

Australian Food and Grocery Council SUBMISSION

31 AUGUST 2010

TO: AUSTRALIAN CUSTOMS AND BORDER
PROTECTION SERVICE

IN RESPONSE TO:
PRODUCTIVITY COMMISSION REPORT ON AUSTRALIA'S
ANTI-DUMPING AND COUNTERVAILING SYSTEM



PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of AFGC comprises more than 150 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors. (A list of members is included as Appendix A.)

With an annual turnover of \$100 billion, Australia's food and grocery manufacturing industry makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector¹ is Australia's largest and most important manufacturing industry. Representing 28 per cent of total manufacturing turnover, the sector is comparable in size to the Australian mining sector and is more than four times larger than the automotive sector.

The growing and sustainable industry is made up of 38,000 businesses and accounts for \$49 billion of the nation's international trade. The industry's total sales and service income in 2007-08 was \$100 billion and value added increased to nearly \$27 billion². The industry spends about \$3.8 billion a year on capital investment and over \$500 million a year on research and development. The food and grocery manufacturing sector employs more than 315,000 representing about 3 per cent of all employed people in Australia paying around \$14 billion a year in salaries and wages.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost half of the total persons employed being in rural and regional Australia³. It is essential for the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

Further inquires on this submission please contact:

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1 Fast moving consumer goods includes all products bought almost daily by Australians through retail outlets including food, beverages, toiletries, cosmetics, household cleaning items etc..

2 AFGC and KMPG. State of the Industry 2009. Essential information: facts and figures. Australian Food and Grocery Council. Oct 2009.

3 About Australia: www.dfat.gov.au

Australian Food and Grocery Council

Mr Geoff Johannes
National Manager – Trade Measures
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Johannes

The Australian Food and Grocery Council welcomes the opportunity to make written comments to the Australian Customs and Border Protection Service (ACBPS) on the Inquiry into Australia's anti-dumping and countervailing system prepared by the Productivity Commission.

The AFGC agrees with the Productivity Commission's conclusion that Australia needs to retain an anti-dumping and countervailing system. We support a number of the recommendations seeking changes to the operation of the current system to ensure Australian industries can take advantage of measures to address what are perceived by many to be unfair trading practices.

The AFGC has a number of guiding principles which underpin this submission and our views in general on the issue of anti dumping.

- Australian industry and particularly the manufacturing sector must have **ready and easy access to measures that have the clear objective of preventing products from being dumped in Australia** to the detriment of the domestic sector.
- Australian business should be able to compete equitably on the global market and anti dumping measures should provide for **transparent and equitable remedies but not allow or encourage vexatious or frivolous claims.**
- **The measures should be administered and processed in a timely way** that minimises costs and uncertainty for the business and provides a swift remedy to any activity that is injuring, or will injure, the domestic sector.
- **The anti dumping legislation should provide clear, unambiguous and transparent definitions of what constitutes dumping** and be able to report on the magnitude of imports and the proposed impact of the imported products on the domestic industry including final cost to consumer.
- **The arrangements should provide for a transparent and equitable process for appeal** from parties associated with any action.

This AFGC submission will focus on a number of key areas raised in the Productivity Commission Report relating to the Anti- Dumping System:



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Should Australia Maintain Anti Dumping Arrangements?

Australia's food and grocery manufacturing sector operates in a global market and in many respects competes on what is often described as a "non level playing field".

AFGC appreciates the complexity in maintaining legislative arrangements that balance the sometimes conflicting views of manufacturers, retailers, importers and consumers with fairness and equality. Notwithstanding this, AFGC is of the view that a comprehensive anti-dumping system is an important and legitimate component of Australia's open economy.

The AFGC considers anti dumping measures should not be seen as protectionist. The provisions of anti dumping should not be described as mechanisms that benefit a small number of selected industries or support longstanding measures that become akin to tariffs that are likely to lessen the need for sectors to adapt to import competition through innovation and other forms of productivity improvement. Rather, continued access to the anti-dumping measures is a necessary industry policy framework that helps to provide equitable trade and fair competition.

The complexities of Australia's existing anti-dumping system means that measures are not easily or readily accessible. It is common for companies or sectors to engage professional external advice, either from an anti-dumping consultant or a lawyer just to determine whether or not to proceed with any application. The AFGC is of the view that in the case of many sectors, the time, cost and complexities involved in launching an anti-dumping case are deterring the initiation of potentially legitimate actions to defend industries against illegal dumping.

