



6th April 2006

Mr Andrew Rice
National Manager, Trade Measures
Australian Customs Service
Customs House
5 Constitution Avenue
Canberra City ACT 2601

Dear Mr Rice

Joint study of the administration of Australia's anti-dumping system

Australian Pork Limited (**APL**) welcomes the opportunity to make a submission to the joint study of the administration of Australia's anti-dumping system.

APL is a producer-owned, not-for-profit company which represents the interests of Australia's pork producers through marketing, research and strategic policy direction and implementation. The Australian pork production sector contributes approximately \$970m to Australia's GDP¹. Annual export volumes are currently 48,300 tonnes valued at \$148 million as compared to 80,000 tonnes of imports valued at \$303 million.

Imports of pork products into Australia have dramatically increased in the past decade as quarantine policy has moved from 'no risk' to 'managed risk'. This has caused significant damage to the competitiveness of the Australian pork industry. Consequently, the monitoring of imports and subsidy arrangements is a critical and ongoing strategic activity for APL.

APL is of the view that Australia's current anti-dumping legislation is deficient when related to the agricultural sector.

Set out below is the submission of APL:

1 Terms of reference

APL is of the view that a legislative review is required to ensure that Australia's anti-dumping regime is administered in a way which guarantees fair and equitable access to anti-dumping investigations. This is particularly important to Australia's agricultural sector. Accordingly, the terms of reference of this review are too narrow to address significant challenges currently facing Australia's anti-dumping system.

The need for legislative review is consistent with the Productivity Commission's recent finding that "the Australian Government should, as soon as practicable,

¹ 'Socio-Economic Impacts of the Australian Pork Industry', Western Research Institute - Charles Sturt University; 3 May 2005

initiate the independent review of anti-dumping arrangements previously scheduled..."²

It, therefore, is APL's view that a review should be undertaken as a matter of priority to identify the failings and deficiencies with the existing regime in order that steps may be taken for them to be remedied.

2 Determination of Australian industry producing like goods and the effect on downstream producers

APL acknowledge that sections 269T(4A) & (4B) of the *Customs Act 1901* (Cth) are designed to allow producers of raw agricultural products to be considered as part of an Australian industry producing like goods where the like goods are processed from the relevant raw agricultural goods.

APL is of the view, however, that the requirements that need to be satisfied in order for the agricultural producers to be considered as part of a downstream industry are too stringent and prejudices agricultural industries such as the Australian pork industry.

In order for the agricultural producers to be considered as part of a downstream industry, subsection (4B) requires that the Minister be satisfied, among other things, that:

- (a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods; and
- (b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods

Given that many products are sourced from a pig carcass and the nature of those products, it is unfeasible that a carcass can be substantially or completely devoted to producing a single processed product. If, for example, pork middles were imported into Australia at dumped prices which consequently caused injury to Australian pork producers, those pork producers would be excluded from forming part of the Australian Industry because the carcasses they produce are not devoted 'substantially or completely to the production of the pork middles.

This exclusion prejudices the Australian pork producers. Taking the example above, where pork middles are imported at allegedly dumped prices, the Australian producers of pork middles (i.e. processors) are not necessarily the party that suffers injury. The reason being that they are able to 'pass on' the injury to the producers of pig carcasses (i.e. processors, boning rooms) by paying less for the carcasses, who in turn pass the injury on to the pork producer by paying less for the pigs. A dumping investigation cannot consider evidence of this flow through effect due to the fact that pork producers are not deemed to be part of the Australian industry because their raw agricultural good - the pig - is not devoted substantially or completely' to the processed agricultural good - pork middles.

APL strongly believes that legislative change, by whatever means is necessary, to ensure that industries producing raw agricultural goods are capable of being considered to be part of the Australian industry producing like goods under sections 269T(4A) and (4B) of the *Customs Act 1901*.

Furthermore, APL notes that the concept of 'close processed agricultural goods' found in Australia's anti-dumping legislation is not considered by the WTO

² Australian Government Productivity Commission, 'Review of National Competition Policy Reforms' (Productivity Commission Inquiry Report No. 33, 2005) 261.

Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (**WTO Anti-dumping Agreement**). APL therefore sees the urgent need for an initiative to be taken up in the current Doha round of negotiations for amendment to the WTO Anti-Dumping Agreement to ensure that industries producing raw agricultural goods are granted fair and equitable access to anti-dumping investigations.

3 The minimum threshold test

APL has investigated from time-to-time the possibility of taking dumping actions on behalf of the Australian pork industry. However, under the current legislation, the wide range of pork products produced by the Australian pork industry makes it difficult for the Australian pork producers of like goods to meet the minimum threshold test which requires that persons who produce like goods in Australia and who support that application account for not less than 25% of the manufacture of like goods in Australia.

While the reasons for not proceeding further with a dumping application were principally for other unrelated reasons, it was nevertheless apparent to APL that this was a significant obstacle to overcome, especially in industries dominated by numerous, small producers[pd1]. This can have the effect of precluding such industries for accessing Australia's antidumping system even when exposed to competition from dumped imports.

APL notes that the Minister for Justice and Customs and the Minister for Industry, Tourism and Resources in their joint media release stated that, "The Australian Government considers it a basic right that local industry is provided with an accessible but robust anti-dumping regime". Regrettably, in the case of the agricultural industries, this would seem not to be the case.

4 Treatment of countervailable subsidies

While APL is not opposed to free trade, it is opposed to unfair trade. That is, having to compete with imports of highly subsidised goods from third country markets.

Where an agricultural product is subsidised and that agricultural product is used to produce another product, such as bacon from pigs, the pass through of the benefit of the subsidy to the cost of the agricultural product to the export price of the finished product that is being exported must be established. APL is of the view that there is currently a lack of guidance on how to establish and calculate this pass through effect. This makes the preparation and ultimate acceptance of a countervailing application prohibitively complex and unpredictable for Australia's agricultural sector.

Such guidance is highly relevant to APL. For example, where pork middles are imported into Australia it is not necessarily the pork middles which are directly subsidised, but rather the foreign pig farmers themselves or the grains they purchase to feed their pigs. Where a foreign pig farmer sells his product onto a producer of pork middles for a lower price due to the government subsidies, then the price of the pork middles is bound to be lower.

While it is clear that the subsidies paid in relation to the production of the pork flow through to the price of the exported pork middles, there is little, if any, guidance on how to calculate the pass through of the benefit of an upstream subsidy on raw agricultural goods to the export price of a finished processed product that is then exported.

The problem experienced by the Australian agricultural sector was exemplified in the recent countervailing case regarding olive oil from Greece, Italy and Spain.³

APL is of the view that the Australian Customs Service (Customs) should, in consultation with the agricultural sector, develop comprehensive guidelines setting out a transparent method for identifying the pass through effect of an upstream subsidy on export prices.

5 Conclusions

Having regard to the foregoing, APL concludes that:

- (a) the Australian Government should, as soon as practicable, initiate an independent review of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) and Part XVB of the *Customs Act 1901* (Cth) to identify existing deficiencies and the steps needed to remedy them.
- (b) a review of the close processed agricultural provisions of Australia's anti-dumping system is required to ensure that producers of raw agricultural goods are not unfairly excluded from forming part of an Australian industry producing like goods.
- (c) the minimum threshold test is a major obstacle for industries dominated by numerous small producers, preventing them from accessing Australia's anti-dumping system even when exposed to dumped imports; and
- (d) Customs should, in consultation with agricultural sector, develop comprehensive guidelines setting out a transparent method for identifying and calculating the pass through effect of an upstream subsidy on export prices.

Please do not hesitate to contact me on (02) 6285 2200 or email kathleen.plowman@australianpork.com.au if you have any questions or if you require further information.

Yours sincerely,



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³ *Inglewood Olive Processors Limited v CEO of Customs and the Trade Measures Review Officer* [2004] FCA 1659