



**REPUBLIC OF TURKEY
MINISTRY OF ECONOMY
DIRECTORATE GENERAL OF EXPORTS**

October 24, 2013

**ADDITIONAL VIEWS OF THE REPUBLIC OF TURKEY REGARDING THE
SAFEGUARD INVESTIGATION INITIATED AGAINST CERTAIN PROCESSED
FRUIT PRODUCTS IMPORTED BY AUSTRALIA**

This document includes the additional views of the Republic of Turkey in accordance with the Article 3.1 of the Agreement on Safeguards (“AoS”) regarding the Accelerated Report (“the Report”) of 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” 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.

In response to the Commission’s request about making submissions by the interested parties, Turkey presented its initial views to the Commission on July 18, 2013. As a supplemental to the initial views, Turkey submitted its views (“the Second Submission”) based on the submission of the Complainant on August 28, 2013. At this time, with respect to the Report released on September 26, 2013, below are the remarks of the Republic of Turkey.

**2. Remarks on Other Processed Fruits / Citrus Fruit and Turkey’s Exclusion
from Investigation of Certain *Subject Merchandise***

At the outset, Turkey welcomes the Commission’s finding regarding the negligible amount of production of certain other processed fruits. It is stated in the Report that “*However, several products are not produced domestically at a reportable volume. These include most tropical and exotic fruit, such as passionfruit, lychees, figs and guava, as well as*



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*some processed berries.*¹” Even though the said products are grown in Australia, they are most commonly cultivated in the tropical regions of South America and Southeast Asia. Strawberry guava, for instance, is native to Eastern Brazil and north eastern of Uruguay². Passionfruit, in addition, is native to Southern Brazil, Paraguay to Northern Argentina³. In this context, negligibility of domestic production volume concerning these products is very likely to be assumed.

In addition, “*The Commission [...] has found that this Tariff subheading comprises a narrow band of products, consisting primarily of processed mandarin and grapefruit segments. The volume of imports under this Tariff subheading is significantly smaller than those of other products under reference, and so far the Commission has not found any domestically produced products that would fall within it.*”⁴” Actually, Turkey agrees with this judgment and seeks to draw attention to certain noteworthy reports prepared by Food and Agriculture Organization of the United Nations (FAO) and United States Department of Agriculture (USDA).

According to the *Projections of World Production and Consumption of Citrus to 2010*⁵, it is stated concerning **Tangerines/Mandarins** that “*Processed tangerine consumption is scattered and difficult to track... Spain, Japan and China have tangerine sectioning industries. Canned tangerine sections from Japan and Spain are exported to North America. Canned fruit products in developed economies, however, will encounter difficulties competing with the new array of "fresh cut" fruit products that are increasingly available in those countries.*”

¹ Productivity Commission Accelerated Report about Safeguards Inquiry into the Import Processed Fruit Products, page 16.

² Bionet – EafriNet Keys and Fact Sheets, [http://keys.lucidcentral.org/keys/v3/eafriNet/weeds/key/weeds/Media/Html/Psidium_cattleianum_\(Strawberry_Guava\).htm](http://keys.lucidcentral.org/keys/v3/eafriNet/weeds/key/weeds/Media/Html/Psidium_cattleianum_(Strawberry_Guava).htm)

³ Bionet – EafriNet Keys and Fact Sheets, [http://keys.lucidcentral.org/keys/v3/eafriNet/weeds/key/weeds/Media/Html/Passiflora_edulis_\(Passion_Fruit\).htm](http://keys.lucidcentral.org/keys/v3/eafriNet/weeds/key/weeds/Media/Html/Passiflora_edulis_(Passion_Fruit).htm)

⁴ Accelerated Report, page 15.

