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SUBMISSION TO THE PRODUCTIVITY COMMISSION

Research into Developments in Anti-Dumping Arrangements

1. About AUSVEG

AUSVEG is the National Peak Industry Body representing the interests of Australian vegetable and potato growers. We represent growers around Australia and assist them by ensuring the National Vegetable Levy and the National Potato Levies are invested in research and development (R&D) that best meets the needs of the industry.

AUSVEG also makes representations on behalf of vegetable and potato growers to ensure their interests and concerns are effectively communicated to all levels of government, in the public sphere, and throughout relevant areas of the private sector.

2. Queries

For more information regarding this submission please contact me

Yours sincerely

Andrew White
Deputy Chief Executive Officer

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3. Summary

In the modern global marketplace, Australia’s primary producers are facing increasing domestic competition from foreign importers. These importers often benefit from lower costs of production in their home countries, enabling them to undercut their Australian counterparts by selling their produce at lower prices while still maintaining a profit margin, even incorporating the cost of export.

This trend is having a significant impact on Australia’s vegetable industry. Figure 1 (below) shows the rapidly-escalating value of fresh, frozen and processed vegetable imports into Australia, compared to our export value for the same commodities.¹

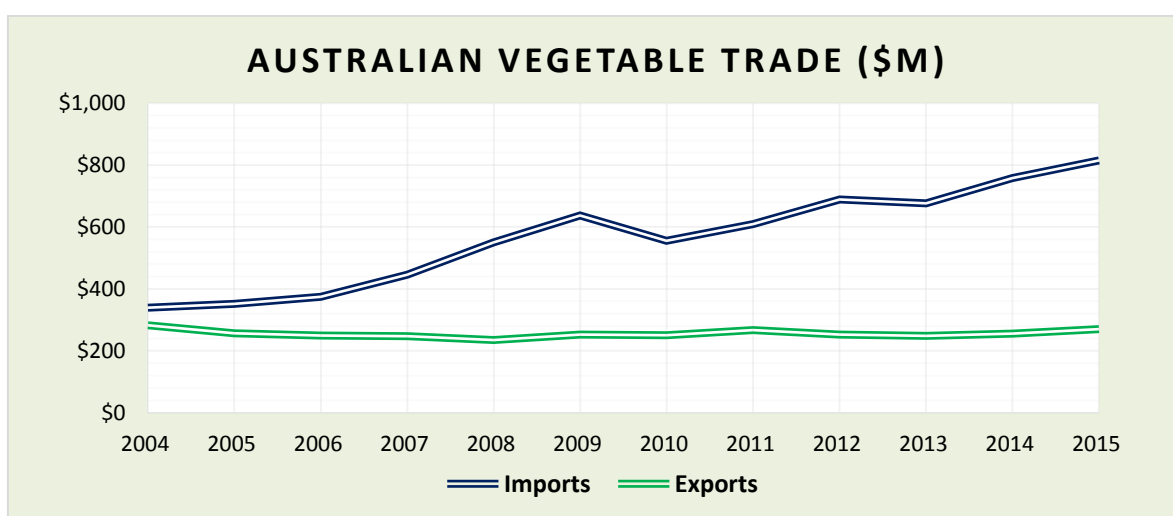


Figure 1: Australian vegetable trade, in millions (fresh, frozen and processed vegetable products)

In 2014-15, the value of fresh, frozen and processed vegetable imports into Australia increased to above \$800 million for the first time. This includes massive growth in imports of frozen prepared potato products which has continued for over a decade – since 2004, the value of these imports has increased by over \$117 million (an increase of over 650% on the 2004 value of \$17.8 million). It is also important to note the \$36 million increase in imports of prepared and preserved tomatoes, whole or in pieces (such as those recently found by the Anti-Dumping Commission to have been dumped in Australia) over the same time period (an increase of over 100% on the 2004 value of \$33 million).

Imports of many other vegetable commodities have also seen significant increases in value. A selection of these commodities and their growth over the last five financial years is presented in Figure 2 (below).

¹ All trade information taken from Global Trade Atlas, which uses data from the Australian Bureau of Statistics.

