

**Submission to the Productivity Commission's Draft Report
on the Antidumping and Countervailing System
of 10 September 2009**

I apologise for the lateness of this brief submission, which was promised to the Commission many weeks ago. My excuse for lateness is that I have been constantly involved for more than 60 hours per week in a major dumping and subsidy case and have to allocate resources primarily to the major task of winning the case.

Another reason for not making a submission was that on the evidence to date was that the Commission had already made up its mind and would not be persuaded to change from its draft recommendations by even the most robust and evidence-rich of arguments.

I have spent more than 30 years preparing and running antidumping and subsidy cases, both as an industry executive and later as a consultant and have more years of experience in conducting antidumping cases than any other person submitting to this Inquiry¹.

I have not lost a case (so far) in all that time. I attribute this success to an insistence that Applications are robust, evidence-rich and sufficiently strong to withstand all review processes and court cases. They also must have regard to the political realities of the day².

From this background I make the following observations:

- ❖ **Dumping is economically rational in most cases.** Manufacturers seeking to fill excess factory capacity (especially newly-installed capacity) can do so at prices reflecting "marginal cost plus a margin" as long as they don't damage the local pricing structure. The WTO Antidumping Agreement provides for injured manufacturers in target countries to seek remedies.
- ❖ **Australia is an ideal dumping ground.** Australia is remote, with low tariff barriers and relaxed Customs entry processes compared with other OECD countries. Dumped product is often protected from market retaliation by high tariffs and tough Customs entry processes in the dumpers' own country, for example Malaysia and the Peoples' Republic of China.
- ❖ **Dumping is Universal.** Almost all manufactured products are exported at prices that include some dumping and subsidy effects. This is the nature of International Trade. Few, if any academics or Government agencies are able to gather evidence of this but it can be proven.
- ❖ **Subsidies are Unfair as a means of supporting exports.** Most subsidies have the effect of using taxpayer funds to selectively support industries that cannot otherwise fend for themselves. Most subsidies are politically motivated, poorly allocated and should be condemned if used to support unfair exports that hurt industries in target countries.
- ❖ **Exports are Exalted, even dumped product.** Governments, economists, industry executives, economic commentators and politicians normally see exports as very positive, without considering the Australian public interest or the question as to the amount of dumping and subsidies involved. The Holden Monaro/Pontiac GTO is a good example³, as may be a current proposal to sell GMH cars to the USA.

¹ Also deeply involved in IAC, TAA, TPC, ADA, TMRO and ACC cases over a span of 30+ years.

² As demonstrated in a fluorescent lamps case involving The Philippines.

³ In 2004, Australians paid about \$58,500 for a Holden Monaro while U.S. buyers paid about US\$30,000 for the car, converted to Left-hand drive, with more options, rebadged as a Pontiac GTO. This export was hailed by Australian politicians, policy-makers and Agencies as a triumph, without any consideration of possible dumping and subsidy effects or a "public interest".

- ❖ **Antidumping actions are Unfairly Attacked.** There has been for decades an unhealthy and unsubstantiated disdain for the antidumping process within agencies such as the IAC, ADA, PC and most disturbingly the ACCC, who should be best-equipped of any agency to recognise and fight predatory behaviour. Few, if any officers, commissioners or consultants to these agencies have *any* detailed knowledge of, or experience with the detailed antidumping process have little or no understanding of the importance to Customs of presenting hard evidence in order to initiate and win a case. Few if any have any senior-level manufacturing industry international trade experience. So policy and conclusions are developed on a “rubbery” base.
- ❖ **Customs is the best Agency to handle dumping complaints.** Customs is disciplined in its processes, focuses on hard evidence as opposed to unsupported assertions and has a straightforward robust and tested operational method.
- ❖ **Customs needs more Forensic, Trade and Legal Resources.** Customs is currently seriously under-resourced to deal with large complex cases, especially those involving imports from the Peoples’ Republic of China involving hundreds of exporters. Investigators have particular difficulties in gathering company information in China (there is no ASIC equivalent and most companies are able to avoid public scrutiny), as well as establishing the linkages between PRC and related entities in offshore jurisdictions⁴. Customs needs project-specific access to independent industry specialists, with hands-on knowledge of manufacturing globally-traded goods, highly experienced forensic accountants and experienced business analysts.
- ❖ **A new “Public Interest” Test will not work.** Customs currently addresses the public interest in applying the “lesser duty” rule on a case-by-case basis having regard to the evidence gathered during its investigation. There is no benefit and only extra time and cost involved for Australian taxpayers in adding a superfluous layer. Importantly, there appears to have been little support for the proposal from Manufacturers, Exporters, Foreign Governments or DFAT with main support coming from Biased Agencies, Academics, Lawyers, Consultants and Importers, particularly the Australian Steel Association. It appears that those parties supporting the idea of a public interest test see:
 - Potential for work at attractive hourly rates (economists and academics who currently supply services to ACCC, PC, etc.), and/or
 - Potential to frighten aggrieved manufacturers away from initiating cases (in the case of importers currently benefiting from dumped imports, or agencies biased against antidumping and subsidy remedies).
- ❖ **Customs’ antidumping process is not “Arcane”.** The Australian antidumping and subsidy process is not arcane or secretive. It is straightforward process involving gathering detailed evidence at an industry and firm level. Generalised, industry summaries and high-level industry research reports such as those used in ACCC processes are often too vague and out of date to be useful in an antidumping case that requires hard evidence to succeed. There is little scope for academic theorists or ‘big picture’ wafflers in this environment. It’s just hard grind gathering and presenting hard evidence. Key skills required are Forensic Accounting, International Marketing and Market Research, Cost Accounting and deep experience in detailed, line-by-line Cost/ Volume modelling of production facilities at an individual firm level. The legal side is simple, so there is limited scope for lawyers, who lack the skills to prepare and run cases economically.
- ❖ **Customs’ current process is very open and transparent.** Antidumping case Public Record documents provide a rich source of competitor and industry information and should more than satisfy the PC and ACCC calls for transparency. Further, there is nothing to prevent interested parties from making a Public File submission in any case. If an agency such as the ACCC, or a consultant, or academic wishes to make a point in any Australian dumping investigation, it is allowed. However, Customs is most likely to discount claims or assertions that are not backed up by evidence.
- ❖ **It would have been useful for the PC to review a case in detail.** We offered the PC an opportunity to review in-depth a large case currently in progress, to provide insight into the amount

⁴ Refer, for example http://legalref.judiciary.gov.hk/lrs/common/ju/ju_body.jsp?DIS=67324&AH=&QS=&FN=&currpage=T

of evidence needed to progress a case, as well as evidence of the pre-initiation processes. This offer was not taken up. I see it as fundamental to a successful review that the PC dig deeply into the process, rather than rely mainly on public submissions and inter-agency reviews.

I sincerely believe that the current antidumping and countervailing processes are satisfactory and that the main problem is Customs' lack of access to the specialist resources needed to fully conduct investigations within the set timeframe. This is especially the case with complex dumping and subsidy cases involving products from the Peoples' Republic of China.

Thank you for the opportunity to present this paper.

John Heslop