

RESPONSE TO THE PRODUCTIVITY COMMISSION INQUIRY  
IN TO AUSTRALIA'S COUNTERVAILING AND ANTI-  
DUMPING SYSTEM

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03/11/2009

The commission has taken this review as an invitation to further the agenda for free trade instead of what is specified in the terms of reference. Not only have virtually no significant improvements or savings been suggested for users of the system, extra cost and complexity has been made a priority. The requirements of part three of the terms of reference have been almost totally ignored. The findings, so far, appear to have grown from the commission's belief that access to unfairly priced goods and any trade, including unfair, is good and any resultant damage to individual sectors of the community is of minor importance. These beliefs have resulted in the commission delivering a preliminary report that seeks to undermine the effectiveness of the system by increasing cost and complexity and decreasing access. Although I am sure other complaints about the initial report will be made, I believe they will ultimately not change the view of a commission that appears obsessed with free trade that will never really exist (one look at EU subsidies would confirm this for most people), they must however still be made. This response is intended to place on the record the views of those of us that are not the fanatical disciples of free trade ideology, and perhaps, force the commission to feel some shame for its moral and economic shortcomings.

After some discussion with a member of the productivity commission staff I was of the view that fairness is not something that would be considered in any deliberations, although the concept of an anti-dumping system is all about protection from unfair pricing. It has been pointed out to me that the draft report covers fairness on pages 46-49. A few points are listed, however they are immediately watered down with "some qualifications" and talk of fairness to those the system is designed to impact on and on fairness not being a straightforward concept. I am thus still of the opinion the commission has not and will not properly consider fairness for those who wish to use the system as it was intended, the preliminary findings certainly show no evidence to contradict this opinion. The commission does not appear to get, or is ignoring, that this system is about providing fairness to those harmed by dumping (not fairness to those who benefit from it) and is currently failing badly in this regard, this is very straightforward. I suggest that the commissioners all give long consideration to any bias towards free trade that may have been present in their minds at the start of the inquiry and how this may have led to wrong conclusions.

The commission appears to have almost entirely focused on short to medium term productivity and efficiency, with very limited evaluation of this course to just one step along the supply chain, and acted in the belief it is not able to consider the effect of their policies on any one sector but only the community as a whole, the death of individual sectors being an acceptable price to pay for access to unfairly priced inputs. I take the view that it is not beneficial to the community to lay waste to sectors such as manufacturing and farming and that the commission should take careful note of the effect of its suggestions on any individual sectors of the community and look at effects right along the supply chain, to get a full and real indication of the results of its recommendations. The commission should also remember that the population it purports to serve are the same people who demand high wages, their own homes, OH&S, quality systems and workers rights etc. To support all these desires the population need jobs, which will be few and far between if we import everything cheaply from China, where they have none of those previously mentioned "inefficiencies" we so dearly love. If our industries are not competitive, because of the mandated worker benefits we wish to continue to enjoy, or subsidies

overseas, they must be protected until the overseas competitors stop subsidising their products. The government and the commission do not have the blessing of the Australian public to flush large sections of our local industry down the toilet for the benefit of the populations of such places as China or the EU. To start this process with the thought that Australia's long term welfare may somehow be better served without large sections of our manufacturing and agricultural industries has allowed the commission to reach false conclusions throughout the report.

Has the commission considered the costs of retraining, permanent unemployment, abandoned country towns, suicides, family breakdown, depression, the negative sentiment created in the community and our balance of trade situation in its calculations? Has the commission considered the effects of a long term downturn in the resources sector, we have just had a small demonstration of what could happen? The Australian economy could go down the drain with the rest of the world, even though we may have no problems of our own. There is a question of balance to be addressed here, the commission currently has the balance all going the one way.

Has the commission reviewed any data on the number of suicide deaths that may be attributed to the current anti-dumping and tariff arrangements and the imbalance of trade against Australian farmers and manufacturers, if not does this signify the commission thinks this matter is of no concern? How many families and lives does the commission think it might be acceptable to sacrifice for free trade?

Unfettered unfair competition and the unrelenting drive for efficiency MAY have a net economic benefit in the long term but if the commission wants to take that approach to Australia's future development then why not support things like euthanasia for the elderly and disabled, which would defiantly have a net economic benefit and should be no problem if morals and fairness are not a consideration. How far is the commission prepared to go in pursuit of its goals, where is the line to be drawn on what is an acceptable price to pay?