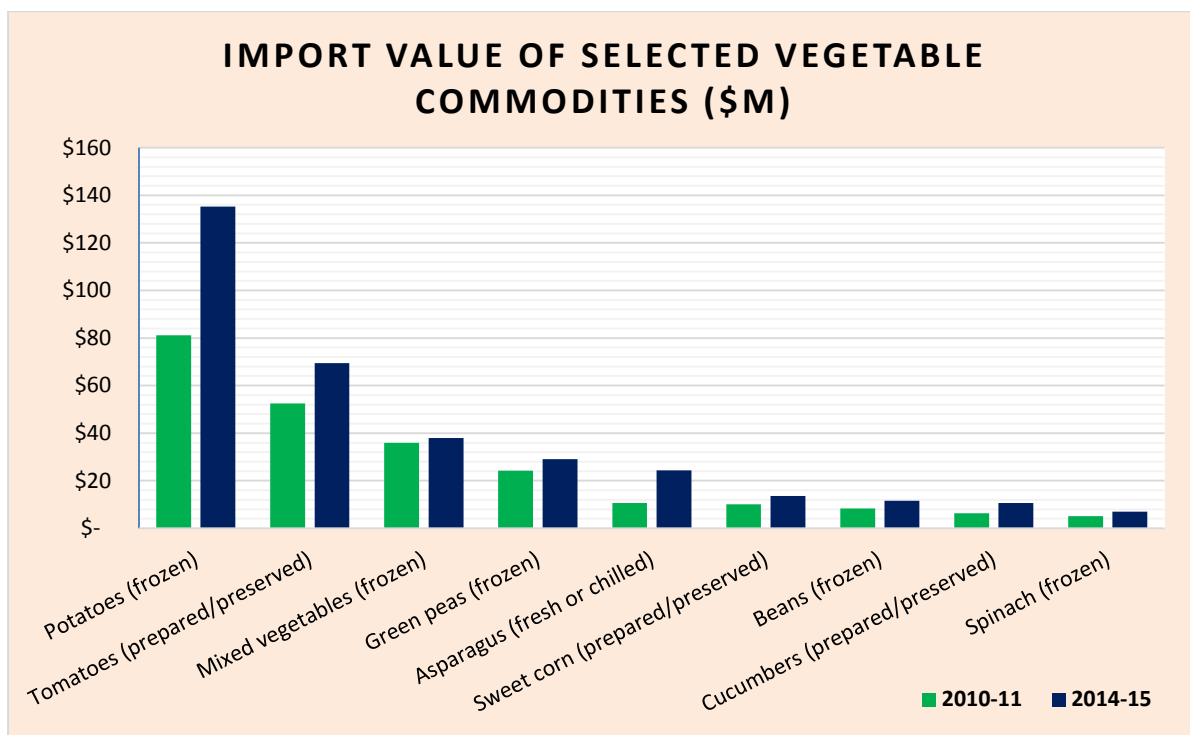


Figure 2: Import value of selected vegetable commodities, in millions

There is nothing inherently anti-competitive about imported produce making its way into the Australian marketplace, and there is nothing anti-competitive about lower-priced imports enabled by general lower costs of production. However, it is crucial to be alert to unnatural distortion of the marketplace, often brought on by importers looking to damage Australian industry by exporting their produce at prices below those at which they could sell in their home country or at prices unfairly enabled by subsidies.

For example, the European Union’s Common Agricultural Policy (CAP) provides assistance to European farmers through three main elements: income support (direct payments), rural development (measures to help farmers modernise farms), and market measures.

In 2013, total expenditure for the CAP was just shy of €60 billion (over AUD\$90 billion). Market measures for fruit and vegetables alone reached over €1.1 billion (over AUD\$1.5 billion, or more than a third of the Australian vegetable industry’s total gross value of production). With such huge amounts of government support for the European vegetable industry, local Australian growers are clearly on an uneven playing field when trying to compete with European produce.

