



Know-how for Horticulture™

**Productivity Commission
Inquiry into Australia's Anti-Dumping System**

Submission by the Horticultural Market Access Committee

on the topic of

Impact of dumping of processed horticultural produce on grower industries- definition of the 'Close Processed Agricultural Goods' provisions as apply to Grower Horticultural Industries.

dated 26 June 2009

1. Introduction

The views contained in this submission to the Productivity Commission investigating Australia's anti-dumping system are on the topic of the impact of dumping of processed horticultural produce on grower industries from the viewpoint of the need for clearer definition of the 'Close Processed Agricultural Goods' provisions of the Customs Act 1901 and subsequent related anti-dumping and administrative regulations as would apply to grower horticultural industries. These views are those of the industry members of the Horticulture Market Access Committee (HMAC). HMAC is the peak market access committee for the horticulture industry and is administered by Horticulture Australia Ltd (HAL). These views are supported by horticulture industries to which the topic is of relevance and concern.

2. Description of Issue

The issue of the definition of 'Close Processed Agricultural Goods' is of considerable importance to the Australian horticultural industry from the viewpoint of growers. Growers may view that they are part of the industry subject to material damage in the event of dumping of the like processed produce. Examples may be growers of commodities such as apples and oranges, in the case of dumped juice concentrate imports, and of vegetables in the case of a range of processed vegetables imports. Recently in the case of growers of dried currants Customs has accepted that the growers of the dried currants are impacted as well as the processors of dried currants, in face of dried currant imports from Greece.

3. Description of Legislation

Section 269T(4A) of the Act provides that where the like goods produced in Australia are close processed agricultural goods then the Australian industry consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.

Section 269T(4B) of the Act provides that for the purposes of s. 269T(4A):

"...processed agricultural goods derived from raw agricultural goods are not to be taken to be close processed agricultural goods unless the Minister is satisfied 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; and

(c) either:

(i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or

(ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be constituted by the cost to the producer of those goods of the raw agricultural goods."

The above definition is reflected in section 3.2 "Policy" of the Dumping and Subsidy Manual August 2007 that reads: "If locally produced goods are close processed agricultural goods, Australian industry includes producers of raw agricultural products (s. 269T(4A) of the Act refers). If all of the criteria set out in s. 269T(4B) of the Act are met, that expanded industry must be considered when assessing material injury".

4. Definition of Terms in Section 269T(4B) of the Act

The horticulture industry views that the weaknesses in this section of the Act relate to the need for definitions of the following:

- meaning of the word 'substantially'
- meaning of 'close relationship'
- meaning of 'significant part'.

The horticulture industry views that more formal definitions of these terms are required. In absence of such, the interpretation of these terms will be individual and arbitrary in the decision of Customs. With more formal definitions, horticulture growers will have clearer understanding of their standing as part of the impacted industry and ability to argue material damage in appropriate circumstances.

5. Recommendation

That the Customs Department undertake a review with the objective of producing formal definitions for the identified terms found in Section 269(4B) of the Act and that such review be undertaken in consultation with interested agricultural producers. The review might also consider whether such formal definitions should be produced by way of operational guidelines or for inclusion within the legislation.

6. About the Horticultural Market Access Committee

HMAC is a committee administered by Horticulture Australia Ltd and is the major coordinating body of the Australian horticulture industry for market access issues. Its responsibilities cover the consideration, prioritisation, promotion and communication of those market access issues that are significant to the industry and the development of strategies for key identified industry access priorities. The Committee undertakes these responsibilities in consultation with industry associations and their members, and others who are stakeholders in market access.

7. Enquiries

Enquiries regarding this submission may be addressed to:

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