

14 April 2015

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600



**Re: Inquiry into Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015 and  
Customs Tariff (Anti-Dumping) Amendment Bill 2015**

**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 Deputy CEO, Mr Andrew White,

Yours sincerely

Richard J Mulcahy  
Chief Executive Officer

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### 3. Summary

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The Australian horticulture industry is worth \$3.7 billion annually, making it a vital part of the Australian economy and a key contributor to the nation's financial wellbeing. It is important that domestic industry and produce are promoted and supported in efforts to remain competitive against cheap foreign imports, many of which are taking advantage of what has previously been seen as a "soft" target market for dumping behaviour.

As the representative body for around 9000 Australian vegetable and potato growers, AUSVEG welcomes this Government's commitment to ensuring the economic strength of Australian industries, and appreciates the opportunity to contribute to this Inquiry.

As seen in the recent case of tomatoes being dumped in Australia by Italian exporters, the Australian horticulture industry is vulnerable to dumping behaviour. This vulnerability is exacerbated by the high costs of production faced by Australian growers, including input and labour costs, which mean that farmgate and retail prices are often, by necessity, higher than those of exported produce from operations with financial advantages in these areas.

AUSVEG strongly supports policy amendments which can support the horticulture industry, including the vegetable and potato industries, against unfair behaviour by exporting countries. In this vein, AUSVEG believes it is vital for Australia to have a strong, effective anti-dumping system.

For this to be possible, the Anti-Dumping Commission, the Anti-Dumping Commissioner, the Review Panel and the Minister for Industry must be granted flexible powers which can ensure a timely resolution to any anti-dumping investigations. As such, we support many proposed amendments in the Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015, and the Customs Tariff (Anti-Dumping) Amendment Bill 2015.

Bringing the legislated deadline for submissions into line with current Anti-Dumping Commission practice will remove potential ambiguity about current processes; meanwhile, amending and strengthening the functions of the Review Panel will increase its effectiveness.

In particular, AUSVEG welcomes the steps taken to ensure that applications for reviews must present the grounds behind the decision they believe should have been made. The use of the Review Panel as a stalling tactic has allowed dumping exporters to inflict further injury onto Australian industry, and this amendment will ensure that the Panel is free to reject frivolous appeals.

#### 3.1 Recommendations

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1. The multiple amendments which would require all notices be published online should instead be inserted alongside, and not replace, current provisions which require that notices also be placed in an applicable newspaper.
2. The reasoning behind revising Part 11 of the *Customs Act 1901* to refer only to paragraph 1 of Article 25 of the Agreement on Subsidies and Countervailing Measures, instead of to Article 25 as a whole, should be clarified in the Inquiry's final report.

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## 4. Amendments and their functions

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### 4.1 Submission deadlines

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AUSVEG welcomes the strengthening of Australia's anti-dumping system by legislating tighter deadlines for submitting information to dumping and subsidisation investigations. The suggested amendments to the *Customs Act 1901* ("the Act") to bring the deadline down to 37 days will bring Australia's legislation into line with the deadline already practiced by the Anti-Dumping Commission<sup>1</sup>, and align that legislation with our commitments under World Trade Organization ("WTO") agreements.

While a minor adjustment, bringing Australia's legislation into line with the minimum period allowed by the WTO is a valuable sign that the Australian Government is following through on its commitment to boost the competitiveness of Australian industries by increasing the efficiency of anti-dumping investigations.

It is also a welcome sign that the Government is committed to removing ambiguity and disparity between what is legislated and what is actual practice, which will provide increased certainty to Australian businesses.

### 4.2 Publication of notices online

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AUSVEG recognises the importance of updating Government practice to match technological process. In this regard, legislating that notices relating to anti-dumping processes and decisions should be posted on relevant websites (such as those of the Anti-Dumping Commission or the Anti-Dumping Commissioner) will indeed help make them more accessible to the public.

However, many vegetable growers (and other members of rural and regional industries) do not have the level of technological proficiency which may be considered to be standard among the broader Australian population. By stating that all notices must be moved online, these amendments run the risk of putting this information beyond the reach of many people for whom access may be particularly important.

As the representative of Australia's vegetable and potato growers, AUSVEG must recommend that these amendments be placed alongside, rather than replace, the current references to "a newspaper circulating in each State, in Australian Capital Territory, and in the Northern Territory". While this may mean these amendments will need further updating at a later point, it is currently unfair and disadvantageous to Australian growers to move this important information beyond their technological reach.

