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Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601



Dear Sir/Madam

Re: Inquiry into Australia's Anti-Dumping System

Attached please find our submission to the inquiry into Australia's anti-dumping system.

Windsor Farm Foods Group Limited (WFF) is a wholly owned Australian company which has manufacturing facilities in western Sydney and Cowra, which is a small town in Central Western New South Wales. WFF has revenues of \$33m and employs approximately 120 people, the majority of which are located in Cowra. We have a proud heritage in manufacturing quality products largely sourced from Australian farmers. We supply the retail, food service and industrial manufacturing sectors. Being the smallest of the canning operations in Australia we have limited funds for marketing and promotion and therefore have a low brand presence at the retail level but are a significant supplier for generic or private label brands as well as co-manufacturing for Australia's leading food brands. We refer to ourselves as the "people behind the brands". Despite our size we invest heavily in innovation and in many of our products we are market leaders.

WFF accepts that the retail market we operate in is a very difficult one with two dominant retailers, however we have done much to improve operational efficiencies and launch new products and extend existing product ranges that meet consumers changing expectations. WFF like most Australian believes in a "fair go" and relishes being the under dog who wins the day. Unfortunately we find we are continually up against imported product that is either heavily subsidised or supported in some way by the exporting country governments. We were successful in an anti-dumping action on mushrooms however the experience was very expensive and protracted. Our experience and suggestions for change are contained in our attached submission.

We thank you for the opportunity to communicate our experiences and look forward receiving your findings.

Yours sincerely

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Productivity Commission Inquiry – Review of Australia’s Anti-Dumping and Countervailing System

Introduction

Windsor Farm Foods Group Ltd (“WFF”) is an Australian unlisted company, established originally as the Mushroom Growers (Co-Operative) society in 1975, with an annual turnover of approximately \$30 Million. Since then, the operation has changed significantly with acquisitions involving baker’s fillings and dry goods that now combine with food processing to form the Windsor Farm Foods Group.

WFF operates a food processing cannery located at Cowra in central NSW. The cannery has a long history associated with processing vegetables at Cowra. On 22 December 1943, during World War II, the one millionth can for Australian and US armed forces rolled off the production line at Cowra. The canned vegetables included peas, beans, tomatoes, carrots and beetroot, mostly grown on the 600 acre company farm situated on rich alluvial river flats seven kilometres from the cannery.

Since then, each decade has seen growth in both produce and the expansion of facilities with the plant canning a wide range of vegetables, soups and hot packs.

In the 1950's & early 60's the factory housed the largest green bean canning line in the Southern Hemisphere, and was capable of handling 2000 tonnes of asparagus, 7000 tonnes of tomatoes and 2000 tonnes of beetroot.

In 1992 Pacific Dunlop closed the Cowra factory leaving the infrastructure in place. Some equipment was moved to other locations owned by the parent company.

In August 1993, a group of local vegetable growers established a Co-operative (Cowra Export Packers Co-Operative Limited) and leased the factory from Pacific Dunlop. Cowra Export Packers processed canned asparagus, tomatoes and potatoes for the "Edgell" brand and "Generic" products for major supermarkets. The company also exported vacuum packed corn on the cob, in pouches, to Japan.

In 1995, the newly-formed company commenced canning mushrooms, red kidney beans and canned bean mixes for major supermarkets.

In 1997, The Cowra Export Packers Pty Ltd (no longer a co-operative) purchased the factory from Simplot Australia Pty Ltd (a wholly owned subsidiary of Simplot USA who acquired the Edgell-Birdseye business from Pacific Dunlop in 1996) and continued its canned vegetable production under the Edgell brand as well as the "Cowra Gold" and "Lachlan Gold" brands. They also packed a range of produce under Homebrand, No Frills, Savings, I.G.A. brands for Australia's major supermarket chains. In 2000, Cowra Export Packers Limited was acquired by The Windsor Farm Foods Group Ltd, which moved its mushroom and salad dressing processing lines from Windsor to Cowra.

In 2003, a state-of-the-art-facility for processing baker's jams and fillings and fruit straps was constructed at the Cowra site and at the Illawarra Jam Company's factory at Tempe, NSW, which was originally owned by The Windsor Farm Foods Group.

Preserved mushrooms anti-dumping

WFF lodged a 'draft' application for Customs' consideration in February 2003. Following feedback received from Customs, a formal application was submitted in September 2003. The application was rejected by Customs as it considered WFF did not manufacture 'like goods' to imported preserved mushrooms.

