Australian Paper
a member of the Nippon Paper Group

307 Ferntree Gully Road Locked Bag 87
Mt Waverley Victoria 3149 Australia
Telephone +61 3 8540 2300
Facsimile +61 3 8540 2280
ABN 63 061 583 533
www.australianpaper.com.au

24 September 2015

Ms. Angela Woo
Assistant Commissioner
Productivity Commission
GPO Box 1428
Canberra City ACT 2600

(by email angela.woo@pc.gov.au)

Dear Ms. Woo

Productivity Commission Research Paper – Developments in Anti-dumping anmd Countervailing ('Anti-dumping') Arrangements

Thank you for the opportunity to discuss Australia's anti-dumping system with you and your colleague on Tuesday and to provide input into the Commission's research project examining recent developments in Australia's anti-dumping and Countervailing arrangements.

1. Our General Position

From Australian Paper's 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 such as in the present world economic downturn.

The WTO agreement prevents these acts from being specifically prohibited by law as they could 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 or predatory acts took place between two Australian companies.

Outside of mining and agriculture, the paper industry is one of Australia's few major regionally based industries. Our manufacturing plant in Victoria's Latrobe valley directly employs close to 1,000 people with many more in the local area providing raw materials, equipment and services to the plant, which has a replacement capital value of the order of $2 bn.

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 and printing paper) and packaging & industrial papers from predominantly Australian renewable resources sourced inn regional areas.

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 Commerce Department to involve high levels of subsidy and to be exporting at prices well below those in their domestic market, some with preliminary dumping and countervailing margins found to be well above 100%.

At present, with the global economic downturn and the slowing of China's economy and dumping and countervailing duties imposed by the US against major paper manufacturers, there is gross overcapacity in the major paper manufacturing countries in our region which are China and Indonesia. Companies in those countries continue to expand capacity despite a market which is not expanding.

Paper manufacturing is, by its nature, very capital intensive, with assets having long economic lives. This creates an imperative for manufacturers with relatively new plants to fill their capacity at almost any price.

In short, the competitive environment in paper is far from a level playing field. No Australian manufacturing industry could be expected to compete against overseas industries subsidised to the degree they are in Indonesia and China, nor against manufacturers who are prepared to sell down to incremental cash cost to maintain production volumes. 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 to prepare applications and in the time from application to relief from injury.

Australian Paper made comprehensive submissions to the Commission's 2009 Inquiry and our views on the issues canvassed by that inquiry have not changed. Copies of our two submissions and also of our submission to the 2011 Inquiry by the Senate Standing Committee on Economics are attached.

3. Comparison of the Australian system with other anti-dumping systems

Australian Paper at present finds itself in the position of defending an anti-dumping action brought by US industry against copy paper exports from Australia, Brazil, China, Indonesia and Portugal. This has given us some valuable insights into the differences between the Australian and US systems which differ both in their apparent objectives and implementation. The US system operates non-apologetically in support of US manufacturing industry.

- The US system has no concept of non-injurious price and therefore makes no pretence of attempting to achieve a level playing field, but rather, to exact penalties and exclude imports; In the case of one Asian paper company in the present action, preliminary dumping and countervailing margins and deposits were over 300% and others were more than 100%;

- The counsels for the petitioners (and other participants) in a US action are able to scrutinise the confidential versions of responses (including data) provided by exporters and importers and are therefore able to request more detailed investigation and questioning where there seems to be a weakness or errors in information supplied in responses and to petition for the information which was provided to be excluded and replaced by 'best available' information, i.e. that of the petitioner;

- There is strict enforcement of time-frames and completeness for responses by exporters and importers to questionnaires, with an apparent readiness to move to 'best available' information;

- Much more detailed information is required from exporters and importers than is required in Australia's system and much less information is required from the petitioners;

- Both the US Commerce Department and US International Trade Commission have large numbers of long-serving and very experienced people while the Australian Anti-dumping

Commission has had significant turnover and has relatively few people with the necessary experience for a thorough in-depth investigation of foreign producers and exporters.

- Outside of the anti-dumping system, the US industry has FULL access to details of all shipments into USA, while in Australia, even the country of origin can be concealed at the exporter or importer's request, denying key information to Australian industry, making detection of dumping and preparation of anti-dumping applications needlessly difficult.

Also, the US has a very broad concept of 'like goods' which, in our case, has led to our US prices for commodity grade generic product being compared with our Australian prices and costs for branded premium product which sells for a significant margin above the generic product in Australia, generating a false dumping margin which is not based on like-for-like.

4. The 'Public Interest' Test

In the report from the 2009 Inquiry, the Commission recommended inclusion of a 'public interest' test in the anti-dumping and countervailing system.

This issue was again canvassed in your discussions with us last Tuesday.

Such a test has serious potential to neuter the anti-dumping system as a redress for predatory and anti-competitive behavior, at least in respect of manufacturing industry and in particular where the local industry has less than 50% of the domestic market.

Rather, the changes proposed in 2009 were designed to limit access to the system by the introduction of a "public interest" provision which it was argued should be 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. Entry of Asian-manufactured paper and other manufactured products into the European market also faces many hurdles other than an anti-dumping system.

The public interest test proposed in the 2009 Inquiry report was designed to restrict imposition of measures where it can be demonstrated there is a lessening of competition. Every affected exporter and importer is likely to argue a "lessening" of competition.

Where an industry does not account for a major share of the local market, it would be denied access to the measures. By contrast, if an industry holds a significant proportion of the market, it would also be likely to 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 would also not be imposed if:

- The export price of the allegedly dumped goods recovers all costs (however defined) 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 a significant share 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.

We would regard the situation as having parallels between non-chain greengrocers in a town facing competition from a national supermarket chain which has decided to pitch its local prices lower than in its operations elsewhere to seize market share. In the short term, it could be said that the lower prices are in the local community's public interest, but there is no doubt that in the long term, with no locally based competition, prices would likely rise. This situation is subject to redress by rapid and decisive action, while the situation of Australia's manufacturing industry, with its essentially small local customer base in the face of competition from massive manufacturers elsewhere is not subject to the same level of redress, with introduction of a 'public interest' test further weakening the position.

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.

5. SUMMING UP

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 discuss this issue with you and to provide written input to your research project.

Yours sincerely

Garry Jones

Planning & Development Manager