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House of Representatives Standing Committee on Agriculture and Industry
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Submission to the Inquiry into Circumvention of Anti-Dumping Laws

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 Levy 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 AUSVEG Manager – Government and Parliamentary Relations, Mr Andrew White,

Yours sincerely,

Richard J Mulcahy
Chief Executive Officer

3. Executive Summary

The Australian vegetable industry, worth around \$3.7 billion annually¹, is a significant employer of Australian workers and a valuable contributor to the Australian economy. The continued health of the industry will provide obvious and valuable benefits to the Australian economy and provide significant flow-on value to Australian consumers.

There is, however, a clear and present risk of foreign exporters seeking to capitalise on the market position occupied by Australian suppliers by selling their produce at prices far below those at which they could sell them in their home markets. Dumping, as this practice is known, has negative impacts on the target economy by allowing foreign producers the chance to gain market share in a country in which they would otherwise not be competitive.

The position of the vegetable industry in the Australian food marketplace has been established through decades of hard work and high production standards, leading to widespread recognition of the high quality of Australian vegetables. Exporters who dump vegetable commodities into the Australian market below the cost of production undermine this position and eat into the market share of vegetables in the Australian shopping basket by undercutting Australian suppliers on price while offering produce of lower quality.

This kind of behaviour can have serious impacts on the national economy, but also – and more significantly – on economies in the regions in which suppliers work and operate. When a supplier's profitability is impacted by anti-competitive behaviour like dumping, they are inevitably unable to contribute less to their regional economy – hours are cut, jobs are lost, and less revenue flows into other businesses in the area.

There is therefore a responsibility on Government to protect Australian suppliers from this behaviour. The current anti-dumping system, while well-intentioned, drains the time and resources of Australian suppliers who are trying to file a claim. The amount of data that suppliers need to bring together to make a claim can require so much time that by the time the Anti-Dumping Commission is convinced to act, the injurious behaviour will have taken its toll – meaning that a supplier or organisation may invest tens of thousands of dollars, and many years, to achieve correctional measures which cannot undo the damage already done.

Once dumping has been identified, there are several recognised methods of circumvention which unscrupulous exporters can use to maintain profit margins regardless of any dumping duties being placed on their product.

AUSVEG also believes that a holistic approach to anti-dumping legislation, including strengthening Country of Origin Labelling laws, would lessen the possible impact of dumping and circumvention behaviour.

¹ *Australian vegetable growing farms: An economic survey, 2012-13 and 2013-14*, ABARES (2014)

4. Addressing specific terms of reference:

4.1. Practices that circumvent anti-dumping measures and the models for addressing practices administered by other anti-dumping jurisdictions; and

There are four distinct types of anti-dumping circumvention strategies:

- Exporting individual components of a dumped product to an intermediary third country, and assembling them there (“third-country circumvention”);
- Exporting individual components of a dumped product to the country which is applying the anti-dumping measure, and assembling them there (“import-country circumvention”);
- Transferring part of or the entire production of the dumped product to the importing country or a third country; and
- Making a minor alteration to the exported product so it is no longer covered by the anti-dumping measures (“minor alteration circumvention”).²

As the Hon. Rowan Ramsey MP has noted when talking about SPC Ardmona’s recent successful case against the importation of Italian tomatoes, it would be a simple matter for importers to circumvent dumping duties through minor alteration circumvention – by adding herbs or spices, for example, the tomato product would no longer be a “like product” for purposes of legislation, and would not be covered by dumping duties³.

In discussions on other problem areas for the Australian vegetable industry, AUSVEG has frequently voiced concerns about behaviour taken by exporters which displays the same thinking, and follows the same patterns, as these circumvention methods.

In consultations about Country of Origin Labelling (CoOL), AUSVEG repeatedly raises the methods through which exporters can obfuscate the actual origin of produce. Food processors in New Zealand are known to take local produce and process it with lower-quality Chinese imports, then export the processed commodity to Australia; under our current labelling laws, this can be marked as “Made in New Zealand from local and imported ingredients”, misleading customers as to the origin of the ingredients of the produce. This produce is then sold cheaply on the Australian market, damaging the market position of Australian suppliers.

While it is not employed as a circumvention of any anti-dumping measures, this behaviour is a blend of two of the above types of anti-circumvention strategies: third-country circumvention and minor alteration circumvention. It is a clear display of the mentality of those who look to get their produce onto the Australian market by any means necessary, without regard for the wellbeing of our industries or, indeed, of the long-term wellbeing of Australian consumers.

² *Anti-Dumping Circumvention in the EU and the US: Is There A Future For Multilateral Provisions Under the WTO?*, L Ostoni (2005)

³ *Liberal MP Rowan Ramsey speaks about an inquiry into anti-dumping laws*, Warwick Long/National Rural News (2014)

It can be seen that exporters dumping processed vegetable commodities on the Australian market have several potential options available to them should their behaviour be curtailed by the Anti-Dumping Commission:

- Exporting the product, as is, through a third country and then on to Australia;
- Exporting fresh produce to a third country, where it can then be processed with local produce and marketed as being made in the third country;
- Exporting fresh produce to Australia and processing it domestically, instead of processing it before exporting; and
- Continuing to export the processed product, modified slightly so it cannot be considered a “like” product for purposes of anti-dumping legislation – such as value-adding nutritional or flavour content to a can of tomatoes.

4.2. Areas which require further consideration or development including the effectiveness of anti-dumping measures and the range and scope of circumvention activities.

Australian’s current system of identifying and controlling dumping is flawed. AUSVEG has consistently voiced concerns that Australia’s current system for verifying dumping places far too much of a burden on the affected industry, and takes far too long to process a claim. When peas were being dumped into Australia in 1995, for example, it took until 2005 for industry to bring a claim together, meaning that ten years of injury were inflicted on the industry while it was trying to convince the Commission that there was a problem at all.

