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**Safeguard investigation concerning processed or
preserved tomatoes**

**Post-hearing submission on behalf of the
Associazione Nazionale Industriali Conserve
Alimentari Vegetali**

8 August 2013

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1. INTRODUCTION

1. We refer to the submission we lodged on behalf of the Italian National Industry Association of Conserved Vegetables - the Associazione Nazionale Industriali Conserve Alimentari Vegetali (**ANICAV**) - on 29 July 2013, and the discussion of that submission at the public hearing with the Productivity Commission (the **Commission**) on 30 July 2013.

2. The purpose of the present submission is to discuss whether there has been an increase of imports relevant to the present investigation. The data presented in this submission is the Australian Bureau of Statistics (**ABS**) data relating to imports of products falling under code 2002.10.00.00.60, as available on the website of the Commission.

3. In this submission, ANICAV reiterates its claim that there has not been an increase in imports which would justify the adoption of safeguard measures.

2. NO INCREASE IN IMPORTS AS REQUIRED BY THE WTO AGREEMENT ON SAFEGUARDS IS DEMONSTRATED

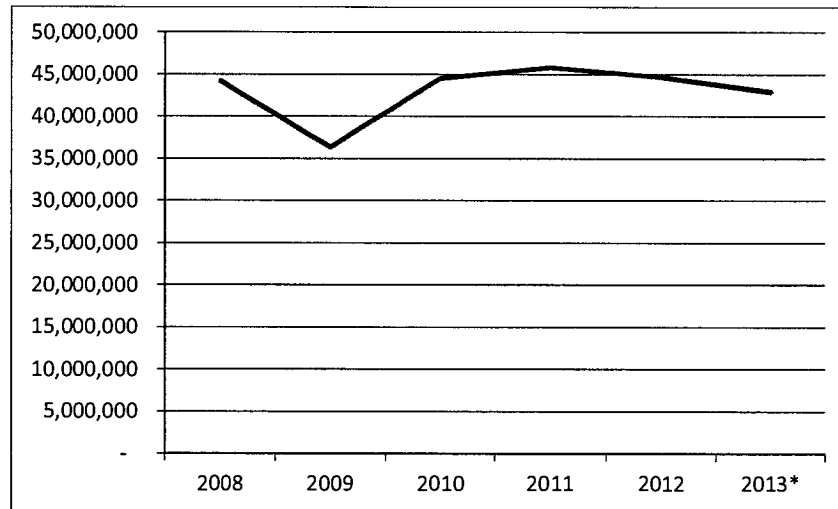
2.1 ABS import data does not demonstrate an increase in imports

4. As already submitted in Section 3.1.2 of ANICAV's submission dated 29 July 2013, an analysis of the recent import data indicates that there was a decrease of imports in 2012 as compared to 2011, and that this decreasing trend continues into 2013. ANICAV submits therefore that there is no basis for the initiation of this proceeding, given that no increase in imports can be demonstrated.

Table 1 and corresponding chart

Imports from the world, quantity in kg (calendar year data)

2008	2009	2010	2011	2012	2013*
44,213,585	36,334,708	44,572,596	45,792,240	44,702,540	42,929,082



5. It is evident from the above figures that there was no increase of imports. Indeed, recent data confirms that imports in 2012 *decreased* compared to imports in 2011, a trend which continues into 2013.¹ Therefore, there was no increase in imports which is “recent enough”, as required by the WTO case law.

6. Moreover, when looking at the trend of imports, it is further confirmed that there is no trend of increase in imports. In *Argentina – Footwear*, the Panel held that there is a requirement “that the intervening trends of imports over the period of investigation be analysed”.² In this respect, it follows clearly from the above table and graph that the import trend over the period 2008-2013 does not indicate an increase in imports.

7. Given that there has been no increase in the import volumes, either as compared to an earlier period or over recent times, ANICAV submits that the investigation should be terminated forthwith without the adoption of safeguard measures.

8. No further analysis should be required to assess whether there was an increase in import volumes, and whether that increase was also sharp enough, significant enough and sudden enough. There simply was no increase. However, for the sake of completeness, ANICAV points to the fact that, even on the basis of an end-point comparison, comparing the start-point of the period of investigation (2008) with the most recent available full-year data (2012), only an increase of around 1% can be demonstrated. This is less than the increase in the population of Australia during the same period and therefore, in relative terms, cannot be considered an

¹ 2013 data in Table 1 and the corresponding graph have been “annualised” on the basis of the available data from January 2013 to June 2013.

² Panel Report, *Argentina - Footwear (EC)*, para. 8.159.

increase at all, let alone a sudden surge in imports of a necessary magnitude.

