AUSTRALIAN Pork

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Philip Weickhardt
Commissioner
Inquiry into Australia's Anti-dumping and Countervailing System
Productivity Commission
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Dear Philip,

R.E. Inquiry into Australia's Anti-dumping and Countervailing System

Australian Pork Limited (APL) welcomes the Productivity Commission's draft inquiry report into Australia's Anti-dumping and Countervailing System. We thank the Productivity Commission for meeting with APL earlier this year. As the representative body of Australian pig producers, APL investigated undertaking Anti-Dumping action in 2006 to establish that dumped or subsidised pork imports were causing or were threatening to cause material injury to the Australian pork industry producing "like goods" to the imported goods under consideration. APL attempted to collect and prepare the relevant data and information on import substitution and are well placed to comment on the review.

APL maintains its view that Australia's current anti-dumping legislation does not favour primary production. Australia is a significant importer of frozen pork legs from Canada and the U.S. and frozen pork middles from Denmark for processing. Sections 269T(4A) & (4B) of the *Customs Act 1901* (Cth) are designed to allow producers of raw agricultural products to be considered part of an Australian industry producing like goods where the like goods are processed from the relevant raw agricultural goods. APL agrees with the National Farmers Federation (NFF) and the Australian Dried Fruits Association's notions that primary producers of 'close processed agricultural goods' (CPAGs) such as pork producers cannot apply alone for measures against dumped processed product, as their raw products are not 'like' the processed item.

APL agrees with the Horticultural Market Access Committee that the meanings of the words, *'substantially', 'close relationship' and 'significant part'* are weaknesses in the *Customs Act 1901* (Cth) and impair industry attempts to substantiate injury to an industry.[1]

Since many products are sourced from a pig carcass, by the very nature of those products, it is unfeasible that a carcass can be substantially or completely devoted to producing a single processed product. If, for example, pork middles were imported into Australia at dumped prices which consequently caused injury to Australian pork producers, those pork producers would be excluded from forming part of the Australian industry because the carcasses they produce are not devoted 'substantially or completely' to the production of the pork middles.

This exclusion prejudices Australian pork producers. Taking the example above, where pork middles are imported at allegedly dumped prices, the Australian producers of pork middles (i.e. processors) are not necessarily the party that suffers injury. The reason being that they are able to 'pass on' the injury to the producers of pig carcasses (i.e. primary processors, boning rooms) by paying less for the carcasses, who in turn pass the injury on to the pork producer by paying less for the pigs. A dumping investigation cannot consider evidence of this flow through effect due to the fact that pork producers are not deemed to be part of the Australian industry because their raw agricultural good - the pig - is not devoted 'substantially or completely' to the processed agricultural good – pork middles.

International experience

The United States has successfully applied anti-dumping measures against Canadian pig and pork imports, one in 1984, a second in 1989 and most recently in 2005. U.S. experience indicates that its system has worked successfully for U.S. pork producers.

Expanding Canadian and hog and pork exports in the 1980's and 1990's, the introduction and modification of Canadian herd stabilisation programs and farm production consolidation has led to the U.S. countervailing and dumping claims.[2]

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[1] http://www.pc.gov.au/__data/assets/pdf_file/0011/90200/sub024.pdf

[2] http://goliath.ecnext.com/coms2/gi_0199-5069821/Agricultural-trade-disputes-between-Canada.html

In the Live Swine and Pork Case (1984) [3], the International Trade Administration (ITA) determined that Canadian hog producers, but not pork processors, benefited from approximately twenty-two federal and provincial programs which were considered to be subsidies. Countervailing duties were hence applied to Canadian pork exports to the U.S.[4] The determination was predicated on programs that covered more than one industry to be countervailable on condition that these programs differed in their treatment of the different industries they covered. The countervailing duties on fresh, chilled and frozen pork were revoked in 1991. Following a sunset review, duties on live hogs ceased in 2000.[5]

On March 8 1991, in the Fresh, Chilled and Frozen Pork from Canada case, the Binational Panel[6] (which is underpinned by the United States-Canada Free Trade Agreement) investigated payments to Canadian pork producers from the Canadian Tripartite Benefit Program, the Alberta Crow Benefit Offset Program, and the Quebec Farm Income Stabilisation Insurance Program. The panel concluded that payments under the Canadian Tripartite Benefit Program were countervailable under U.S. law. [7],[8]

In the Live Swine from Canada Countervailing Duty and Anti Dumping Case in 2004[9], the United States Department of Commerce (DOC) ruled in October 2004 that Canadian producers were dumping live hogs in the United States and that provisional antidumping duties averaging 10.63 per cent would be applied to live Canadian hog imports.[10]

Some aspects of the U.S. countervailing and anti-dumping system make it easier to initiate investigations. For example, the U.S. has broader product definitions, allowing their investigations, in turn, to be broader. This contrasts with Canada where the scope for

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[3] Source: Chapman, Anthony. Canada-U.S. Trade Disputes. 1995.

[4] Martin, L., Amanor-Boadu, V., Stirling, F., (1998). Countervailing and antidumping actions: an evaluation of Canada's experience with the United States. American Review of Canadian Studies. Autumn, 1998. [Online] Last Accessed 23 July 2009: http://findarticles.com/p/articles/mi_hb009/is_3_28/ai_n28713226/pg_3/

[5] http://goliath.ecnext.com/coms2/gi_0199-5069821/Agricultural-trade-disputes-between-Canada.html

[6] http://www.worldtradelaw.net/cusftaecc/pork-cvd-cusftaecc.pdf

[7] http://www.worldtradelaw.net/cusfta19/pork-cvd-remand-cusfta19.pdf

[8][8] Under the United States-Canada FTA, binational panels review final determinations relating to countervailing duty and antidumping investigations and, in effect, substitute for judicial review.