The commission has acknowledged the costly, complex and arcane nature of the current system, and the WTO agreements upon which it is based, and inexplicably gone on to conclude there is little more that can be done to improve it, except to make it even more complex and costly by adding a public interest test as a highest priority. The nature of such a test would be a denial of WTO rights for local business, with the end result being virtually no cases would ever proceed. (Discussion with a commission representative has convinced me the commission does not think Australian business should automatically have access to its full rights under the WTO, just that government has the option to implement such a system if it so chooses.) This is an appalling state of affairs and shows why the commission may not be concerned about the negative ways a public interest test would impact. There are many things that could, and should, be done to make the system more productive and fair. It is the intentionally unproductive and costly nature of the present system, in seeking to discourage its own use, and the resultant decimation of Australian manufacturing and agriculture, that is one major reason there have been fewer cases pursued in recent years, demonstrating not less need for a system, as the commission implies, but greater need for a system that works to save what remains of our manufacturing and agricultural industries. The commission is instead recklessly advocating virtual open slather on imports, relying on free trade ideology (which no other significant country has implemented

without strong countermeasures to protect their own industry) and some very narrow and poorly considered views about the consequences of its actions, when examples of the depressing and heart wrenching end results of this path already litter the Australian landscape.

Has the commission decided Australia does not need an agricultural and manufacturing sector and that those is these businesses types should just accept that they will continue to be unprofitable and eventually have to close down, no matter how efficient and productive? The commission appears to be thinking the subsidies, worker exploitation, and lack of quality and environmental protection systems in other countries are signs of greater efficiency on their part. I wonder if the commission would consider recommending to the government we also do away with OH&S, Environmental protection, government charges and workers rights and subsidise our products in the name of greater efficiency? Following the commissions logic to its ultimate end point, we should close all businesses not involved with the export of natural resources or the service industry and import everything from the more efficient China? What does the commission think will happen when natural resources are no longer paying Australia's way and we can not afford to import the food and other products we do not produce ourselves, where is the greater public good and long term efficiency in this, where do we get our food and goods in the case of a major regional conflict? It would appear, from reading the preliminary report, the commission thinks that it does not matter if we lose skills, factories, infrastructure and farms in the short to medium term because they can always start up again down the track, if required. Clever words are not needed to highlight what little knowledge of the real world this thinking shows, it speaks for itself. Has anyone on the commission ever been anything but a bureaucrat and know what it takes to start and develop a large successful business that actually produces something other than bits of paper? The commission's logic reminds me of the way the Nazi's thought, they were very big on efficiency and had no hesitation in ruthlessly eliminating unwanted elements for the greater good, they did not have to worry about considering fairness, or what was morally right either.

The commission has decided that policy in this area must be predicated on the wider public interest but forgets that an antidumping and countervailing system is not put in place for the wider public interest, but to allow Australian industry a FAIR go and full access to their rights under the WTO agreements, in a situation where most of the important players are heavily subsidised and or otherwise protected, do not have a public interest test and have no plans to ever have one. The commission has also not fully calculated what the wider public interest really is. The commission has arbitrarily decided Australian business has no WTO rights and should be forced to unfairly compete, in order to become even more innovative and productive and so as consumers can have access to unfairly priced goods. It is not in the wider public interest to pursue this course if it results in high unemployment and very high risk of disaster in the event of a downturn in natural resource prices, let alone the moral deficiencies of these actions. The commission has, in keeping with its obsessive convictions, brushed aside opposing views, and the evidence of recent decades, and concludes the concerns of the overwhelming majority, are overstated. I, for one, am not reassured by this assertion and would like the commission to outline, in detail, how it has justified this position. Why would any business want to keep going and bother to keep up superior productivity and innovation in the face of this attitude, only to have them continuously copied or the gains matched by a competitor's subsidies? This is sentencing Australian business to a life

of continuous struggle, and low to negative margins, while the rest of the world gets a free ride, at some point the playing field must be level and the use of subsidies in other countries not supported. There comes a point when there is no more efficiency or productivity gain to make and it is all about survival, many businesses in Australia have long past that point. If access to subsidised goods is so important then why not subsidise Australian products instead of making them compete with subsidies in other countries?

