

30 July 2010  
National Manager Trade Measures  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

Dear Sir/Madam,

**Re: Comment on the Productivity Commission Inquiry Report No. 48 into to Australia's Anti-dumping and Countervailing System.**

Thank you for the opportunity to make written comments on the Inquiry Report No. 48 into to Australia's Anti-dumping and Countervailing System prepared by the Productivity Commission.

**1. OUR GENERAL POSITION**

From our perspective, the basic underlying reason for the existence of antidumping and countervailing provisions is to provide a level playing field and to redress the short and long term effects of subsidies and predatory and anti-competitive behaviour in addition to the short-to-medium term effects of surplus product dumping in times of industry over-capacity.

The WTO agreement prevents these acts from being specifically prohibited by law as they would be if they took place between two Australian companies and prevents civil action for damages by injured companies.

It is important to all of Australian manufacturing industry that the meagre provisions of Australia's WTO compliant anti-dumping and countervailing system are not further watered down as they already provide much less protection and right of redress than would be the case if the same anti-competitive acts took place between two Australian companies.

We endorse the more comprehensive response provided by our industry association, A3P, on behalf of ourselves and other pulp and paper industry members and wish to add the following comments which represent our particular issues of interest:

**2. AUSTRALIAN PAPER'S INTEREST IN THE ANTI-DUMPING & COUNTERVAILING SYSTEM**

Australian Paper manufactures both uncoated printing and writing papers (including copy paper, envelope paper, scholastic paper, printing paper and specialty papers) and packaging & industrial papers from predominantly Australian materials. Outside of mining and agriculture, it is one of Australia's few major regionally based industries.

In printing and writing papers, major import competition in the Australian market comes from non-Japan Asian manufacturers which operate in an environment found recently by the US ITC to involve heavy subsidisation and to be exporting at prices well below those in their domestic market.

In short, the competitive environment is far from a level playing field. Our only available defence against this is an anti-dumping & countervailing system which, although much improved from the days when two separate bodies were responsible for its administration, remains difficult and high cost, with large delays, both in the time necessary to collect evidence and prepare applications and in the time from application to relief from injury.

### **3. THE 'PUBLIC INTEREST' TEST**

The recommendations of the report will not “preserve” the effectiveness of the antidumping & countervailing system. Rather, the proposed changes are designed to limit access to the system by the introduction of a “public interest” provision which it is argued is based upon the EU test. In practice the EU test is rarely used and often fails where the local industry accounts for a greater volume in sales than imports the subject of the application. Entry of Asian-manufactured paper into the European market faces many hurdles other than an anti-dumping system.

The proposed public interest test is designed to restrict imposition of measures where it can be demonstrated there is a lessening of competition. Every affected exporter and importer will argue a “lessening” of competition.

Where an industry does not account for a major share of the local market, it will be denied access to the measures. By contrast, if an industry holds a significant proportion of the market, it will also be denied measures as it will be argued that “there will be a lessening of competition”.

For any applicant industry that overcomes either restriction, it must also be a globally efficient producer, as measures will also not be imposed if:

- The export price of the allegedly dumped goods recovers all costs (however defined) and some contribution to profit; or
- The resulting non-dumped price (after imposition of measures) is significantly below the Australian industry’s cost-to-make-and-sell.

In the Australian market, which is not a large scale market for many manufactured goods, achieving the status of a globally efficient producer is difficult if not impossible and denying access to measures for an industry which does not account for a significant share of the local market would effectively prevent Australian manufacturing moving to compete with imported product from manufacturers in countries with subsidy regimes or where exports to Australia were a small portion of their total sales and could therefore be dumped, either to gain market share or to defend their share against a new domestic competitor.

We would regard the situation as having parallels between non-chain greengrocers in a town facing competition from a national supermarket chain which has decided to pitch its local prices lower than in its other operations to seize market share. In the short term, it could be said that the lower prices are in the local community’s public interest, but there is no doubt that in the long term, with no locally based competition, prices would rise. This situation is subject to redress by rapid and decisive action, while the situation of Australia’s manufacturing industry, with its essentially small local customer base in the face of competition from massive manufacturers elsewhere is not subject to the same level of redress, with introduction of a ‘public interest’ test further weakening the position.