Following discussions with Customs in early 2004, WFF commissioned a study of the interchangeability of locally manufactured preserved mushrooms and imported preserved mushrooms. The University of New England study conclusively showed that imported preserved mushrooms were substitutable for, and interchangeable with, locally produced preserved mushrooms.

WFF again formally submitted an application in January 2005. Customs rejected this application with concerns relating to normal value determination.

WFF lodged a further application for anti-dumping measures against Chinese exports of preserved mushrooms in March 2005. The application followed a decline in the Australian industry's supply of locally preserved mushrooms over an extended period of time. WFF alleged that the increase in Chinese imports of preserved mushrooms had, in part, resulted from anti-dumping measures on Chinese exports in the USA from 1999.

Anti-dumping measures were also applicable to Chinese preserved mushrooms in the EU and Mexico.

Customs initiated the application for anti-dumping measures in April 2005. The investigation had commenced prior to Australia's recognition of China as a market economy country for anti-dumping purposes. This fact, however, had little impact on investigation outcomes.

WFF had asserted that a "market situation" prevailed in China in respect of the production of preserved mushrooms. WFF relied upon information sourced from earlier US investigations where it was established that the government of China ("GOC") was involved in a range of activities in the raw material and processing chain. These activities included:

- The provision of raw material spores at less than market prices;
- The provision of aids to manufacture at less than market prices (e.g fertilizers);
- GOC control of the mushroom cooperatives for purchasing mushrooms from growers;
- Substantial GOC ownership of canneries;
- GOC ownership of can suppliers (with cans sourced from GOC owned manufacturers);
- Raw material supplied from GOC controlled entities (e.g. salt and electricity).

US investigations do not recognise China as a "market" economy for anti-dumping purposes. As such, the US investigation examines 'surrogate' information sourced from an alternate country. The US utilised India as a surrogate country for the Chinese preserved mushrooms inquiry.

Customs visited five exporters of the goods under consideration. Customs determined that the Chinese exporters visited did not sell preserved mushrooms on the domestic market. Customs therefore could not establish normal values on domestic selling prices. Customs' verification visits confirmed that:

- There was no evidence that government officials occupied executive or senior management positions in the companies visited;

- Each company operated under a business licence, with no other government influence over how the business was operated;
- All companies maintained accounting records in accordance with Chinese generally accepted accounting principles;
- The Chinese producers claimed there was no government control of major inputs, and that raw material inputs for salt and electricity were only minor cost inputs.

As a consequence, Customs considered that a market situation was not evident for preserved mushrooms sold in China and determined normal values using the Chinese exporter's productions costs and expenses (as domestic sales were not evident).

Determined dumping margins were in the range 4.2 to 23.2 per cent. One exporter was found not to be exporting at dumped prices. Remaining exporters were found to have dumping margins of approximately 25 per cent.

An extension to the investigation timeframe to publication of the Statement of Essential Facts ("SEF") was made (the inquiry was extended by a further five weeks). Customs' published a preliminary affirmative determination ("PAD") imposing provisional measures on the day prior to the final report and recommendations were forwarded to the Minister (i.e. six months after the commencement of the investigation).

The Minister accepted Customs' report and recommendations and imposed interim dumping duties for five years. The Minister's decision was appealed to the Trade Measures Review Officer ("TMRO"). Following investigation by the TMRO, and a further re-investigation by Customs, the interim duties were affirmed by the Minister in September 2006.

WFF's experience with its preserved mushrooms anti-dumping case positions it well to comment on certain aspects of the Productivity Commission's Review of Australia's Anti-Dumping System. These comments are addressed hereunder.

Comments on recent Anti-Dumping Activity

Apparent decline in applications

WFF is not surprised by the decline in the number of applications for anti-dumping and countervailing measures over recent years. As a small to medium sized enterprise (“SME”) that endured a long lead time to the formal initiation of an investigation, WFF questions how other SME’s can withstand the uncertainty surrounding the pre-screening process.

Data is not published in relation to the number of applications rejected pre-initiation – making it difficult to understand the overall success rate through Customs’ pre-screening process, however, it would be expected to be low.

Diminished incentive to take action?