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<sup>1</sup> "Submissions from importers, exporters and any other interested parties are required within 37 days from the commencement of the investigation." (*Submission 2 - Department of Industry Submission to the Inquiry into Australia's Anti-Circumvention Framework in Relation to Anti-Dumping Measures*, Department of Industry.)

For example, paragraph 269ZC(4)(a) of the Act currently reads that if the Commissioner decides not to reject an application for review of anti-dumping measures, they must:

*(a) publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory indicating that it is proposed to review the measures covered by the application<sup>2</sup>*

AUSVEG proposes that any amendment retain this wording while also adding in references to websites, meaning that the above paragraph would require the Commissioner to:

*(a) publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory, and on the Anti-Dumping Commission's website, indicating that it is proposed to review the measures covered by the application*

We believe this wording acknowledges the increasing shift towards online information dissemination while still allowing access for those who continue to rely on traditional media.

#### 4.3 Length of investigation period

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The amendments to ensure that the Commissioner cannot vary the length of time for an investigation period, once it has been specified by the Commissioner in a notice, will help to reassure Australian businesses that anti-dumping investigations will be resolved in a timely manner, and help to avoid prolonged injury if dumping behaviour is identified.

#### 4.4 Reduction of investigation periods for identifying dumping

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By reducing the length of the periods used in calculating a single dumping margin for a commodity over the entire investigation period, these amendments will help strengthen Australia's anti-dumping system. Shortening the time periods to one month will increase the accuracy of the calculations and add to the effectiveness of the Anti-Dumping Commission.

#### 4.5 Lesser duty rule where there has been no notification of subsidies

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The "lesser duty rule" requires the Minister to consider fixing a duty that is smaller than the identified dumping margin where that lesser duty would be adequate to remove injury<sup>3</sup>.

The proposed amendment to paragraph 269TJ(3A)(a) would provide that the Minister is not required to have regard to this rule when considering the imposition of duties if the relevant exporting country has not complied with paragraph 1 of Article 25 of the WTO Agreement on Subsidies and Countervailing Measures.

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<sup>2</sup> Section 297ZC, *Customs Act 1901*

<sup>3</sup> Subsection 269TJ(3B)

As written, this amended provision would apply:

*[If] the government of the country of export has not submitted notification of its subsidies, as mentioned in paragraph 1 of Article 25 of the Agreement on Subsidies and Countervailing Measures, at least once in the compliance period.*

This would replace the current provision, which applies:

*[If] the country of export has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period.*

Article 25 covers more ground than simply the notification of subsidies, including requiring that members report all preliminary or final actions taken with respect to countervailing duties. Given this broader scope, AUSVEG is unsure why the Government is proposing an amendment which would limit the application of the current exemption solely to non-compliance with the first paragraph of the Article. We hope that the Committee's Inquiry into these Bills includes identifying the reasoning behind this revision.

#### 4.6 Amendments to Review Panel functions

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The collective amendments which strengthen the functions and effectiveness of the Review Panel are welcome signs that this Government is willing to take action to support Australian industries and Australian businesses.

Previously, operations who have been found to be dumping products on the Australian market have resorted to applying for frivolous and ungrounded reviews as a stalling tactic. This strategy allows further injury to be inflicted on Australian business while the review process continues, and exploits a review process which should be reserved for decisions where there are legitimate grounds for appeal.

By requiring applicants for a review to lay out the various factors behind their reasoning that a review is necessary, including the decision they believe should have been made and the grounds behind that decision, the proposed replacements for paragraph 269ZZE(2)(b) will make significant improvements to the standard of applications made to the Review Panel.

The insertion of subsection (5) to section 269ZZG, which will allow the Review Panel to reject individual grounds of an application, will also significantly strengthen the abilities of the Panel by adding another level of protection against frivolous applications. In conjunction with the amendment mentioned above, it will ensure that any applications which meet the increased legal threshold but also include unnecessary or illegitimate extra grounds as a stalling tactic will not be able to exploit the review system.

Predatory exporters cannot be allowed to unfairly take advantage of the Australian marketplace. As the industry body for the Australian vegetable and potato industries, AUSVEG welcomes these reforms and the extra protection against injury they will provide to Australian businesses and industries.