



Penrice Soda Products Pty Ltd

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6 November 2009

Presiding Commissioner
Productivity Commission
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Dear Sir

Draft Report on Australia's Anti-Dumping Submission

I refer to Penrice Soda Holdings Limited ("Penrice") submission of June 2009 to the Productivity Commission ("the Commission") and the Commission's recently published draft report on Australia's Anti-Dumping System.

1. Public interest test

Penrice notes that the Commission has identified the introduction of a public interest test as its priority for reform of Australia's Anti-Dumping System. Penrice is concerned by the Commission's apparent intent on denying access to remedies under the System for Australian manufacturers that have encountered material injury from dumped and/or subsidized exports which is condemned internationally.

It is clear that the Commission is opposed to any intervention to redress unfair trading practices. The Commission's proposal will disadvantage Australian manufacturing (when contrasted with manufacturing in other jurisdictions) and will undoubtedly limit new manufacturing investment in Australia. Penrice views the proposed "guidance" and "directives" which the Commission considers to be in the Australian community's interest as restrictive limitations to accessing measures.

Penrice does not consider that the broader community supports the proposed public interest provisions. The Commission has 'lifted' considerations drawn from similar provisions in the Canadian and European Union ("EU") Anti-Dumping Systems and sought to impose the considerations in a more robust manner than in is intended (or apparent) in those jurisdictions, with little regard to the peculiarities of the Australian market. The size of the Australian market is a unique characteristic in anti-dumping investigations – it is small by comparison to markets in Canadian and the EU markets and often is supplied by only one or two producers. The impact of dumping and subsidization on producers in Australia that rely on a significant proportion of total sales to be sold domestically, is more demonstrable than in a market with numerous local manufacturers. However, due to perceived concerns about the lessening of competition, it is very likely that Australian manufacturers would be denied access to measures to address trade distorting impacts.

The lessening of competition concerns are more appropriately addressed within the Trade Practices legislation and should not be intertwined into the Anti-Dumping System.

Penrice further considers that the Commission's proposal extends far beyond the public interest provisions of Canada and the EU – the proposals are tailored in an uncertain manner that will encourage exporters and importers to seek rulings on whether measures are in the public interest in **every** investigation (as is now evident with appeals to the TMRO on almost every Ministerial decision or termination decision by Customs and Border Protection). The priority proposal will be embodied in each and every investigation – a significant contrast with the relative minimal consideration of the matter by administrations in Canada and the EU.

Penrice is the sole manufacturer of soda ash and sodium bicarbonate in Australia. The company is competing head-to-head with producers in China and the United States, the world's first and second largest sources of supply, respectively. It is feasible that producers in either country could target the relatively small Australian market (in global terms) on the basis of short term factors – for example, the respective domestic markets contracting necessitating a more export-focused response. In this instance, Penrice would find it difficult to compete against unfairly priced exports – particularly when Customs and Border Protection has failed to recognize that prices in the Chinese market are artificially low.

Australia's Anti-Dumping System has evolved into what it is today from a number of previous legislative and administrative reviews. The System has been fine-tuned to accommodate the peculiarities associated with the reduction in the number of applications over the last two decades and can be described as 'fit-for-purpose'.

Through the introduction of a public interest test the Commission is proposing to limit access to anti-dumping measures. Contrary to the Commission's 'bounded' qualification, anti-dumping measures will only be applied in minimal circumstances. Penrice does not consider that a public interest test is in the Australian community's interest; nor does it consider that the Australian community would want Australian industry to exit Australia due to domestic restrictions which disadvantage Australian manufacturers (viz-a-viz manufacturers in other countries). In addition limitations which relate to the size of the Australian producer (in market share terms) and its efficiency (costs are above those of an exporter, including profit), are similarly not supported.

2. Market situation

Penrice identified in its submission the need for greater clarity and guidance in the current application by Customs and Border Protection of the particular 'market situation' provisions. The Commission has failed to address the issue of the application of the rules as representing "dumping-specific concerns" of a particular industry. This is clearly not the case.

It is Penrice's experience (and supported by its observations in other investigations) that exists a significant problem in the interpretation and recognition of relevant factors which constitute government influence on prices and/or costs in the country of export. Customs and Border Protection conducted a limited review of factors to be considered in 'market situation' investigations in December 2008, in response to ongoing challenges by Australian industry that the provisions were not applied in a reasonable manner. Reference was made to the approach followed by the Canadian Border Services Agency which identified domestic prices and costs as not being determined in a "competitive manner".

Penrice is aware that at the time of this submission Customs and Border Protection has published a Provisional Affirmative Determination ("PAD") where it has considered a particular market situation is evident in respect of aluminium extrusion products exported from China. Whilst it is recognized this is a preliminary decision, it is hoped that Customs and Border Protection has altered its unacceptable historic approach on the issue. Penrice would point out that the factors considered by Customs and Border Protection to render

Chinese market prices unsuitable for normal value purposes, were also evident in the sodium bicarbonate case of 2005 (and other subsequent cases).

Penrice would encourage the Commission not to dismiss its examination of the policy approach on 'market situation' based upon concerns that it is a matter for individual investigations. There exists overriding concerns about the application of the recent policy approach involving market situation investigations and this should be addressed in the Commission's review of Australia's Anti-Dumping System.

3. Continuations

The Commission's second priority for reform of Australia's Anti-Dumping System is the 'life' over which anti-dumping measures are imposed. The Commission has suggested that the "efficacy of the requirements determining the duration of Australia's anti-dumping measures is highly questionable". As a result of these concerns, the Commission has proposed that the extension of anti-dumping measures beyond the initial five-year application period should be limited to one further three-year extension.

Following the expiration of the total eight-year life of the measures, the Australian industry is to be barred from re-applying for measures for a two-year period.

Penrice is concerned that the proposed introduction of blanket approaches to the life of anti-dumping measures does not sufficiently take account of the particular circumstances appropriate to the imposition of the measures. The extension (or continuation) of anti-dumping measures should be considered based upon the individual factors appropriate to each application. The five-year application period is endorsed by the WTO Anti-Dumping Agreement, which also does not place limits on the extension of measures.

Penrice, therefore, does not support the Commission's proposals to limit measures to a maximum five years, or the prohibition on application of measures following expiry of the measures.

4. Other matters

The Commission has proposed the abolition of the current review of variable factors process and administrative reviews. Penrice supports the introduction of 12-monthly revisions of each of the variable factors by Customs and Border Protection as ensuring the effectiveness of the measures in place. Penrice is opposed to the abolition of the administrative review process as this will contribute to a reduction in the effectiveness of interim duties imposed.

Penrice supports the Commission's position in the retention of each of the present roles of the Minister, Customs and Border Protection and the Trade Measures Review Officer ("TMRO"). Penrice also welcomes the Commission's proposal to extend the reviewable decisions provisions to include decisions in respect of continuation inquiries.

The above comments represent a brief outline of Penrice's major concerns with the Commission's draft report on Australia's Anti-Dumping System.

Yours sincerely

A Kuhndt
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