WFF would agree that there is a diminished incentive to commence preparing an anti-dumping application. Not only is it difficult for an SME to prepare the financial information as per Customs’ pro-forma requirements, but there is also the difficulty experienced in having Customs’ accept business assumptions which are appropriate to a business with an annual turnover of \$30 million or less.

SME’s do not have the resources available to devote substantial time to re-configuring financial information for little benefit other than the once-only anti-dumping purpose. Similarly, SME’s do not have access to large databases containing competitive information on import offers for dumped imports – unlike large corporate entities.

WFF recognises that Customs is required to ensure certain standards of information are required for it to be satisfied that dumping, material injury and causal link have all been established. However, the onus of proof in relation to these factors requires some level of flexibility when considering applications by SMEs.

It is also WFF’s experience that it is simultaneously experiencing cost pressures in relation to margins from customers. The business case to justify an anti-dumping action is extremely difficult in terms of the dollars outlaid, internal resources committed, and payback time. There is no ‘windfall gain’ at the completion of the process and it can be questioned whether a return to pre-dumping and material injury is ever really achieved.

Will the current downturn lead to increase in applications?

It is WFF’s view that the current economic downturn will lead to an increase in instances of dumping – it does not automatically follow that the number of new applications will increase. A decision to take a new application will be examined on a case-by-case basis, taking into account the impact of the dumped products on the overall business (in WFF’s case).

Have changes to the composition and nature of industry activity impacted anti-dumping activity?

The continued dominance of the two major retailers in the grocery markets has increased the disincentive for small, local suppliers such as WFF to commence anti-dumping action. The influence of the two retailers to improve margins over the recent five years has impacted the viability of small suppliers – both on the basis of price and product range (certain lines have been discontinued due to the substitution of imported goods for higher priced locally produced lines).

Product and country incidence

It was WFF's expectation that as exports of Chinese preserved mushrooms had been the subject of investigations by other administrations, a certain level of recognition of exporters involved, findings in relation to government involvement and influence in the exporting country, and possibly whether 'benchmarking' Chinese selling prices and costs with an 'other' market economy country would have been appropriate.

None of these considerations were afforded in WFF's investigation.

It is WFF's view that dumping and subsidisation of Chinese processed products in the agricultural sector is significant (refer also to canned pineapple). The difficulty for Australian food processors is the lack of transparency and access to prima facie information to reasonably demonstrate grounds for a dumping or countervailing notice.

International comparison

In retrospect, WFF remains significantly disappointed with the outcome in respect of its preserved mushrooms case. Anti-dumping measures imposed by US authorities remain substantially higher than those applicable to Chinese exports to Australia, highlighting the attractiveness of the Australian market to further Chinese exports. Similarly, actual Chinese export prices to Australia are significantly below export prices to the USA – again demonstrating the disparity between the outcomes of two different administrations.

Rationale for the anti-dumping system

As a food processor supplying to two large retailers, WFF's expectation is that it should be competing with imports at full cost plus a margin. Under the principles of anti-dumping "full cost" is defined as full absorption costing, and not variable cost plus some contribution to margin.

An effective anti-dumping system is required to ensure this principle is adhered to. In the absence of the anti-dumping system which embodies this principle, Australian manufacturers (including food processors) would be unable to compete.

Australia has reduced its tariffs substantially since the mid 1980s. The tariff reduction program has led to the rationalisation of Australian manufacturing – as evidenced in the above introduction outline which identified the cessation of some cannery businesses. The processors that remain and have survived the steep cost reduction transformation are surely entitled to the certainty that they should only have to compete with fair pricing – that is, pricing which reflects full cost recovery.

WFF does not consider that the anti-dumping system penalises comparative advantage – rather, it is based upon the premise that selling prices recover actual costs incurred plus a margin. If actual costs are low and free from any form or type of government influence or intervention, then those selling prices reflect the competitive benchmark.

WFF considers that the anti-dumping system goes some of the way to addressing predatory behaviour. In the food processing sector, the extent of the dumping (and possibly subsidisation) is enhanced by the two large retailers seeking to improve margins by sourcing goods at prices below full cost recovery. In many instances, the lack of competition in the retail grocery market is a catalyst for dumping. Access to the anti-dumping system is important for local suppliers to address the power of the retailers which contributes to the incidence of dumping. It should also not be assumed that cheaper prices benefit the consumer – this misconception is evident in food processing where imported products are often of poor quality and undercut the Australian produce selling prices (and hence margins). Lower prices do not always mean the consumer benefits – quality remains an important factor.

