

Department of Agriculture, Fisheries and Forestry
Submission in Response to the
Productivity Commission's Inquiry into
Australia's Anti-dumping and Countervailing Duties System

Introduction

1. Australia's agriculture, fisheries and forestry industries make a substantial contribution to our nation's wealth. These sectors have proven themselves to be both productive and efficient, managing to stay viable despite pressures from climate, fluctuating global economic markets and operating in an environment of highly distorted export markets, facing numerous trade barriers. These industries have remained the backbone of the Australian economy providing, on average over the last 5 years, 20% of Australia's export revenues¹ and employing more than 6 per cent of Australia's full-time workforce.² Operating within an open and globalised economy, these industries remain subject to international developments, including the policies and commercial practices of our trading partners. Australia's anti-dumping and countervailing duties system has provided a means by which injurious practices of our trading partners can be addressed. Australia's agriculture, fisheries and forestry industries have therefore utilised the present system as applicants (for the imposition of anti-dumping and countervailing duties) but have also been directly affected by the imposition of such duties as consumers of dumped products, particularly those used as inputs.

2. This submission highlights how Australia's anti-dumping and countervailing duties system affects the Australian agricultural, fisheries and forestry industries as both producers and consumers. It notes the importance of the system to Australia's agriculture, fisheries and forestry industries. It identifies some areas of concerns with the current system such as the cost of accessing the system by Australian agriculture, and the difficulty in proving material injury. It recommends improvements to the system that would broaden the scope for actions against subsidies which more directly impact on Australia's agriculture sector. It also suggests that, should the Productivity Commission examine economy-wide tests, that sector or other industry specific tests also be considered as a suitable option.

¹ *Derived from Australian Bureau of Statistics, 5368.0, expanded data release.*

² *Derived from Australian Bureau of Statistics, 5206.0, March Quarter 2009.*

Anti-dumping and the WTO

3. Under World Trade Organization (WTO) rules³ Australia is permitted to impose anti-dumping duties on products that have been sold into Australia at an unfair price (i.e. dumped); where such sales can or do cause material injury to domestic producers of like products. Australia is also able to respond to subsidies that other WTO members provide to producers through the imposition of countervailing duties⁴. Relevant WTO agreements set out the rules which govern when anti-dumping or countervailing measures can be imposed⁵. Those rules are reflected in the *Customs Act 1901* (Cth)⁶.

Agriculture, fishing and forest industries status as producers and consumers

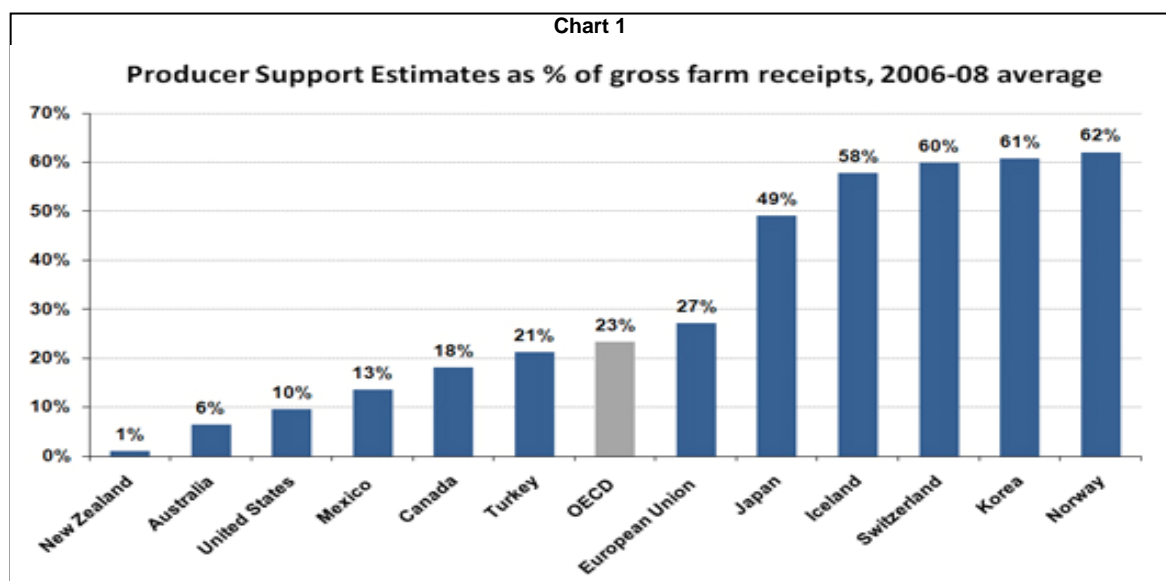
4. Global agriculture, fishery and forestry industries are among the most highly distorted sectors of international trade. Major developed countries such as the United States, the European Union and Japan provide very large subsidies to their agricultural industries. Chart 1, below, illustrates the extent to which government subsidies make up farm receipts among OECD economies. In addition to the competitive pressures that such domestic support by other countries provide, Australian agriculture also faces a range of other barriers to trade such as tariffs, quotas, and technical market access measures. In stark contrast Australia provides a very low level of subsidy to its agricultural, fisheries and forestry industries, and maintains low tariffs for imported products in these sectors. Australia's agricultural, fisheries and forestry industries are therefore significantly exposed to the unfair policies and practices of other countries. Accordingly it has been important that Australian industries have had recourse to the full suite of retaliatory measures, authorised by WTO rules, where it can be established that significant harm is being caused as a direct result of external policies or practices.

³ Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

⁴ Agreement on Subsidies and Countervailing Measures.

⁵ Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Subsidies and Countervailing Measures.

⁶ See also the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) and the *Customs Regulations 1926* (Cth).



Source: OECD, Agricultural Policies in OECD countries: Monitoring and Evaluation 2009.

5. Since 1999 there have been some 19 anti-dumping investigations undertaken by the Australian Customs and Border Protection Service (Customs) as a consequence of complaints made by Australian agricultural, fisheries and forestry industries. This demonstrates that these sectors consider the anti-dumping system an important avenue in countering the injurious pricing techniques of some exporters⁷. In a number of cases Australian agricultural producers (or their peak industry representatives) have successfully complained against dumped imports of agricultural products⁸. For example, in the *Processed Dried Currants Exported from Greece* matter the Customs and Border Protection Service (Customs) found that dumped currants from Greece had caused Australian currant growers to suffer lower prices for currants, price suppression, lost sales and unprofitable rates of return⁹. Despite such successes, industry has also expressed its concern to the government that the cost of making applications alleging that dumping has occurred can be expensive, both in terms of time and financial resources, and the outcomes are mixed. It is particularly difficult for small to medium enterprises to bring such cases forward both in terms of costs and requisite expertise. This raises equity issues that should be addressed.

6. Material injury, a condition that must be satisfied before anti-dumping measures can be taken, has, in the past, proven difficult for some agriculture industries to demonstrate. Although the *Customs Act 1901 (Cth)* appears to provide the Minister with sufficient

⁷ See: <http://www.customs.gov.au/site/page.cfm?u=4412>

⁸ See for example: *Trade Measures Report No. 140— Processed Dried Currants Exported from Greece*.

⁹ *Ibid.* page 73

flexibility to conduct an objective examination in this area, industry have suggested that Customs could adopt a more flexible approach in considering the claims by industry of the material injury caused. The department sees merit in such suggestions given industry is closely attuned to the effects of dumped product. The department notes that the WTO Anti-Dumping Agreement does not define material injury, but that determinations are based on positive evidence.

7. While Australian agricultural, fishing and forest industries need recourse to anti-dumping actions as producers it is also recognised that those same sectors rely on imported inputs. Such inputs can also be subject to anti-dumping duties. The Australian Bureau of Agricultural and Resource Economics (ABARE) has reported that the major cash costs of broadacre¹⁰ farms include: fertiliser; fuel, oil and grease; as well as crop and pasture chemicals¹¹. According to ABARE spray chemicals and fertilisers account for approximately 25% of the average grain farmers' cash costs¹². Significant quantities of these farm inputs are imported, or made from imported ingredients¹³. The imposition of anti-dumping duties, particularly on these commodities, therefore increases the price of inputs and the overall cost of production. Indeed price pressure from the imposition of anti-dumping duties (and the removal of a subsidy) on imports of fertilisers formed part of the rationale for the 1986 review by Professor Fred Gruen of Australia's anti-dumping system¹⁴. Ammonium nitrate (an ingredient used in explosives but also as a fertiliser for agriculture) has been subject to anti-dumping duties¹⁵, with the latest imposition being made in 2006 and due to expire in 2011, subject to further industry representation.

8. The test to determine if dumping has occurred¹⁶ requires a comparison between the *export values* and the *normal value* (as defined) of the good in question. Where the export value is lower than the normal value then dumping will be taken to have occurred.

¹⁰ ABARE defines "broadacre" farms to include: wheat and other crops enterprises, sheep enterprises, beef enterprises as well as enterprises comprising a mix of the aforementioned enterprises. See ABARE *Australian Commodities March Quarter 09.1, Volume 16 No. 1*. page 100.

¹¹ *Ibid.* page 104. ABARE forecast that in 2008-2009 fertilisers would comprise the largest cash cost for broadacre farms.

¹² ABARE *Australian Commodities March Quarter 09.1, Volume 16 No. 1*. page 104.

¹³ For fertiliser see: ABARE *Australian Commodity Statistics 2006*. Tables 100-106 and in particular table 102 "Volume of Australian trade in manufactured fertiliser, by type".

¹⁴ Banks, *The Antidumping Experience of a GATT-Fearing Country*. In: Finger (Ed) *Antidumping*. page 47.

