

26 June 2009

Australia's Anti-Dumping System
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

(e) antidumping@pc.gov.au

Dear Sir/Madam,

Re: Submission to the Productivity Commission's Inquiry into Australia's anti-dumping system.

Thank you for the opportunity to make a written submission to the Productivity Commission's Inquiry into Australia's anti-dumping system (the Inquiry).



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1. KEY ISSUE SUMMARY

- A3P strongly supports the continuation of an effective, efficient, and accessible anti-dumping system that provides a level playing field for Australia's primary and manufacturing industries;
- The administrative and compliance costs (including consultant costs and information gathering) to lodge an antidumping application in Australia are unreasonably high and prohibitive in many instances;
- Within the constraints of the system, the Customs dumping liaison unit has been reasonably efficient and effective in undertaking the anti-dumping administration role. Customs is still the best placed agency to administer the anti-dumping system;
- Recommendations are made below in relation to the operation and administration of the following key aspects of the anti-dumping system:
 - Agency responsible for the anti-dumping system;
 - Initiation of cases;
 - Access to the anti-dumping system;
 - Transparency of the process and outcomes;
 - Conduct and timeliness of the investigations;
 - Costs of compliance; and
 - Post-imposition monitoring of measures.

2. THE AUSTRALIAN PLANTATION PRODUCTS & PAPER INDUSTRY COUNCIL'S (A3P) INTEREST IN THE ANTI-DUMPING SYSTEM.

A3P is the national industry association representing the interests of all segments of the plantation-based wood products and paper manufacturing industry. A3P member's employ more than 13,500 people in plantation management, sawmills, panel board, and paper manufacturing plants, mainly in rural and regional areas. Each year A3P members create and sell more than \$4 billion of products, produce more than 12 million cubic metres of logs, 3 million cubic metres of sawn timber and more than 2 million tonnes of paper.

Paper and wood products are internationally traded commodities. Australian paper and wood products manufacturers face significant international competition, and increased incidence of competition from producers selling below 'normal value' and producers that have a cost base or regulations (environmental/social/employment/safety inputs) that may not reflect the 'true' cost of inputs for competing products around the globe. Economic globalisation has increased this competition, and recently the global financial situation has added increased incentive for activities that constitute dumping.

Examples include:

- Rapid expansion in paper (of all types) and sawn-wood manufacturing capacity particularly in Asia and Europe in recent years has substantially increased competitive pressures on Australian manufacturers and increased concerns about the potential for dumping of paper and sawn-wood products into the Australian market; and
- Potential dumping activities of imported engineered wood products (EWP) and wood panels/plywood in the context of a depressed North American housing market.

Australian wood fibre processors and manufacturers that have been directly involved in previous anti-dumping actions see the continued availability of a strong anti-dumping and countervailing measures regime, and the maintenance of safeguard provisions, as vital to the future of Australian industry. A4 copy paper, grey-back carton-board, and toilet paper are three wood fibre based products which have been the subject of dumping investigations in recent times. The plantation sawn-timber and newsprint industry have not been actively involved in anti-dumping applications recently but have had reason to make some preliminary investigations regarding the requirements and operation of the anti-dumping system.

As a result A3P (on behalf of its members) has a keen interest in the Productivity Commission's (PC) Inquiry into Australia's anti-dumping system. A theme throughout this submission is that A3P strongly supports the continuation of an effective, efficient, and accessible anti-dumping system that supports a level playing field for Australia's competitive industries.

3. POLICY RATIONALE AND OBJECTIVES FOR THE ANTI-DUMPING SYSTEM.

A3P supports the underpinning rationale and broad objectives of the anti-dumping system. Australian industry has every right under existing international trade rules to continue to have World Trade Organisation (WTO) sanctioned anti-dumping and countervailing measures to counter predatory pricing, and underpin fairness in trading outcomes.

Broad rationale for, and objectives of, an anti-dumping system include: fairness in trading outcomes; countering predatory behaviour – improving economic efficiency; and avoiding the costs of intermittent dumping activities.

PC statistics suggest that after an initial high level of applications (as compared to Australia's quantum of international trade) under the anti-dumping system in the 1980-90's, that recent application levels are lower and the incidence of the imposition of counter measures per application higher. This indicates that cases continue to be lodged, and in the majority that these cases are not flippant or unsubstantiated. As a result an effective antidumping system is seen to be definitely required in the Australian context.

