
BEFORE THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**COMMENTS CONCERNING PROPOSED TRANSATLANTIC TRADE AND
INVESTMENT AGREEMENT
Docket No. USTR-2013-0019**

**COMMENTS OF THE
CALIFORNIA CLING PEACH BOARD**

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The following comments are submitted by the California Cling Peach Board (Board) in response to the *Federal Register* notice of April 1, 2013 (78 *Fed. Reg.* 19566) inviting comment on the proposed Transatlantic Trade and Investment Partnership (TTIP) agreement between the United States and European Union, including U.S. industry priorities to be considered for developing U.S. negotiating positions.

The California Cling Peach Board is a non-profit, quasi-governmental association representing all 500 cling peach producers in the State of California, many of whom are small-sized, family-owned businesses. Almost all of the United States' production of cling peaches is found in California. Over 95% of that production is used for processing. Canned peaches (classified under H.S. 2008.70.20 covering prepared or preserved peaches) are the industry's principal product, with approximately 70% of the annual cling peach crop processed into canned peaches. Other important products are canned fruit mixtures (classified under H.S. 2008.97.90), peach concentrate (classified under H.S. 2008.70.20), frozen peaches (classified under 0811.90.80), and peach pulp (classified under H.S. 2008.70.20).

A U.S.-EU trade and investment agreement raises special concerns for California cling peach growers because of their thirty-year history with unfairly subsidized, low-priced EU canned peaches, which have limited the California industry's export opportunities and disrupted its U.S. market. Due to the California cling peach industry's long history with subsidized EU canned peaches, its TTIP priorities include:

- *maximum import-sensitive tariff treatment* for its 17% U.S. canned peach tariff (H.S. 2008.70.20), 14.9 % U.S. canned fruit mixture tariff (H.S. 2008.97.90), and 14.5% U.S. frozen peach tariff (H.S. 0811.90.80);
- *special agriculture price-based safeguards* or similar measures for the industry's three cling peach products, if those products are subject to tariff reductions;
- *strong canned fruit rules of origin* that require the fresh peaches to be grown in the U.S. or EU;

- *provisions that maintain and do not weaken U.S. Buy America provisions in USDA School Nutrition programs; and*
- *Binding commitments on subsidy transparency with regard to the EU's hidden canned peach subsidies.*

I. The California Cling Peach Industry's Import-Sensitivity is Well-Established

The California cling peach industry has consistently received maximum import-sensitive treatment for its double-digit U.S. canned peach, canned fruit mixture, and frozen peach tariffs in all multilateral trade initiatives and free trade agreements concluded by the United States with canned peach producing and processing countries. Canned peaches, canned fruit mixtures, and frozen peaches are also included on the 2002 Trade Promotion Authority list of U.S. import-sensitive agricultural products.

The U.S. Government has always granted import-sensitive treatment to cling peach products because of the industry's large losses due to heavily subsidized EU canned peaches and, more recently, subsidized, low-priced canned peaches from China.

In the early 1980's, shortly after Greece became an EU member, the Greek and Spanish canned peach industries began receiving large EU subsidies. By the early 1990's, EU subsidies to the relatively small Greek and Spanish canned peach industries totaled more than \$200 million annually. In a relatively short time, Greece became the largest global canned peach producer and exporter, displacing California canned peaches in Europe, Japan, and the United States. Subsidized EU canned peaches pushed the California industry from net-exporter to net-importer status where it remains today. California canned peach exports today are limited to Canada and Mexico, but the industry may lose these markets if EU canned fruit gains improved preferential access into Canada and Mexico under new or improved trade agreements.

U.S. government and industry have tried to discipline the EU's trade-distorting subsidies through a Section 301 case, multilateral dispute settlement, a bilateral settlement agreement that was intended to reduce EU canned peach subsidies, U.S. government retaliation for EU non-compliance with the settlement agreement, and numerous high-level U.S. government interventions. Although those efforts resulted in certain changes to the EU's subsidy regime, low-priced subsidized Greek canned peaches continue to harm U.S. canned peach sales today.

In 2008, the EU transferred its sector-specific canned peach subsidies to its Single Payment Scheme (SPS) under which each EU Member State receives a single envelope of subsidies to distribute to peach and other fruit and vegetable producers based on historical payments under the prior subsidy regime. The EU transferred over \$15 million annually to Greece's SPS envelope of subsidies and nearly \$9 million annually to Spain's SPS envelope of subsidies to cover the historical payments made on an annual basis to Greek and Spanish cling peach growers who sold their peaches to canning facilities. Because the SPS subsidy payments made by Member States to growers are not tracked by the EU or published by EU Member States, the U.S. Government has not been able to determine the full measure of financial support now benefitting Greek and Spanish canned peach producers.