Australian farmers, as an example, are among the worlds most efficient yet the majority have struggled to survive for years against heavily subsidised imports and distorted markets that lack competition, often driving their sale prices below the cost of production (the majority of that cost being tax and compliance) and many out of agriculture. Where is the greater public benefit in this result, has the price of food gone down? Certainly it has, but only at the farm gate, not for the consumer. What about the quality issues and shrinking range of product choices consumers now face? Has anybody on the commission been to a supermarket or greengrocer recently and experienced what a struggle it is to find a tender cut of meat or quality fresh fruit and veg? If the commission forces Australian farmers to compete in an unfair market the end result will be more of what we see now, sub standard, poor quality and, most likely, unsafe imports, that become even more expensive as the local producers are driven out of business. The few farmers who are not already working for wages will all be sub contractors or the employees of large multinationals, who will control the world's food supply, dictating price and quality. If the commission needs an example of this in practice then I suggest they have a close look at the product of the moment, milk. The control and manipulation of this product, has led to suffering on a global scale for producers, and excessive prices for consumers. If farmers are not profitable on a global basis, and the majority have some form of subsidisation or protection to survive, why does the commission think it appropriate our farmers are left to perish with absolutely no protection from unfair trade? The un-proportionally high suicide and depression rates amongst our highly skilled and efficient farmers are a direct result of the hopelessness of this situation (not climate change). Farmers only ask to be given a chance on a FAIR and level playing field. It appears the commission does not want this to happen, why does the commission work so hard to commit such sins against farmers? The commission should recommend a review of the food supply chain, concentration of ownership within the buyers of farm produce, and the effectiveness and competence of the ACCC, if it is really concerned about competition and the prices consumers pay.

The commission has also assumed that resources retained in an industry by virtue of anti-dumping protection will be used less productively than if they were used elsewhere and that industry is automatically inefficient if protected from unfair trade. This is like saying a poor unprotected man dying of thirst will be more efficient with his water so it would be better for efficiency if we permanently restrict his water and keep him poor and unprotected, even though he only uses half as much as any other man and may end up dying of thirst. I would point out to the commission that there is no evidence that a business will be inefficient just because it is protected from subsidised competitors (there is probably plenty that it will not survive if not protected). It is the greater efficiency of Australian business that is driving the competitor's need for subsidies in the first place. The unfair pricing is itself evidence of continuing greater Australian efficiency, shows the commissions logic is fundamentally

flawed, and that this thinking should change to supporting local industry, not penalising their efficiency with a sloping playing field and a one eyed umpire. Anyone would think that the better Australian business gets at what it does the more the commission sees fit to give away in pursuit of its dreams. If the commission wants to encourage competition and efficiency then it should find a way to do this without sticking the boot in to some Australian businesses, or if not capable of doing this, then standing aside.

Another place the commission has failed to grasp the issues correctly is in pushing aside the AWU's view that dumping may cause more damage to regional centres, saying "anti-dumping is not a regional development mechanism". This is ignoring the fact that the arguments for not having anti-dumping are mostly those that will benefit urban consumers, perhaps regional and rural communities are more of those individual sectors the commission thinks it can not consider? The commission's questioning of what justification there is for the "special case" treatment of farmers in protection from dumping of close processed agricultural goods would certainly highlights a lack of concern for the country, especially when the commission has failed to act on allowing farmers to access the system directly, forcing them to rely on the processor (who may generally prefer the cheaper dumped product) to bring a case. I think, if the commission cares to check for itself, farmers do think they have been treated as a special case, although not in the way the commission is thinking. If there is a sacrifice to be made for the greater good, in either economics or the environment, farmers are always be the first (and often the only ones) to pay the price if they are involved.

The commission also states that predatory behaviour is rare and this should not be justification for a system. If this practice is so rare then perhaps it is because we do have a system and doing away with it would open the flood gates when the news spread? The commission has suggested that knowledge of our system overseas was not widespread and therefore considers it is no deterrent but has failed to realise that it would be automatically assumed we were not so silly as to not have one the same as or better than theirs. In the absence of any other system to effectively deal with predatory behaviour how can the commission justify taking this irresponsible and dangerous stance, not by dodgy assumptions about what knowledge is in the minds of our competitors I hope.

