



**National Farmers'**  
FEDERATION

**AUSTRALIA'S ANTI-DUMPING AND  
COUNTERVAILING SYSTEM**

**NFF SUBMISSION**

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# The National Farmers' Federation

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The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly agriculture across Australia.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Each of these state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

## Introduction

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The NFF welcomes the opportunity to comment on the Productivity Commission's Issues Paper on Australia's Anti-dumping and Countervailing System.

The NFF believes the major challenge for anti-dumping policy is to identify options to improve the accessibility of Australia's anti-dumping system for industries with legitimate claims against dumped products, while insuring that any changes to policy or administration do not result in an increase in the number of unsubstantiated applications from industry sectors seeking to use the anti-dumping system as a means of reinstating industry protection.

On this basis the NFF makes the following comments.

## General Comments

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The NFF is committed to ensuring Australia's anti-dumping system is WTO-consistent, and that industries with legitimate claims against dumped imports have the opportunity to seek remedy through the system.

Australian farmers, for differing reasons, depend on a transparent, efficient and defensible anti-dumping system. Australian grain growers for instance, competing in highly competitive export markets, seek assurance that Australia's anti-dumping system will not allow domestic manufacturers of farm chemicals and fertilisers to launch unsubstantiated and tactical anti-dumping action in order to halt the flow of competitively priced imported farm input products.

In contrast, other Australian producers supplying the domestic processed food industries may seek the opportunity to access the anti-dumping system to offset the injury they periodically claim to be suffering as a consequence of the potential

dumping of products such as frozen concentrated orange juice or concentrated apple juice.

## Initiating Anti-dumping action

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A number of NFF member organisations that represent horticultural growers, particularly in the apple and citrus industries have raised concerns over the current process and requirements for initiating an anti-dumping action.

Growers in these respective sectors have faced a significant increase in import competition in relation to Concentrated Apple Juice (CAJ) and Frozen Concentrate Orange Juice (FCOJ) used by juice processors to make reconstituted apple and orange juice.

Despite these growers facing significant market losses at the hands of imported juice concentrates, and international precedent suggesting that at certain times these products may have been dumped in certain markets, a number of factors have impeded Australian growers from attempting to seek remedy under the anti-dumping system.

Under the current anti-dumping system, the injury caused by dumped imported agricultural or food products on Australian producers of raw agricultural products (ie: farmers), can only be taken into account when these raw agricultural products are deemed to be *close processed agricultural products*. This link can only be drawn when a number of legislative conditions are met, including that:

- a) The raw agricultural goods are devoted substantially or completely to the processed agricultural product; and
- b) The processed agricultural goods are derived substantially or completely from the raw agricultural goods; and
- c) either:
  - a. There is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or
  - b. 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 current interpretation of the *close processed agricultural products* condition has precluded apple and orange growers, or their representative organisations, from initiating anti-dumping action.

Feedback indicates that Customs has been unwilling to accept that apple and orange growers' products constitute close processed agricultural products, despite the fact that the majority of growers grow varieties which are specifically targeted at the

juicing market, this fruit represents a substantial ingredient in processed juice products, and that no secondary market for this fruit exists.

Under the current anti-dumping arrangements, it is the NFF's understanding that the application must be supported by firms accounting for at least 25% of the total Australian production of like goods. This means that growers who wish to take an anti-dumping case cannot initiate an application without the support of the company (often a processor) who stands to benefit from the availability of cheaper imports. For example in the recent case of dumping of currants by Greece, the Australian Dried Fruits Association (ADFA) could not proceed without the support of Sunbeam Foods despite the fact that Sunbeam Foods could benefit from the availability of cheaper imports.

The requirement for Australian farmers to be reliant on a processing company/or companies (in meeting the collective output test) in order to initiate anti-dumping action must be reviewed.

## The cost of accessing the system

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In instances where NFF members, either individually or in conjunction with processing organisations, have developed the foundations for an anti-dumping action, these industries have faced major barriers in terms of the cost, time and complexities associated with preparing an anti-dumping application.

The costs involved in launching anti-dumping action involving an agricultural product were highlighted in the Australian mushroom industry's successful anti-dumping case against imported Chinese mushrooms. The Mushroom Growers Association of Australia (AMGA) in conjunction with Windsor Farm Foods jointly spent over \$400,000 in developing and pursuing the anti-dumping case. The costs were a combination of internal staff costs and costs associated with the engagement of a suitably qualified consultant, in order to gather the industry data and financial records required to prove 'material injury'. They were also incurred in contracting an economics academic to prove that consumers were actually substituting the 'unlike' dumped Chinese products for the Australian product for identical end uses. In the case of the ADFA against Greek currants the application cost a total of \$120,000. Costs were also incurred in both cases due to the Australian Customs' Service extending the timeframes involved.

