

6 November 2009

Australia's Anti-Dumping System
Productivity Commission
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Dear Sir/Madam,

Re: Submission to the Productivity Commission's Draft Inquiry Report into Australia's Anti-dumping System.

Thank you for the opportunity to make a written submission on the draft inquiry report in relation to the Productivity Commission's Inquiry into Australia's anti-dumping system (the Inquiry Report).

1. THE AUSTRALIAN PLANTATION PRODUCTS & PAPER INDUSTRY COUNCIL'S (A3P) INTEREST IN THE ANTI-DUMPING SYSTEM.

A3P is the national industry association representing the interests of all segments of the plantation-based wood products and paper manufacturing industry. A3P member's employ more than 13,500 people in plantation management, sawmills, panel board, and paper manufacturing plants, mainly in rural and regional areas. Each year A3P members create and sell more than \$4 billion of products, produce more than 12 million cubic metres of logs, 3 million cubic metres of sawn timber and more than 2 million tonnes of paper.

Paper and wood products are internationally traded commodities. Australian paper and wood products manufacturers face significant international competition, and increased incidence of competition from producers selling below 'normal value' and producers that have a cost base or regulations (environmental/social/employment/safety inputs) that may not reflect the 'true' cost of inputs for competing products around the globe. Economic globalisation has increased this competition, and recently the global financial situation has added increased incentive for activities that constitute dumping.

Examples include:

- Rapid expansion in paper (of all types), sawn-wood and board manufacturing capacity particularly in Asia and Europe in recent years has substantially increased competitive pressures on Australian manufacturers and increased concerns about the potential for dumping of paper and wood products into the Australian market; and
- Potential dumping activities of imported engineered wood products (EWP) and wood panels/plywood in the context of a depressed North American housing market.

Australian wood processors and manufacturers that have been directly involved in previous anti-dumping actions see the continued availability of a strong anti-dumping and countervailing measures regime, and the maintenance of safeguard provisions, as vital to the future of Australian industry. A4 copy paper, grey-back carton-board, and toilet paper are three wood fibre based products which have been the subject of dumping investigations in recent times.

The plantation sawn-timber and newsprint industry have not been actively involved in anti-dumping applications recently but have had reason to make some preliminary investigations regarding the requirements and operation of the anti-dumping system.

Australia's commercial environment is completely exposed to international trade and is not a level playing field, A3P members feel that the anti-dumping system is a mechanism (albeit with limitations) that can be effective in addressing instances of external subsidies, predatory and anti-competitive behaviour in the international arena.

1.1 A3P has a keen interest in the Productivity Commission's ('PC') Inquiry into Australia's anti-dumping system. A theme throughout this submission is that A3P strongly supports the continuation of an effective, efficient, and accessible anti-dumping system that supports a level playing field for Australia's competitive industries.

2. RATIONALE OF THE ANTIDUMPING SYSTEM.

Australian industry has every right under existing international trade rules to continue to have World Trade Organisation (WTO) sanctioned anti-dumping and countervailing measures to counter predatory pricing, and underpin fairness in trading outcomes. A3P supports the underpinning rationale of the anti-dumping system.

The broad rationale for an anti-dumping system include: fairness in trading outcomes; countering predatory behaviour – improving economic efficiency; and avoiding the costs of intermittent dumping activities. In the tough international economic environment currently being experienced the drivers leading to dumping activities strengthen, and Australia will experience increased incidences of dumping activities, especially as Australia is weathering the global financial storm in better shape than many other countries.

2.1 The continued availability of a strong, efficient and effective anti-dumping and countervailing measures regime and maintenance of safeguard provisions is vital to the future of Australian industry.

3. GENERAL FINDINGS OF THE INQUIRY REPORT.

A3P supports the following general findings from the Inquiry Report:

- That the anti-dumping system has been found to be consistent with WTO guidelines;
- That the anti-dumping system is acknowledged by PC as a necessary, important and legitimate component of an Australia's open economy;
- That the anti-dumping system should remain under the control of the Australian Customs and Border Protection Service (Customs) and its Minister, and Customs, the Minister and the Trade Measures Review Officer (TMRO) should retain their roles and powers;

A3P submits more detailed responses and comments to the following key recommendations and proposals made in the Inquiry Report below (also refer to ATTACHMENT A for a summary):

4. THE 'PUBLIC INTEREST' TEST

The PC proposal under Recommendation 6.1, was to introduce a 'bounded' public interest test (conducted by Customs), containing a presumption in favour of measures where there has been injurious dumping or subsidisation, but detailing a list of circumstances where measures would prima facie not be in the public interest.

