REPUBLIC OF TURKEY
MINISTRY OF ECONOMY
DIRECTORATE GENERAL OF EXPORTS

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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 ("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) Committee on Safeguards the initiation of the safeguard investigation on July 3, 2013.

The Complainant released the "Non-Confidential Version of the Submission" (the Submission) presented to the Commission on July 23, 2013. At this time, as a supplemental to the initial views, here below are the remarks of the Turkish Government concerning the Submission.

2. Absence of Figures on Some Relevant Factors of Injury

As per Article 4.2 (a) of the AoS, *"In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports,*

changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment."

Taking into account the said Article, it should be underlined that the absence of figures regarding the Complainant's productivity, capacity utilization and employment deprived Turkey of making proper comments concerning the course of domestic industry during the investigation period.

3. Remarks on Turkey's Share in Imports of *Subject Merchandise*

Article 9.1 of the AoS sets forth *"Safeguard measures 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."* The underlined expressions in the Article necessitates that the "3 per cent rule" should be implemented separately for each of the product (subject merchandise) included in the ongoing safeguard investigation.

Pertaining to the abovementioned requirement, the official statistics from the Department of Agriculture, Fisheries and Forestry (DAFF) explicitly demonstrate that Turkey can only be subject to the inquiry with regard to 'Apricots' (HS Code 2008.50.00) in the context of current investigation. In 'Citrus Fruit' (HS Code 2008.30.00), for instance, Turkey had exports to Australia only in 2007 and its share in Australian imports was 1,3%. For 'Pears' (HS Code 2008.40.00), the shares in Australian imports in the years of 2007 and 2008 (the only importation years) were highly negligible, 0.6% and 0.3% respectively. Similar to the 'Pears', the shares of 'Peaches' (HS Code 2008.70.00) imported from Turkey in 2007 and 2008 were also negligible, 0,1% and 0,2% respectively. For the subject merchandise of 'Mixtures' (Until 2012, HS Code: 2008.92.00; after that time HS Code: 2008.97.00), Turkey's shares in the whole years during the period of investigation (POI) never exceeded 3 per cent. At this timeframe, these shares varied from 0.4% (min.) to 2,7% (max.).

Furthermore, in the Submission, the Complainant does not specify Turkey as being among the major exporters of the subject merchandises namely, China, South Africa and Greece[1].

Hence, Turkey kindly requests the Commission to consider the abovementioned facts and exclude Turkey from the ongoing safeguard investigation of aforesaid subject merchandises.

4. Circumstances That Shall Not Be Associated With Alleged Increase in Imports

In the Executive Summary of the Submission, the Complainant associated the removal of fruit trees and the critical decision of fruit growers about spraying their trees with injury stemming from increase in imports[2]. In fact, while trees are considered as long-term crops in the Submission[3], making the decision of the removal of them in such a short-term can be regarded as totally unjustifiable. At that point, Turkey expects the clarification of whether there is truly an issue regarding the removal of trees; if so in what amount and owing to which reasons. In addition, even if there will be removal of trees, the reasons lying behind should be examined well. The natural and financial problems which have been widely seen in agriculture sector such as drought, low humidity in high temperatures, inadequate capital cannot be ignored in this case.

Moreover, the relation established by the Complainant between the trees not sprayed and a major risk of biosecurity damage can also be considered as very speculative and as an effort to overstate a completely hypothetical situation.

[1] Non-Confidential Version of SPC Ardmona's Submission, page 30.
[2] Non-Confidential Version of SPC Ardmona's Submission, page 3.
[3] Non-Confidential Version of SPC Ardmona's Submission, page 3.

5. Remarks on Domestic Industry

Within the framework of 'domestic industry', Article 4.1 (c) of the AoS underlines 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"*.

In the Submission, Complainant included farmers and fruit growers to the components of domestic industry by expressing "*A continuation of recent import trends threatens to overwhelm the industry. There are critical circumstances facing* ***the industry, with decisions having to be made now at the farm and plant level*** [4] *"*. In other words, the industry is divided into different levels, farms and plants, and these levels are considered as viable segments of the industry by the Complainant.

However, in *US — Lamb*, the Appellate Body upheld the findings of the Panel and also concluded that the definition of "domestic industry" by the United States authorities was too broad and added: *"There is no dispute that in this case the 'like product' is 'lamb meat', which is the imported product with which the safeguard investigation was concerned. The USITC considered that the 'domestic industry' producing the 'like product', lamb meat, includes the growers and feeders of live lambs. The term 'directly competitive products' is not, however, at issue in this dispute as the USITC did not find that there were any such products in this case.*[5] *"*

Likewise, in this case, it is significant to underline that the definition of domestic industry should be made properly in order not to include irrelevant parties to the said definition. Hence, Turkey expects that the Commission will make its determinations pursuant to the relevant Panel and Appellate Body decisions.

[4] Non-Confidential Version of SPC Ardmona's Submission, page 3.
[5] Appellate Body Report, *US — Lamb*, para. 88.