The objective of any amendment should be to improve the ability of companies and sectors to access the arrangements. This could be achieved via a number of mechanisms such as guides or templates that assist in the understanding of required information. In addition, there is a need to provide more detailed and accessible data from agencies such as the Australian Bureau of Statistics but also via improved service capability from Customs and Border Protection.

The AFGC would support amendments to the anti dumping arrangements that improve the efficiency of the application process and remove the complexity and costs that companies need to incur to seek assistance measures.

The Public Interest Test

The AFGC notes Recommendation 5.1, where it is proposed to introduce a 'bounded' public interest test (conducted by ACBPS), containing a presumption in favour of measures where there has been injurious dumping or subsidisation, but detailing a list of circumstances where measures would prima facie not be in the public interest.

The AFGC view is that the imposition of a public interest test is likely to result in additional uncertainty beyond that already embedded in the anti dumping system. It is unclear to what



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extent the public interest test would consider external factors, what these factors may be and how they will be interpreted.

The responsible Minister already has scope within his powers to act with discretion should there be additional factors worthy of consideration when making the final determination. The additional ambiguity created by providing for a public interest test would further exacerbate the situation and make it less likely for sectors to consider or access to anti-dumping action.

In addition the proposal appears contrary to the intent of improving the efficiency and effectiveness of the anti-dumping system and is more likely to provide an additional barrier for applicants to an already complex and resource intensive process. Public interest tests are likely to be subjective and wide ranging. They could encompass any number of factors such as competitive behaviour, retail prices for consumers, environmental or social responsibility and varying impacts depending on urban and regional perspective etc.

AFGC considers existing measures that already allow for appeal and review will provide opportunity to consider impacts and or changes in market dynamics or prices etc.

AFGC does not support an additional 'public interest test' due to the additional ambiguity and uncertainty it would place on an already complex and time consuming exercise for business.

Appeals process

AFGC is of the view that the current appeals process requires modification. Currently where measures are imposed the opportunity exists for importers to appeal to the Trade Measures Review Officer (TMRO). If a re-investigation by Customs is instigated and results in revocation of the measures (i.e. a finding of dumping is overturned), there is an inadequate appeal process for the original applicant for the anti dumping measures – i.e. domestic manufacturer.

AFGC does not agree with recommendation [7.2] that the TMRO be able to make a decision direct to the Minister without reinvestigation by Customs. This concern is based on the outcomes of the recent Toilet Paper Dumping Case, where the TMRO made significant critique of aspects of the case, but new information was not able to be considered nor was the decision able to be appealed. Currently the scope of the re-investigation is limited to the issues included in the original investigation, no opportunity is provided for the domestic industry to answer issues raised as part of the appeal. This is a fundamental flaw in the system which should be amended to allow for a similar appeals process for applicants or domestic manufacturers. The absence of this provision means the domestic industry is unable to respond to issues that were raised as part of an appeal to a successful case for action.

AFGC is of the view that should a reinvestigation by Customs be undertaken, new and original information should be able to be considered and discussed by stakeholders to provide additional context and understanding.



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Life of measures

The PC proposal under Recommendation 6.4 to limit extensions of measures to one three year period does not adequately reflect global market behaviour. AFGC is of the view that if the market circumstances and dumping activities continue, then anti-dumping measures should continue until such time that a review demonstrates that the predatory or dumping behaviour has changed.

The proposal to place a specific time frame to require “*application for new measures following the expiry of a three-year extension that would be subject to the same requirements as the original application (including assessment against the public interest test as detailed in recommendation 5.1)*” compromises industry investment behaviour and may lead to a fragmented and periodic approach which is not only costly for business but inefficient.

AFGC is of the view that anti-dumping measures should not be arbitrarily removed without review and demonstrable evidence that the original situation has changed.

Definition of Material Injury

The Australian food and grocery manufacturing industry utilises some of the most advanced and up to date technology in the world. Notwithstanding this, there is an acknowledged need for rules defining global trade, and what constitutes unfair and fair practice.

AFGC is of the view that the recent decision by the Attorney General regarding the revocation of antidumping duties on toilet paper imports was a major concern. The report found that:

- the imported products were dumped;
- the Australian industry producing like goods suffered injury; but
- the injury to the Australian industry caused by dumping of the goods was deemed not to be material.

The AFGC is concerned that there was clearly sufficient evidence that products were being dumped and that the domestic industry was suffering, however, there was no action taken to respond to the issue. This lack of transparency and understanding anomaly continues to threaten the future of the Australian food and grocery manufacturing industry.

AFGC is of the view that there is a critical need for a more adequate definition and explanation of what constitutes material injury, to reduce and if possible remove the existing substantial level of uncertainty.