A3P is concerned by this proposal for the following reasons:

- The proposal is not seen to support or promote the efficiency and effectiveness of the anti-dumping system rather it seems designed to limit access of applicants to an already complex and resource intensive process, and to increase the possibility of political influence and drivers;
- The 'public interest' test framework seems to be based on the similar European Union (EU) test. It is understood that the EU test is seldom used in practice and often fails where the local industry share of the market is greater than the suspect imports;
- 'Public interest' analysis is subjective and usually ideologically driven, that is an outcome, such as the continuation of industrial jobs in regional Australia, may be of no special value to the reviewer, but to another, may be seen as a desirable public interest outcome;
- It is understood that one such parameter the proposed 'public interest test may decide as a basis for not imposing any measures is a 'lessening of competition', which every affected company would virtually always argue as a matter of course;
- An applicant industry's market share and being globally efficient are two parameters that the 'public interest test includes within its consideration. These two parameters would prove to be difficult to demonstrate, as Australia is not a large market for many manufactured products and the ability for Australian companies to be globally efficient is difficult due to the size of our market. It is understood by A3P that in terms of market share, if it is less than 20% the applicant would be denied access to the measures, and if the applicant cannot demonstrate the status of global efficiency of production access to the measures is very difficult.

A3P notes that the anti-dumping system has a series of checks and balances inherent in its current framework that makes getting a viable case across the line a comprehensive and non-frivolous process. When measures are imposed these are still subject to appeal and review processes that will pick up changes in circumstances or market dynamics.

4.1 A3P does not support an additional public interest test as it would add unnecessary complexity, additional time and uncertainty to an already complex comprehensive process.

5. LIFE OF MEASURES

The PC proposal under Recommendation 7.4 was to limit extensions of measures to one three-year period and introduce a two year freeze on re-application (so in total anti-dumping measures are proposed to have a maximum 8 year term).

A3P's view is that an arbitrary limit to the extension of measures is problematic, unnecessary, and doesn't reflect the market situation if the subsidy, predatory behaviour or dumping activity continues to occur.

In the case of countervailing actions, subsidies and support in exporting countries that directly lead to dumping activities do not just disappear or cease delivering an unfair competitive advantage after an arbitrary term. Similarly, a company's policy of aggressive or forced entry to and dominance of a particular domestic market is not necessarily abandoned despite being adjusted by measures for a period of time.

5.1 A3P does not support this proposal, if the market circumstances and dumping activities continue, then anti-dumping measures should not be arbitrarily removed without review and demonstrable evidence that the situation has changed.

6. AUTOMATIC REVIEW OF MEASURES

The PC proposal detailed under Recommendation 7.5 is that the current 'review of measures' provisions should be terminated. The system should provide for annual adjustments to the magnitude of measures by an automatic review of measures.

A3P would see merit in an automatic review of measures based on major external factors having changed significantly, for example currency realignments and general world market price realignments. This has potential for providing improved outcomes in a world of changing economic circumstances and exchange rates.

A3P sees that this proposal should replace the present system of application for reassessment within the 5 year period of the measures, rather than imposing an additional mechanism of review. Product prices, volumes and industry market shares over the period in which measures are imposed were not seen by A3P as appropriate to use in triggering such a review as these indicators do not reflect those which would apply if the measures had not been imposed.

The current common practice of Customs to accept undertakings at a fixed price from exporters would not be compatible with a system of automatic reviews and, in an environment of rapid world pricing movements and exchange rate realignments, reduces the effectiveness of the system significantly. Such undertakings, if accepted, should include a responsibility of the party making the undertaking to report regularly and in a fully documented way on variables such as the exporter's domestic price and cost of manufacture, in the country of manufacture.

In regard to the current mechanism, the ability of a party to apply for reassessment within the 5 year term of imposed measures (even after one year) without needing to show that the external environment has changed in such a way as to require a reassessment is seen by A3P as unduly onerous on the applicant, who must maintain, at significant cost, price intelligence services in the country of the exporter and to suffer the cost and business distraction imposed in meeting these reviews.

