POLYPACIFIC PTY LTD

(ABN 44 005 728 709) AND

TOWNSEND CHEMICALS PTY LTD

(ABN 26 005 074 073)

SUBMISSION TO THE AUSTRALIAN PRODUCTIVITY COMMISSION PUBLIC INQUIRY INTO AUSTRALIA'S ANTI-DUMPING AND COUNTERVAILING SYSTEM

PolyPacific Pty Ltd (PolyPacific) is an Australian based manufacturing company being a 50/50 Joint Venture between Mirlex Pty Ltd (a 100% Australian owned company) and LyondellBasell Holdings Pty Ltd, a company registered in the Netherlands. PolyPacific was incorporated in 1980 and is a manufacturer of a comprehensive range of polyolefin compounds. In Australia its head office is located in Dandenong, Victoria where it has its manufacturing, technical, sales and marketing, warehousing and distribution and administration facilities.

PolyPacific products are sold to the injection moulding, extrusion and film industries for use in the automotive, whitegoods, appliance, housewares, packaging, building and general industrial sectors. PolyPacific supply both domestic and export markets.

The Company's technology and intellectual property has been almost exclusively developed in-house and there is very little reliance on external technology.

PolyPacific is a major consumer of Australian produced polypropylene resin as well as other Australian made raw materials.

In 1994 PolyPacific Polymers Sdn Bhd (a fully owned subsidiary of PolyPacific) was incorporated in Malaysia where it operates a similar manufacturing facility. It is located within the Greater Kuala Lumpur area.

Townsend Chemicals Pty Ltd (Townsend) is a 100% wholly Australian owned subsidiary of Mirlex Pty Ltd. Townsend was incorporated in Australia in 1974 and is an Australian manufacturer of polymeric plasticizers, polyester polyols, thermoplastic polyurethanes and polyurethane adducts. The head office is located in Dandenong Victoria where it has its manufacturing, technical, sales and marketing, warehousing and distribution and administration facilities.

Townsend's products are sold to the injection moulding, extrusion, compounding, paint and adhesives industries, for use in a wide range of manufactured products including - adhesives, mining, surface coatings, footwear, industrial belting, livestock, flexible foams as well as a multitude of general moulding applications. Townsend supply both domestic and export markets. Townsend's technology has been developed in-house.

Over the past 30 years we have participated in Tariff related inquiries, IAC inquiries, TCO inquiries and now an Anti-Dumping inquiry. This demonstrates long held beliefs that a level playing field along with transparent and user friendly processes are essential if Australian manufacturers, those who actually make goods, should be protected by laws and measures that mean something.

Townsend and PolyPacific are on record as being a supporter of low and uniform tariffs for imported goods into Australia. We have always argued the case for a low tariff regime because for many reasons we fundamentally don't believe in high tariff protection. As an example, reference our participation in the 1984 Industries Assistance Commission Inquiry into the Plastics and Chemicals Industries where we argued for an across the board lowering of tariffs on all plastics and chemicals. Note that this also included a lowering of tariffs for products we produced in Australia thus arguing the case for low tariff protection for the products we made. Importantly, we also argued that for Australian manufacturing to be able to exist in a low tariff environment, it was imperative that a robust anti-dumping regime be in place to defend against unfair international trade practices. We think anything other than a level playing field for Australian manufacturing is prejudicing the ongoing health of Australian manufacturing. However, in order for this to occur we believe there must be in place a reformed anti dumping system which is effective, practical and accessible, all things that in our opinion do not currently exist. Based on our own experience in taking an anti-dumping action in 2002, we will argue that the system we encountered was neither effective, practical or affordable and as a consequence the system requires a significant adjustment so as to allow Australian manufacturing industries but in particular, SMEs greater accessibility to the process and the system.

Townsend and PolyPacific are manufacturers. We are not experts in International Trade Law, in WTO Law or Anti-Dumping Legislation and Tariff Law. Whilst we agree in the principal that "God helps those who help themselves", these four examples of legislation that heavily impact the viability of SMEs and even larger enterprises should be if at all possible simplified to the point that the interests of local manufacturers that don't have the luxury of a legal department are taken into consideration.