Summary

The AFGC agrees with the Productivity Commission’s conclusion that Australia needs to retain an anti-dumping and countervailing system. AFGC supports measures that would improve the effectiveness and efficiency of Australia’s anti-dumping and countervailing framework by



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clarifying and simplifying the process for business to seek measures that maintain a level playing field. The lack of transparency in the decision-making process and the outcomes that flow from it continues to be a major concern for Australian food and grocery manufacturers.

All Australian manufacturers depend on a transparent, efficient and defensible antidumping system. The AFGC supports amendments that would strengthen and clarify existing measures as opposed to proposals to reduce access to anti-dumping provisions.

The Australian food and grocery manufacturing industry does not seek protection nor unfair advantage, but must be provided with adequate measures that facilitate a competitive and innovative domestic industry which can compete in a global trading environment.

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AFGC MEMBERS LIST AS AT 16 AUG 2010

Arnott's Biscuits Limited
Asia-Pacific Blending Corporation P/L
Barilla Australia Pty Ltd
Beak & Johnston Pty Ltd
BOC Gases Australia Limited
Bronte Industries Pty Ltd
Bulla Dairy Foods
Bundaberg Brewed Drinks Pty Ltd
Bundaberg Sugar Limited
Byford Flour Mills T/a Millers Foods
Cadbury Pty Ltd
Campbell's Soup Australia
Cantarella Bros Pty Ltd
Cerebos (Australia) Limited
Cheetham Salt Ltd
Christie Tea Pty Ltd
Church & Dwight (Australia) Pty Ltd
Clorox Australia Pty Ltd
Coca-Cola Amatil (Aust) Limited
Coca-Cola South Pacific Pty Ltd
Colgate-Palmolive Pty Ltd
Coopers Brewery Limited
Danisco Australia Pty Ltd
Devro Pty Ltd
DSM Food Specialties Australia Pty Ltd
Earlee Products
FPM Cereal Milling Systems Pty Ltd
Ferrero Australia
Fibrisol Services Australia Pty Ltd
Fonterra Brands (Australia) Pty Ltd
Food Spectrum Group
Foster's Group Limited
Fruco Beverages (Australia)
General Mills Australia Pty Ltd
George Weston Foods Limited

GlaxoSmithKline Consumer
Healthcare
Go Natural
Goodman Fielder Limited
H J Heinz Company Australia Limited
Harvest FreshCuts Pty Ltd
Hela Schwarz
Hoyt Food Manufacturing Industries P/L
Johnson & Johnson Pacific Pty Ltd
Kellogg (Australia) Pty Ltd
Kerry Ingredients Australia Pty Ltd
Kimberly-Clark Australia Pty Ltd
Kraft Foods Asia Pacific
Laucke Flour Mills
Lion Nathan Limited
Madura Tea Estates
Manildra Harwood Sugars
Mars Australia
McCain Foods (Aust) Pty Ltd
McCormick Foods Aust. Pty Ltd
Merisant Manufacturing Aust. Pty Ltd
National Foods Limited
Nerada Tea Pty Ltd
Nestlé Australia Limited
Nutricia Australia Pty Ltd
Ocean Spray International Inc
Parmalat Australia Limited
Patties Foods Pty Ltd
Peanut Company of Australia. Limited
Procter & Gamble Australia Pty Ltd
PZ Cussons Australia Pty Ltd
Queen Fine Foods Pty Ltd
Reckitt Benckiser (Aust) Pty Ltd
Sanitarium Health Food Company
Sara Lee Australia
SCA Hygiene Australasia
Schweppes Australia
Sensient Technologies
Simplot Australia Pty Ltd
Spicemasters of Australia Pty Ltd

Stuart Alexander & Co Pty Ltd
Sugar Australia Pty Ltd
SunRice
Swift Australia Pty Ltd
Tasmanian Flour Mills Pty Ltd
Tate & Lyle ANZ
The Smith's Snackfood Co.
The Wrigley Company
Tixana Pty Ltd
Unilever Australasia
Wyeth Australia Pty Ltd
Yakult Australia Pty Ltd

Associate & *Affiliate Members

Accenture
Australian Pork Limited
Australian Dietetic Services
ACI Operations Pty Ltd
Amcor Fibre Packaging
*ASMI
AT Kearney
BRI Australia Pty Ltd
*Baking Association Australia
CAS Systems of Australia
CHEP Asia-Pacific
CSIRO Food and Nutritional Sciences
CoreProcess (Australia) Pty Ltd
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Exel (Aust) Logistics Pty Ltd
Food Liaison Pty Ltd
FoodLegal
*Foodservice Suppliers Ass. Aust.
*Food industry Association WA
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