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Presiding Commissioner
Productivity Commission
GPO Box 1428
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BRADKEN LIMITED COMMENT ON THE PRODUCTIVITY COMMISSION'S DRAFT REPORT ON AUSTRALIA'S ANTI-DUMPING AND COUNTERVAILING SYSTEM

Executive Summary

Bradken has been involved as an applicant in one antidumping action and one continuation action during the last five years and is therefore positioned to provide the Commission with first-hand experience from an affected manufacturer's perspective.

Bradken was very satisfied with Customs' professionalism, dedication and focus on gathering factual evidence. Our case was completed within the set timeframe.

However, this case was reasonably straightforward, with one product, one importer causing the injury and a small number of companies injured. Bradken was able to meet Customs' evidence requirements and the company's global market intelligence system was an inherent part of normal business practice.
Bradken considers that quotation and sale of dumped and/or subsidised products represents predatory pricing for which swift and effective trade remedies should be available.

Bradken supports the proposal to maintain the process within Customs and recommends that the investigation teams are well-resourced with personnel and expertise commensurate with the case under review, with access to:-

1. Industry specific experts, capable of readily understanding the nuances of the industry under consideration,

2. Industry-seasoned personnel with a track record of success in forensic accounting, legal and international marketing, and

3. Country-specific skills, including access to Austrade resources.

Bradken is concerned that a public enquiry and public interest test will be wasteful, costly and likely to dissuade injured manufacturers from seeking unfair trade redress. This is particularly the case where Public Inquiry participants are more skilled in presenting broad philosophical, econometric or theoretical arguments rather than focussing on the hard evidence upon which Customs relies.

Bradken's Experience with the Australian Antidumping Process

The Grinding Mill Liners Case

In 2002 Bradken and one other Australian manufacturer applied to Customs for urgent antidumping duties in response to material injury caused by an international competitor quoting like goods in a series of "reverse tender auctions" in which product was quoted with very high dumping margins.

The product was being quoted by a global competitor with a higher average cost structure than the Australian companies from a country in which the prevailing domestic price for like goods was higher than the Australian equivalent.

The bid was made at prices estimated to recover a margin above marginal cost but well below the "fully absorbed cost to make and sell plus profit" and well below the prevailing market price in the home market.
In this case the injury inflicted was swift, material and relatively easy for Customs to establish.

The Australian industry participants in their application presented comprehensive evidence to Customs, including factory economic modelling showing the marginal and average costs of the overseas competitor and the Australian Industry, evidence of higher-priced domestic sales in the competitor's country of manufacture as well as supporting evidence from an independent third party verifying costs and prices in that country.

Customs issued a Preliminary Affirmative Determination within a record time as a means of addressing the material injury and followed this with a final determination, roughly within the time period specified in the brochure.

The initial case was followed by a Continuation case in 2008, which resulted in a continuation of duties for an extra five years. The overseas competitor still poses the same threat as it did in 2002.

Bradken's key observations and experiences

The Application Process

Bradken used a consultant to assist with its application as the issue was urgent and serious operational, financial and reputation injury issues needed to be addressed without delay. Customs' evidence-gathering and decision process appeared straightforward, not "arcane" as found by the Commission and far less complex than many of the operational, technical, financial, regulatory and market challenges routinely addressed by Australian manufacturers.

Customs were at all times courteous and helpful and were focussed on ensuring that the requirements of the "Form" and Appendices were strictly adhered to. Some of the requirements of the form and appendices appeared more focussed on "micro" issues rather than a more "macro" approach that is more in tune with industry's assessment processes[1]. In other words, what is fairly obvious to a seasoned executive from a globally-exposed and globally-active manufacturing industry may not be obvious to Customs officers, who generally have no long-term experience in such roles.

Having said this, Bradken appreciates that Customs' attention to detail and reliance on hard evidence is important to making a determination that will stand up to the rigours on review processes such as the Trade Measures Review Officer and the Federal Court.

Observation:

Some intending applicants may be put off by what appears to be a focus on gathering masses of minutely detailed information at a time where significant *prima facie* evidence is available, injury is obvious to an industry insider or seasoned analyst and "time is of the essence".
Customs could consider streamlining this process, with assistance from independent experts (preferably with broad long-term industry experience, rather than from academic, legal or accounting backgrounds).

The Assessment and Reporting Process

The Customs manual, the application form and attaching appendices outline Customs' processes well and are relatively straightforward. In Bradken's case, the like goods and industry structure were simple and injury and causal link easy to prove.

The use of Indices is of concern, especially as there is no established process of attaching relative "weights" to the various factors being measured. There are grave risks that reviewers with restricted industry knowledge will reach the wrong conclusions if they place too much emphasis on the general pictures without also attaching relative "weightings" to each of the factors.

Observation and Recommendation:
Over-reliance on Indices can be misleading and prejudicial to the interests of Applicants.
The Commission may consider a recommendation that Customs attach a "dollar-value assessment" to each of the main indices / factors as a means of more rigorously weighting the indices-based factors.

Material Injury and Public Interest

Material injury to the Australian industry was initially demonstrated by price undercutting, which led to the incorrect inference that Australian foundries were high cost, inefficient and potentially making "super profits" to the detriment of the interests of their Australian customers and the Australian public.

In Bradken's case, Customs did not accept that one of the main injury factors was damage to customer relationships, when this is clearly the case and one of the most important of all injury factors.

[1] A good example is the Schedule A4 spreadsheet, which requires minute detail including an arbitrary allocation of corporate overheads and borrowing costs over every line item of sales.

There is only very limited opportunity for Applicants to respond in public to some customer submissions due to confidentiality and / or the risk that such responses are likely to further damage customer relationships.

Observation and Recommendation:
Damage to customer relationships is amply evidenced in submissions to the Commission. Bradken recommends that this injury factor be recognised and measured as a legitimate material injury factor.

Thank you for the opportunity to comment.

Yours sincerely,

Stephen Bone
General Manager