Following a 6 month long period of preparation, on September 1, 2002, Townsend lodged with the Australian Customs Service an Application for Dumping Duties on imports of Thermoplastic Polyurethanes from Germany, Italy and the USA. The ACS published an ACDN on September 26, 2002. Following our application and ACDN publication there was an Issues Paper published by the ACS followed later by a Statement of Essential Facts (SEF) then finally on 9/04/03 the Trade Measures Report (TMR) which terminated the investigation. Townsend sought a review of the investigation through the Trade Measures Review Officer (TMRO) and the TMRO report upholding the decision made by the ACS to terminate was published on 25/08/03. Considering the six months of preparation of our submission, the process to this point had taken 18 months.

We want to make a key point here regarding the cost of submissions. We have estimated the cost of our submission including the use of consultants to assist in its preparation and their presence during ACS visits, the cost of airfares in making trips to Canberra to provide submissions and to provide evidence in support of submissions, the cost of company resources and personnel in preparation of submissions etc at $200,000 plus. We went into the process expecting a positive result. We went into the process fully understanding and expecting it would cost a lot in dollars and resources but we went in committed to the process, committed to presenting a full and comprehensive case, not taking half measures - of doing the job properly, honestly and thoroughly. This cost and imposition on resources is an enormous burden for any SME.

As mentioned earlier, following the termination report Townsend sought a review of the ACS investigation by the TMRO. In our case at that time we had grave reservations regarding the genuine independence of the TMRO. The officer was an ACS dumping branch member seconded from the ACS to an office in the Attorney Generals office. He had no investigative function and no new evidence could be submitted or considered. It was limited to a review of process and procedure only.

On receiving the negative TMRO report, we considered taking the only avenue left open to us to rectify what we considered to be an incorrect decision being the Federal Court. We took advice from a leading counsel in this arena at a cost of a further $10,000. We were advised that on opinion, a case could be taken to the Federal Court that would have a relatively high likelihood for success, however the cost of that action would be a minimum of $100,000 and possibly exceed $200,000. On that basis, having already expended as much as $200,000 plus to this point we decided that the system would in the final analysis be too hard to challenge as the onus would be heavily on us and it would be a legal argument rather than a practical commercial dispute. We elected to cut our losses and await an opportunity, such as this Productivity Commission Inquiry to present our case for change which we believe is sorely needed.

In preparing our anti dumping submission in 2002, we were told to expect exporters, as their first line of defense, to argue that Townsend did not have like goods to the Goods Under Consideration (GUC) - this we were told is a fairly standard strategy taken in dumping cases.

Much of the dumping investigation was in fact taken up by conjecture over like goods. The issues paper of December 11, 2002 and SEF of March 21, 2003 concluded Townsend did not produce like goods to the GUC.

We could never understand how the ACS investigators could possibly conclude that Townsend did not make like goods to the GUC. In fact in our opinion this view when put to anyone in the plastics industry would have been considered laughable.

At a point in time when we believe that the ACS had already decided to reject Townsend's application, we provided a report from an independent technical expert on the subject - Professor Brian Cherry of the Monash University Department of Materials Engineering. This report which fundamentally debunked the ACS position on like goods came too late. Had there been any desire within the ACS to rectify a serious wrong - that wrong being their continued failure to accept Townsend as having like goods to the GUC and that contention being a cornerstone argument for their rejection of our application, it would have been a considerable embarrassment to the ACS. Eventually the ACS reluctantly and begrudgingly acknowledged Townsend did make like goods to the GUC but they relegated the critical importance of this fact. How unfair and un-Australian was this.

Townsend are of the opinion that in cases such as ours, where technical arguments are critical in appraising the question of like goods that the investigators and decision makers, - predominately lawyers and accountants, - do not possess the technical expertise and rely on evidence from vested interests to arrive at a position. This process in our opinion is corruptible in more ways than one. Our suggestion to this Commission is that the ACS be obligated to seek out and consider independent technical advice and not rely on the evidence or information from parties that have a vested interest in the arguments - including the applicant.

