



Productivity Commission
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November 9, 2009

Attention: Jill IRVINE

**Australia's Anti-dumping and Countervailing System
– Productivity Commission Draft Inquiry Report**

Thank you for the opportunity to make a written submission on this Draft Report. In this submission we address what we see to be the two critical recommendations (6.1 and 7.4) in addition to several of the administrative recommendations (8.2, 8.4, 8.5 and 8.10).

The balance of the recommendations has either been adequately addressed via the submissions of our industry association (Trade Remedies Task Force) or in the case of recommendation 7.1 are not applicable to ourselves.

SCA and its employees take very seriously the nature and impact of anti-dumping on our Australian industry. Our intent has and will always be focussed on creating fair trading conditions in the Australian market in which we operate.

DRAFT RECOMMENDATION 6.1

The imposition and continuation of anti-dumping and countervailing measures should be subject to a 'bounded' public interest test.

Our view is that this Recommendation should be rejected in its entirety.

The implementation of such a Public Interest Test (PIT) into legislation or regulations would allow any and all exporters of product to object to any decision for the implementation of anti-dumping and countervailing measures on their capability to mount a successful lobbying campaign on a "lessening of competition" basis even though prima facie dumping is occurring.

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Whilst the professionalism and dedication of the Australian Customs and Border Protection Services (Customs) personnel is not questioned, the proposal in the Productivity Commission Report (PCR) would appear to allow for a non-objective approach to be taken when applying some or all of the PIT provisions as laid out in the PCR.

Specifically, in applying such a PIT what would define "...significantly reduce competition..." and/or a "...comparable price...", or in regard to the exporter and their supply costs, what defines "...a reasonable profit..."?

Furthermore, the proposed 'bounded' PIT (which would not allow an industry with less than 20% market share to apply for anti-dumping measures) would appear to be an arbitrary and unworkable %. This could possibly lead to industry's at or below this level discontinuing operations restricting for example Australia's research & development capacity and capabilities in leading edge technologies.

As there is an existing mechanism for intervention via the Minister in regard to the public interest, we see no reason for any additional criteria.

DRAFT RECOMMENDATION 7.4

There should be no change to the current five-year default term for anti-dumping and countervailing measures.

However, extensions of anti-dumping and countervailing measures, following a continuation review, should be limited to one three-year term. Following expiry of a measure, there should also be a two-year freeze on reapplications for new measures.

Australia's current methodology requires the completion of a continuation (or sunset) inquiry prior to the end of the five-year period. It is our view that each continuation application should be considered on its merits.

If the factors remain in play that resulted in the measures being applied initially and for any extended period (including but not limited to export subsidies) they should be allowed to continue.

Preventing access to these measures post a nominal 8-year period is counter-productive and appears to be at odds with the World Trade Organisation (WTO) principles and the very basis that anti-dumping measures are imposed, which is to ensure a level playing field from which one can compete.

The implementation of a freeze for a further two-year period seems to imply a belief that a company or industry should have had a 'fair-go' by then and post this time exporters are given a two-year free kick to enter and possibly destroy markets, companies and the employment, skills sets and overall economic benefits that those companies provide to the Australian economy.

Under the existing provisions, interested parties have access to review and revocation provisions throughout the life of the measures and can challenge whether grounds exist for the measures to remain in place.

Consequently, we see no reason for any alteration to the existing periods and continuation inquiry review provisions.

DRAFT RECOMMENDATION 8.2

The following changes should be made to the current appeals arrangements.

- ***Where the Trade Measures Review Officer finds in favour of an appeal against a decision made by the Minister, the Minister should make a final determination without returning the case to the Australian Customs and Border Protection Service for reinvestigation.***
- ***Decisions to continue anti-dumping or countervailing measures beyond the initial five-year term should be appealable.***

In regard to the first bullet point our experience is that the implementation of this part of the recommendation would certainly speed up the post Trade Measures Review Officer (TMRO) process. This of course would also reduce the amount of resource necessary to be expended by the interested parties, none-the-less being Customs, on a particular anti-dumping case when a TMRO requirement has been identified and implemented.

That being said, by implementing this change the Minister would become the Appeal Court to their Judge stage of the anti-dumping matter. However, with appropriate, objective administrative guides or measures that are to be used at this point (and which are transparent to the interested parties) it is a workable recommendation.

The second bullet point of the recommendation is seen to be unnecessary. This is based on our understanding that a Minister can undertake a review at any time with the ability for a new exporter to access an accelerated review after publication of an original notice.

DRAFT RECOMMENDATION 8.4

Decisions by the Minister in response to advice from the Australian Customs and Border Protection Service, or from the Trade Measures Review Officer, should be subject to a 30-day time limit.

We support this recommendation which is in line with common business practice. However, we also understand the workload volumes and time pressures that a Minister of the Crown is faced with.

Possibly a 45-day time period would be more appropriate.

DRAFT RECOMMENDATION 8.10

As part of its current review into the laws and practices relating to the protection of Commonwealth information, the Australian Law Reform Commission should give consideration to proposing a change to the legislation governing the operation of the Australian Bureau of Statistics to preclude the suppression of import data when the same or similar information can be publicly accessed from the export statistics of other countries.

As a party to an existing anti-dumping matter and one who regularly reviews import data statistics from the Australian Bureau of Statistics (ABS) we support the implementation of this recommendation.

However, the challenge with this recommendation is how to actually achieve greater transparency of data without sacrificing commercial-in-confidence information.

As such we would support and be available for consultation and discussion with the Australian Law Reform Commission (ALRC) and the ABS to map a path forward on the recommendation.

IN SUMMARY

Public Interest Test

1. The implementation of a PIT would allow any and all exporters of product to object to any decision for the imposition of anti-dumping and countervailing measures using the thin veneer of a campaign based on a "lessening of competition" even though prima facie dumping is occurring.
2. The proposed 'bounded' PIT appears to be an arbitrary and unworkable approach.
3. There already exists a mechanism for intervention via the Minister in regard to the public interest.

Anti-dumping Default Periods

1. A nominal 8-year maximum period is at odds with the WTO principles.
2. The implementation of a freeze of activity for a further two-year period is an unfair restraint on an industry or company under siege from these exporters.

Administrative Matters

1. There exists reasonable capacity to improve administrative systems related to anti-dumping.
2. The availability and transparency of information from the ABS can be improved.

Yours sincerely
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