



11 April 2006

Mr Andrew Rice
Chair
Joint Study - Reference Group
Trade Measures Branch
5 Constitution Avenue
CANBERRA ACT 2600

Dear Mr Rice,

The National Farmers' Federation (NFF) welcomes the opportunity to contribute to the Joint Study of the Administration of Australia's Anti-Dumping System. NFF, through its member organisations, represents around 80,000 farm businesses around Australia, the majority of which have a clear interest in antidumping issues.

NFF believes the major challenge for Joint Study will be to identify options to improve the accessibility of Australia's antidumping system for industries with legitimate claims against dumped products, while insuring that any refinements do not result in an increase in the number of unsubstantiated applications from industry sectors seeking to use the antidumping system as a means of reinstating industry protection.

NFF acknowledges the terms of reference for the Joint Study are limited to the administration of Australia's antidumping system, and therefore many of the Federation's major concerns over antidumping may be beyond the scope of the Review. With more than a decade having passed since the last major review of Australia's antidumping policy, NFF believes that the Australian Government, following the receipt of the Joint Study, should move to initiate a broader anti-dumping policy review. This broader review should focus on quantifying the costs and benefits of Australia's current approach to antidumping on an economy-wide basis, and on this basis consider appropriate policy reforms.

GENERAL COMMENTS

NFF is committed to ensuring Australia's anti-dumping system is WTO-consistent, and that industries with legitimate claims against dumped imports have the opportunity to seek remedy through the system.

Australian farmers, for differing reasons, depend on a transparent, efficient and defensible antidumping system. Australian grain growers for instance, competing in highly competitive export markets, seek assurance that Australia's antidumping system will not allow inefficient domestic manufacturers of farm chemicals and fertilisers to launch unsubstantiated and tactical antidumping action in order to halt the flow of competitively priced imported farm input products. In contrast, Australian horticulturalists, supplying the domestic processed food industries, seek the opportunity to access the antidumping system to offset the injury they claim to be suffering as a consequence of



the potential dumping of products such as frozen concentrated orange juice or concentrated apple juice.

Given the scope of the Study's terms of reference, the following comments particularly focus on the difficulties certain NFF members are facing in accessing Australia's antidumping system.

INITIATING ANTIDUMPING ACTION

A number of NFF member organisations that represent horticultural growers, particularly in the apple and citrus industries have raised concerns over the current process and requirements for initiating an antidumping action.

Growers in these respective sectors have faced a significant increase in import competition in relation to Concentrated Apple Juice (CAJ) and Frozen Concentrate Orange Juice (FCOJ) used by juice processors to make reconstituted apple and orange juice.

Despite these growers facing significant market losses at the hands of imported juice concentrates, and international precedent suggesting that at certain times these products may have been dumped in certain markets, a number of factors have impeded Australian growers from attempting to seek remedy under the antidumping system.

Under the current antidumping system, the injury caused by dumped imported agricultural or food products on Australian producers of raw agricultural products (ie: farmers), can only be taken into account when these *raw agricultural products* are deemed to be *close processed agricultural products*. This link can only be drawn when a number of legislative conditions are met, including that:

- a) The raw agricultural goods are devoted substantially or completely to the processed agricultural product; and
- b) The processed agricultural goods are derived substantially or completely from the raw agricultural goods; and
- c) either:
 - a. There is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or
 - b. A significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australian for these goods, in, or would be constituted by the cost to the producer or those goods of the raw agricultural goods.

The current interpretation of the *close processed agricultural products* condition has precluded apple and orange growers, or their representative organisations, from initiating antidumping action. Feedback indicates that Customs has been unwilling to accept that apple and orange growers' products constitute *close processed agricultural products*, despite the fact that the majority of



growers grow varieties which are specifically targeted at the juicing market, this fruit represents a substantial ingredient in processed juice products, and that no secondary market for this fruit exists.

Under the current antidumping arrangements, Australian farmers would be reliant on a processing company/or companies (meeting the collective output test) in order to initiate antidumping action. Given that Australian juice processors are the primary beneficiaries of questionably low priced imported juice concentrates, there is an obvious disincentive for these companies to partner with Australian growers in taking such action.

Even in the event that growers did manage to establish that their raw agricultural products were *close processed agricultural products*, it would be highly unlikely that Australian processing companies would be willing to provide Customs (or grower representatives) with access to the detailed financial information required to initiate an antidumping investigation.

On a separate, but related issue, agricultural industry representatives have raised a concern that where products are being dumped into a particular port, and the material injury resulting from such dumping is limited to a specific and distinct growing region and market (eg: Western Australia), these regional industries, while facing injury, can not meet the collective output test at the national scale. NFF is current pursuing additional information on the specific details of this case.

