

26<sup>th</sup> June 2009

## **SUBMISSION**

Australia's Anti-Dumping System  
Productivity Commission  
(by email to [antidumping@pc.gov.au](mailto:antidumping@pc.gov.au))

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1. This submission is made by the Forestry and Furnishing Products Division of the Construction, Forestry, Mining & Energy Union. The Division is the union responsible for Australia's forestry, forest products, furnishing and pulp and paper manufacturing workers.
2. This submission does not address all of the terms of reference or questions set out in the Issues Paper. Where reference is made to a specific aspect of the issues paper, the page number is provided at the end of the paragraph.
3. The CFMEU is aware of a number of firms in our industries who feel they are unable to make complaints. Generally, this is because there are a small number of businesses operating in the Australian domestic industry, who are too easily identifiable by large customers with a track record for commercial retribution. (p7)
4. Some of these large customers are directly involved in the dumping activity, sometimes for opportunistic reasons and at other times as strategic interventions intended to change the supply side economics of the industry or sector with which they are dealing. In our experience, the major offenders among domestic customers are construction companies and in particular, retailers whose market dominance is significant and in some cases without international parallel. (p7)
5. Other instances arise where Australian firms are unable to make complaints because the globalised nature of their businesses creates a conflict of interest. Such conflicts of interest can arise in different situations. For instance, domestic manufacturers in some cases (the pulp and paper manufacturing industry is a good example) are owned by global businesses that also import competing product into Australia. (p8)
6. This is not merely an internal issue, because the dumping actions in which they engage affect the wider public interest of sustained employment and investment in the Australian economy. (p19)
7. The references above may in part explain the reduction in the number of complaints (p9) in respect of paper manufacturing (p9) but generally, other factors also apply to reduce the number of complaints, including:
  - a. **Low expectations of success.** This expectation is driven itself by a number of factors including the complexity and cost of gathering complying data and the ability of importers to obstruct and obfuscate for sufficient time to change their practices, products and pricing just sufficiently to avoid the specific complaint 'attaching' to them;
  - b. **Limited resources within firms.** The pressures on firms that are likely to be victims of dumping – especially manufacturing firms where there are often low domestic volumes and small to medium size businesses – are under the constant pressures of global fair trade, let alone unfair trade. Their profits and resources have been diminishing. The opportunity cost for scarce resources is increasingly skewed away from undertaking anti-dumping complaints;

- c. **The national emphasis on free trade agreements implies a lack of interest from policy makers and implementers in fair trade measures;**
  - d. **Increased use of Tariff Concession Orders (TCOs) by importers as an indirect method of dumping.** For short runs and small volumes, TCOs are being used to create an impression that there is no competitor product made in Australia, reducing the information and opportunity for dumping cases to be taken;
8. The CFMEU is aware actions by other countries to assist firms that are engaged in dumping to avoid tariffs, to apply pressure on Australian complainant firms (p10) and even to suggest to the Australian Government that bilateral relations may not be enhanced by the continuation of an Australian firm or industry's anti-dumping complaint.
  9. Leaving aside anecdotes, the CFMEU has observed significant non-subsidy support being provided to firms, for instance through the provision of 'free' forestry concessions under national legislation, access to export finance facilitation at preferential rates through quasi-autonomous non-government financial institutions and so on.
  10. In tissue products, especially toilet paper, it is clear to the CFMEU that one importing firm has been working with one or more Australian retailers to create an enduring monopoly position by dumping. The evidence is significant and includes the massive volumes of product arriving into Australia already packaged precisely for the retailer, the coordinated nature of the responses of the retailer and the importer, the subsequent tardiness of the retailer to extricate itself from 'the deal' with the importer, indicating they had pitched their future supply strategy at the dumped price. Duties have been imposed on the firm, Asia Pulp and Paper, as a result of an early 2009 decision in respect of this matter. (p11)
  11. Australia's current system of investigations is too unresponsive to effectively address intermittent dumping. This is because the time taken to prepare 'cases' is greater than the time usually required by a firm to alter its parameters sufficiently to avoid the specific complaint. In paper products for example, this occurs by the importer altering the product specifications or pricing structures. A good example is tissue products where the pricing structure can be nominally adjusted to avoid a complaint by altering the number of rolls of toilet paper in a 'bundle'. (p12)

The following are modification options for consideration:

12. Full exploration of the last decade's Tariff Concession Orders with cross-referencing and feedback from industry to determine the extent to which TCOs have been utilised as a proxy dumping mechanism.
13. To ensure timeliness in addressing instances of dumping, the investigative resources available to Customs and Border Protection should be increased, without diminishing transparency or procedural integrity and fairness. (p18)
14. It is appropriate for the future anti-dumping system to take into account economy wide measures, including:
  - a. The impact or potential impact on employment levels;
  - b. The impact or potential impact on national, state or regional productivity.
15. Accordingly, it is appropriate to address economy wide measures by the following procedural amendments:
  - a. Establishing an 'own recognisance' complaint laying regime by Customs and Border Protection where they believe industry parties are conflicted or otherwise unable to act but the data indicates dumping is likely to be occurring (p19);

- b. Expansion of the complainants to include trade unions whose members are or were employed in businesses that have or may be affected by dumping (p3);
  - c. Introduction of automatic mechanisms that 'on allegation' are applied until at least the conclusion of the dumping 'case' where domestic employment is considered to be at risk if the dumping action is proven.
16. Australian domiciled firms engaged in dumping either directly or as recipient of final goods (in the case of retailers for instance) should be responsible for paying the Customs and Border Protection costs and the costs of preparing the complaint.

*Forestry & Furnishing Products Division  
Construction, Forestry, Mining & Energy Union  
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