[9] http://www.porktradeaction.org/case_details/case_details.php

[10] http://farmfutures.com/story.aspx?s=25596&c=17

investigating anti-dumping or countervailing is limited to the types of goods to which an injury can be demonstrated. [11]

The U.S. Department of Commerce can also impose penalties before an investigation is even completed. Often, these penalties can be established at levels higher than necessary. The Fresh, Chilled, and Frozen Pork Case in 1984 awarded a five-cent per kilogram refund to Canadian producers in the final decision.[12]

Public Interest Test

The NFF has indicated that an 'economy-wide assessment' as part of an anti-dumping or countervailing investigation is inappropriate. The NFF argued that an investigation should only focus on whether imported goods below 'normal value' will injure or has injured an industry.[13]

The WTO Agreements do not require a public interest test. Both the EU and Canada use public interest tests but these tests, according to the PC's draft report '*have not had a major impact on the outcomes of anti-dumping investigations.*'[14] The public interest test is unnecessary and contrary to the core objective of the anti-dumping and countervailing actions under the GATT (Article 6) of the WTO. An understanding of the commercial environment in which the industry operates in is sufficient. Assessing the public interest test of Australia's anti-dumping system and countervailing measures would 'distract' the assessment of the injury on the affected industry which initiated the action.

Cost of pursuing Anti-Dumping and Countervailing measures

APL believes that Anti-Dumping and Countervailing measures for primary industries and for the pork industry in particular are cost prohibitive and time consuming. The NFF in its June 2009 submission claimed that many industries need to engage expensive professional advice from anti-dumping consultants or trade experts to substantiate their claims. Professional overheads and lengthy investigation periods deter industries from launching any anti-dumping

[11] http://findarticles.com/p/articles/mi_hb009/is_3_28/ai_n28713226/?tag=content;col1

[12] http://findarticles.com/p/articles/mi_hb009/is_3_28/ai_n28713226/pg_5/?tag=content;col1

[13] http://www.nff.org.au/get/2471482909.pdf

[14] Productivity Commission 2009, *Australia's Anti-dumping and Countervailing System,* Draft Inquiry Report, Canberra. Pg 73

or countervailing actions. Obtaining cost of production data from overseas companies suspected of dumping or subsidy activities is so high it is not a viable option for many. APL's experience with the anti-dumping investigations in 2006 has shown this to be true. At the time, estimated funding of the anti-dumping application approximated $200,000 to prepare the application and lodge the draft application with Customs. This estimated cost was just the first stage should the application have proven successful. This excluded the additional cost of collecting data and monitoring of competitors' markets, which would have been a significant ongoing cost to APL. Increasing costs also arose due to problems in collecting data and getting the 'industry which producers the like goods' as distinct from producers to participate and anticipated Australian Customs Service (ACS) verification of the collected data.

Importantly, without comprehensive participation from members of the processing sector, at that time, APL was unable to meet the data threshold level to prove cases of dumping to the ACS. The minimum threshold test requirement for not less than 25% of the domestic industry which manufactures like goods in Australia is inappropriate for an industry whose products are changed throughout the supply chain. Processors source part of their input from pork imports. Where imported pork products form part of their supply, processors see it as in their commercial interest to sustain this source of supply and would not want to compromise and impose trade measures that would increase processor costs.

APL also disagrees with the PC's assessment that the CPAGs arrangements should be abolished on the grounds that primary producers receive special treatment. APL still supports that the 'like goods' can be 'close processed agricultural goods' (CPAGs) arrangements, allowing a vertically integrated industry to be relevant Australian industry assessed against imported processed products remain unchanged. Originally introduced in 1991[15], the changes to the *Customs Act 1901* (Cth) were made in good faith and not as de facto protection for an industry. APL supports the creation of a working group to examine and improve the current CPAGs arrangements for pork producers who APL represents.

The future role of an anti-dumping system

Improved access to the Australian system is necessary for pork producers and primary industry. APL maintains its view that Australia's current anti-dumping legislation does not favour primary production but favours secondary processing and manufacturing of agricultural

[15] http://www.wto.org/gatt_docs/English/SULPDF/91531027.pdf

products. APL suggests that some reform of Australia's Countervailing and Anti-Dumping System should take place to assist Australian primary producers and pig producers to initiate investigations, but not compromise procedural integrity and transparency.

APL maintains its support for change to improve access to trade remedies within the remit of WTO law. To date however, Australian pork producers have not benefited from Anti-Dumping or Countervailing measures available to the Australian pork industry, despite positive anti-dumping actions such as in the United States. The administration of anti-dumping and countervailing investigations should be benchmarked to competitors' practice. This would eliminate inequities between Australia's investigation processes and that of our major pork competitors.

APL agrees with the NFF's statements into the improved use of Australia's extensive international network of diplomatic posts to procure market information. This would reduce the compliance costs for industries pursuing anti-dumping and countervailing activities. APL would also support a funding model to support Australian industry in their pursuit of anti-dumping or countervailing activities. [16]

APL welcomes further enquiries from the Productivity Commission.

Yours sincerely,

(signed)
Kathleen Plowman
General Manager, Policy
Australian Pork Limited

[16] http://pc.gov.au/__data/assets/pdf_file/0009/90000/sub006.pdf