T. C. F. INQUIRY

By

THE PRODUCTIVITY COMMISSION

FOOTWEAR SECTOR

SPORTING FOOTWEAR

Presented by -

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SUPPLEMENTARY STATEMENT

My name is Denis Michael Gilmour, of *Denis M. Gilmour and Associates,* Tariff and Trade Consultants, 1/B Mugga Way, Canberra.

This supplementary evidence is being submitted on behalf of the *Sporting Footwear Importers Group* which sought, in brief -

(a) the implementation of duty free rates of duty in the Customs Tariff of sports footwear which is currently duty free under Tariff Concessions;
(b) the implementation of duty free admission of sporting footwear in the Customs Tariff which is currently dutiable at 15% *ad valorem,* and for which there are no Australian manufacturers;
(c) the removal of TCF products from the *Excluded Goods Schedule;*
(d) if the Commission saw fit not to consider (a) and (b) above, then sports footwear and sporting footwear be dutiable at 5% *ad valorem,* in line with protection accorded other Australian manufacturing industries.

Whilst the Terms of Reference did not specify that the Commission look at the TCF industry in depth, it did ask it to evaluate current assistance arrangements and to "examine relevant workplace issues". We believe what the Group is seeking, meets this interpretation.

Our initial submission to this Inquiry made several observations, but essentially, sports footwear is duty free under Tariff Concessions, and sporting footwear is still dutiable although we have demonstrated that there are no Australian manufacturers. It is public knowledge what we are seeking and there have been no disagreements.

It is regretful you feel the case for specific changes in tariff levels for sporting footwear would not be appropriate in your broadly based inquiry. I can understand that it would not be appropriate for the Commission to examine Tariff concession issues, as this is the responsibility of Customs. However, I believe it is within your brief to recommend the introduction of permanent rates of duty such as 5% to equate Australian industry generally, or minimum rates, if there is no Australian manufacturer. It would seem our only

opportunity for duty free admission on sporting footwear is to have these goods removed from the *Excluded Goods Schedule.* The procedure then would be to apply for a Tariff Concession and go through the normal procedures.

However, you mentioned that before a move is made too far in dismantling the EGS, only those products that have the greatest chance for success should be given consideration. How can this be measured?

As a matter of interest, there has been a de-facto EGS in existence for nearly 50 years to my knowledge. It was not tied to the *Customs Act* but was labelled "products for which a By-law (now Tariff Concession) is not considered." Products on this list included luxury goods such as cosmetics, jewellery, electrical equipment, motor vehicles, etc. This list was modified from time to time, but hard-core products still remained and were transferred to EGS, when formed.

We could do away with the EGS altogether and I do not believe such action would impact on costs to Customs, applicants and Australian producers. The onus of seeking the granting of a Tariff Concession lies with the applicant who is required to support his request with evidence that "substitutable" goods are not available from Australian manufacture. That is his cost. If a local manufacturer objects to the granting of a Tariff Concession, Customs will refuse the applicant's request. This is virtually a rubber stamp. If the applicant appeals the decision, there would need to be very solid grounds for reversal. I know of no such incidence and it would only occur if the objector had misled Customs. Costs here are minimal to all parties. In excess of 95% of all cases, the exercise stops here. There is the internal appeal process, which rarely succeeds, and then the option for an AAT hearing. This can be reasonably expensive for the applicant, but that is a price he has to pay to back his judgement. If TCF's are excluded from the EGS for example, I see no visible impact on any party involved. No-one would apply for a Tariff Concession on, say, red shirting material with white stripes if there is local manufacture of shirting material of any other design. Tariff concession criteria has changed to a degree where tariff concessions are now more difficult to obtain. In the past, considerations such as price, quality, market use, significant adverse affects, availability, etc. could dictate if a Tariff Concession could be available. Now the whole ball game has changed, as it has over the years, in trying to seek the ultimate solutions.

The pursuit of Tariff Concessions is of less significance now because the maximum duties are *5% ad valorem,* except in TCFs and motor vehicles and parts. There is now not the urgency, particularly as in many cases a Tariff Concession on non-consumable products means only a reduction from 5% to 3% *ad valorem,* and you are well aware of this. In fact in many cases local manufacturers pay 3% duty on their inputs such as motors etc. and are forced to compete with imports of fully assembled goods which are duty free in their own right. The Government has been alerted to this over the years - but to no avail.

I speak above about "the ultimate solution," which we have not got. A Tariff Concession will be granted, provided substitutable goods are not produced in Australia, in the ordinary course of business. Simple words but they have a powerful meaning, defined by the Customs Act. Let's look only at "substitutable". The *Act* defines this as "goods produced in Australia that are put, or are capable of being put, to a use that corresponds with a use (including a design use) to which the goods, the subject of the application or the TCO, can be put". Section 269B3 of the *Customs Act* states that "in determining whether goods produced in Australia are put, or are capable of being put, to a use corresponding to a use which goods, the subject of a TCO, or of an application for a TCO can be put, it is irrelevant whether or not the first-mentioned goods compete with the second-mentioned goods in any market."

Therefore for goods to be substitutable, they most "correspond" with the uses in question. The Oxford Dictionary defines "correspond" as being "equal to; be similar". It is safe to say that there is nothing manufactured in Australia that would "correspond" with imported sporting footwear. Then Section 269B3 comes into force that can deny the opportunity for a Tariff Concession on goods that are not "substitutable". The Act says it is irrelevant whether or not the goods compete in any market. Obviously if local manufacturers want to invoke Section 269B3, what recourse is there?