Today China is the leading exporter of canned peaches to the U.S. market followed by Greece. There is evidence that, like Greece, China's canned peach industry has become a dominant low-cost producer and exporter of canned peaches with the help of significant central and sub-central government subsidies, including government-sponsored demonstration bases and export bases aimed at improving the quality and volume of China's canned peach production. Subsidized, low-priced Chinese canned peaches are replacing U.S.-origin canned peach sales in the U.S. market and in Canada and Mexico. In 2012, U.S. imports of Chinese canned peaches totaled over \$60 million, more than double total U.S. canned peach exports that year. Even with this growing Chinese presence, however, EU canned fruit continues to displace U.S. canned fruit in retail outlets. As the attached chart of U.S. canned peach imports shows, U.S. imports of canned peaches from Greece increased by over 100% between 2012 and 2013 for the 10-month period June to March.

With most export opportunities lost to foreign subsidized competitors, the California cling peach industry has been forced to fund successive tree-pull programs to reduce significant acreage, and help balance U.S. supply and demand and stabilize U.S. grower prices. California cling peach growers depend on maintaining the U.S. market to remain viable.

II. The California Cling Peach Industry's First TTIP Priority is Maximum Import-Sensitive Treatment for its Three U.S. Cling Peach Product Tariffs

The California cling peach industry is seeking the maximum import-sensitive treatment allowed by the TTIP agreement for its 17% U.S. canned peach tariff (H.S. 2008.70.20), 14.9% U.S. canned fruit mixture tariff (H.S. 2008.97.90), and 14.5% U.S. frozen peach tariff (H.S. 0811.90.80). It asks for exemptions from tariff reductions if exemptions are permitted by the agreement. If no exemptions are allowed, it asks for the longest possible phase-out period allowed by the agreement.

The United States is the largest market globally for canned peaches. If Greek and Spanish producers are granted preferential or duty-free access to the U.S. market, they are certain to target more of their production to the United States. Greek and Spanish producers have indicated an interest in increasing U.S. sales to counter losses occurring in their own and third-country markets to low-priced Chinese canned peaches. Preferential treatment for EU producers would disrupt the fragile U.S. supply-demand balance and collapse U.S. industry prices.

There are no export opportunities for California canned peaches in the EU market even if the EU's 15.2% to 19.2% canned peach tariffs are eliminated under a U.S.-EU agreement. The EU market is already saturated with lower-priced Greek, Spanish, South African, and, more recently, Chinese canned peaches.

III. If TTIP Does Not Authorize Exemptions of Any Kind, the Industry's Maximum Phase-Out Periods Should Also Include Priced-Based Safeguards

If TTIP exemptions are not granted in agriculture, U.S. cling peach products should be protected by the longest possible tariff phase-out periods with back-loaded reductions and agriculture-specific safeguard measures that return the preferential tariff to the MFN rate if imports from the EU enter below a trigger price.

This would be comparable to the treatment accorded U.S. cling peach products under the United States' FTAs with Chile and Australia where the canned peach competitors were less of a threat than EU competitors. The Board supports a price-based safeguard mechanism for canned peaches, canned fruit mixtures, and frozen peaches over volume-based safeguards because volume-based safeguards generally only apply near the end of the year when industry losses have already occurred. Year-round protection is needed for a non-seasonal, price-sensitive product like canned peaches.

IV. Strong Canned Fruit Rules of Origin are Also Needed to Prevent Transshipments

If exemptions from tariff phase-out are disallowed under TTIP, the industry is seeking strong cling peach product rules of origin covering canned peaches and fruit mixtures (classified under H.S. 2008.70 and 2008.97 and including prepared or preserved peaches and fruit mixtures), peaches packed in gelatin (classified in Chapter 21), and frozen peaches (classified under H.S. 0811.90) -- similar to the origin rules included in KorUS to prevent non-EU peach producing countries from benefiting opportunistically or illegally under any new tariff preferences granted by the agreement.

To be effective, the rules should: (1) confer origin only if the fresh peaches used in the cling peach products are grown entirely in the United States or European Union; and (2) exempt Chapter 20 prepared or preserved peaches and fruit mixtures and Chapter 8 frozen peaches from the de minimis rule, which would otherwise allow a certain percentage of non-U.S. or EU peaches in the final canned peach product that qualifies for FTA tariff preferences.