Australia has historically been, and continues to be, a low-subsidy environment, both for primary producers and other industries. With the increasing globalisation of trade, including the number of high-profile Free Trade Agreements which have recently either been concluded or are being finalised with major importing nations, it is vital that Australian industry is not left to suffer from trade, compared with nations which subsidise their primary producers and local industries.

A strong, effective anti-dumping framework is key to maintaining a fair playing field for Australian industry. Importers must not be allowed to take advantage of Australian industry by selling their goods at artificially low prices which they would never manage to maintain in their home markets.

AUSVEG believes that recent reform efforts to Australia’s anti-dumping framework reflect well-intentioned attempts at positive reform. It is vital that Australian industry is protected from opportunistic behaviour by importers, many of whom benefit from subsidy-heavy environments in the countries in which they base their operations, as well as from overall lower costs of production.

It is vitally important that the Anti-Dumping Commission (“ADC”) continues to be given the support and powers it requires to function effectively. This includes ensuring that anti-dumping duties are considered solely based on the injury caused to domestic industry and calculated based on the need to alleviate that injury, without taking into account other industries – in other words, continuing to have no formal public interest test.

4. Recommendations

1. That no formal public interest test be incorporated into Australia’s anti-dumping system.
2. That increased resources be allocated to the Australian Industry Group to provide assistance to small and medium enterprises beyond the initial application for anti-dumping duties and throughout an entire case.
3. That the current system for the expiry of anti-dumping measures be maintained, including the ability to apply for continuation of anti-dumping measures where appropriate.

5. Responses to specific terms of reference

How the anti-dumping system is operating

AUSVEG believes that Australia’s anti-dumping system is operating well, albeit with opportunities to strengthen and improve the function of the ADC.

Recently, we have welcomed recommendations by the ADC to impose duties on two canned tomato exporters from Italy who were originally named in SPC Ardmona’s initial application for dumping duties to be imposed on 105 Italian canned tomato exporters. With the other 103 exporters already having anti-dumping duties imposed on their products, AUSVEG believes that this recommendation is an example of the system functioning as it is intended to – that is, by identifying injurious behaviour and imposing duties which ensure local industries and businesses can continue to operate and contribute to the Australian economy.

Additionally, it is important that analysis of potential dumping behaviour within one industry recognise that setting precedent can have flow-on consequences across a broad variety of Australian industries. For example, a previous anti-dumping case has identified that special considerations given by the Chinese Government to capital-intensive industries, such as setting electricity prices at more beneficial rates for producers in those industries, created a “market situation” which rendered domestic prices for those products unsuitable as a way of determining normal values for the purposes of calculating dumping margins.

Given the potential for indirect impacts on both the export prices and domestic market prices for products, it is important that future anti-dumping cases take the broadest possible view when considering possible influences on dumping margins.

AUSVEG also believes it is important to ensure that Australia’s relationships with trading partners are not prioritised above providing a level playing field for Australian primary producers, including Australian vegetable and potato growers. The ADC must be prepared to recognise and act against dumping behaviour across all commodities and all trading nations.

Any opportunities to improve outcomes from the anti-dumping system

Opposition to a public interest test

AUSVEG is concerned that discussion of reforms to Australia’s anti-dumping system are designed to open the gate for discussion of a public interest test for dumping duties.

The main purpose of a public interest test, as regards anti-dumping measures, is to decide whether there are particular reasons not to impose these measures despite a finding that the dumped imports are causing material injury to a domestic industry. For example, a public interest test may consider the impact on consumers of a dumped food product being forced to raise its prices to account for an anti-dumping or countervailing duty, or the impact of the same action on downstream industries.

AUSVEG strongly opposes the introduction of a formal public interest test.

If an Australian industry is being injured by dumped imports, the damage must be alleviated. While downstream industries may be affected by the imposition of these duties, if the duties were not imposed, these industries would be benefiting from anti-competitive behaviour – which contradicts the original intention of having an anti-dumping system. Incorporating a public interest test would undermine the purpose and integrity of the anti-dumping system.