9. This small increase in absolute terms cannot be considered to be sudden, sharp or significant, given that any increase that can be demonstrated (from 2009 to 2011) followed a decrease of imports from 2008 to 2009.

2.2 Data relied on in the Notification

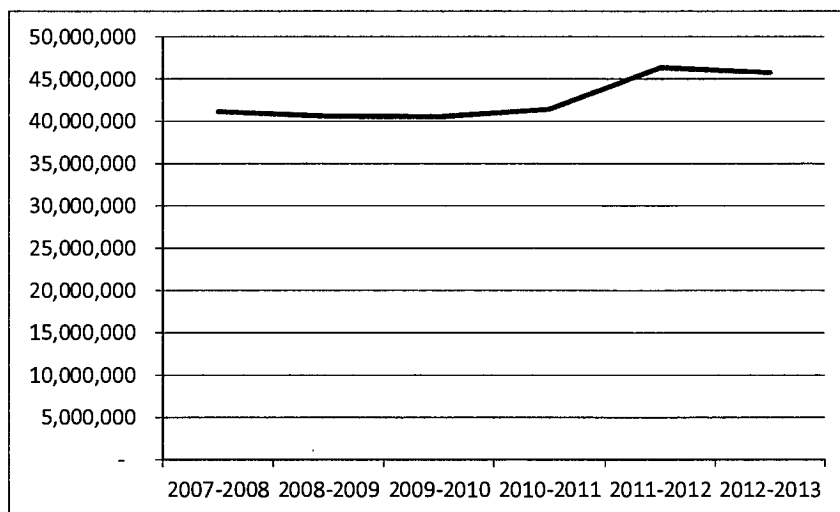
10. At the hearing on 30 July 2013, the Commission referred to an increase of imports of 12%. This claim is based on the data provided in the Notification of the Australian delegation to the WTO Committee on Safeguards (the **Notification**). According to the data provided in that Notification, imports (excluding those from New Zealand and Singapore) increased from 41,023,158 kg in 2010-2011 to 46,006,962 kg in 2011-2012, which corresponds to an increase of 12.15%.

11. The below table and corresponding graph visualises the trend of imports, when looking at data from July-June.

Table 2 and corresponding chart

Imports from the world, quantity in kg (July-June data)

2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
41,172,419	40,611,947	40,572,511	41,433,433	46,315,298	45,721,488



12. It is evident that, when relying on July-June data rather than on calendar year data, a different trend of imports appears to be demonstrated. On this basis the volume of imports is seen to be generally stable, with an increase after 2010-2011, before another decrease after 2011-2012.

13. First, ANICAV submits that the choice not to use calendar year data is arbitrary. This is demonstrated by the fact that the curve looks completely different depending on whether one relies on calendar year data or July-June data. This is due to coincidence, depending on how the imports are spread out throughout the year. To overcome this arbitrary contest between the two charts, it is instructive to also assess the trend of imports on the basis of half year data. This is set out in more detail in Section 2.3 of this submission

14. Second, even when using the data in this way, there is no “recent” increase as required by WTO case law. Indeed, as is evident from the most recent available ABS data, there is a decrease in imports in 2012-2013 as compared to 2011-2012. Therefore, any increase that can be demonstrated on the basis of this analysis of the data occurred between the financial year that was over two financial years ago and the financial year that was more than one financial year ago. Moreover, the increase shown in this way – when considered in parallel to the equally valid calendar year method, could not be said to be “significant” enough. The opposite picture presented by the calendar year data considerably moderates the appearance of any increase, rendering the increase shown in the alternative financial year method as not being significant enough overall. That moderated increase is also not “sharp” enough nor is it “sudden” enough.

2.3 Analysis of the trend of imports

15. The trend of imports can be looked at in different manner, namely on the basis of half year figures.

16. In this respect, it is important to note that the Panel in *Argentina - Footwear* commented on the importance of the sensitivity of the comparison to the specific years used as the end-points, as it might confirm or reverse the apparent initial conclusion. In that specific case, changing the starting-point and/or ending-point of the investigation period by just one year meant that the comparison showed a decline in imports rather than an increase. The Panel then concluded that “*this necessarily signifies an intervening decrease in imports at least equal to the initial increase, thus calling into question the conclusion that there are increased imports.*” The Appellate Body confirmed this conclusion and stated as follows:

“Indeed, in cases where an examination does not demonstrate, for instance, a clear and uninterrupted upward trend in import volumes, a simple end-point-to-end-point analysis could easily be manipulated to lead to different results, depending on the choice of end points. A