The commission's view that measures are damaging to competition also has a flaw in logic, it assumes any competition, even unfair competition, is good and no valid reason for not imposing measures. Based on what evidence has the commission reached the conclusion unfair competition is good? Is the commission prepared to subject this data to scrutiny, does the commission actually have any data or is this position again based on assumptions? The commission thinks that unfair competition at the expense of some for the benefit of others is reasonable and does not acknowledge, or champion, other better options, as a productivity commission should, even if the government does not want to hear it.

A pro free trade position by the commission has biased the findings of the inquiry, such comments as “*perceived* unfair trading practices” and a summary table on the effects of the proposed public interest test that only lists benefits, not costs, are evidence of this. The commission has acknowledged the EU and others recalibrate their subsidies specifically to get around WTO requirements and that, in addition, our list of actionable subsidies is not as large as the WTO and most of our competitors adhere to. Where does the word perceived fit in to the statement in the light of these facts?

A little more evidence of the commissions one track thought process is pointing to overseas versions of public interest tests as examples we should draw on, without clearly pointing out how few and which countries actually have and use one and what subsidies or other protection they also have in place to protect their own. We can add to this describing long term measures as akin to protectionism when, by WTO definition, they are clearly defined as not being protection.

To sum up the key points of the commission’s position: small, and sometimes very large, players should specifically not be protected from unfair trade, there should be access for all to unfairly priced goods no matter the consequences, the system is too lenient and should be opened up to further appeal, Customs currently has adequate resources for the job, predatory behaviour is not a problem, the welfare of farmers or regional centres cannot be considered, if something else is doing a business greater harm let us not bother about the additional harm of dumping, if the time limit is up dumping should be allowed or dumping is not longer dumping after 8 years, case costs in the hundreds of thousands do not need addressing, fairness does not matter, and even when you win a case it should be able to be overturned by the minister.

The commission had two fundamental questions to answer, should we have an anti dumping system and if so what form should it take. Due to its obsessive preoccupation with free trade and some incorrect conclusions it has comprehensively failed on both counts, let down large sections of the community and embarrassed itself with a report that has not satisfied the requirements at points 3, 4a and 4d in the scope of the enquiry.

# REVIEW OF THE MAIN ISSUES

## SHOULD WE HAVE AN ANTI DUMPING SYSTEM

When contemplating an anti dumping system there were a number of points to consider.

1. What are our WTO and other trade obligations that impact on what we can do, should they take precedence over common sense and self preservation, especially given the subsidies and quotas in use by our competitors?
2. Is the current scheme cost effective, practical and fair? Does it take so long and cost so much that it is only possible for a large organisation to bring a case, is the damage done by the time the case is won? If you are a smaller player damaged by dumping do you even have the resources to make an application, let alone afford the exorbitant costs, are you specifically excluded due to your small size. Would the case do more harm financially than the dumping, would both put you out of business?
3. What are our competitors doing?
4. Do we need a system?
5. Should the minister have the power to hold up a decision when a case has been won, should the minister be involved at all?
6. The lesser rate, retrospective measures.
7. Greater Public interest.
8. By definition dumped products are not produced in the first place, unless subsidies, protections or exploited workers etc are in place in the country of origin.
9. Who should run and fund the system?
10. Material injury.



## **WTO obligations**

By far the biggest limiting factor is Australia's WTO obligations; the entire WTO system is not practical, it takes years and hundreds of thousands of dollars to get a result, is subject to judicial review and is designed to discourage potential cases being pursued. There is no consideration of the effects that dumping can have on primary producers and small manufactures and, In Australia, a huge emphasis is placed on meeting our WTO and free trade obligations at their expense. The EU and USA, by comparison, have a huge emphasis on finding ways to get around these obligations because they, presumably, recognise as economically and strategically important retaining farming and manufacturing capabilities. The WTO (and the UN) are clear examples of where democracy can fail. Australia should be mindful of what we have agreed to at these venues but not to the point of doing ourselves harm, especially when none of our competitors will risk damage to their local producers. The commission should give the utmost priority to the fact that the WTO system is unworkable and recommend other measures be looked at when common sense dictates. The terms of reference of the inquiry specify that a practical cost effective, simple to access system with certainty is sought; the commission appears to basically agree that this is not possible if we fully adhere to our WTO obligations, so why has solution not been recommended. Are the losers from the current system just to accept the cost of this failure because Australia must be obsessive about adhering to international trade law when the rest of the world does not care, and probably never will? Does adhering to the WTO guidelines automatically disqualify Australia from farming and manufacturing in the eyes of the commission so end of story?

