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**SULO**

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Mr Philip Weickhardt  
Commissioner  
Productivity Commission  
GPO Box 1428  
CANBERRA CITY ACT 2601

Dear Mr Philip Weickhardt

**RE: COMMENTS ON DRAFT REPORT ON AUSTRALIA'S ANTI-DUMPING SUBMISSION**

I refer to the Productivity Commission's Draft Report on Australia's Anti-Dumping System released in September 2009. Sulo MGB (Australia) Pty Ltd ("SULO") provided a submission to the Productivity Commission ("the Commission") in June 2009 in response to the *Issues Paper* released for discussion.

The Commission's draft report has proposed changes to Australia's Anti-Dumping System that SULO considers will substantially diminish access to measures by Australian industry. SULO similarly views the Commission's priority recommendations as means by which the effectiveness of the System will be diluted.

SULO provides the following comments in relation to the key recommendations.

- Draft Recommendation 6.1 – Bounded Public Interest Test

SULO reiterates its position in support of the Minister's current discretionary role to impose anti-dumping measures as sufficient means by which the broader community interest can be considered. The Commission's proposal, which encompasses general guidance mechanisms and a range of directives (six identified), are non-prescriptive, requiring further subjective assessment.

SULO notes that the community interest is examined in a minority of cases in Canada and the European Union. The Commission's proposed public interest test will be raised by exporters and/or importers in the majority of investigations (if not all investigations) to explore every opportunity for the non-imposition of measures. The proposal will further extend the uncertainty associated with an outcome.

SULO is also concerned that the Commission's proposal will detract from the importance of the key factors required to be established in an investigation, and provide exporters/importers with a further opportunity to evade anti-dumping measures. SULO maintains its support for the Minister's discretionary role in applying anti-dumping measures – a role which presently enables the Minister to consider whether the imposition of measures is in the public interest.

- Draft Recommendation 7.3 – Provisional measures

In addressing the concerns of Australian industry, the Commission has proposed provisional measures be imposed “no later than day 110 in an investigation”. SULO does not view this proposal as altering current practice and is disappointed that the Commission did not recommend the imposition of measures “as early as practicable” from Day 60 in an investigation.

- Draft Recommendation 7.4 – Extension of measures limited to one three-year term

SULO does not consider that Australian industry should be denied access to remedial measures when it is established that a future threat from dumping is evident. Each application should be examined on a case-by-case basis taking into account the specific circumstances of the particular industry.

The Commission’s proposal that a two-year freeze on reapplications for new measures is also not supported as this will deny industries access to measures to address trade distortion threatened by dumping and material injury.

- Draft Recommendation 7.5 – Termination of current review of measures process

The Commission’s recommended abolition of reviews to be replaced with annual revisions undertaken by Customs and Border Protection could result in anti-dumping measures achieving currency over the life of the measures. SULO considers, however, that the self-assessment proposal is problematic as exporters and importers will (naturally) seek to minimize interim duty payments.

SULO also envisages considerable difficulty in achieving agreement on appropriate “adjustment mechanisms” for Australian industry and exporters.

- Draft Recommendation 7.6 – Administrative reviews

SULO is opposed to the Commission’s proposed abolition of the administrative review process. Administrative reviews are key means by which the effectiveness of anti-dumping measures is achievable. Suggested adjustments at time of importation cannot be effected where the measure is triggered by the Australian industry’s unsuppressed selling price.

SULO supports the present administrative review process where Customs and Border Protection examines consignments on a shipment-by-shipment basis over the administrative review period to assess whether the appropriate interim duty has been paid.

- Draft Recommendation 8.1 – Administration of System

SULO welcomes the Commission’s recommendation for the Minister, Customs and Border Protection and the Trade Measures Review Officer (“TMRO”) to each maintain their respective current roles.

- Draft Recommendation 8.2 – Changes to current appeal arrangements

SULO is supportive of the proposal to include decisions on the continuation of measures as reviewable decisions by the TMRO. SULO is concerned by the Commission’s proposal that when

the TMRO finds in favour of an appeal against a decision by the Minister that the Minister should not refer the matter back to Customs and Border Protection for reinvestigation. SULO considers the Minister will need to access Customs and Border Protection advice to assess the overall circumstances of recommendations received.

- Draft Recommendation 8.3 – Extension of inquiry timeframes

SULO considers current procedures limiting the extension of timeframes to only be granted prior to the issuance of the Statement of Essential Facts as adequate. SULO does not support extending timeframes to any stage of the investigation process.

- Draft Recommendation 8.4 – 30 day time limit on Minister

SULO supports the imposition of a 30-day timeframe on the Minister to decide upon recommendations from Customs and Border Protection and/or the TMRO as enhancing the timeliness of the decision-making process.

- Draft Recommendation 8.5 – Adequate resources

The Commission's proposal to ensure Customs and Border Protection and the TMRO are adequately resourced to perform their respective responsibilities within the Anti-Dumping System is considered essential to effective decision-making.

- Remaining key concerns

SULO provides the following comments on certain other proposals contained in the Draft Report:

- The publication of information about applications for products which have not been initiated will have a likely deleterious impact on the applicant industry;
- Customs and Border Protection is to be encouraged to seek feedback from interested parties on the impact of anti-dumping measures imposed (in the absence of a public interest test); and
- The recommendation to have the Australian Law Reform Commission examine proposed changes to the legislation of the Australian Bureau of Statistics to release import information where alternative sourced data is publicly available is supported.

SULO anticipates the preceding comments will assist the Commission in assessing feedback to its proposals contained in the Draft Report on Australia's Anti-Dumping System.

If you have any questions concerning this submission, please do not hesitate to contact me.

Yours sincerely  
**SULO MGB Australia Pty Ltd**

Michael R Huston  
**MANAGING DIRECTOR**