- 6.1 *A3P sees merit in an automatic review replacing the current "application for re-assessment" provisions but notes that the Inquiry Report does not detail the proposed criteria for such a review. A3P would not support the imposition of an additional mechanism of review.*
- 6.2 *A3P notes that a current 'review of measures' can be a costly, information intensive, and time-consuming process for parties in the anti-dumping system.*

7. CUSTOMS FEEDBACK ON THE IMPACTS OF MEASURES

The PC proposal under Recommendation 8.9 is to require Customs to seek feedback on the impacts of measures.

- 7.1 *A3P supports this proposal in principle, as having an active, engaged responsible organisation (Customs) seeking feedback from the marketplace, determining whether measures are working, or circumstances may have changed would seem to be a positive step and one that would underpin a pro-active and efficient system.*

8. CUSTOMS AND TMRO RESOURCING

The PC proposal under Recommendation 8.5 is to ensure that Customs and the TMRO are adequately resourced to undertake their functions under the anti-dumping system.

8.1 A3P supports this proposal as adequate resourcing for the key administrators of the anti-dumping system is essential for the system to be effective and efficient.

9. MEASURES NOT IMPEDED

The PC proposal under Recommendation 8.10 is for the current Australian Law Reform Commission review to consider precluding suppression when the same or similar information can be publicly accessed from the export statistics of other countries.

In addition a useful proposal would be to increase support for the ability to access data to support viable cases. A3P would be interested to see how this external review would be fed into any potential amendments of the anti-dumping system.

9.1 A3P supports this proposal for the current Australian Law Reform Commission review to consider issues about suppression of relevant information.

10. INCREASED TRANSPARENCY OF ANTIDUMPING SYSTEM

The PC finding under Recommendations 8.6, 8.7 & 8.8 is to require Customs to indicate what account it has taken of overseas investigations and to report more extensively on: applications for measures that do not proceed to initiation; the magnitude of measures imposed and the underlying parameters; and the timeliness of its investigations.

10.1 A3P supports this proposal as previous negative outcomes from the anti-dumping system have been characterised by limited transparency, lack of feedback, and some inconsistencies in the assessment and investigation processes.

Improvement in these areas would ease potential applicants' concerns pre-application and avoid follow-up and misunderstandings post measures being applied or dismissed.

In A3P's previous submission it was recommended that more be done by Customs to reduce the complexity of the system, be more proactive, offer more assistance, increase audits, and improve feedback, in order to allow the full range of enterprises to utilise the anti-dumping system.

11. ASSESSMENT TIMEFRAMES

A part of PC proposal under Recommendations 8.3 & 8.4 is to increase the scope for Customs to seek extensions of time for consideration of anti-dumping cases but offset this change by imposing a 30-day limit on Ministerial decision-making.

11.1 A3P supports the proposal to increase the scope and ability of Customs to analyse complex anti-dumping cases coupled with a reduced Ministerial decision-making time frame, as this would lead to better, efficient and more considered outcomes.

12. ISSUES NOT ADDRESSED IN THE INQUIRY REPORT:

A) COSTS FOR STAKEHOLDERS IN THE ANTI-DUMPING SYSTEM.

The costs involved in the anti-dumping system include: administrative costs for government of maintaining the anti-dumping system; application, information, administrative and compliance costs for both local industries seeking imposition of the anti-dumping measures and for the overseas suppliers (and local agents) who are the subject of these actions; and potential economic efficiency costs to Australia if domestic industry is reduced and injured due to unfair competition or predatory activities.

Some of the costs of compliance identified by A3P members via practical experience include:

- The costs of compiling the substantial information requirement applicants must satisfy to have an investigation initiated, and frequent delays during the screening of an application;
- The difficulty in obtaining “normal value” information and import data where its availability is restricted for confidentiality reasons or by lack of transparency in overseas markets; and
- The expense of using consultants, which is often hard for applicants to avoid because of their limited understanding of anti-dumping practices and the application process – especially within small and medium enterprises.

12.1 *A3P considers the administrative and compliance costs (including consultant costs and information gathering) to lodge an application to be high and in many instances prohibitive and action should be taken to address this issue.*

B) ADDITIONAL HELP FOR APPLICANTS.