⁵ *Projections of World Production and Consumption of Citrus to 2010*, Thomas A. Spreen, China / FAO Citrus Symposium, 2001, <http://www.fao.org/docrep/003/x6732e/x6732e02.htm>



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In the Report, it is also pinned down regarding **Grapefruit** that “*As grapefruit production is better suited for tropical climates, its production is scattered among the countries near the equator in Latin America, Africa, and Asia. The largest producing country, however, is the United States...Per capita consumption of processed grapefruit is also projected to decline. Processed grapefruit competes directly with processed oranges. As consumers in the developed countries continue to move towards orange juice and away from grapefruit juice, grapefruit producers will need to find new markets and/or new products.*”

Furthermore, with respect to Citrus, Australia did not take place among the major tangerine/mandarin producers for processing which compose nearly 98% of whole production on the July 2012/2013 period. According to the report⁶ issued by United States Department of Agriculture (USDA) concerning grapefruit production for processing, Australia is appeared to possess no production and, in fact, there are only six producers (United States, South Africa, Israel, Mexico, Argentina and European Union) worldwide in this field.

Moreover, Turkey would like to underline its point of view regarding the exclusion from the investigation concerning certain subject merchandise. As it is emphasized in our Second Submission, according to Article 9.1 of the AoS, Turkey should be excluded from the investigation regarding the *Subject Merchandise* except ‘Apricots’ with regard to the import statistics provided from Department of Agriculture, Fisheries and Forestry (DAFF) covering the period 2007-2012.

Hence, Turkey believes that abovementioned points will be taken into consideration by the Commission on the preparation phase of final report.

⁶ *Citrus: World Markets and Trade*, United States Department of Agriculture / Foreign Agricultural Service, July 2013, <http://usda01.library.cornell.edu/usda/current/citruswm/citruswm-07-25-2013.pdf>



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3. Remarks on Increase in Imports

As per the Appellate Body Report on *Argentina-Footwear(EC)*, “...And this language in both [Article 2.1 of the Agreement on Safeguards](#) and [Article XIX:1\(a\) of the GATT 1994](#), we believe, requires that the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause ‘serious injury’.⁷”

In this framework, Turkey finds well-grounded the Commission’s findings on *Pears*, *Apricots*, *Peaches* and *Mixtures* in regard to the evidences which do not meet the requirements for implementing provisional safeguard measure concerning Article 2.1 of the AoS and abovementioned Appellate Body decision.

The imports of pears, peaches and mixtures do not fulfill the criteria of recentness, being strong and suddenness respectively, according to the Report. For apricots, on the other hand, it is stated that a decrease in the imports has experienced rather than an increase on the last five years. Hence, any measure cannot be in compliance with Article 2.1 of the AoS which denotes “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...”

Consequently, Turkey emphasizes that the Commission should take into account these unsatisfied requirements to apply any measure petitioned by the Complainant.

4. Remarks on Unforeseen Developments

With respect to the Appellate Body Report on *US-Lamb*, “...As [Article XIX:1\(a\) of the GATT 1994](#) requires that ‘unforeseen developments’ must be demonstrated ‘as a matter of

⁷ [Appellate Body Report, Argentina — Footwear \(EC\)](#), para. 131.



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fact' for a safeguard measure to be applied' the existence of 'unforeseen developments' is, in our view, a 'pertinent issue[] of fact and law', under [Article 3.1](#), for the application of a safeguard measure, and it follows that the published report of the competent authorities, under that Article, must contain a 'finding' or 'reasoned conclusion' on 'unforeseen developments.' ⁸".

As it is stated in the Second Submission, Turkey believes that the alleged appreciation of Australian Dollar (AUD) is a misleading argument regarding the issue of 'Unforeseen Developments'. In fact, AUD has depreciated nearly 20% in two-years time⁹. Hence, this would naturally improve Australia's condition about competing far stronger on the international trade.

Furthermore, it must be underlined that private label strategies cannot be categorized under 'Unforeseen Developments'. It would be appropriate to consider this issue as a company strategy since supermarkets are free to develop their own brands in order to be more competitive in the market. Therefore, the concept of creating such private labels is entirely motivated by domestic decision makers and this surely cannot be attributed to the imports.

Besides, Turkey attaches importance to the Commission's finding with respect to other factors¹⁰ that cause serious injury. As stated in Turkey's Second Submission, Australian growers and the Complainant itself have been subjected to certain stringent burdens varying from additional taxes to high transportation costs.

Hence, Turkey reiterates that the arguments which were included in this category by the Complainant are highly inadequate to justify the existence of 'Unforeseen Developments' which is a prerequisite to implement a safeguard measure.