So you see, so much depends on the Australian manufacturer as to whether or not he claims what he produces to be "substitutable". If this is interpreted strictly, then it is safe to say very few Tariff Concessions would be issued. Fortunately, most local manufacturers adopt a sensible approach to Tariff Concession criteria. The Tariff Concession Orders are full of examples where Tariff Concessions should not be granted, if strict criteria is followed. See *Attachment A,* and pick any hand tool that is "qualified". If an Australian company manufactures, say, grass shears, why should a Tariff Concession be allowed on

the imported grass shears I have highlighted, just because they have stainless steel blades and blade adjustment capabilities? Surely both types of grass shears would be regarded as "substitutable", even though the imported product appears to be of higher quality.

As I have said, most Australian manufacturers adopt a sensible approach. However, dealing with Associations is another matter and this is where the *Sporting Footwear Importers Group* runs into trouble. In our case the FMAA's attitude is "a shoe is a shoe". To get Tariff relief, if the Productivity Commission will not recommend such, firstly the goods have to be removed from the EGS. The Department of Industry, Tourism and Resources, which administers this function would, on past experience, support the FMAA, because it simply objects. Accordingly we would not get to first base to advance our case. I do not believe an Association, a member of an Association, or any manufacturer can hide behind a blanket objection without disclosing publicly what is claimed to be "substitutable" goods. We must be able to compare goods and without doing so, decisions cannot be made. How any part of Government can make a decision on "I cannot give you details, just trust me", is not good enough.

I have the utmost respect for the Public Service generally and I do not wish to be critical of how it performs its duties. Accordingly I set out in *Confidential Attachment B,* an example of the difficulties in dealing with EGS.

If, on the other hand, sporting footwear is excluded from the EGS, then any application for a Tariff Concession will be looked at under normal Tariff Concession criteria. For certain, if the FMAA persists with its attitude of "a shoe is a shoe", then Customs would support an objection to the granting of a Tariff Concession on the grounds of "substitutability".

We know there is no local manufacturer of sporting footwear. It is my feeling that any individual footwear manufacturer approached would adopt a sensible approach and have no objection to a concession on sporting footwear, provided sporting footwear is defined in a way to ensure no leakage into casual footwear. Shown in *Attachment C is* a proposed wording that may be acceptable.

It is a fact that casual or fashion footwear of a type made in Australia is not substitutable to sporting footwear. Even the FMAA must agree with this. Casual or fashion footwear cannot be used to, say, play tennis. However the FMAA argument would be that people

can buy sporting footwear to use as casual shoes. I do not have an answer for this except to voice our opinion that so-called sporting footwear of the type mostly seen down the street is in fact imitation sporting footwear of a type of no interest to our members. This is cheap, but comfortable footwear not designed or built to support the foot in any sporting activity. This is why in *Attachment C we* have come up with a wording that would isolate sporting footwear from imitation sporting footwear, or casual or fashion footwear. Imitation sporting footwear has such a low FOB that it would not be worth the financial effort to make to conform, by overseas manufacturers.

I had submitted to the Commission, confidential details supplied by New Balance and *The Athletes Foot* which outlines the detail in production and marketing of sporting footwear. This footwear is for the athlete in a particular sport of his choosing. If a consumer wants comfort, then the much cheaper, no frills shoe is his target.

The Commission had an opportunity to visit Texas Peak (Brooks) and New Balance to see first hand how the industry operates. It was for this reason I submitted evidence along the lines I did, even to the point of proposing Customs Tariff amendments that would support my request. We would be disappointed if the Commission could not come up with some recommendation on how the Group can achieve a result. I do not believe taking sporting footwear off the EGS goes far enough. You will note that the Department of Industry Tourism Resources has stated in its letter of 21St March in *Confidential Attachment B* that to remove goods from the EGS, it infers Australian industry support is necessary. As I have said, the opinion of an Association may not reflect the true views of its members, but just a common stance. I appreciate you cannot change the *Customs Act,* but a further examination of Tariff Concession criteria would be a start. Shown in *Confidential Attachment D is* an example of a case I have at the moment, where the full powers of the Customs Act could be invoked. This is what importers are faced with when they come up with a "win at all costs" approach. How do you think this looks when comparing it with the "grass shears" case I have mentioned above. For instance, there are Australian manufacturers of pliers and screwdrivers. I have also highlighted Tariff Concessions that apply here. In accordance with the Act, these must also be "substitutable". The Tariff Concession Orders are filled with similar examples of qualified concessions.

Getting back to the case in question, I hope the Commission can be more positive to our problem and I look forward with interest to the evidence to be presented by the FMAA.

I ask myself why should sporting footwear importers bear the brunt of 15% duty plus 10% GST when there is no local industry to protect. Part of my request was to consider making sporting footwear dutiable at 5% *ad valorem* in accordance with that accorded other manufacturing industries, other than those subject to a policy plan. You had in fact suggested this rate for post 2010 could apply. I see no reason why, if you cannot agree to parts (a) and (b) of my request, this rate cannot be recommended immediately - particularly as there is no industry to protect. If the Commission cannot recommend this course of action to the Government, who can?

On other issues, I believe the EGS should be disbanded altogether, as it has outlived its usefulness. I do not believe frivolous applications will be made, as common sense would prevail. Could you imagine someone applying for a concession on, say, Jaguar cars, when we already have an established motor vehicle industry. As I have said before, duties of 5% have cut applications to a minimum. Whereas Customs had four sections screening Tariff Concession applications, now it has one and in some weeks, no new applications are gazetted. Appeals are at a minimum because 5% or 2% savings are not worth the effort.

Whilst the SFI Group is not affected by the 3% revenue duty, I personally applaud the Commission's intentions to recommend this impost be removed. Unquestionably, it imposes unnecessary costs on manufacturers and consumers alike. With GST, the 3% increases to 3.3% and is significantly more by the time it reaches the end of the line.

This completes my supplementary evidence, but I will be pleased to assist the Commission in any way possible.