In addressing this impediment to access, NFF member organisations have requested that the Joint Study consider opportunities to improve the ability of agricultural producers to access Australia's anti-dumping system in instances were they are facing material injury as a consequence of their products being displaced by imported products as key ingredients in Australian food products.

THE COST OF ACCESSING THE SYSTEM

In instances where NFF members, either individually or in conjunction with processing organisations, have developed the foundations for an antidumping action, these industries have faced major barriers in terms of the cost, time and complexities associated with preparing an antidumping application.

The costs involved in launching antidumping action involving an agricultural product were highlighted in the Australian mushroom industry's recent successful anti-dumping case against imported Chinese mushrooms. The Mushroom Growers Association of Australia (AMGA) in conjunction with Windsor Farm Foods jointly spent around \$500,000 in developing and pursuing the antidumping case. The costs were principally expended on engaging the services of an appropriately qualified consultant, an accountant in order to gather the industry data and financial records required to prove 'material injury', and in contracting an economics academic to prove that consumers were actually substituting the 'unlike' dumped Chinese products for the Australian product for identical end uses.

With the complexities of Australia's antidumping system necessitating that industries engage professional advice, either from an antidumping consultant or a lawyer, the high costs associated with preparing an antidumping application have proven prohibitive in the apple, orange and pork industries previous attempts to mount cases. It is clear that in the case of many intensive



agricultural industries, the time, cost and complexities involved in launching an antidumping case are deterring the initiation of potentially legitimate actions to defend industries against illegal dumping.

With the Australian antidumping system placing the onus of proof on the applicant to establish reasonable grounds to warrant the initiation of an antidumping action, the greatest challenge that Australian agricultural industries have faced has been in obtaining cost of production data from overseas companies suspected of dumping products into Australia.

Although NFF members are familiar with the role of the Dumping Liaison Unit, that is providing objective advice on investigation process and information requirements, members are of the view that the Australian Government should take on a far greater role in assisting affected industries to compile market information on pricing and subsidy arrangements in overseas countries suspected of dumping products into Australia. Given the Australian Government's extensive international network of diplomatic posts, Austrade and Customs representatives and Department of Agriculture Fisheries and Forestry (DAFF) officials, NFF believes there are clear opportunities for government officials to provide additional assistance to Australian industries seeking to compile information on overseas markets and competitors. It is likely that through Australian Government representatives playing an enhanced role in working with Australian industry to support, and facilitate the collection of pricing and market information in overseas markets, the requirement for industries to engage specialised expertise may be substantially reduced. This would clearly assist in reducing some of the cost burden and in turn impediments facing industries in accessing the Australian antidumping system.

It has also been argued that the Australian Government should draw more heavily on the evidence presented in overseas antidumping cases to support the initiation of action in Australia.

Given that cost appears to represent a major impediment to certain Australian agricultural industries exercising their legitimate right to use the antidumping system, NFF believes that it is appropriate for the Joint Study to review potential opportunities for the Australian Government to assist such industries in meeting the costs of compiling an antidumping application. Clearly any such assistance must not create an incentive for industries to launch vexatious and baseless applications, or compromise Australia's broader WTO obligations. The AMGA, has suggested that Customs establish a system where applicants who meet the upfront costs of preparing and lodging an antidumping action, which is subsequently proven, be able to claim reimbursement for some or all of their costs. It has been suggested that this reimbursement could be met from an "Antidumping Cost Rebate Trust Fund", managed by Customs and financed through duties collected on dumped products. NFF believes this model warrants further consideration by the Reference Group.

THE LACK OF AGRICULTURAL SPECIFIC EXPERTISE IN CUSTOMS

A number of NFF members have raised concerns over the drain of corporate and industry-specific knowledge within Customs' Trade Measures Division and with the Dumping Liaison Unit, particularly as it relates to the specific treatment of agricultural products under Australia's antidumping system. It has been suggested that in recent antidumping cases, this lack of expertise within Customs has meant that industries have been required to appoint ex-Customs staff as consultants in order to



obtain such advice. NFF believes that it is critical that Customs maintain a body of expertise on the application of Australia's antidumping system across all industry sectors, in particular agriculture.

CONCLUSIONS

All Australian farmers depend on a transparent, efficient and defensible antidumping system. In spite of the narrow terms of reference for the Joint Study, NFF believes there are considerable opportunities to improve the accessibility of the antidumping system, particularly for those industries with strong cases against dumped imports, which are currently impeded from taking antidumping action due to the costs and complexities of Australia's current system.

NFF looks forward to continuing to work with Customs and other representatives on the Reference Group to consider the issues outlined in this submission and in developing strong recommendations to Ministers.

Please do not hesitate to contact either Peter Arkle or myself at NFF on (02) 6273 3855 if you would like to further discuss NFF's submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ben Fargher', is written over a light grey background.

BEN FARGHER
Chief Executive Officer