It is accepted that simple, unsubstantiated assertions should not provide sufficient grounds for initiation of an anti-dumping investigation. However, the task of providing a basis for a claim is a significant and costly exercise. This is particularly the case when dealing with relatively small enterprises, where there are a significant number of players in an industry and/or where there is a large number of like but not identical products in the market place. It is interesting to note that much larger enterprises still find many aspects of the anti-dumping system difficult to navigate.

12.2 *A3P suggests that more be done by Customs to reduce the complexity of the system, be more proactive, offer more assistance, increase audits, and improve feedback, in order to allow the full range of enterprises to utilise the anti-dumping system.*

The role of dumping liaison officer could potentially be reviewed to include aspects of actively assisting applicants rather than merely providing basic advice – although the dual potentially conflicting role of advisor and case manager would need to be addressed. This additional aspect to the role would greatly help potential applicants to navigate through the anti-dumping system.

A3P recommended that the Dumping Liaison Unit should operate on a “case management team” basis providing consistent advice and continuing support to the industry throughout the process.

12.3 *A3P again suggests that a liaison team with specific communication skills spend time understanding the client and assisting industry.*

C) DATA COLLECTION

Data suppression makes it even more difficult for complex industries with increased numbers of manufacturers in Australia, and no access to import data other than ABS statistics (see *point 9.1 and 10.1 above*). One of the largest issues applicants have is access to sufficiently detailed import statistics. Obviously the suppression of import data is the major issue, but within the data for an individual country, there may be several suppliers of a good, or one tariff code may contain several distinct goods and products.

It must be understood that, particularly in relatively undifferentiated markets such as printing papers, even a relatively small quantity of very low priced (dumped &/or subsidised) goods can have a price leadership role and destabilise the market.

A3P sees a way to resolve this is by full disclosure of import shipments as occurs under the US system. The concealment of detailed trade data is seen to be a major impediment to industry identifying unfair international competition in all of its forms. If one concedes that competition works best where information availability is optimum, this proposal should address this issue.

12.4 *A3P recommends that the current system is reviewed and that the US system which gives full access to import data on a transaction by transaction basis with full detail of what is being imported by who, from where, and at what price, is implemented as the model framework for trade data.*

12.5 *In the comparable US system, duties are imposed at the time an initial finding of prima facie dumping is made (a relatively quick process) and then revised if necessary at the end of the process.*

Another data issue detailed in our previous submission was the prevailing 'market situation' as related to countries that Australia has a current Free Trade Agreement with. It is A3P's understanding that with a free trade economy (e.g. China) the government assumes 'Normal Value' to be established, and any anti-dumping action should be taken via the countervailing system rather than the dumping system. Whilst this outcome seems idealistically reasonable and consistent, actions taken under the countervailing system are difficult to substantiate, and most of these actions are politically difficult.

12.6 *A potential solution suggested was Customs (in conjunction with industry and potentially Austrade) being more pro-active in benchmarking prices and costs in other 'Free Market Economies' in order to form an opinion if a 'Market Situation' exists or what the 'Normal Value' may be. This potential approach would be a significant improvement over the current approach where it is up to the applicants to prove pricing in a foreign country.*

D) INVESTIGATIONS - ACCOUNTS AND UNDERTAKINGS

In regard to the information requirements and standards imposed by Customs in considering anti-dumping applications, A3P members have previously expressed concerns about the willingness of Customs to accept individual company accounting procedures and standards in overseas investigations. In a specific circumstance Customs have not accepted procedures for the allocation of expenses as accurately reflecting actual costs of production even though these procedures were widely used and endorsed by internal and external audit systems.

While Customs do not necessarily accept accounting data from the applicant, they are required to accept audited accounts from overseas exporters into Australia, even when they may suspect that the audited accounts may be potentially erroneous. An overriding 'does it make sense' test should be able to be applied by Customs investigators in these situations where the exporting company's accounts appear questionable.

12.7 *A3P again proposes that Customs should have discretion to substitute 'best available information' and lean towards the more verifiable Australian-sourced data where there is an alternative.*

CONCLUSION

The anti-dumping and countervailing provisions are all that is available to Australian industry to provide a semblance of a level playing field and to redress subsidies and predatory and anti-competitive behaviour by international companies. To put it in context, the current provisions are less than those which would apply if the same anti-competitive and predatory activities were undertaken in Australia between Australian companies (ie Trade Practices Act, ACCC regulation etc), and as a result A3P would not support any further dilution of these very necessary provisions.

