

**MANIFESTATION OF THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL ON THE
SAFEGUARD INVESTIGATION INITIATED BY THE GOVERNMENT OF AUSTRALIA, ON JUNE 21, 2013,
AGAINST IMPORTS OF PROCESSED FRUIT**

With respect to the safeguard investigation initiated by the Government of Australia, on June 21, 2013, against imports of processed fruit, commonly classified under items 2008.30.00, 2008.40.00, 2008.50.00, 2008.70.00, 2008.97.00 and 2008.99.00 of the Australian Customs Code, the Government of the Federative Republic of Brazil would like to thank the Australian authorities for the opportunity to submit comments on the process.

The Brazilian Government believes that safeguard measures shall be applied only in exceptional cases, that justify protective emergency actions of the national industry, as explained in Article XIX of GATT 1947 and the Agreement On Safeguards. Given its global and unrestricted nature, safeguards affect all exporters of the product under investigation, regardless of the fact that they individually cause injury to the domestic industry. For this reason, the understanding of the component for the Solution of Controversies on this subject has established high parameters for the final determination of the application of a safeguard measure. The Brazilian Government is certain that the Australian authorities are aware of the standards to be observed during the investigation.

Firstly, the Brazilian Government would like to express its disappointment with the limited amount of information presented by the Australian Government in its Notification to the WTO, and also in the Notification released by the investigating authority. The data listed on the importation and the feedback provided on the evidence of injury caused to the domestic industry is so restricted that this hinders refined analysis on the part of the Brazilian Government.

1. Brazilian Exports

The Government of Brazil would like to point out that, in the Australian Notification to WTO, it identifies Brazil as the second largest exporter of products classified under item 2008.30.00, processed citrus fruits, although there are no records in Brazilian official statistics (available at the electronic address <http://aliceweb2.mdic.gov.br/>), of any exports to Australia of the tariff item listed. In this respect, it would be grateful if the Australian authorities submit the ports of export of products of Brazilian origin which are contained in their official statistics, as well as the names of the Brazilian producers/exporters identified in such operations, as when consulted by the Brazilian Government, Brazilian exporters have stated that they do not export to Australia.

2. Outbreak of imports

It is necessary to observe that the safeguards should only be used as a tool to counteract the severe damage or threat caused by a recent and sudden surge of imports. The data made available by the Australian Government in its Notification to the WTO, however, does not allow a check on the latest developments on imports, as Australian records cover a period that extends only until June 30, 2012 (end of the Australian fiscal year). This surprised the Brazilian Government, including the presence in the Australian Notification to WTO, of comparisons between import volumes from the periods 2000-2001 and 2011-2012, which thus escape completely the requirements provided for in

the Agreement on Safeguards (As in the Report of the Dispute Settlement Body in Argentina - Footwear (EC), paragraph 130).

The Brazilian Government believes that in the course of investigation the Australian Government should also take into consideration the fiscal year 2012-2013. The absence of this most recent period would put in doubt the compliance established in the Agreement on Safeguards.

In addition to being recent and sudden, the surge of imports, according to the understanding of the Dispute Settlement Body (DSB), must be acute and significant enough to cause, or threaten to cause serious damage to the domestic industry. The data indicated in the documents already provided by the Australian Government does not seem to suit these requirements.

The code 2008.30.00, citrus fruits, for example, grew by a mere 5.67% between 2011-2012, which far from meets the consolidated level in the understandings of the WTO. Furthermore, the comparison of the absolute level of imports at that tariff line between the period of 2007-2008 and 2011-2012 shows that there was only a marginal increase of imports, disregarding the extraordinary period of decline in imports due to the world crisis.

Even among the codes listed as products which are the object of research, there are some products, such as the 2008.97.00 , "mixtures", which have a significant reduction in imports in the period 2011-2012 (-43,50 %). However, there remains a clear understanding in the Agreement on Safeguards that the investigating authority should focus their attention on the most recent period, because otherwise it would not be possible to claim an emergency situation that would justify the use of a safeguard measure.

It would seem to the Brazilian Government that it could hardly conclude that there is a recent outbreak (acceleration) of imports based on data submitted by the Australian authorities up to now. The reasons which led the Australian Government to accept a petition which included certain tariff codes such as product research objects that had dropped or had minimal marginal growth is not clear, and does not leave obvious causal link between the alleged outbreak of imports and the damage alleged by the domestic industry. The Brazilian Government hopes that this decision will be reviewed in the course of the proceedings.

3. Similar Product and definition of domestic industry

The Brazilian Government regrets that the Australian authorities have not made available sufficient information on the definition of the like product or direct competitiveness or on the contours of the Australian domestic industry producing the like product. In this respect, the Brazilian Government expresses its surprise at the Australian notification to WTO, and that there is no mention of the losses suffered by producers of fruit in natura ("fruit growers") - mentioning the reduction of the number of trees and even their exit from the market.

To the Brazilian Government, the producers of fruit in natura, in line with the understanding already consolidated by OSC (vide case US - Lamb), should not be included as members of the domestic industry, as well as none of the producers who are in the industry of fruit processed (who are also producing the like product or directly competing in the Brazilian understanding). The Brazilian Government also wishes to stress, moreover, that the data presented in the domestic production of citrus fruits in natura is for the period 2010/2011, and is therefore out-dated.

4. Conclusion

The arguments above suggest that the Australian Government has opened an investigation of safeguards based on little accurate data and not commensurate with the requirements laid down in the WTO Agreement on Safeguards. The Brazilian Government hopes that these arguments are taken into consideration by the investigating Australian authority, once the non-observation of the points raised here put in doubt the legality of the possible application of a safeguard measure by the Government of Australia.