As put by Senator Nick Xenophon:

Isn't that the nub of the problem, that in order to get to that threshold before they can get to the commission [...] they are already in a position where they are having to show material harm? As a consequence of that, the harm has already been done. By the time that the process starts, the particular industry or particular sector can be brought to its knees by virtue of dumped products.⁴

With that said, AUSVEG strongly supports the current position of the Coalition Government announced prior to the 2013 elections and their proposed move to require more proof from importers as part of anti-dumping investigations. This reform, as well as others proposed by the Coalition Government prior to the last election, will lessen the burden on injured industries and give the Anti-Dumping Commission more flexibility to request information from importers during their investigation and is a welcome improvement.

Another possible method of streamlining the system would be to reduce the amount of data growers need to collate before a claim can be brought to the Anti-Dumping Commission. In the case of peas being dumped, for example, the major cause for the delays in bringing a claim together was that suppliers needed to collate sufficient data to show that dumping had occurred, requiring co-ordination and organisation between multiple industry participants.

⁴ Nick Xenophon in *Committee Hansard*, Industry Portfolio Budget Estimates Hearing 2014-15

Possible reform could ensure that once a particular quota of growers (for example, an application accounting for more than 15% of the total production of like goods) had provided data suggesting that dumping behaviour was injuring their business, the Anti-Dumping Commission could then compel other businesses to provide data to compile an application supported by the amount required under WTO rules (currently 25%).

This quota system follows similar principles to those of the Preliminary Affirmative Determination system currently employed by the Anti-Dumping Commission, whereby once a preliminary decision on the presence of dumping is reached, the Commission is empowered to impose provisional measures. It would not, therefore, be an unreasonable extension of the Commission's powers.

There are also other measures which, while not specifically targeted at preventing dumping, could bolster the ability of Australian suppliers to maintain their market position in the face of cheap, low-quality imports.

Strengthening Australia's CoOL laws would (along with other benefits) ensure that exported vegetable products gave clear and unambiguous information regarding the actual origin of contents. This would help in the fight against produce dumping by enabling consumers to make their own informed choices about the products they buy – as studies have shown that Australian consumers would prefer to buy Australian produce, this would have an obvious impact on the profits of dumpers, and discourage the practice.

To this end, AUSVEG welcomes the reform proposed in the recent *A clearer message for consumers* report into the CoOL system which would enable Government to prescribe that labelling text be larger than surrounding text. AUSVEG also welcomes the reporting Committee's suggestion that labelling text be bolded or underlined, as AUSVEG put forward in its submission to the Inquiry.

However, AUSVEG believes that these moves are primarily useful as a step in the right direction, and that there is far more work to be done in this policy area. The proposed reforms rely on a system where "mostly local" and "mostly imported" will be used as stand-ins for the actual percentage of ingredients originating in a particular country, leaving consumers in the dark and providing no significant differentiation from the current labelling scheme. If Australian consumers are to gain benefits from a reformed labelling system, claims must be simplified and unambiguous, with consumers able to tell at a glance the source of a product and its major ingredients, based on a higher threshold for something to be labelled as "Australian" ingredients.

5. Recommendations.

1. That dumping duties be imposed to nullify the full extent of the dumping margin.

Australia currently follows the World Trade Organisation recommendation that duties imposed be lesser than the dumping margin, and simply be maintained at a level which is sufficient to reduce injury to the market. This should be reformed to ensure that correctional anti-dumping strategies have maximum effect.

2. That current anti-dumping legislation be streamlined, and the amount of data required to file a claim be reduced.

This measure will lighten the burden on Australian suppliers and producers who are already suffering from the effects of dumping on their market share. The time and resources that suppliers are currently required to allocate on top of the regular running of their business present a sometimes unworkable obstacle to dumping claims.

3. That the Anti-Dumping Commission be given powers which provide more flexibility and expanded reach to deal with both dumping and circumvention behaviour in a timely and effective manner.

The Commission needs an expanded ability to address behaviour within a timeframe that allows for effective pro-active correction of damaging behaviour instead of being a post-event band-aid. While the current 155-day maximum for concluding an investigation is valuable, the ability of exporters to modify their products and strategies to circumvent dumping duties (which then prompts another inquiry, instead of more direct action) means that damage can still continue.

4. That anti-circumvention measures take into account the strategies available to vegetable exporters, such as minor alterations of current imports, or third-country imports as part of processed products.

The Australian vegetable industry, and the broader Australian food industry, is a vital part of Australia's economy and ongoing food security. Anti-circumvention measures must acknowledge these roles and ensure that strategies specifically available to vegetable exporters are not overlooked in the Commission's available responses.

5. That revenue from dumping duties be put towards support measures for the injured local industry, such as financial relief or investment in research and development.

While dumping duties are intended to act as obstacles to this behaviour and reduce the incentive for exporters to attempt dumping in Australian markets, it is vital that the injury suffered by local industries is addressed. Any revenue gained from the increased duties on dumped goods must be passed on to the affected industries to help them endure the effect on their market and recover once the dumping has been nullified.

6. **That CoOL laws be reformed and strengthened, acknowledging that any actions which support Australian suppliers' market position against imports will necessarily contribute to lessen the impact of attempted dumping.**

Country of Origin Labelling is an established way to encourage and facilitate Australian consumers to make informed decisions about their purchases. To combat dumping and circumvention, we must employ a holistic approach to the problem, which includes strengthening CoOL laws and allowing consumers to act on their proven preference to buy Australian.