
BEFORE THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2019 ANNUAL REVIEW OF COUNTRY AND PRODUCT ELIGIBILITY UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT

WRITTEN COMMENTS OF THE US PROCESSED PEAR INDUSTRY

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The Northwest Horticultural Council, Pacific Northwest Canned Pear Service, Washington Oregon Canning Pear Association, California Pear Advisory Board, and California Pear Growers Association (collectively the "US processed pear industry" or "US industry") hereby submit written comments in response to the notice of June 28, 2019, by the Office of the United States Trade Representative ("USTR") inviting input on its annual review of country and product eligibility under the African Growth and Opportunity Act ("AGOA") (Docket No. USTR-2019-0006; 84 *Federal Register* 31136).

The **Northwest Horticultural Council** handles federal and international policy issues for the Pacific Northwest tree fruit industry. Its pear growers represent 76 percent of the pears and 51 percent of the processed pear crop produced in the United States.

The **Pacific Northwest Canned Pear Service** is the primary arm of the Northwest canned Bartlett pear industry. PNCPS is a USDA Agricultural Marketing Service research and promotion program funded by assessments on fruit delivered to local processors.

The **Washington Oregon Canning Pear Association** represents the Northwest Bartlett pear growers to the US pear processing community, negotiating the annual price that processors pay for grower tonnage.

The **California Pear Advisory Board** is a state agricultural marketing order responsible for research, statistics, issue management, and the promotion of California pear industry interests. CPAB is composed of, and managed by, growers.

The **California Pear Growers Association** is a non-profit agricultural trade association representing California pear growers, responsible for government relations and other activities benefitting the pear industry in California.

The US processed pear industry is comprised of several hundred growers of Bartlett pears for canning. Most industry growers are located in Washington and Oregon, with only 60 remaining in California. Following this year's closure of Seneca Foods' pear processing plant in Sunnyside, Washington, the US industry will be left with only three primary pear processors: Del Monte Foods, Inc., Pacific Coast Producers, and the Neil Jones Food Company.

Although the US processed pear industry is over 200 years old, in recent decades, its grower and processor ranks, canned pear tonnage, and market presence have substantially contracted, in large part the result of unfair competition from foreign suppliers. That unfair competition has accelerated in recent years, with subsidized Chinese canned pears representing by far the largest current threat to the US industry. Nevertheless, South Africa, which is now the second largest supplier of processed pears to the US market, has also long contributed to US price-undercutting and market displacement, with detrimental consequences for the US industry.

Because South Africa continues to impose significant market access restrictions on US agriculture while enjoying duty-free access to the US market for most of its agricultural products, including processed pears (**HTS 2008.40.00**), the US industry in this submission requests that the President withdraw or suspend South Africa's AGOA benefits on HTS 2008.40.00 and reinstate the US MFN tariff rate of 15.3% for all processed pears entering from that country.

I. Although nearly all South African canned fruit products have been denied eligibility under AGOA, its processed pears are receiving AGOA benefits for no justifiable policy reason.

As explained further in Sections III and IV below, South Africa considers itself a "world class," globally competitive producer of both processed peaches and pears; markets its canned peaches, fruit mixtures, and canned pears on a common global platform; and undercuts US processed peach, fruit mixture, and processed pear prices by roughly equivalent margins. Yet, since AGOA first began, South African canned peaches (HTS 2008.70.70), fruit mixtures (HTS 2008.97.90), and frozen fruit and pulp (HTS 0811.90.80) have all been denied AGOA benefits, while South African canned pears have been entitled to enter the United States duty-free under AGOA.

There is no valid basis for denying AGOA treatment to every other major South African processed fruit category except processed pears. US canned pears, canned peaches, fruit mixtures, and frozen fruit have been all equally designated import-sensitive under the 2002 and 2015 US Trade Promotion Authority ("TPA") laws, and are all equally competitive in the US marketplace even without the added benefit of zero-duty treatment.

Moreover, contrary to AGOA requirements, South Africa continues to undermine the US industry with its zero-duty, low-priced, highly competitive processed pears even as it continues to resist US Government requests to provide fair access to US goods in a number of sectors, particularly agriculture.

II. The President has discretion to withdraw or suspend duty-free treatment on South African processed pears and should exercise that authority.

Under AGOA (19 USC 3703) and the Trade Act of 1974 ("1974 Act") (19 USC 2461, *et seq.*), the President has authority to withdraw or suspend duty-free treatment on specific articles from South Africa if he determines that doing so will help promote South Africa's compliance with AGOA eligibility requirements, including the requirement that South Africa make "continual progress" in eliminating barriers to US trade. South Africa has a long history of falling short of that requirement, most notably in the agricultural sector.