Concerns are also held for products that are deleted by the major retailers in preference to locally produced goods. It is difficult to re-introduce a product line once it has been deleted – the long-term cost of dumping and countervailing is high particularly when a processor relies on a broad range of product lines to fill production capacity.

WFF is also of the view that Australian agriculture is competitive and that food processing operations co-located with raw material inputs are competitive on the Australian market. Australia's anti-dumping system is well targeted to addressing *unfair international* trading practices – the concern is that access to relatively swift relief is not impeded.

The benefits and costs of the current system

WFF recognises that the Productivity Commission's *Issues Paper* is intended to generate discussion of the net benefits to the economy of the Ant-Dumping System. WFF is concerned that any analysis required to assess 'net economic benefits' that may flow from the imposition of anti-dumping or countervailing measures is likely to:

- Unnecessarily extend the investigation process whilst a cost/benefit analysis is undertaken;
- Create significant uncertainty for all interested parties on the question of what constitutes the "public interest";
- Impose additional costs to the applicant industry that has already experienced material injury (and continues to do so in the absence of measures);
- Delay access to any relief that measures could provide; and
- Question the overall intent of government to provide access to remedy a situation where unfair trading practices have been confirmed.

Any examination of the benefits and costs of imposing measures will involve a subjective assessment which could jeopardise the ongoing viability of the applicant industry. The decision whether to impose measures (or not) is a discretion that is currently available to the Minister. It may therefore be argued that a public interest provision already exists. WFF does not support the introduction of an additional phase of the investigation process to examine any 'net economic benefits' from the imposition of measures due to time delays and additional costs that are likely to arise.

WFF disagrees with the comments in the *Issues Paper* which suggests that anti-dumping measures 'tend to be of a much larger magnitude than prevailing tariff rates'. There is no connection between determined dumping margins and applicable tariff rates. The operation of the 'lesser duty rule' also impacts the level of final anti-dumping measure, hence, there can be no conclusion(s) drawn concerning the relativities between tariffs and anti-dumping measures.

WFF would agree that anti-dumping measures do reduce market volatility in certain markets – the food processing market where production crops are seasonal is one clear example where reduced volatility permits processors to contract with growers in full knowledge of final selling prices for processed goods. The uncertainty associated with dumping and subsidisation often results in volatility (i.e. falling prices) making it difficult for growers and processors to plan supply arrangements for the forthcoming season.

Diminished benefits

It is WFF's experience that the operation of the "market situation" test (as applied in WFF's preserved mushrooms case) as applied by Customs in respect of selling prices (and costs) in the exporting market has not resulted in the rejection of domestic prices and/or costs in that market. As a consequence, Australian industry is required to compete with prices and costs which are considered 'artificially low' and well below selling prices and costs in normal market economy countries.

The market situation test is commonly requested in applications involving China (although it can have wider application). The concern is that there is no comparison of selling prices and costs in China with selling prices and costs from another market, to ultimately assess whether the prices and costs are artificially low. The failure to undertake this comparison significantly reduces the level of measures that are applied as the domestic prices and/or costs used for normal value purposes are artificially low by international comparison.

The market situation test undertaken by Customs in the preserved mushrooms exported from China case failed to recognise any of the findings of US authorities in respect of the goods under investigation in China and the exporters involved (some involved in exports to both US and Australia).

It is WFF's view that the application of the current 'market situation' provisions fail to adequately address artificially low prices in the country of export.

The application of the 'lesser duty rule' is a further area where final outcomes for a dumping inquiry are diminished. Where a calculated non-injurious price ("NIP") is determined on the basis of costs, Customs will apply an appropriate amount for profit to arrive at a constructed selling price. The level of profit to be applied to the applicant industry's costs is a subjective issue. In the absence of the applicant industry identifying a level of profit achieved for a business within its operations which is open to import competition (but not impacted by dumping), Customs will revert to profitability information sourced from the Australian Bureau of Statistics ("ABS"). The level of profit sourced often does not reflect that required for a high-capital manufacturing operation (industry data includes data for all sector participants – importers and manufacturers).

The cost-based NIP is often established at a level below what the applicant industry considers is non-injurious, and does not reflect a level required for re-investment purposes.

Impact on capital investment

Investment decisions are based upon the assumption that the competition is fairly priced. Dumped or subsidised product in the market adversely affects returns and therefore reduces the ability of manufacturers to make further reinvestment decisions (including for innovation).