Furthermore, the Complainant emphasized in the Submission that it's now the sole Australian processor of retail products in the multi serve fruit industry[6]. But, the submission of Coles, leader of Australian food retailing[7], disclaims the abovementioned expression by highlighting Heinz among the other major processors of Australian fruit[8]. Besides, in the Australian Industry Group's Water Saving Factsheet regarding processed fruit and vegetables industry, some of the major fruit and vegetable processors are exemplified as SPC-Ardmona, Goulburn Valley (a subsidiary of SPC-Ardmona), Simplot, Unilever, Heinz, Golden Circle and McCains[9]. Accordingly, Turkey requests Commission to carefully determine the members of domestic industry for the clarification of the fact that whether SPC Ardmona constitutes a major proportion of the total domestic production or not, pursuant to the Article 4.1 (c) of the AoS.

6. Unforeseen Developments

From the aspect of 'Unforeseen Developments', the Complainant constantly puts emphasis on two factors, the appreciation of Australian dollar and the mining boom. Turkey would like to point out that both of the aforementioned factors cannot be considered as unforeseen developments.

Firstly, Turkey is of the view that the argument of Australian dollar's appreciation is misleading. The Complainant asserts the existence of a relationship between the appreciation of exchange rate and alleged increase in imports on the Chart 4.3.3 (a). At that point, it is naturally expected that while alleged increase in imports must be 'recent and sudden enough'[10], the exchange rate appreciation should also follow the similar path. However, the graph presented below which demonstrates the exchange rate of Australian Dollar (AUD) vs. American Dollar (USD) between July 25, 2011 - July 25, 2013 contradicts with the Complainant's argument on the appreciation of AUD since it has experienced a remarkable

[6] Non-Confidential Version of SPC Ardmona's Submission, page 3.
[7] http://www.coles.com.au/about-coles/the-coles-story
[8] Submission of Coles to Productivity Commission on Imports of Processed Fruit Products, page 3.
[9] Water Saving Factsheet: Processed fruit and vegetables industry, Australian Industry Group
[10] Appellate Body Report, *Argentina – Footwear (EC)*, para. 131.

depreciation vs USD, nearly 20%, in the last two years. Therefore, consideration of appreciation of AUD as an unforeseen development is quite contrary to the realities.

Source: Oanda Corporation

The mining boom also cannot be categorized under 'Unforeseen Developments' due to two major reasons. First and foremost, the mining booms in Australia could not be seen as "unforeseen" because the country has continuously experienced high growth rates in this sector in the last half century[11]. At that point, reference to Appellate Body Report of *Argentina-Footwear(EC)* can be made: *"We look first to the ordinary meaning of these words. As to the meaning of "unforeseen developments", we note that the dictionary definition of "unforeseen", particularly as it relates to the word "developments", is synonymous with "unexpected". "Unforeseeable", on the other hand, is defined in the dictionaries as meaning "unpredictable" or "incapable of being foreseen, foretold or anticipated"*[12]. Hence, in this current situation, the concept of "unpredictability" as a matter of fact, cannot be associated with developments in mining sector. In addition to that, the

[11] http://www.rba.gov.au/speeches/2010/sp-dg-230210.html
[12] Appellate Body Report, *Argentina — Footwear (EC)*, para. 91. See *Webster's Third New International Dictionary*, (Encyclopaedia Britannica Inc., 1966) Vol. 3, p. 2496; and *Black's Law Dictionary*, 6th ed., (West Publishing Company, 1990) p. 1530.

beginning of current mining boom used to be traced back to the year of 2005[13]. At this juncture, Turkey is of the view that an event with a long history cannot be considered as an unforeseen development.

7. Remarks on Alleged Increase in Imports

As per 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"*.

The Complainant claims that imports of total multi serve fruit increased in relative terms in 2011 to 2012[14]. However, this argument can easily be refuted with the very charts present in the Submission. The examination of Chart 4.3.1(a) which demonstrates total multi serve fruit import penetration levels reveals the fact that total share of imports in the total consumption has entered into a declining trend starting from 2011 and continuing in 2012. Thus, imports of total serve fruit demonstrated a decrease in 2011-2012 rather than an increase, in relative terms.

Moreover, the Complainant's arguments on the recent rise of imports in 2013[15] could not be verified since there is no data presented in the Submission.

Besides, the use of the Chart 4.3.1(b) which presents canned multi serve fruit import penetration levels forbids the Commission to make a fair evaluation regarding the alleged increase in imports. In this chart, an increase in relative terms on the period 2011-2012 was sought to be demonstrated by the Complainant in a speculative manner. The speculation arises from the preference of considering solely the imports of 'canned' multi serve fruit. In fact, ignoring the imports and domestic production of multi serve fruit in other packaging formats

[13] http://www.rba.gov.au/speeches/2010/sp-dg-230210.html
[14] Non-Confidential Version of SPC Ardmona's Submission, page 14.
[15] Non-Confidential Version of SPC Ardmona's Submission, page 37.

such as plastic, glass, tetra packs etc. and only focusing on imports of canned type hinders declining imports in relative terms. Therefore, Turkey would like to reiterate that whole kinds of multi serve fruit should be included into an analysis of alleged increase in imports in relative terms.

