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Geoff Johannes  
National Manager  
Trade Measures Branch  
Customs and Border Protection

Customs House  
5 Constitution Avenue  
CANBERRA ACT 2600  
[tmpolicy@customs.gov.au](mailto:tmpolicy@customs.gov.au)

Dear Geoff,

### **R.E. Productivity Commission Report on Australia's Anti-dumping and Countervailing System**

Australian Pork Limited (APL) welcomes the Australian Customs and Border Protection Service's call to receive and coordinate submissions on the Productivity Commission (PC)'s final recommendations into Australia's Anti-dumping and Countervailing System.

APL is well placed to comment on the review. As the representative body of Australian pig producers, APL investigated undertaking Anti-Dumping action in 2006 to establish whether dumped or subsidised pork imports were causing or were threatening to cause material injury to the Australian pork industry producing "like goods" to the imported goods under consideration. APL attempted to collect and prepare the relevant data and information on import substitution.

We address these particular recommendations from the PC Inquiry below:

#### **The new public interest test – Recommendation 5.1**

***'The imposition and continuation of anti-dumping and countervailing measures should be subject to a 'bounded' public interest test...'***<sup>1</sup>

APL does not support any concept of a 'bounded' public interest test, and supports the National Farmers' Federation (NFF) in this regard. The NFF has indicated that an 'economy-wide assessment' as part of an anti-dumping or countervailing investigation is inappropriate. The NFF argued that an investigation should only focus on whether imported goods below 'normal value' will injure or has injured an industry.<sup>2</sup>

The PC also stated in its final report on consideration of wider impacts that, '...there are practical limits on how far consideration of wider impacts can and should reasonably extend.'<sup>3</sup>

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<sup>1</sup> [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0006/93750/anti-dumping.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0006/93750/anti-dumping.pdf)

<sup>2</sup> <http://www.nff.org.au/get/2471482909.pdf>

<sup>3</sup> [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0006/93750/anti-dumping.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0006/93750/anti-dumping.pdf)

The World Trade Organisation (WTO) Agreements do not require a public interest test. Both the European Union (EU) and Canada use public interest tests, but these tests, according to the PC's draft report 'has not had a major impact on the outcomes of anti-dumping investigations.'<sup>4</sup> The public interest test is unnecessary and contrary to the core objective of the anti-dumping and countervailing actions under the General Agreement on Tariffs and Trade (GATT) (Article 6) of the WTO. An understanding of the commercial environment in which the industry operates in is sufficient. Assessing the public interest test of Australia's anti-dumping system and countervailing measures would 'distract' the assessment of the injury on the affected industry which initiated the action.

### **Supporting framework changes – Recommendation 6.1**

***'The Australian Government should convene a working group to examine the close processed agricultural goods provisions and report to the Minister...'*<sup>5</sup>**

APL is willing to participate in any consultation the Government establishes in relation to the close processed agricultural goods (CPAG) provisions, to examine and improve the current CPAGs arrangements for pork producers.

CPAGs arrangements should not be abolished on the grounds that primary producers receive special treatment. APL supports that the 'like goods' can be 'close processed agricultural goods' (CPAGs) arrangements, allowing a vertically integrated industry to be relevant Australian industry assessed against imported processed products remain unchanged. Originally introduced in 1991<sup>6</sup>, the changes to the *Customs Act 1901* (Cth), which were subsequently reported to the WTO were made in good faith and not as de facto protection for an industry.

APL maintains its view that Australia's current anti-dumping legislation does not favour primary production. Australia is a significant importer of frozen pork legs from Canada and the U.S. and frozen pork middles from Denmark for processing. Sections 269T(4A) & (4B) of the *Customs Act 1901* (Cth) are designed to allow producers of raw agricultural products to be considered part of an Australian industry producing like goods where the like goods are processed from the relevant raw agricultural goods. APL agrees with the National Farmers Federation (NFF) and the Australian Dried Fruits Association's notions that primary producers of 'close processed agricultural goods' (CPAGs) such as pork producers cannot apply alone for measures against dumped processed product, as their raw products are not 'like' the processed item.

