

**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 tomato products (2002.10.00.60)**

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 tomato products (2002.10.00.60) (hereinafter, “the Product”).

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 Product**

Australia’s investigation for remedial action in the form of a safeguard is allegedly intended against the increased imports of processed tomato products. Nevertheless, according to the statistics shown by the Australian Bureau of Statistics, practically there is no variation of imports into Australia in connection with the Product for the period 2008-2012 (except for the inter-annual rate 2011 -2012).

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

**Table I: Imports of processed tomato products to Australia**

Year	KILOS	Annual Growth (%)
<b>2007-2008</b>	40.602.633,00	
<b>2008-2009</b>	40.111.911,00	-1,21%
<b>2009-2010</b>	40.031.441,00	-0,20%
<b>2010-2011</b>	41.023.158,00	2,48%
<b>2011-2012</b>	46.006.962,00	12,15%

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

Australia states that one of the primary sources of imports is Argentina<sup>1</sup>, however, as it show in the table below, exports from Argentina have decreased during the period under investigation have decreased (except for the inter annual rate 2010-2011), and have reduced to zero since 2012.

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

Año (year)	FOB (USD)	KILOS	Participation on imports
<b>Total 2007</b>	815.019	1.537.906,00	3,28%
<b>Total 2008</b>	1.319.911	1.866.182,00	4,70%
<b>Total 2009</b>	1.161.270	1.482.096,00	3.70%
<b>Total 2010</b>	3.157.784	3.966.956,00	9,70%
<b>Total 2011</b>	1.129.424	1454117,00	3,20%
<b>Total 2012</b>	0	0	0
<b>Total 2013</b>	0	0	0

Source: Argentina's National Institute of Statistics and Censuses

Although the statistics show an increase during the last year, 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.

## **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 Product, the Applicant has to demonstrate the causal link between increased imports of the Product 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.

<sup>1</sup> Australia's notification under article 12.1 (a) of the Agreement on Safeguards, G/SG/N/6/AUS/3 pag. 2

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*”.<sup>2</sup>

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 is caused by “*A more than 50% appreciation in the Australian dollar in the past four years has made cheap imported food even cheaper*”.<sup>3</sup>

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”<sup>4</sup>

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

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<sup>2</sup> Import of processed tomato products, Productivity Commission Issue Paper, Terms of Reference pag 4.

<sup>3</sup> Id.

<sup>4</sup> Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products (DS98), paragraph. 7.89.

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.<sup>5</sup>

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."

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<sup>5</sup>United States — Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities. DS166 paragraph 66.

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 product import trend into Australia from Argentina is not reflecting an increase of any kind but a sharp decrease to zero imports into Australia.

The causal link between serious injury and increased imports is not met since other factors claimed by the Applicant, are not analyzed separately from increased imports.

The effects of the alleged increased of the imports are not considered in a separate way, and the effects of the other factors mentioned by the Applicant are attributed in a non differentiated manner to the increased of the imports.

The Government of Argentina requests the Productivity Commission of Australia the closure of the Investigation without the application of any safeguard measure, taking into account that not all conditions required for applying a safeguard measure are met.