The longer term impact of the injurious effects of dumping cannot be understated. The reduced returns contribute to uncertainty and an unwillingness to commit to further investment.

How might the current system be improved?

WFF considers that the Anti-Dumping System should continue to be administered by Customs and Border Protection (“Customs”) with the Minister responsible for the imposition of anti-dumping measures. The timeframes involved in investigations is considered appropriate to the requirements of Australian industry.

WFF’s exposure to the anti-dumping system through a protracted initiation process and delayed access to measures has, however, identified some concerns the company has with certain areas of the Anti-Dumping System architecture and administration.

Architecture

WFF’s involvement in the anti-dumping application process provided it with some insight into certain procedural aspects where some fine tuning is required. Areas include:

- The concept of a ‘draft’ application being submitted prior to formal lodgement generates little confidence when the applicant company cannot rely upon advice provided by Customs’ officials – Customs should not seek to ‘qualify’ advice by stating that a ‘screening team’ may adopt an alternate viewpoint upon formal lodgement;
- The extent of communication between the applicant company and Customs during the ‘screening’ phase of application consideration – communication requires enhancement to provide the applicant with confirmation that Customs fully understands the basis and claims contained in the application;
- Access to provisional measures is delayed unnecessarily – the earliest provisional measures can be imposed is from Day 60 of the investigation. Customs’ recent practice is not to publish a preliminary affirmative determination (“PAD”) until after SEF. Further delays occur where investigation timeframe to SEF is extended;
- The application of retrospective measures where provisional measures not applied. WFF’s experience in its preserved mushrooms case was that a PAD was not published until the day prior to the final report and recommendations were forwarded to the Minister. Significant uncertainty surrounded the delays in the decision-making process;
- Changes to the provisions relating to ‘market situation’ to ensure increased certainty surrounding information supplied as demonstrating artificially low prices (see discussion above); and
- Increased transparency surrounding normal value determination, particularly where it is argued that exporters have an absence of domestic sales, domestic sales are at a loss, and adjustments to normal values (current disclosures do not adequately inform the applicant industry of the quantum of the adjustment).

Administrative

The recent Joint Study completed in 2006 identified a number of areas of administrative reforms to improve the Anti-Dumping process. Select administrative initiatives have been introduced (and are welcomed) including:

- the commencement of the electronic public file system allowing interested parties access to information in a timely fashion;
- the establishment of an SME liaison officer;
- review of the Customs' manual on Anti-Dumping to improve readability;
- the introduction of a 'deficiency notice' system for applications in the screening phase of the process; and
- improved transparency associated with claims of commercially sensitive information.

The Willett Review of 1996 recommended the abolition of the then bifurcated process (involving both Customs and the then Anti-Dumping Authority). The present Anti-Dumping System operates with increased certainty (as compared with the previous bifurcated process), with improvements in the ratio of positive outcomes to Australian industry versus number of new investigations. Further suggestions for improved administration include:

- enhancing professional skills and resources of investigators in the areas of accounting and law (particularly in the area of company structures and related party transactions);
- developing linkages with industry experts and professionals to increase understanding of industry norms and practices;
- liaison with other administrations that have undertaken investigations in respect of the same goods – to foster learning and an understanding of expectations; and
- Affirmation that no new information should be considered in appeals to the TMRO – to do so would undermine the efficiency of the anti-dumping process.

Other areas of concern

WFF considers the Anti-Dumping System is an appropriate means of addressing unfair trading practices. Attempts to limit the access to, or delay access to relief via the system, are not supported. It is WFF's view that the Anti-Dumping System already includes a ministerial discretion on whether or not to impose measures – the introduction of a public interest test will cause likely delays to measures and increase costs of participants.

For SMEs such as WFF it is important that access to measures is not delayed. The PC is encouraged to recommend the early application of provisional measures by Customs as close to Day 60 as possible – as recommended in the Joint Study.

WFF's experience with its preserved mushrooms case was that Customs paid little attention to the findings of the US administration in its investigation(s). WFF understands that the US' treatment of China is different to that by Australia, however, there were aspects of the US investigations relating to government ownership and participation in the Chinese food processing sector which should have been considered in the Australian investigation. It is unacceptable for the findings by other administrations to be totally discounted in favour of simple question and answer responses from exporters.