### **Is the current system cost effective, practical and fair**

Of course it is not and it never will be in this highly complex and litigious form. The current scheme is so complex that lawyers and consultants are needed in order to bring a case. Applicants must produce estimates of normal value, material injury and demonstrate causation to bring a case; the exporter is not required to prove they are not dumping. The local producer must pay a consultant to go and collect, often restricted, data in order to lodge a claim, when the exporter should be required to present it for consideration by customs, if dumping is reasonably suspected.

If a case is won despite all the obstacles placed in the way, the years of effort and the huge expenditure the result can be blocked by the minister.

Intermittent dumping is also a major issue, the current system cannot cope with and it is arguably the most likely type to occur, I see no evidence that the commission has given adequate consideration to this problem, except to say industry should have to cope with it as the normal course of events, hardly a fair and helpful result for Australian firms.

There is also little consideration given to parties constructing responses to cases so as to delay, mislead or make fair decisions impossible. The issue of Customs applying more stringent criteria or allowing respondents to drag out the time frames is also not corrected. The need for a certain percentage of the local industry to support a claim does not account for the sophisticated nature of business today and the forces that can be at work; this has not been correctly addressed by the commission and is a fundamental failure of the current system.

There is no pretence at justice in our current system, everything is as difficult and expensive as it possibly could be and the smaller players are specifically excluded from any protection from dumping. Why has the commission not given options that will benefit Australian business, instead of our competitors?

### **What are our competitors doing**

This was an easy one, a lot more than we are, including the use of fees and charges for imports, quotas, tariffs, subsidies and putting the responsibility on the exporter to show the goods are not dumped. Why does the commission think Australia should go further, doing more than other countries, and harm Australian businesses in the process? Our welfare should be the priority, not WTO obligations no one else is ever likely to implement to our extremes. There is simply no sensible logic that could be presented that would justify Australia going so far, only obsessive ideology.

### **Do we need an anti dumping system**

Some would argue not, based on cost effectiveness, others based on free market ideology, efficiency or competition. The fact is these points are irrelevant, as is the benefit some third party may gain from access to cheap imports, importers and consumers have no right to access UNFAIRLY priced imports at the expense of local suppliers and there is nothing desirable about unfair competition.

Competition should be fair and free, not just free. Dumping does occur and any amount of dumping causes material harm to any business that produces a competing product and decreases the incentive for further investment, arguments to the contrary could only be made by a bureaucrat or someone not acting in good faith.

We need an effective deterrent to the predatory behaviour that would be encouraged with no system in place.

The government is responsible for the welfare of all, not just a few large resource companies, the commission should not be balancing up how much damage they can allow in one area for the benefit of another (especially on a one step along the chain basis) or to save on administration costs. If any damage occurs due to dumping the government must act to protect the interests of any competing business, to do otherwise would be no different to the actions of government back in the days of the Rum Corps and the Eureka stockade, when the law only served the interests of a few important players, fairness or morality was not a factor. Consideration needs to be given to the core values of what it is to be Australian and the will of the general population in all decisions taken by government. The commission is not correct in excluding fairness or the public's wishes from its findings on the need for and structure of a system. In not doing so the commission does injury to the morale and social fabric of Australia and thus also the economy, this is not in the greater public's interest. The best interests of the public are not always, if ever, served by only economics, especially flawed economics.

### **Should the minister have the right to overrule or hold up decisions**

If an appropriate and lawful system concludes dumping is occurring then there is no need for the minister to be involved. To argue that the minister should continue being allowed to override the result is again implying that other factors should be considered when they clearly should not. If a minister did have the power to interfere other forces would have to come in to play on any decision, as they obviously have in the past, all decisions should be independent and at arm's length from government. Ministers have sat on decisions for years and this is all the evidence that should be needed to take them out of the system. The commission has not made a strong statement about removing the minister from the loop and instead suggested a 30 day time limit on decisions because of the public interest test it has wrongly suggested we are desperately in need of. The commission should have firmly and clearly stated that in the absence of this test the minister should be removed from the system. Has this not been done because the commission has already decided that a public interest test will be introduced and the situation will not arise?