V. The TTIP Should Not Weaken U.S. Buy America Provisions in USDA School Nutrition Programs

The EU has indicated an interest in eliminating all "Buy America" provisions in U.S. government procurement or purchasing arrangements. USDA's School Nutrition programs include a "Buy America" provision that requires school food authorities operating school meal programs to purchase domestically-produced (grown) and processed foods, to the maximum extent practicable. This means, U.S.-origin canned peaches should be purchased by schools unless either (i) the product is not produced in the United States in sufficient and reasonable available quantities of satisfactory quality, and (ii) competitive bids reveal the costs of the U.S. product is significantly higher than non-U.S. product. Neither circumstance apply to California canned peaches or fruit mixtures.

The EU's School Fruit Scheme includes similar preferences for "products of Community origin." Under that program, Member States draw up the lists of fruits and vegetables that will be eligible for purchasing under their respective school fruit schemes, and "may give preference to products of Community origin." (Council Regulation No. 13/2009 and Regulation 1234/2007, Article 103ga).

The California cling peach industry relies on sales to USDA's School Nutrition programs to supplement its commercial purchases that are being lost to low-priced, subsidized imported canned peaches. The current "Buy America" requirements help sustain these purchases by encouraging schools to purchase high-quality U.S.-origin product over subsidized imported canned fruit. These rules should not be weakened under TTIP.

VI. A U.S.-EU Agreement Should Require Transparency with Respect to Hidden EU Canned Peach Subsidies

Since 2008, the EU has paid EU canned peach sector subsidies through its Single Payment Scheme (SPS), under which a single envelope of aid is granted to each EU Member State to cover product-specific fruit and vegetable subsidies paid under its prior Common Agriculture Policy (CAP) regime. For cling peaches, the EU transferred 11.8 million Euro (\$15 million) to Greece's annual SPS fund and 6.667 million Euro (\$9 million) to Spain's annual fund for the period 2008 to 2013. The SPS payments are not technically "reserved" for any specific product so the EU does not track the monies once they are paid in a lump sum to each Member State. Once the Member States receive the EU funding, however, payments are distributed to specific commodity sectors, but no public record of the payments is available. The EU itself has confirmed that since the EU "support [provided by the Member States to Producer Organizations] does not refer to specific products, the data for peaches are not available." (WT/TPR/M/248/Add.1) It has been impossible to identify the volume and level of payments made to Greek and Spanish cling peach growers under the SPS system and other EU subsidy programs including the EU's Rural Development Fund. Although no clear public records are kept of these subsidies, low-priced Greek canned peach exports would not be commercially sustainable without subsidized support. USTR's *2013 National Trade Estimate Report on Foreign Trade Barriers* expresses concern about the "hidden nature" of the EU's canned fruit subsidies and their potential "trade distorting effects."

Although TTIP may not be able to discipline EU canned fruit subsidies, the agreement should at a minimum require the EU to make its canned peach and other fruit and vegetable subsidies transparent, both as to the level and types of subsidies being provided through EU Member States, Producer Organizations, the EU's Rural Development Fund, and other EU subsidy programs. TTIP subsidy transparency commitments should also extend to any new fruit and vegetable subsidy programs the EU may adopt under its new CAP system for 2013-2020, which is currently being considered by the Commission, Council, and European Parliament.

VII. Conclusion

For the foregoing reasons, the California industry requests that TTIP (i) provide maximum import-sensitive treatment allowed under the agreement for its three U.S. cling peach product tariffs, and in the absence of exemptions, price-based agriculture safeguard measures for any cling peach product subject to tariff reduction; (ii) in the absence of exemptions, establish strong canned fruit rules of origin; (iii) maintain U.S. Buy America provisions in USDA School Nutrition programs; and (iv) establish transparency commitments to address the hidden nature of the EU's canned peach subsidies.

Attachment: U.S. Canned Peach Imports (MY basis)

U.S. Canned Peach Imports

June – March

2012 vs. 2013

%

<u>Country</u>	<u>2012</u>	<u>2013</u>	<u>Change</u>
China	1,677,710	2,139,010	+ 27%
Thailand	17,245	21,590	+ 25%
Greece	331,126	680,477	+106%
Chile	68,333	120,205	+ 76%
Mexico	38,086	60,220	+ 58%
Spain	18,685	25,128	+ 34%
All Other	<u>76,264</u>	<u>68,010</u>	<u>- 11%</u>
TOTALS	<u>2,227,449</u>	<u>3,114,640</u>	<u>+ 40%</u>