8. Remarks on Serious Injury or Threat Thereof

8.1. Influence of Various Cost Factors

The Complainant states that *"The rise in imports has caused damage. The decline in sales volume caused by the imported canned Multi serve fruit has resulted in SPCA experiencing higher costs to make and sell during the period from 2010 to 2013 with average cost to make and sell increasing by 19%"*[16]. However, the casual link sought to be established between alleged increase in imports and injury with concentrating on the average costs rise experienced by the Complainant is definitely not based on a detailed cost analysis.

With respect to the Select Committee Report on Australia's Food Processing Sector[17] published on August 2012, it is clear that there are remarkable burdens on the Australian food processing sector which vary from current regulatory environment to additional taxes. Regarding the current regulatory environment, for instance, *"It is acknowledged by government that the regulatory structure currently governing the food industry is complex and has the potential to impose significant compliance and administrative costs on businesses.*[18]*"* Therefore, *"Increasing regulation increases the cost of products and acts as a disincentive to investment thereby impacting the competitiveness and ongoing viability of the sector*[19]*."* Besides the regularity problems creating additional costs to the parties of food processing sector in Australia, the problems in transportation also complicate the situation. *"The committee heard that differences in transportation infrastructure and fees and charges*

[16] Non-Confidential Version of SPC Ardmona's Submission, page 18.
[17] http://www.aph.gov.au/parliamentary_business/committees/senate_committees?url=foodprocessing_ctte/foodprocessing/report/index.htm
[18] Select Committee Report on Australia's Food Processing Report, page 16. See also Department of Agriculture, Fisheries and Forestry, *Issues paper to inform development of a national food plan*, 2011, p. 32.
[19] Select Committee Report on Australia's Food Processing Report, page 18.

throughout the different jurisdictions were potential to impediments to competitiveness.[20]*"* Also, Webster Ltd., a Tasmanian based exporter, complained about the excessive transportation costs within Australia and specified *"In addition to the high costs of freight between Bass Strait…, as well as the introduction of a Port Licence Fee by the Port of Melbourne to enable it to pay an annual port licence fee to the Victorian Parliament ('the state of which the Complainant operates'), are placing further pressure on their ability to compete.*[21]*"*

Moreover, from the aspect of taxes collected by both state and local government, the domestic producers have given a particular emphasis on the heavy burden stemming from the aforesaid taxes. For example, Coca-Cola Amatil, parent company of the Complainant, emphasizes that *"State payroll tax is a 'significant cost…and a significant barrier to maintaining a competitive and viable local food and beverage manufacturing industry' and … more needs to be done to 'reduce the burden on local manufacturers'.*[22]*"*

In sum, Turkey kindly requests the Commission to take into consideration the facts regarding the various noteworthy cost factors having a significant bearing on the domestic producers in Australian food processing sector and not to associate injury resulted by these factors to the imports under investigation.

8.2. Ambiguity Concerning Decline in Demand

In the Submission, the Complainant stressed the decline in its demand of raw tonnes of fruit by referring Chart 4.3.2(c). However, it is important to note that this chart does only have relevant information for 4 groups of products under investigation (Peaches, Pears, Apricots and Plums, which can be categorized under Others) and does not include figures relating to whole subject merchandise. In fact, the Submission does not contain any intake figures concerning Citrus Fruit and Mixtures.

[20] Ibid, page 22.
[21] Ibid, page 23. See also Webster Ltd, *Submission 58*, p. 4.
[22] Ibid, page 26. See also Coca-Cola Amatil, *Submission 44*, p. 5.

On the other hand, the Plums is not one of the subject merchandises in this investigation; thus, it can only be regarded as one of the components of the 'Mixtures' group of which the demand figures are absent.

Moreover, the Complainant's intakes regarding Apricots and Plums in the term mentioned in the chart (2006-2013) do not demonstrate any change. At this point, it is very unlikely to assume that the statistical information involving only two of the subject products will be enough to use in the determination of serious injury. Hence, Turkey is of the opinion that a chart constituted with a remarkable amount of missing information cannot be taken into account while making a decision whether there is serious injury or not.

9. Conclusion

The Turkish Government expresses its concerns regarding the initiation of this investigation which has the potential to harm bilateral trade relations between two countries.

In addition, Turkey underlines the fact that in light of the Articles 2.1, 4.1 (c), 4.2 (a), 4.2 (b), 9 of the AoS, Article XIX of GATT 1994 and the related rulings of WTO Panel and Appellate Body on specific disputes; the criteria to initiate a safeguard investigation and to impose a safeguard measure in this investigation are not met.

Therefore, Turkey kindly requests the Commission to terminate the ongoing investigation without imposition of any measure.

Turkey follows this investigation closely and reserves all its rights under the WTO Agreements.