The US goods trade deficit with South Africa was $3.0 billion in 2018.[1] Although South Africa has a $14 billion agricultural market,[2] US agricultural exports represent only a small fraction of that market (4%), primarily because of South Africa's unjustifiably restrictive tariff and non-tariff measures.

USTR's 2019 National Trade Estimate Report on Foreign Trade Barriers ("2019 NTER") makes clear that despite sustained US pressure on South Africa to liberalize its agricultural market, South Africa continues to bar or restrict US agricultural exports in numerous ways, including, *inter alia*, by --

- maintaining average WTO bound tariff rates on agriculture of 39.1% and maximum bound rates as high as 597%,[3] even as South African goods receive AGOA zero-duty access to the US market;
- granting preferential access to EU agriculture over US agriculture under the European Union-South African Development Community Economic Partnership Agreement ("EU-SADC EPA"), thereby eroding the competitiveness of US exports;[4]
- declining to honor the poultry, pork, and beef health certificate procedures agreed to by USDA and South Africa in 2016;[5]
- restricting US frozen bone-in chicken through questionable import relief duties and questionable tariff quota procedures, and subjecting US poultry exports to sanitary and phytosanitary ("SPS") requirements that are inconsistent with international standards;[6]
- imposing SPS restrictions on pork that are inconsistent with international standards, and barring access for certain US pork cuts and products unless they are further processed in South Africa;[7]
- wrongly agreeing under the EU-SADC EPA to prohibit the use of certain "geographical indications" in the South African market;[8] and
- imposing SPS restrictions on certain US fruits, including apples, pears, cherries, and blueberries.[9]

In the case of most of these agricultural restrictions, despite years of US Government pressure to liberalize access, South Africa has declined to make the "continual" access progress required under AGOA and the 1974 Act to justify continued duty-free eligibility.

The withdrawal or suspension of AGOA treatment on HTS 2008.40.00 is therefore authorized and would help send a message to South Africa that substantially more access reforms are needed in its agricultural sector if South Africa expects to continue receiving unilateral US tariff preferences. A restoration of the 15.3% MFN rate on processed pears from South Africa would also help stem

[1] USTR's 2019 National Trade Estimate Report on Foreign Trade Barriers, p. 441.
[2] USDA GAIN Report, 7/16/2018.
[3] 2019 NTER, p. 441.
[4] *Id.*
[5] *Id.*, p. 444.
[6] *Id.*, pp. 442, 445.
[7] *Id.*, pp. 444-445.
[8] *Id.*, p. 446.
[9] *Id.*, p. 445. Although not specifically named in USTR's 2019 NTER listing of South African SPS restrictions, US fresh pears and cherries are also impeded by that country's unfair SPS measures.

low-priced canned pears from South Africa, providing much-needed relief to the fragile US processed pear industry.

III. South African canned pears are competitive with US production even without AGOA preferences.

South Africa is a well-established, important global exporter of canned pears and other canned fruit. Its processed pear sector produces choice, quality canned pears that are virtually identical to, and highly substitutable with, US production.

For decades, the only crucial difference between South African and US canned pears in the US institutional and retail segments has been South Africa's lower price. In 2019, for example, South African canned pear halves have undercut US industry prices by about $3.00/case, reflecting, among other advantages, the South African industry's much lower costs of production (*e.g.*, labor costs of $1.00/day, raw product costs of $202/metric ton). The 25% additional US Section 232 steel tariffs imposed on tin-plate steel, an input used to produce finished cans, has further enlarged South Africa's price advantage, enabling that much deeper price-undercutting in the US market.

With the benefit of low production costs, price-undercutting, AGOA zero-duty treatment, and the Section 232 steel tariffs, South African canned pear volumes increased to 1,951 metric tons in 2018, up 73% over 2017 levels.

Although China in recent years has overtaken South Africa as the largest foreign supplier of processed pears to the US market, demand and inventory conditions in the US market are such that current South African shipments to the United States still disrupt US industry sales. The US processed pear market is mature, with static to declining demand. Because the US industry is entirely reliant on US sales and has inventories sufficient to satisfy domestic demand, virtually every low-priced entry of South African canned pears priced below US canned pears displaces one-for-one a US-origin sale.