With the complexities of Australia's anti-dumping system necessitating that industries engage professional advice, either from an anti-dumping consultant or a lawyer, the high costs associated impeded the pork industry's previous attempts to mount cases. It is clear that in the case of many intensive agricultural industries, the time, cost and complexities involved in launching an anti-dumping case are deterring the initiation of potentially legitimate actions to defend industries against illegal dumping.

With the Australian anti-dumping system placing the onus of proof on the applicant to establish reasonable grounds to warrant the initiation of an anti-dumping action, the greatest challenge that Australian agricultural industries have faced has been in obtaining cost of production data from overseas companies suspected of dumping products into Australia.

Although NFF members are familiar with the role of the Dumping Liaison Unit, in the Department of Customs, that is providing objective advice on investigation process and information requirements, members are of the view that Government should take on a far greater role in assisting affected industries to compile market information on pricing and subsidy arrangements in overseas countries suspected of dumping products into Australia. Given Australia's extensive international network of diplomatic posts, Austrade and Customs representatives and Department of Agriculture Fisheries and Forestry (DAFF) officials, the NFF believes there are clear opportunities for government officials to provide additional assistance to Australian industries seeking to compile information on overseas markets and competitors.

It is likely that through Australian Government representatives playing an enhanced role in working with Australian industry to support, and facilitate, the collection of pricing and market information in overseas markets, the requirement for industries to engage specialised expertise may be substantially reduced. This would clearly assist in reducing some of the cost burden and in turn impediments facing industries in accessing the Australian anti-dumping system. In this regard, the NFF highlights practises by the United States Government who provides their domestic industry with detailed domestic commodity price analysis from overseas markets through their United States Department of Agriculture (USDA) GAIN Reports.

It has also been argued that the Government should draw more heavily on the evidence presented in overseas anti-dumping cases to support the initiation of action in Australia.

Given that cost appears to represent a major impediment to certain Australian agricultural industries exercising their legitimate right to use the anti-dumping system, the NFF believes that it is appropriate for consideration to be given to assisting industries in meeting the costs of compiling an anti-dumping application. Clearly any such assistance must not create an incentive for industries to launch vexatious and baseless applications, or compromise Australia's broader WTO obligations.

The AMGA has suggested that Customs establish a system where applicants who meet the upfront costs of preparing and lodging an anti-dumping action, which is subsequently proven, be able to claim reimbursement for some or all of their costs. It has been suggested that this reimbursement could be met from an "Anti-dumping Cost Rebate Trust Fund", managed by Customs and financed through duties collected on dumped products. The NFF believes this model warrants further consideration.

## The lack of agricultural specific expertise in customs

A number of NFF members have also raised concerns over the drain of corporate and industry-specific knowledge within Customs' Trade Measures Division and with the Dumping Liaison Unit, particularly as it relates to the specific treatment of agricultural products under Australia's anti-dumping system.

It has been suggested that in recent anti-dumping cases, this lack of expertise within Customs has meant that industries have been required to appoint ex-Customs staff as consultants in order to obtain such advice. The NFF believes that it is critical that Customs maintain a body of expertise on the application of Australia's anti-dumping system across all industry sectors, in particular, agriculture.

## Economy wide impacts of Anti-dumping measures

The NFF believes that it is inappropriate to incorporate an emphasis on economy-wide impacts in relation to its anti-dumping system. The NFF contends that the focus of Australia's anti-dumping system should be focussed on ensuring that the principles outlined under the WTO are upheld. That is, the NFF firmly believes that only the facts of if goods are exported to Australia at a price below the "normal value" of the goods with intent to harm should be taken into account when assessing any anti-dumping application.

Consumer benefit attained through the advent of cheap, dumped product, should not be factored into the determination process. This is particularly the case as it can often be extremely difficult to foresee the longer term domestic price outcome of dumping. For example, if the injury incurred by the domestic industry from dumping leads to domestic participants leaving the industry, in the longer term this can lead to market power issues and increased domestic prices as competition dissipates.

Therefore, the NFF would not support the transfer of responsibility for the administration of anti-dumping and countervailing measures from the Australian Customs Service (ACS) to the Australian Competition and Consumer Commission (ACCC).

## Conclusion

All Australian farmers depend on a transparent, efficient and defensible anti-dumping system. Further, the NFF believes there are considerable opportunities to improve the accessibility of the anti-dumping system. This is particularly for those industries with strong cases against dumped imports, which are currently impeded from taking anti-dumping action due to the costs and complexities of Australia's current system.

## NFF Contact

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