The plantation products and paper industry looks forward to working constructively with the Productivity Commission in the finalisation of its Inquiry into Australia's anti-dumping system.

Yours sincerely

RICHARD STANTON
Chief Executive Officer

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ATTACHMENT A: SUMMARY OF A3P KEY RECOMMENDATIONS

NO.	A3P KEY RECOMMENDATIONS
1.1	<i>A3P has a keen interest in the Productivity Commission’s (‘PC’) Inquiry into Australia’s anti-dumping system. A theme throughout this submission is that A3P strongly supports the continuation of an effective, efficient, and accessible anti-dumping system that supports a level playing field for Australia’s competitive industries.</i>
2.1	<i>The continued availability of a strong, efficient and effective anti-dumping and countervailing measures regime and maintenance of safeguard provisions is vital to the future of Australian industry.</i>
3	<i>A3P supports various PC findings such as the Anti-dumping system being found consistent with WTO guidelines, a necessary part of Australia’s commercial environment, and that Australian Customs and Border Protection Service (Customs) and its Minister retain their role and powers.</i>
4.1	<i>A3P does not support an additional public interest test as it would add unnecessary complexity, additional time and uncertainty to an already complex comprehensive process.</i>
5.1	<i>A3P does not support this proposal, if the market circumstances and dumping activities continue, then anti-dumping measures should not be arbitrarily removed without review and demonstrable evidence that the situation has changed.</i>
6.1	<i>A3P sees merit in an automatic review replacing the current ‘application for re-assessment’ provisions but notes that the Inquiry Report does not detail the proposed criteria for such a review. A3P would not support the imposition of an additional mechanism of review.</i>
6.2	<i>A3P notes that a current ‘review of measures’ can be a costly, information intensive, and time-consuming process for parties in the anti-dumping system.</i>
7.1	<i>A3P supports this proposal in principle, as having an active, engaged responsible organisation (Customs) seeking feedback from the marketplace, determining whether measures are working, or circumstances may have changed would seem to be a positive step and one that would underpin a pro-active and efficient system.</i>
8.1	<i>A3P supports this proposal as adequate resourcing for the key administrators of the anti-dumping system is essential for the system to be effective and efficient.</i>
9.1	<i>A3P supports this proposal for the current Australian Law Reform Commission review to consider issues about suppression of relevant information.</i>
10.1	<i>A3P supports this proposal as previous negative outcomes from the anti-dumping system have been characterised by limited transparency, lack of feedback, and some inconsistencies in the assessment and investigation processes.</i>
11.1	<i>A3P supports the proposal to increase the scope and ability of Customs to analyse complex anti-dumping cases coupled with a reduced Ministerial decision-making time frame, as this would lead to better, efficient and more considered outcomes.</i>
12.1	<i>A3P considers the administrative and compliance costs (including consultant costs and information gathering) to lodge an application to be high and in many instances prohibitive and action should be taken to address this issue.</i>

12.2	<i>A3P suggests that more be done by Customs to reduce the complexity of the system, be more proactive, offer more assistance, increase audits, and improve feedback, in order to allow the full range of enterprises to utilise the anti-dumping system.</i>
12.3	<i>A3P again suggests that a liaison team with specific communication skills spend time understanding the client and assisting industry.</i>
12.4	<i>A3P recommends that the current system is reviewed and that the US system which gives full access to import data on a transaction by transaction basis with full detail of what is being imported by who, from where, and at what price, is implemented as the model framework for trade data.</i>
12.5	<i>In the comparable US system, duties are imposed at the time an initial finding of prima facie dumping is made (a relatively quick process) and then revised if necessary at the end of the process.</i>
12.6	<i>A potential solution suggested was Customs (in conjunction with industry and potentially Austrade) being more pro-active in benchmarking prices and costs in other 'Free Market Economies' in order to form an opinion if a 'Market Situation' exists or what the 'Normal Value' may be. This potential approach would be a significant improvement over the current approach where it is up to the applicants to prove pricing in a foreign country.</i>
12.7	<i>A3P again proposes that Customs should have discretion to substitute 'best available information' and lean towards the more verifiable Australian-sourced data where there is an alternative.</i>