The Section 301 tariff on processed pears from China, which was recently increased from 25% to 30% effective October 1, 2019, is further encouraging the South African industry to gain ground in the US market not only over US industry sales, but Chinese sales as well. US imports of South African canned pears have reached 3,000 to 5,000 metric tons in the past under AGOA and could easily reach or exceed that volume in the near term to take new advantage of any displaced Chinese volumes. Already in the canned fruit sector, US year-to-date (January-June 2019) imports of canned peaches from South Africa have surged abruptly to 5,800 metric tons, up from 550 metric tons for the same period of 2018 -- a confirmation that South Africa's canned fruit sector has the capacity and interest to redirect its exports to the US market on a moment's notice when openings arise.

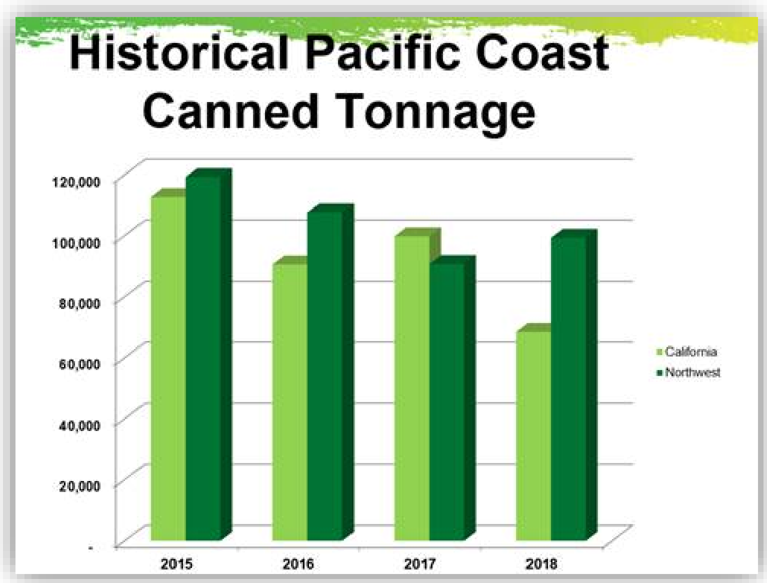
Even if processed pear imports from South Africa remain level, however, low-priced South African canned pears do not need the added advantage of zero-duty AGOA treatment and are only using that preference to displace US canned pears. AGOA benefits should not be allowed to compromise a US industry that is already at risk, particularly when the beneficiary country continues to restrict access for US agriculture over the persistent objections of the US Government.

IV. Unfairly priced US imports have compromised the US processed pear industry to the point that its future is now at risk.

The US canned pear sector has been contracting for many years, in large part due to unfair trade practices. China in particular has greatly increased its processed pear shipments to the United States, seizing a growing number of US customers throughout the US market at prices now less than half of the US break-even price.

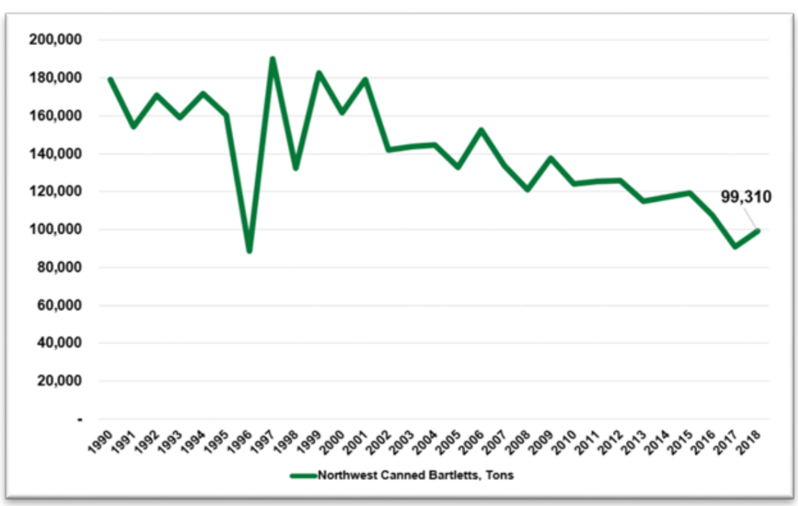
As a result of increasing imports from China, South Africa, and other sources, processed Bartlett tonnage from the Northwest and California in recent years has continued its progressive decline.