### **The lesser duty and retrospective measures**

Use of a lesser duty implies that some quantification of damage should be done and is a major flaw in the WTO model; it adds cost, complexity and lack of fairness to the system. This is not needed and should be abandoned; especially given many other countries do not use it. Access to unfairly priced imports is not a sufficient argument for use of the lesser duty when the inquiry parameters encompass efficiency, and compliance cost? Why do we always use the lesser duty and never apply retrospective measures when there is arguably no requirement to do so? Why has the commission not made these items major issues for discussion and recommended that both actions should cease? This must, presumably, again be in the name of greater access to unfairly priced goods having priority over fair protection for local industry.

### **The greater public interest**

If this test were added to the current system then it would be equivalent to having no system at all, who is going to spend hundreds of thousands to bring a case forward to then have that expenditure wasted because of the supposed greater public interest? I am curious to know by what means anyone has calculated it could possibly be in the greater public interest to support the efforts of the subsidised and inefficient to continue in business while sending our more efficient producers to the wall. It would be more in the public interest if these businesses were allowed to go more quickly to where they should be and are replaced by a more efficient competitor. An equally compelling argument could be made that it is in the greater public interest to protect our firms from unfair trade. The commission is clearly supporting local access to unfairly priced imports at the expense of Australian businesses. While it is easy to understand how a manufacturer would want cheaper raw materials to better compete in the market place these goods should not be cheaper than what they would cost in the country of origin, should not be the result of subsidies or the predatory efforts of a global player. This is an example of unfairly favouring one business over another, for reasons unrelated to those particular businesses; the logic of this whole argument is as embarrassing as it is immoral. I remind the commission that the WTO agreements Australia supports (as the AWU has also pointed out in its submission sub 2 p14) entitle Australian businesses to the right to fair trade, not consumers and importers to unfairly priced goods. The commission cannot have it both ways; if the WTO system is to be rigidly adhered to then Australian producers should have full and unimpeded access to take action under this system, as most of their competitors do? If offshore subsidies are causing a competitive issue for a local company, which needs the items at the same price as an overseas competitor, he should be able to get a government rebate, equal to the tariff on the subsidised item, for the locally sourced product, paid for by the revenue from the anti-dumping measure. The tariff itself should fully match the level of the subsidy in the country of origin. This being a fair, effective, simple and cheap solution I hold little hope it would ever be put into practice, it may interfere with the glowing aura around the sale of some other more important company's product, or our prime minister on the world stage.

### **Who should run and fund the system**

This is the natural job of Customs and part of the reason they exist, there is no logical reason to have such entities as the ACCC involved, especially if they are not able to do their current jobs effectively. To add a second player to the mix would require even more funding, for a system that is not correctly funded now. It would appear that the commission has at least been correct on this issue. The commission has however failed to adequately address the resourcing of customs to correctly carry out the current role. The commission and government needs to understand that if it takes hundreds of thousands of dollars and years to reach a conclusion this is the equivalent of denying Australian companies their rights. If the government did not wish to pay for the process it should not have signed up at the WTO in the first place. Harking back to values again, it is un-Australian to sign up to an onerous and expensive system, that benefits only the important few, and force the "unimportant" majority to bare the enormous costs. Our competitors can fund their systems appropriately, why is it that Australia cannot and many of our companies are disadvantaged in the market place. If we must have a user pays system, and I do not accept that we should, it should at least all be paid for by those who get the supposed benefit of our WTO agreements, not those who are unfairly disadvantaged by them.

### **Material Injury**

In a world where efficiency is apparently of greatest importance how can the commission justify the amounts of time and money devoted to determining material harm when this seems to be contrary to the stated goals of the inquiry and the answer is already obvious. If goods are being dumped there MUST be harm to a competitor if one exists, trying to quantify this is subjective and serves no useful benefit for the cost involved. As material injury is not defined by the WTO Australia would be within its rights to use its own definition, which should be that any dumping causes material injury. The dumping should be countered at the full amount of the subsidies or other measures, this would eliminate the need to quantify the amount of harm of calculate the lesser rate to be used. Apart from its support for unfair competition and access to unfairly priced goods what possible reason could the commission have for not suggesting this course of action?