APL agrees with the Horticultural Market Access Committee that the meanings of the words, 'substantially', 'close relationship' and 'significant part' are weaknesses in the *Customs Act 1901* (Cth) and impair industry attempts to substantiate injury to an industry.<sup>7</sup>

Since many products are sourced from a pig carcass, by the very 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.

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<sup>4</sup> Productivity Commission 2009, *Australia's Anti-dumping and Countervailing System*, Draft Inquiry Report, Canberra. Pg 73

<sup>5</sup> [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0006/93750/anti-dumping.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0006/93750/anti-dumping.pdf)

<sup>6</sup> [http://www.wto.org/gatt\\_docs/English/SULPDF/91531027.pdf](http://www.wto.org/gatt_docs/English/SULPDF/91531027.pdf)

<sup>7</sup> [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0011/90200/sub024.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0011/90200/sub024.pdf)

This exclusion prejudices 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. primary 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.

#### **Other matters – Recommendation 7.9**

***'The Australian Government should consult with the Australian Bureau of Statistics on the best way to ensure that import data are not suppressed on confidentiality grounds when the same or similar data can be publicly accessed through other sources.'*<sup>8</sup>**

APL supports a move to improve access to Australian Bureau of Statistics (ABS) import data where this data can be accessed publicly via other means. Lack of access to ABS import data on confidentiality grounds impacted on APL's capacity to produce evidence to prove anti-dumping in 2006.

APL believes that Anti-Dumping and Countervailing measures for primary industries and for the pork industry in particular are cost prohibitive and time consuming. Engaging specialist anti-dumping and trade consulting advice is expensive, and obtaining cost of production data from overseas companies suspected of dumping or subsidy activities is so high it is not a viable option for many. Professional overheads and lengthy investigation periods deter industries from launching any anti-dumping or countervailing actions.

APL's experience with the anti-dumping investigations in 2006 has shown this to be true. At the time, estimated funding of the anti-dumping application approximated \$200,000 to prepare the application and lodge the draft application with Customs. This estimated cost was just the first stage should the application have proven successful. This excluded the additional cost of collecting data and monitoring of competitors' markets, which would have been a significant ongoing cost to APL. Increasing costs also arose due to problems in collecting data and getting the 'industry which produces the like goods' as distinct from producers to participate and anticipated Australian Customs Service (ACS) verification of the collected data.

Importantly, without comprehensive participation from members of the processing sector, at that time, APL was unable to meet the data threshold level to prove cases of dumping to the ACS. The minimum threshold test requirement for not less than 25% of the domestic industry which manufactures like goods in Australia is inappropriate for an industry whose products are changed throughout the supply chain. Processors source part of their input from pork imports. Where imported pork products form part of their supply, processors see it as in their commercial interest to sustain this source of supply and would not want to compromise and impose trade measures that would increase processor costs.

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<sup>8</sup> [http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0006/93750/anti-dumping.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0006/93750/anti-dumping.pdf)

## **The future role of an anti-dumping system**

Improved access to the Australian system is necessary for pork producers and primary industry. APL maintains its support for change to improve access to trade remedies within the remit of WTO law. To date however, Australian pork producers have not benefited from Anti-Dumping or Countervailing measures available to the Australian pork industry, despite positive anti-dumping actions for pork producers such as in the United States. The administration of anti-dumping and countervailing investigations should be benchmarked to competitors' practice. This would eliminate inequities between Australia's investigation processes and that of our major pork competitors.

APL agrees with the NFF's statements into the improved use of Australia's extensive international network of diplomatic posts to procure market information. This would reduce the compliance costs for industries pursuing anti-dumping and countervailing activities.

APL welcomes further enquiries from the Australian Customs and Border Protection Service.

Yours sincerely,

(signed)  
Kathleen Plowman  
General Manager, Policy  
[kathleen.plowman@australianpork.com.au](mailto:kathleen.plowman@australianpork.com.au)  
(02) 6285 2200