

Level 26, 385 Bourke Street, Melbourne VIC 3000  
GPO Box 1533N, Melbourne VIC 3001 | DX 252 Melbourne  
T +61 3 8602 9200 | F +61 3 8602 9299

26 June 2009

The Commissioners  
Australia's Anti-Dumping System  
Productivity Commission  
GPO Box 1428  
CANBERRA CITY ACT 2601

Our ref: ATH  
Matter no: UNKMEL1

**By email: [antidumping@pc.gov.au](mailto:antidumping@pc.gov.au)**

Dear Commissioners

**Laurence Hudson and Hudson Trade Consultants  
Submission to the Productivity Commission Inquiry into Australia's Anti-Dumping & Countervailing System**

We act on behalf of Mr Laurence Hudson of Hudson Trade Consultants ("**HTC**").

**Background to HTC**

HTC has been conducted for a number of years by Mr Hudson, a former senior officer of the Australian Customs Service (through its various iterations) ("**Customs**"). During his time at Customs, Mr Hudson was involved in a number of anti-dumping investigations which he conducted on behalf of the Federal Government. This included investigations in Australia and overseas including time spent at the Customs representation office in London.

Subsequent to leaving Customs and following a period as a consultant with a major international accounting firm, Mr Hudson established HTC. In this capacity, Mr Hudson has been engaged to advise a number of companies involved in anti-dumping inquiries both to initiate inquiries and to defend allegations of dumping in relation to goods imported by its clients. In addition, Mr Hudson has been involved in policy forums which included representing a client as a member of the Imported Foods Council being a consultative body convened by the Australian Quarantine and Inspection Service.

Our client has now instructed us to make the following preliminary submission to the inquiry being conducted by the Productivity Commission. This preliminary submission draws on fifty years of experience in anti-dumping matters.

**Submission to the Productivity Commission**

Our client has instructed us that its preliminary submission would be on two bases.

1. **General Comments**

Our client has been provided with a copy of the proposed submission by the Law Council of Australia and the Law Institute of Victoria to the Productivity Commission. As a general proposition, our client has instructed us that it generally endorses and supports the comments and recommendations of the Law Council of Australia and the Law Institute of Victoria. In many cases, these comments specifically reflect observations and recommendations made by our client to its clients and to Customs over a number of years.

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2. **Specific additional comments**

Without limiting the force and generality of the comments in the preceding paragraph, our client wishes to draw the attention of the Productivity Commission to the following specific issues.

(a) ***Access to ABS statistics and Customs records***

- (1) for many years, our client has been of the view that one of the main impediments to comprehensive anti-dumping inquiries is access to ABS statistics. In the view of our client, there should be more comprehensive access to such statistics which should be made available in relation to specific goods under review rather than by way of provision of broader or averaged figures under more general categories. For these purposes, the ABS could be requested to establish new specific statistical codes for goods the subject of an investigation. This would assist in determining levels of imports over time, both before and after measures had been imposed. Such specific codes could also be established for goods where it is believed that there could be action in relation to those goods based on overseas actions (which have the habit of then being initiated in Australia). That would assist in monitoring imports.
- (2) on a related issue, our client believes that interested parties to an investigation should have access to a higher level of information from Customs' systems to enable them to deal with the relevant investigation. This should be able to be used to identify exporters, importers, of the goods under consideration, levels of imports and declared values for the goods at point of import.

(b) ***No accumulation of injury within a group.***

Our client has concerns that Customs may allow "accumulation" of alleged injury or damage beyond an applicant itself. For example, when considering the case of an applicant who is a vendor of canned goods, it should only consider the injury to vendors of canned goods. Customs should not be able to consider injury to other entities related to the applicant who are also in the supply chain (for example the entities growing and canning the goods).