## WHAT FORM SHOULD OUR SYSTEM TAKE

If we are going to have a system, and it is going to be based on anything to do with the WTO, then, by the commission's own admission, it will not be the best it could be. If Australia had no system it would be a green light to dumping and may encourage predatory behaviour. It is easy to imagine a large global company bringing in its own product below cost to put a smaller local supplier out of business, why not, if they can bring the product to Australia with no questions asked. It is up to our law makers to put the boundary in a position that makes it clear this is not acceptable behaviour.

The reality is Australia should bring in a much cheaper and quicker system that is run by a dedicated arm of Customs, and has no recourse to judicial review. Simplistically, an interested party could ask customs to investigate an issue; customs would also be monitoring imports, collecting statistics and becoming a centre of knowledge as a day to day task, all ABS data should be readily available to all parties, via administrative protective orders if needs be. Trade offices around the globe would work with customs to collect any extra data on the ground. If customs determined a prima facie case existed the offending party would be asked to show evidence that dumping was not occurring. If the evidence was not compelling, or forthcoming, a tariff would *automatically* be applied by customs until such time as it could be shown, by the exporter, that dumping had ceased. The tariff would be adjusted on a 6 monthly basis to equal the effect of any subsidies etc. Material injury would not be measured, just assumed, and anything else to do with measuring effects would not be considered, nor would the incorrectly assumed greater public interest. If the item were not produced or intended to be produced in Australia then no investigation would occur. The definitions of like items would need ongoing review and better understanding, by customs staff with expertise in each product. The development of a larger knowledge base within customs would also help overcome the problem of poor decisions being made due to lack of knowledge of the relevant industry. If calculation is needed to verify a product is *not* being dumped this should be by reasonable, simple predetermined methods and comply with standard accounting practices. *All* costs should be considered in the calculation and *all* subsidies would be actionable. Developing nations would need some concessions; a discount in the tariff rate would be one solution.

Customs should investigate cases only where it reasonably suspects that dumping is occurring and an obligation should be on the exporter to provide evidence the goods are not being dumped, not the complainant to prove that they are, the evidence would be verified by customs, the statistical data and skill set would be in place to carry out this task within a 30 day time frame. An Administrative Protection Order system would be in place. Any action taken by customs, where dumping has been declared, should stay in place only until the exporter can show evidence the product is no longer being dumped. If dumping is still occurring years down the track it would hardly be sensible to pack up and say the time limit for action has ended and you can go ahead and start dumping again.

If the system is for the greater public good an obligation exists for the greater public to pay for this, not to burden individual businesses with another non productive cost their competitors do not have.

A world leading obsession with following the WTO course to free trade is the same type of act as sending Aussie diggers over the top in the First World War, a pointless sacrifice in aid of a bad plan. The only difference now is the bodies are those of Australian businesses, not diggers. There is no reason Australia cannot be out arguing for a better system, or even going it alone if needs be. At least then the rest of the world would not be able to laugh at how we continually bludgeon our own primary producers and manufacturers while they protect theirs with quotas and subsidies. There must be scope for better and fairer systems; most of our competitors seem to have one for their own backyards.

## **CONCLUSION**

The commission has not comprehensively addressed its terms of reference and instead focused on a more liberal free trade agenda.

The preliminary report contains many questionable conclusions not supported by any comprehensive economic modelling and also in direct conflict with much of the high quality advice provided in the many submissions it has received.

The current system should be replaced by an efficient, productive and simpler one.

Any system should be fully funded by the taxpayer.

A public interest test should not be introduced.

The minister should not be part of the decision making process.

Having a body that will not consider fairness to the individual system user in its deliberations review the function of a system that has a primary purpose of fairness in international trade could suggest to the public that this inquiry is just about providing excuses to dump or undermine the system altogether, not make functional improvements for the intended users. The commission needs to ensure the final report does not leave any room for allegations of bias or lack of depth to be made.