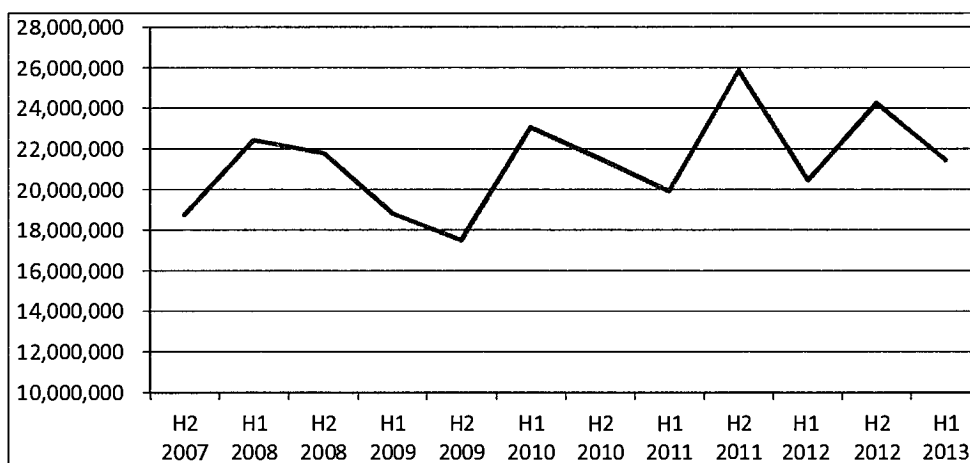
comparison could support either a finding of an increase or a decrease in import volumes simply by choosing different starting and ending points. [...] Rather, as we have said, competent authorities are required to examine the trends in imports over the entire period of investigation.³ (emphasis added)

17. Similar reasoning should be applied here. It is undisputed that there is a different result, depending on whether a comparison is made on the basis of calendar year data, or July-June data. In itself, this would call into question any conclusion that there was an increase of imports. Therefore, in this investigation, it may be appropriate to analyse the trend of imports on the basis of half year data. Such an analysis can provide another demonstration of the actual trend of imports in the period under investigation.

Table 3 and corresponding chart

Imports from the world, quantity in kg (half year data)

Year	2007	2008	2009	2010	2011	2012	2013
First Half	-	22,425,533	18,823,895	23,061,698	19,922,535	20,445,593	21,464,541
Second Half	18,746,886	21,788,052	17,510,813	21,510,898	25,869,705	24,256,947	-



18. This chart, which is not influenced by the choice of calendar year data or July-June data, demonstrates that, throughout the period under investigation, there has been a fluctuation of imports of canned tomatoes. On occasions throughout the

³ Appellate Body Report, *US – Steel Safeguards*, paras. 354-355.

period, there were increases in imports, and on other occasions there were decreases in imports.

19. In analysing this trend, it is evident that no increase in imports can be established. In particular, ANICAV submits that:

- The increase in imports is **not recent enough**: irrespective of whether one looks at calendar year data, July-June data, or half year data, the most recent available import data indicate that there is a decrease in imports in 2012 as compared to 2011, 2012-2013 as compared to 2011-2012 and H1 2013 as compared to H2 2012. Indeed, looking at Table 3, the H2 2012 peak was much less than the H2 2011 peak. Therefore, any alleged increase could not be said to be recent enough.
- The increase in imports is **not sudden enough**: it is clear that imports of canned tomatoes have fluctuated over time. Indeed, imports increased from H2 2007 to H1 2008, subsequently decreased from H1 2008 to H2 2009, and increased and decreased again in the periods thereafter. Therefore, any alleged increase that can be demonstrated cannot be considered as sudden.
- The increase in imports is **not sharp enough**: it is evident from the graphs provided throughout this submission that any increase that can be demonstrated is not sharp enough. Throughout the period of investigation, any increases have been as sharp as previous decreases.
- The increase in imports is **not significant enough**: the ABS data available clearly demonstrate that there has been no significant increase of imports, given that similar decreases took place in the same period.

20. Safeguard measures are available where “serious injury” is caused by imports in “increased quantities” in “unforeseen circumstances”. ANICAV submits that this test is not met – nor can the policy underpinning the test be satisfied – by the imposition of safeguard measures in circumstances where the volumes that have been imported during the time period most recent to the investigation are much less than, and are shown to be decreasing in comparison to, an earlier period. The chart setting out the half year data shows that imports have trended downwards since a peak in H1 of 2011. That half year peak was over two years ago.

3. CONCLUSION

In view of the above, ANICAV concludes that there were no imports “in such increased quantities” justifying the imposition of safeguard measures.

We respectfully request that the investigation be discontinued, as no safeguard measures can be imposed under these circumstances.

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