¹⁵ *Trade Measures Reports Nos 104 & 105 continuation inquiry and review of anti-dumping measures- ammonium nitrate- the Russian Federation*.

¹⁶ Section 269TACB of the Customs Act 1901 (Cth).

Whilst under the *Customs Act 1901* (Cth) the Minister is required to be satisfied that the dumping has or will cause injury to a domestic industry, the *Customs Act 1901* (Cth) does not require the Minister to consider the effects on consumers or an entire economic sector or entire industry, but only defined producers flowing from the imposition of anti-dumping duties.

9. A challenge therefore facing Australia's anti-dumping system has been to ensure a balance between, on the one hand, ensuring that agricultural, fishing and forest industries are able to challenge dumped products where they cause material harm, and on the other hand, the extent to which consideration should be given to the effect that anti-dumping duties placed on inputs can impact on the viability of producers within those sectors¹⁷. The Productivity Commission's Issues Paper notes that the Commission will explore alternative approaches to anti-dumping, including the question of whether there should be more emphasis on economy wide impacts¹⁸. There is a strong economic rationale for considering the overall costs and benefits of a dumped product on the economy. One option may be to consider not only the immediate producer-specific effects of dumping, but extend the impact examination to the entire sector and/or other industries that are affected. Where impacts beyond the sector(s)/industry(s) in question are expected to be significant, then there could be merit in a wider economic assessment. In this regard the Commission should note that Australia's agriculture, fisheries and forestry industries continue to make an important contribution to Australia's economic, social and environmental prosperity. These industries contribute some \$25 billion towards GDP¹⁹ and remain a large direct employer with some 340,000 employed throughout the sector in full-time employment.²⁰ The industries also provide many indirect employment opportunities. Indeed more than one-third of rural and regional Australian jobs are linked to these primary industries.²¹ Most critically, these industries contribute to Australia's, and indeed, global food security. Australia remains one of the world's largest agricultural exporters with two-thirds of production being exported annually.

¹⁷ Noting the historical pressures placed on agricultural producers from the imposition of anti-dumping duties on fertilisers. See: Banks, *The Antidumping Experience of a GATT-Fearing Country*. In: Finger (Ed) *Antidumping*, page 47.

¹⁸ Productivity Commission *Australia's Anti-dumping and Countervailing System- Issues Paper April 2009* page 19.

¹⁹ Australian Bureau of Statistics, 5206.0, March Quarter 2009.

²⁰ Australian Bureau of Statistics, 6291.0.55.003, Labour Force, Australia, Detailed, Quarterly, May 2009.

²¹ Department of Agriculture, Fisheries and Forestry, *Australia's Agriculture Industries at a glance*, 2008.

10. The trade exposed status of the agriculture, fisheries and forestry sectors means that anti-dumping duties levelled on inputs used by these industries can have a dramatic and disproportionate effect. Given these factors it may be that the technical focus on the transaction required by anti-dumping should be broadened to ensure that anti-dumping actions have a net positive benefit for Australian agriculture, fishery and forestry industries.

11. WTO rules do not prohibit dumping; rather they regulate the response of the state in response to the act of dumping. By implication, arguably it is up to the state to determine the extent to which anti-dumping measures taken pursuant to the relevant WTO rules meet their own competition and economic policy goals. In this regard, DAFF notes that Australian agricultural enterprises have been unable to take full advantage of anti-dumping actions afforded by the WTO rules. This is because the *Customs Act 1901* (Cth)²² has not been updated to reflect the expiration of the so-called WTO *Peace Clause*.²³ This has effectively meant that Australia's agriculture industries have been unable to bring forward actions and/or Customs has been required to ignore certain subsidies in its calculations, thus resulting in lower or no remedies.

Conclusions

Recognising the importance of the Australian agriculture, fisheries and forestry industries to Australia's economic well-being, DAFF notes that:

A. Australian agricultural, fishing and forest industries are highly exposed to international developments, including the policy induced distortions in global markets, given the openness of the Australian economy, its low tariff regime and low level of government support. The United States, the European Union and Japan in particular provide considerable subsidies and protection to their agricultural, fisheries and forestry industries.

²² Section 269TAAC(6), Customs Act 1901 (Cth)

²³ Peace Clause protections were afforded under Article 13 of the WTO Agreement on Agriculture and Article 8 of the WTO Agreement on Subsidies and Countervailing Measures.

- B. Australian agricultural, fishing and forestry industries need access to the full suite of anti-dumping and countervailing measures in order to respond to imports of dumped products (as defined by WTO rules relating to dumping or subsidies) where these are found to cause material harm.
- C. The Productivity Commission should consider the extent to which decisions on anti-dumping measures need to be taken on a whole of economy, or sector/industry-specific basis particularly where they affect inputs used in the agricultural, fisheries and forestry sectors and where continual dumping threatens to undermine Australia's competitiveness in these sectors and the wider economic benefits for these industries.
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