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30 March 2011

The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam,

Re: Inquiry into the Customs Amendment (Anti-Dumping) Bill 2011

Thank you for the opportunity to make a submission to the Inquiry into the Customs Amendment (Anti-Dumping) Bill 2011.

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 to the Inquiry 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. It also manufactures envelopes and other paper-based stationery. Outside of mining and agriculture, the paper industry is one of Australia's few major regionally based industries.

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

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 Recommendations of the Productivity Commission Inquiry

Australian Paper provided submissions both to the Productivity Commission in 2009 in relation to their draft report and also in 2010 to Customs in relation to the final report No. 48 published in December 2009.

3.1 The 'Public Interest' Test

The Productivity Commission report recommended limiting access to the dumping & countervailing system by introduction of a "public interest" provision 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.

We are pleased to see that the Bill before the Inquiry has not endorsed this recommendation, which would have effectively neutered the anti-dumping & countervailing system.

3.2 Life of Measures

For anti-dumping measures in place, the Productivity Commission report has recommended a maximum eight-year life, after which applicant industries would be denied from re-applying for measures against that source country for two years. This provision would not be appropriate to redress the predatory actions by aggressively growing industries, particularly those of non-Japan Asia. We are therefore gratified that this recommendation was not pursued in the Bill.

3.3 Automatic Review of Measures

The Productivity Commission suggested that an automatic review of measures take place, but does not detail the proposed criteria for review. While we see some merit in an automatic review of measures based on major external factors having changed significantly, for example currency realignments, this would not be appropriate unless it replaced the current review mechanism.

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. The Pulp & Paper Industry Strategy Group

On 19 June 2009, Senator the Hon Kim Carr, Minister for Innovation, Industry, Science and Research, commissioned a review of the pulp and paper manufacturing industry. The purpose of the review was to recognise the industry's competitive advantages and identify the significant opportunities available to the industry to grow, increase its profitability and become internationally competitive. This group lodged its final report in March 2010.

Recommendation 15 of the strategy group responded to the Productivity Commission report No.48 into Australia's Anti-dumping and Countervailing System

Recommendation 15

The Strategy Group recommends that:

(15a) a working group with the Australian Customs and Border Protection Service (perhaps in conjunction with the Trade Remedies Task Force) be established to consider how to streamline the process for making a case that dumping or subsidy is occurring, in order to reduce costs and complexity for the industry

(15b) the Australian Customs and Border Protection provide business with a clear definition of material injury in relation to dumping actions and remedies

(15c) the Productivity Commission's draft recommendation to introduce a 'public interest test' be rejected

(15d) the Productivity Commission's draft recommendation on the continuation of measures be rejected.

The Pulp & Paper Industry Strategy Group report to Senator Carr is available in full at:

http://www.innovation.gov.au/Industry/PulpandPaper/PPIIC/Pages/PulpandPaperIndustryStrategyGroupFinalReport.aspx

5. Customs Amendment (Anti-Dumping) Bill 2011

In Layman's terms, we have summarised the provisions of the Bill as follows and have commented on each major provision as follows:

- Definition of *affected party* and *interested party* to be widened to include trade unions with some members directly concerned with the production or manufacture of the goods

  We support this provision as the workforce have at least as great a stake in the continuation of a viable Australian manufacturing industry as the Company being injured.

- If dumping is found to have occurred, there is a rebuttable presumption that this dumping results in material injury (a reversal of the onus of proof of injury and causal link)

  We support this provision, as Material Injury and Causal Link are sometimes difficult to authoritatively establish, particularly where the dumping &/or subsidy have been occurring for an indeterminate period (as has been the situation in the recent US coated paper case). This provision should also apply in relation to subsidy.

- Definition of injury to be widened to include *Impact on Jobs*

  This is a little wider than the present number of persons employed and could, for instance include reduction in overtime, a move to casuals of reduction in use of external contractors. We support this provision.

- Definition of injury widened to include *impact on capital investment in the industry*

  Where a manufacturer is being injured on an ongoing basis, this calls into question the long term viability of domestic manufacturing and the first casualty will often be its ability to reinvest. We support this provision.

- Requirement for supporting data reduced to the last 90 days rather than 1 year at present

  Any reduction in the vast quantity of data which is currently required to mount a dumping or countervailing case would be gratefully received. Much of the data requirement relates to the Injury issue and with a reversal of onus, this reduction in data requirement becomes practical.