Historical Pacific Coast Canned Tonnage



Source: PNCPS

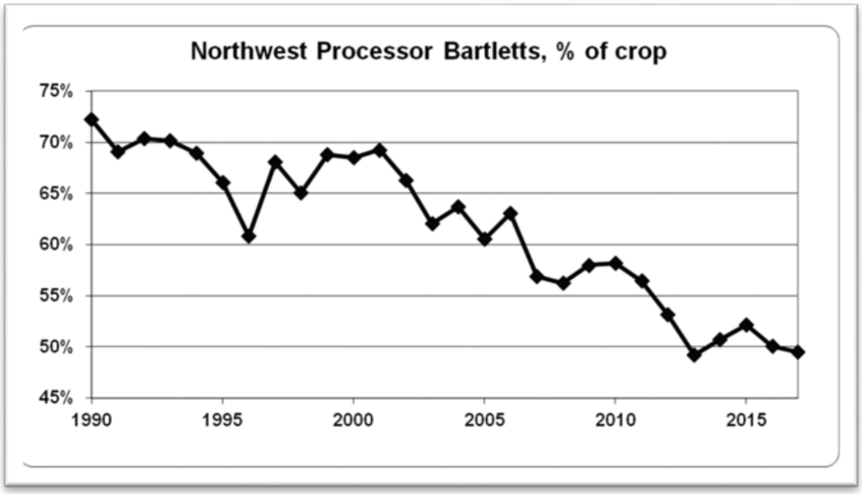
Northwest Canned Bartletts, Tons



Source: PNCPS

As the industry's processed pear tonnage has declined, so too has the percentage of the Northwest Bartlett crop dedicated to processing.

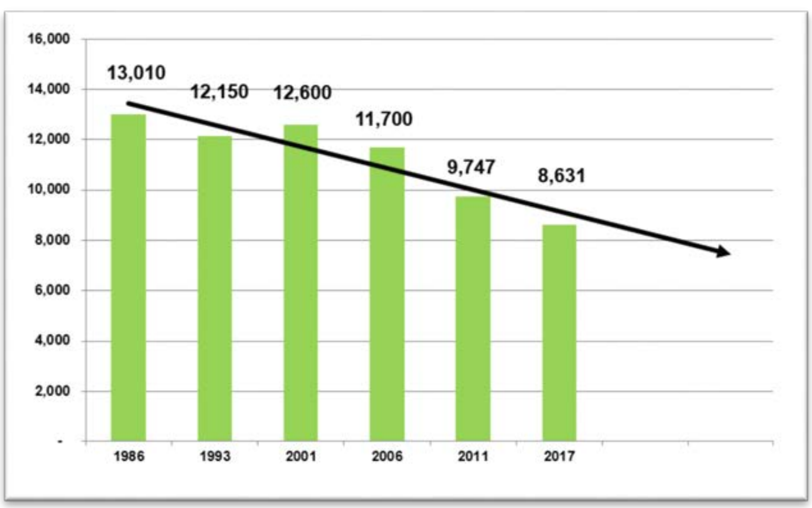
Northwest Processor Bartletts, % of crop



Source: PNCPS

Bartlett acreage in Washington, the largest Bartlett-producing state in the nation, has suffered commensurate declines.

Washington Bartlett Acreage (down 32% since 2001)



Source: PNCPS

As unfairly priced imports, including from South Africa, continue to seize US sales, US industry inventories have climbed to unmanageable levels and are still on the rise. The current oversupply -- estimated at approximately 400,000 to 500,000 6/10 can equivalents -- includes supply from the 2015, 2016, 2017, and 2018 pack.

With prices and inventories at unsustainable levels, Seneca Foods was forced to close its fruit cannery in Modesto, California, in 2018 and will be closing its fruit processing facility in Sunnyside, Washington, in the Fall of 2019. With that additional closure, another 300 long-time Seneca employees will lose their jobs, and Seneca will be entirely out of the processed pear sector.

In another troubling signal for the industry, Del Monte Foods' S&P Global rating was downgraded in 2018 to "CCC-", underscoring the market's poor outlook for both the company and US canned fruit sector.

Unless the current flood of unfair imports is curtailed, and the US industry is shielded from further unfairly priced competition, US fresh pear outlets will feel growing pressure, and US Bartlett pear growers and processors will continue to contract to the point that a viable US processed pear industry no longer exists.

V. Conclusion

For the reasons above, South Africa's highly competitive processed pear sector should not be allowed to thrive in the US market with the benefit of unilateral zero-duty treatment, while its own agricultural market remains unjustifiably closed, and the US industry is fighting to stay in business.

The President has ample statutory authority to withdraw or suspend zero-duty treatment for processed pears entering under HTS 2008.40.00 from South Africa until that country commits to the continual elimination of its trade barriers, particularly in agriculture, as required under AGOA law. The US industry accordingly requests that the President announce in the ongoing annual review the withdrawal or suspension of AGOA benefits on processed pears entering from South Africa, which will not only uphold the statutory mandates of the AGOA program, but also safeguard the several hundred growers and thousands of allied workers that are struggling to sustain a viable US processed pear industry.