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Australia's Anti-Dumping System
Productivity Commission
GPO Box 1428
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Dear Sir/Madam

Comment on the Productivity Commission's Draft Inquiry Report in Relation to its Inquiry into Australia's Anti-Dumping System

Thank you for the opportunity to make written comments on the draft inquiry report in relation to the Productivity Commission's Inquiry into Australia's anti-dumping and countervailing system.

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 subsidies and predatory and anti-competitive behaviour.

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 and 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 and industrial papers from predominantly Australian materials.

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 defence against this is an anti-dumping and 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.

3. The 'Public Interest' Test

The recommendations of the Draft Report will not "preserve" the effectiveness of the antidumping and 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.

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 more than 20% 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 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 more than 20% 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.

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 draft 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.

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 and/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 pup 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 draft report will substantially 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 trading practices.

As outcomes from the Inquiry:

- The "public interest" test would be detrimental to the operation of the anti-dumping and 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 draft report.

Yours sincerely

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Chief Executive Officer, Australian Paper