The action of a ‘public interest test in relation to a countervailing action is also worrisome, as it has potential to allow the politics of expediency to prevail.

### **3. LIFE OF MEASURES**

For anti-dumping measures in place, the report has recommended a maximum eight-year life. Applicant industries will be denied from re-applying for measures against that source country for two years.

While there may seem to be some merit in this in relation to traditional short-to-medium term dumping of surplus product in times of international over capacity in an industry, it is not appropriate to redress predatory actions by aggressively growing industries, particularly those of non-Japan Asia.

The limit to extensions is problematic. In the case of countervailing actions, subsidies such as those found by the US ITC to prevail in China and Indonesia do not just go away or cease delivering an unfair competitive advantage after 5 or 8 years. Similarly, a policy of forced entry to and dominance of a particular market, or even variable cost recovery disposal of product surplus to the home market is not abandoned despite being controlled for a period of years. 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.

#### **4. AUTOMATIC REVIEW OF MEASURES**

The draft report suggests that an automatic review of measures takes place, but does not detail the proposed criteria for review.

We see merit in an automatic review of measures based on major external factors having changed significantly, for example currency realignments, general world market price realignments. This has potential for providing improved outcomes in a world of changing economic circumstances and exchange rates and should replace the present system of application for reassessment within the 5 year period of the measures, rather than adding another mechanism of review.

Prices, volumes and market shares in the period for which measures are imposed would not be appropriate to use in triggering such a review as they do not reflect those which would apply if the measures did not exist.

The 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.

#### **4. OTHER ISSUES**

One of the largest issues Australian manufacturing industry has in identifying and actioning unfair international competition is access to sufficiently detailed import statistics.

Suppression of country of origin information in Customs/ABS import statistics is common in tariff codes affecting the pulp and paper industry.

The problem is deeper than just country of origin volumes and prices. Even when import data for an individual tariff code and country of origin is available, there may be several suppliers of a good, or one tariff code may contain several distinct goods at quite distinct prices, some dumped or subsidised. 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.

The only way this can be resolved is by full disclosure of individual import shipments as takes place in the US system.

The concealment of detailed trade data cannot be in the interests of Australian manufacturing industry and is a major impediment to industry identifying unfair international competition in all of its forms.

#### **5. SUMMING UP**

**The changes which have been proposed in the report will substantially weaken and reduce access to anti-dumping measures.** Australian industry will be denied access to relief from measures which are available to competitors in other countries to address unfair and predatory trading practices.

As outcomes from the Inquiry:

- The “public interest” test would be detrimental to the operation of the anti-dumping & countervailing system, opening the door for undue political influence and weakening defence against unfair and/or predatory competition from overseas manufacturers. We cannot support introduction of a “public interest” test
- Since threats do not necessarily evaporate in the years following imposition of measures, we cannot support any artificial restriction on life of measures.
- We support automatic review of measures if this wholly replaces the present ability of the parties to apply for review of measures and where the automatic review is triggered by and limited to consideration of external influences on the non-injurious price, such as currency realignments or global market price realignments. We could not support a system of automatic review co-existing with the present system of application for review.
- The common practice of accepting undertakings from exporters rather than imposing measures should be discontinued as it is incompatible with automatic review.
- Import statistics need a much higher level of transparency as exists in some other jurisdictions. Ideally, detailed transaction-by-transaction or shipment-by-shipment information should be available to allow discrimination between different manufacturers in an exporting country and different goods which are classified under the same tariff code. At a minimum, the practice of suppressing country and port of origin and port of destination at the request of exporting or importing parties should be discontinued.

The meagre antidumping and countervailing provisions are all which are available to Australian industry to support the semblance of a level playing field and to redress subsidies and predatory and anti-competitive behaviour by off-shore competition. These provisions, far less than those which would apply if the same anti-competitive acts took place between two Australian companies, must not be further diluted.

Thank you for the opportunity to make written comments on the report.

Yours sincerely

JH