⁸ [Appellate Body Report, US — Lamb](#), para. 76.

⁹ See the Graph Presented in the Second Submission, *Oanda Corporation*

¹⁰ Accelerated Report, page 39.



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5. Remarks on Serious Injury or Threat Thereof

According to 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.”*

In the Report, the Commission declared that the injury to the domestic industry has not been caused by an increase in imports of processed pears, peaches and fruit mixtures¹¹. Turkey agrees with the Commission concerning alleged increase in import is not a cause of claimed injury to the domestic industry.

Turkey wishes to underline the Commission’s judgment that *“The unit values of imports for each Tariff subheading have generally remained stable and there is no evidence of a material decrease over the past five years¹²”*. Hence, it is unlikely that import prices created any pressure on the Complainant. Any other pressure can only be affiliated with the factors other than imports like the Complainant’s own price policy and decreasing world prices of subject merchandise as mentioned in the Report¹³.

Moreover, the Commission’s linkage which was established between decreasing production and declining domestic consumption is reasonable. According to the Canning Fruit Investment Plan of Australia July 2013 – June 2014, *“There is a strong correlation between the domestic demand for processed fruit products and fresh fruit prices. The lower the price*

¹¹ Accelerated Report, page 63.

¹² Accelerated Report, page 49.

¹³ Ibid.



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for fresh products to consumers decreases the demand for canned fruits. The decreased demand for canning fruit was further exacerbated by near perfect growing conditions during 2012/13. Both quality and volume of production was higher than normally experienced. The large volume of production together with continued decrease in demand for canned fruit has placed further commercial pressure on canning fruit growers. The canning fruit industry is now entering a period of consolidation to ensure ongoing viability of the industry.¹⁴” Essentially, the price disadvantage of canned fruit stemming from different costs has also mentioned on the said plan. It is advised in the Strategic Priorities part of the Plan to;

- ❖ *Reduce unit costs through the introduction of new technology and processes, to improve competitiveness and provide opportunities to gain new markets*
- ❖ *Reduce unit labour cost in the orchard and in the factory¹⁵*

Besides, regarding supermarkets’ strategy of creating private label products, it is unfounded to associate this strategy with the imports. Rather, it is completely related to the efforts to gain bargaining power over the monopolistic status of the Complainant in the domestic market. In other words, supermarkets have developed the abovementioned strategy to increase their competitiveness against the Complainant. In fact, the Report verifies this approach by stating *“In 2009, SPC Ardmona’s share of supermarket sales volumes of peaches, pears and mixtures was still of the order of 80–90 per cent. This dominant market position and the perceived ability to raise market prices would typically create an environment that encourages the entry of competitors into the market. The promotion of private labels by supermarkets is one manifestation of increased competition in the market.¹⁶”*

¹⁴ *Canning Fruit Investment Plan of Australia July 2013 – June 2014*, Horticulture Australia, page 3, <http://www.horticulture.com.au/librarymanager/libs/194/AIP%20-%20Canning%20Fruit%20-1314%20-%20Web.pdf>

¹⁵ *Canning Fruit Investment Plan*, page 4.

¹⁶ *Accelerated Report*, page 61.



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As a consequence, Turkey is of the view that the requirements specified on the Article 4 of the AoS relating to 'Serious Injury' are not satisfied in this investigation and in the light of abovementioned information, establishing casual link between alleged increase in imports and serious injury has become improbable.

6. Conclusion

Turkey reiterates its concerns regarding the initiation of this investigation which has a potential to harm agricultural trade relations between two countries.

Bearing in mind the great value attributed by Turkey to the friendly relations with Australia, we believe that our additional views will also be taken into consideration and the Commission will act consistently with the pertinent provisions of AoS and Article XIX of the GATT 1994.

Therefore, in the light of abovementioned points and the Report, Turkey kindly requests the Esteemed Australian Authorities to terminate the ongoing investigation without imposition of any measure.

Taking the foregoing into account, we would like to reiterate that Turkey closely follows this investigation and reserves all its rights under WTO rules and procedures.