Open debate between an independent technical expert with the applicant and other parties if necessary is a tool that could be employed for a better outcome.

We had situations in our particular case where exporters were arguing that their goods were developed specifically for their Australian customers applications, whereas the exporters own published data sheets for these GUC grades described their goods as "general purpose" listing multiple applications. Despite this being repeatedly pointed out to the investigation team, the ACS accepted the exporters and end users evidence and not the contradicting evidence provided by Townsend. We had three other customers/end users using Townsend grades for this same application yet the ACS refused to accept ours as like goods.

We believe that an exporter adopted a long term dumping strategy to secure a monopoly supply situation with a major end user in the Australian market and that had led to Townsend being fundamentally excluded from that business. We don't believe this relationship between a specific exporter and specific end user was properly investigated by the ACS. We identified the exporter to the ACS as being the lowest price seller of the GUC in the Australian market and to our absolute astonishment an ACS visit to the exporter or representative office in Australia was not undertaken by the ACS. We expressed a suspicion that the exporter and end user had established a relationship to prevent Townsend having fair access to the market - thus creating a monopoly situation. This was disregarded and not investigated by the ACS.

In our experience during the period of the Issues Paper and Statements of Essential Facts which also included several visits to Canberra offices of the ACS we were made to feel as if we were the ones being investigated. We sat in conference rooms with ACS personnel and ACS legal officers - often having WTO rules and Australian laws and legislation quoted to us which frankly was not our area of expertise and which we were unable to understand, challenge or question.

During the entire process of the investigation, we volunteered the names of all our customers and detailed information about our dealing with them. This was not a requirement of our application. Some of the exporters of the GUC and some of the users of the GUC however used strategies of being uncooperative in some cases and of being deliberately misleading in others.

During and following the period of investigation of our application for dumping duties a number of large multinational plastics and chemicals companies, some of whom were exporting their goods to Australia were being successfully prosecuted and heavily fined by regulatory authorities in Europe and the USA for being involved in anti-competitive behaviour for practices such as price fixing and cartel activities. Yet the ACS investigating team in our opinion was much more amenable to accepting evidence "per se" from large well known multinational plastics companies than they were from a small no name company in Dandenong.

The goods under consideration in Townsend's anti-dumping application were a range of specialty technical polymers. They were not large volume commodities such as eg. polyethylene, polypropylene or polyvinyl chloride. As such there is no published pricing data or intelligence eg. Platts, Icis-Lor etc available to establish international pricing and normal values. The goods could not be identified and segregated by Townsend from ABS import statistics because the Tariff Item Number under which they are imported is a "catch all". This fact made it difficult for Townsend to establish normal values. We had to rely on agencies such as Austrade and arms lengths contacts we had in the exporting countries to try to establish normal values. We believe that due to there not being readily accessible public pricing information and for other reasons such as the lack of technical knowledge and expertise of the ACS officers involved in the investigation they were duped by the exporters into accepting that normal values for the GUC were lower than what in reality they actually were. During the course of the reporting from the ACS it was never apparent to us, because there was an absence of detail on how the ACS came to this conclusion. We challenged the normal values established by the ACS which were completely at odds with the normal values that we had established.

For a manufacturer believing they are the victim of dumped competitive product how it handles the marketing strategy during the preparation and investigation period is a major dilemma.

In establishing injury a great emphasis was placed on the financial performance of the company by the ACS investigators. That in itself is not a problem. The problem lies in the over emphasis on the financial state of the business with quarterly updates required. We believe that when the ACS were adducing injury other performing sectors of Townsend's business were taken into account and the injury suffered in the sector of the business which was being injured by dumped imports was discounted.

Our submission whilst identifying several exporters we claimed as being involved in dumping and several exporters who were not in our opinion involved in dumping singled out one exporter in particular as of major concern. We identified them as having the lowest prices and largest volumes in the Australian market. We were shocked to find that the ACS investigation team did not visit this exporter or their Australian subsidiary offices due to them being uncooperative and the ACS used information from another exporter from the same country to establish normal value. This despite the fact that we presented evidence that the major exporters prices in Australia were the lowest of all market participants there was no allowance made by the ACS for establishing higher dumping margins against this exporter.