- A reduction in the % of Australian industry required to support the application to 25%

  This will be of importance to industries in which some manufacturers are also major importers and so are not supportive of certain dumping actions

- A requirement that new information submitted after the formal application which could not have reasonably been provided earlier be considered

  This provision has the potential to reduce the time required to lodge an application for measures since the applicant will have the ability to lodge further information as it comes to hand (often slowly from overseas sources)

- A reversal of the onus of proof that the importer has not dumped or been subsidised once the application has been accepted prima facie

  We support this provision and would like to see it combined with automatic imposition of provisional duties so that the injury to the applicant is minimised.

- Lack of cooperation by the importer gives rise to a rebuttable presumption of dumping/subsidy

  We support this provision

- Forecasts of the economic condition of the Australian industry are admissible evidence which must be considered

- Similar provisions are applied to reviews of measures

  We believe that a Review of Measures should only occur if it can be demonstrated by the Applicant that some major factor has changed significantly. The administrative burden of a review, both on the original applicant and on Customs is almost as much as for the original application, so it should be ensured that reviews are not requested as a matter of course by those with measures imposed on them.

- There appears to be a shortening of the time frame

  Any reduction in the time frame consistent with a rigorous investigation would be advantageous, although this would not be necessary if there were automatic imposition of provisional duties once the application had been accepted prima facie or at some other early point in the investigation.

Overall, the provisions of the Bill would reduce the administrative burden of applying for measures and, with the changed onus in relation to injury and causal link, would go some way towards easing one of the most onerous requirements of preparing an application for anti-dumping or countervailing measures. The reversal of onus should apply equally in the case of subsidy and dumping. This does not appear to be clear in the Bill.

6. Other Issues

6.1 Concealment of Import Trade Data

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.

6.2 Price Undertakings

The common practice of Customs to accept undertakings at a fixed price from exporters is not appropriate in an environment of rapid world pricing movements and exchange rate realignments, reducing the effectiveness of measures significantly.

6.3 Customs Dumping Liaison Function

The Customs Dumping Liaison function could be strengthened to empower it to give positive assistance in preparation of cases and active case management as investigations proceed.

7. Summing Up

The changes which have been proposed in the Bill before the Inquiry go some way towards levelling the playing field between Australian manufacturers and their competition, which increasingly comes from non-Japan Asia where subsidies and exports at below domestic price are rife.

The Bill makes some progress in making it more practical for Australian industry to obtain relief from measures to address unfair and predatory trading practices.

- Inclusion of Trade Unions in the definition of *Affected Party* and *Interested Party* is appropriate.

- The changed onus in relation to injury and causal link, would go some way towards easing one of the most onerous requirements of preparing an application for anti-dumping or countervailing measures. The reversal of onus should apply equally in the case of subsidy and dumping and, as with the US system, provisional measures should be imposed at an early stage in the investigation.
- Widening of the definition of injury to include *Impact on Jobs* and *impact on capital investment in the industry* is worthwhile, as the effects of injury on jobs goes well beyond direct employee headcount and where a manufacturer is being injured on an ongoing basis the first casualty will often be its inability to reinvest in the business.
- The administrative burden of a *Review of Measures*, both on the original applicant and on Customs is almost as much as for the original application, so it should be ensured that reviews are not requested as a matter of course by those with measures imposed on them, but only where the Applicant can demonstrate that some major factor has changed significantly.
- Any reduction in the investigation time frame consistent with a rigorous investigation would be advantageous, although this would not be necessary if there were automatic imposition of provisional duties once the application had been accepted prima facie or at some other early point in the investigation.
- The common practice of accepting undertakings from exporters rather than imposing measures should be discontinued as it is not appropriate in an environment of rapid world pricing movements and exchange rate realignments, reducing the effectiveness of measures significantly.
- 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 meager 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, which are far less than those which would apply if the same anti-competitive acts took place between two Australian companies, must be strengthened and redress be made more practical to obtain. The Bill before the Inquiry, should it become law, goes some way towards attaining this objective.

Thank you for the opportunity to make a submission to the Inquiry.

Yours sincerely

Jim Henneberry

Chief Executive Officer

Australian Paper