As the Australian Government of the time said in its 2011 response to a proposed “bounded” public interest test:

The purpose of the ADS is to provide redress for manufacturers and producers injured by dumping or subsidisation. A public interest test could unfairly remove the remedy available to those manufacturers and producers.²

² Explanatory Memorandum for the *Customs Amendment (Anti-Dumping Improvements) Bill (No. 2) 2011*

The Government did consider a number of other options for taking account of the wider impact of measures. However, any such approach would undermine the purpose of the ADS for Australian manufacturers and producers.³

Recommendation

1. That no formal public interest test be incorporated into Australia's anti-dumping system.

Assistance for SMEs throughout the entire investigation process

While the Australian vegetable industry is going through a transitional period, family-owned businesses still make up the bulk of Australian vegetable-growing operations. On top of this, the industry is predominantly made up of small farms – in 2012-13, around 40 per cent of vegetable farms were smaller than 5 hectares.

Unfortunately, under the current operations of the ADC, the resources and paperwork required throughout the process of a case for anti-dumping duties impose an unreasonable burden on small and medium-sized enterprises (SMEs) and necessitate a reliance on external resources, such as lawyers.

AUSVEG considers this system to be exclusionary to SMEs who, despite suffering injury from dumping behaviour, either cannot manage the time burden or afford an external resource. All businesses deserve the chance not only to bring an application to the ADC, but to see the case through to completion without suffering undue burden on their own operations.

Currently, the Australian Industry Group (AIG) provides an International Trade Remedies Advisory service, which has recently been expanded to offer three International Trade Remedies Advisors. This is a specialist service which can help SMEs prepare and apply for anti-dumping measures.

However, the process of carrying a case through to completion following an application can often take months and be a drain on both time and resources. With growers and other SMEs needing to maintain regular business operations while bringing a case to the ADC, it is vital that they receive assistance throughout the process of a case, and not simply during the preparation and application stages.

³ *Streamlining Australia's anti-dumping system: An effective anti-dumping and countervailing system for Australia*, Australian Customs and Border Protection Service, 2011

Recommendation

2. That increased resources be provided to the Australian Industry Group to provide assistance to small and medium enterprises beyond the initial application for anti-dumping duties and throughout an entire case.

Opposition to a maximum imposition period for anti-dumping duties or counter-vailing duties

Currently, any anti-dumping measure imposed by the Commission expires five years after the day on which it is published (unless it is revoked before the end of that period). However, the person who originally applied for the measure, or a person representing the whole or a portion of the industry producing like goods to those covered by the measures, may apply for a continuation of those measures.

AUSVEG strongly opposes any possible move to apply an absolute maximum imposition period of said duties. Under this model, any anti-dumping duties applied to imported goods would only last for a certain period of time, with domestic industry having no ability to seek continuation of the duties prior to their expiry or to seek the re-imposition of duties any time after the duties have expired.

In particular, any argument for a maximum imposition period based on competition is completely fallacious. For example, the New Zealand Government claim in their recent discussion paper on the topic that:

...because duties are imposed for one imposition period only, industry will be encouraged to use the limited period when duties are in place to adjust to expected future competition from dumped goods.

However, only paragraphs later, they acknowledge that:

[this model] affords less protection from dumped and subsidised imports.⁴

Given that anti-dumping duties should primarily be intended to account for anti-competitive market distortions created by dumped and subsidised imports, implementing a time limit which would instead force domestic industry to attempt to compete with unfairly-priced goods is completely antithetical to the principle behind anti-dumping duties.

AUSVEG believes that forcing industries which have already been provably injured by anti-competitive pricing to then compete with that pricing is completely unfair and an illogical response to anti-dumping behaviour.

⁴ *Introducing a Bounded Public Interest Test and Automatic Termination Period into the Anti-Dumping and Countervailing Duties Regime*, New Zealand Ministry of Business, Innovation & Employment, 2015

AUSVEG strongly supports retaining the ability for anti-dumping measures to be applied, and re-applied, for as long a period as is necessary to reduce or eliminate injury to local industries from dumping behaviour.

Recommendation

- 3.** That the current system for the expiry of anti-dumping measures be maintained, including the ability to apply for continuation of anti-dumping measures where appropriate.