Townsend have never expected or been the recipient of a government subsidy. We have never expected excessive duty protection - having argued for and supported a low tariff regime for the past 30 years. What Townsend have expected is a trade regime which provides for and delivers protection against unfair practices such as dumping.

The current anti-dumping system in our view discriminates against small and medium manufacturing enterprises in Australia for a number of reasons - the high cost of participation, the lengthy process and the coming to terms with the bureaucracy of the system (not user friendly).

In an economy such as Australia - being a low tariff economy, - a very open economy, - an economy absorbing the increasing use of Free Trade Agreements, the overwhelming need is for an accessible, fast, affordable and sensitive to the need for Australian manufacturing to get a fair go system - a comprehensive reform of the anti-dumping process is in our view critical.

We apologise if by going into the details of a recent past experience of Townsend it is construed as a whinge or a detailed review of a bad experience. However, using our experience is our way of contributing to the Inquiry as in our opinion we ask the main question to be answered by the contributors which is, "in what way is the system flawed and how can improvements be made?"

The Commission has asked for reasons as to why the number of dumping cases has declined in recent years. We see cost as being an enormous deterrent for SMEs in pursuing an anti-dumping case. We see cost in no small way, enlarged by the compliance costs, as one major explanation why the number of applications for anti-dumping duties has declined in recent years in Australia. It is now in our opinion really only within the capacity of large companies or of industry groups to afford to initiate an anti-dumping case in Australia. Other reasons may be that there are fewer Australian manufacturers, many industries have disappeared from Australia. We believe most small and medium industries don't have the financial capacity, time or knowledge to take on a dumping case. From experience, our view is that most companies that might consider a dumping action would feel intimidated and overwhelmed by the process. We also believe that continuous multinational acquisitions of previously Australian owned enterprises and their use of product transferring may have influence in the reduction of cases - the no borders multinationals club.

The Commission has asked for comments on the question of whether there should be more emphasis on economy-wide impacts of dumping. Our view is that to introduce other factors and therefore potentially other interested parties into an investigation will only serve to further complicate and slow down an already protracted process. The dumping investigation should be limited to whether dumping is occurring and whether the dumping has caused injury to the local industry.

There are some other issues that we will take the opportunity to comment on.

We want to bring to the attention of the commission our concern that rules of origin requirements in Free Trade Agreements can be and as such are probably being abused by some exporters from countries that have free trade agreements with Australia. Our businesses compete in the Australian domestic market against imports from FTA countries. We are concerned that in some cases the majority of raw material content of products that we compete against are not produced in the FTA country of export, that the product exported does not comply with rules of origin, but the goods are being certified by the exporter as complying with rules of origin and as such are not subject to 5% import duty thus creating an unfair advantage for the exporter when being sold against Australian produced goods in the Australian market.

Our concern is that a statement of origin simply issued by an exporter is considered sufficient to authenticate its legitimacy as a qualifying product for duty exemption.

In fact the exported product could have been produced in the country of export from 100% imported raw material feedstocks in which case it would disqualify it from concessional entry.

Governments enact these FTA's. It is therefore incumbent on Governments to put in place processes that ensure that the rules applied in the FTA's are not abused to the direct detriment of Australian producers of competitive goods.

TCO System - This system allows for importers to apply for duty free importation of goods where there is no Australian manufacture of substitutable goods. Townsend Chemicals and PolyPacific support the need and purpose of the TCO system. However, it is our view that the system is misused and abused to such a wide extent by importers that it can fundamentally be argued that in many situations it has become a means of dumping by default. A comprehensive review of current TCO's would uncover a very large amount of goods that are being imported into Australia duty free when clearly there are industries currently producing these goods or producers capable of producing substitutable goods in Australia. In our opinion what is happening could be described as a systematic and surreptitious dismantling of the Australian Tariff System.

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