(c) ***Conditions to submissions by interested parties***

Our client remains concerned that parties to an anti-dumping investigation may not fully appreciate the seriousness of the investigation and the consequences for affected parties from submissions, especially if there is inaccurate or misleading information in such submissions. While our client appreciates that the *Customs Act 1901* includes provisions to impose penalties on persons who make incorrect or misleading statements to Customs, our client believes that it would be more appropriate for parties making submissions to do so by way of covering statutory declaration or affidavit. This could be effected by a party making submissions providing such a declaration or affidavit at the commencement of their involvement to the effect that they recognise the importance of the information being provided to Customs is true and correct in every particular and that a person making an incorrect statement will be liable to prosecution pursuant to the laws prohibiting perjury.

(d) ***Obligations of complete disclosure***

There should be a specific obligation on applicants to disclose all and any relevant information affecting their business which could also have caused injury. For example, if a producer of canned foodstuffs had to destroy product because of a product recall through health and safety issues, then that would be relevant to the performance of a company and needs to be disclosed. All applicants must disclose all possible **other** reasons for adverse effects to their business, other than alleged dumping.

(e) ***Penalties for vexatious, incomplete or misleading applications***

Without limiting the effect of the comments in the preceding paragraph, our client believes Customs should be able to penalise applicants when applications prove to be vexatious, incomplete, misconceived or misleading.

(f) ***Like goods***

Our client is firmly of the view that there are significant difficulties associated with Customs' assessments as to what constitutes "like goods". For these purposes, our client believes the following actions would be appropriate;

- (1) our client believes that the interests of Customs would be well served by retaining its own panel of independent experts to advise on what constitute "like goods" in various industry areas.
- (2) our client is concerned that Customs may place undue reliance on "experts" reports provided by parties to an investigation. For these purposes, our client is concerned that Customs does not appear to undertake sufficient direct examination of the reports of the experts or seek further information or raise further questions regarding the reports.
- (3) in making any determinations regarding "like goods", our client believes there should be increased emphasis on the views of "end users" (consumers) as to whether the goods are "like goods". This should entail extensive sampling of those "end users" rather than the limited sampling which appears to be undertaken by Customs.

(g) ***Manner of investigation***

Our client is concerned that Customs be able to undertake a full audit and review of all submissions made by all parties. This should include requiring production of all documentation evidencing claims and financial information provided. For example, it should not just be a verification that a charge has been claimed but also checking with the party allegedly having made the charge

(h) ***Conduct of reinvestigations***

As set out in the submission by the Law Council of Australia and the Law Institute of Victoria, our client has significant reservations that the reinvestigation process adequately delivers the intended comprehensive review. It is the view of our client that should the Trade Measures Review Officer identify difficulties with the investigation, then those difficulties should be subject to merits review and the findings of the Trade Measures Review Officer should be able to be substituted for those of Customs.

However, our client believes that the ability to undertake a review pursuant to the Trade Measures Review Officer is entirely too limited, requiring other forms of comprehensive merits review.

(i) ***Merits review***

As discussed above, our client is of the view that there should be the ability for parties to have access to merits review without the exposure of parties to the costs and difficulties of litigation. Parties should be entitled to seek review without recourse to an appropriate body such as the Australian Competition Tribunal or other arbiter and that review should be undertaken without an exposure to a cost penalty. The results of those reviews should lead to substitution of earlier decisions. There could still be legal review of those decisions.

(j) ***Time and practical constraints***

Customs regularly states that it requires extensions of time because of difficulties with completing stages of investigations within prescribed times. Our client is concerned that this suggests that current prescribed times are inadequate. These delays also create uncertainty for parties and require referral to the relevant Minister. Our client believes that appropriate responses would be either to;

- (1) provide adequate additional resources to Customs (or other investigating party) to ensure that prescribed times can be observed;  
or
- (2) adopting more realistic timelines.

**Further submissions**

Our client welcomes the opportunity to make further submissions in person or in writing to the Productivity Commission.

**Nature of comments**

Our client has requested us to emphasize that the comments set out above are those of our client alone and should not be construed as being made or endorsed by any clients of our client or any bodies of which our client is a representative.

We look forward to discussing these matters with you.

Yours faithfully  
**Hunt & Hunt**

**Andrew Hudson**  
Partner  
D +61 3 8602 9231  
E ahudson@hunthunt.com.au