In addition, in the tough international economic environment currently being experienced the drivers leading to dumping activities strengthen, and Australia will experience increased incidences of dumping activities - especially if Australia weathers the global financial storm in better shape than other countries. *The continued availability of a strong anti-dumping and countervailing measures regime and maintenance of safeguard provisions is vital to the future of Australian industry.*

4. GENERAL COSTS/BENEFITS FOR STAKEHOLDERS IN THE ANTI-DUMPING SYSTEM.

The costs that are involved in the anti-dumping system include: administrative costs for government of maintaining the anti-dumping system; application, information, administrative and compliance costs for both local industries seeking imposition of the anti-dumping measures and for the overseas suppliers (and local agents) who are the subject of these actions; and potential economic efficiency costs to Australia if domestic industry is reduced due to unfair competition.

The benefits of an anti-dumping system include: benefits to activity and employment in domestic competitive industries; and the benefits to competition and domestic production by reducing the incidence of dumping and predatory pricing.

*The administrative and compliance costs (including consultant costs and information gathering) to lodge an application are high and in many instances prohibitive (please refer to **point 4f** below for more detail).*

5. ADMINISTRATION OF THE ANTI-DUMPING SYSTEM

a. Agency responsible for the anti-dumping system;

The current system is administered by the Australian Customs and Border Protection Service (Customs). Customs investigate claims of dumping, make recommendations to the Minister, and also oversee anti-dumping and countervailing measures in force. *In various A3P members' experience, within the constraints of the system the Customs dumping liaison unit has been reasonably efficient and effective in undertaking the anti-dumping administration role.*

The following additional points regarding administration of the anti-dumping system need to be considered as part of the PC review. *The role of dumping liaison officer could potentially be reviewed to include aspects of actively assisting applicants rather than merely providing basic advice – although the dual potentially conflicting role of advisor and case manager would need to be addressed. This additional aspect to the role would greatly help potential applicants to navigate through a complex, information-intensive, and costly system.*

An issue raised is which agency/organisation should be responsible for the primary carriage of the anti-dumping system. There have been suggestions that the dumping investigations should become part of the Australian Competition and Consumer Commission (ACCC) portfolio, most likely under the auspices of anti-dumping being aligned to competition policy. This re-alignment would be of concern to A3P, as the ACCC focus has tended to be on the consumer rather than the product supplier, which could be problematic and potentially conflicting as dumping investigations are initiated by product suppliers.

It is suggested that Customs still remains the best placed agency to administer the anti-dumping system. However there may be some potential value in the ACCC being given some powers to overview potential predatory conduct by those exporting to Australia, and be either given the ability to act directly as they would with an Australian producer behaving in the same way, or, as a minimum, initiating dumping cases with Customs on their own behalf where it can identify such predatory conduct.

b. Initiation of cases;

• ***Data collection:***

It is A3P members' experience that the system in which ABS suppresses country by country and port by port trade data at the request of either the exporters or the importers is a great impediment to determining whether dumping is taking place and from what source. It makes it very difficult for potential applicants, even with access to the applicant's own downstream merchants' product data. Data suppression makes it even more difficult for complex industries with increased numbers of manufacturers in Australia, and no access to import data other than ABS statistics.

A3P recommends that the current system is reviewed and that the US system which gives full access to import data on a transaction by transaction basis with full detail of what is being imported by who, from who, and at what price, is considered as a potential framework for trade data.

• ***'Normal Value' and 'Market Situation':***

In regard to the determination of 'Normal Value', it has proven to be difficult for applicants to determine an appropriate "normal value", especially where the manufacturers in the exporting country are potentially all making losses. In that environment there is no expectation that the domestic sales would be above cost.

A3P suggests that the 'Normal Value' determination system be reviewed to address this issue. One potential approach could be a cost plus reasonable profit margin as providing a floor level for 'Normal Value' but this approach may prove difficult without the cooperation of the manufacturing exporter.

An additional potential issue with this approach is that it does not address the instance where input costs in the other market are artificially low due to other factors (low material costs and energy prices etc).

Another issue is the prevailing 'market situation' as related to countries that Australia has a current Free Trade Agreement with. It is A3P's understanding that with a free trade economy (e.g. China), the government assumes 'Normal Value' to be established and any potential support from government (e.g. in the form of government support/grants, tax concessions, etc), and any anti-dumping action should be taken via the countervailing system rather than the dumping system. Whilst this outcome seems idealistically reasonable and consistent, actions taken under the countervailing system are difficult to substantiate, and most of these actions are politically difficult.

A potential solution is Customs (in conjunction with industry and potentially Austrade) being more pro-active in benchmarking prices and costs in other 'Free Market Economies' in order to form an opinion if a 'Market Situation' exists or what the 'Normal Value' may be. This potential approach would be a significant improvement over the current approach where it is up to the applicants to prove pricing in a foreign country.

c. Access to the anti-dumping system;

Concerns expressed by A3P members in relation to the anti-dumping system have related primarily to access to the anti-dumping system, rather than to the conduct of investigations or the outcomes reached.

- ***The data collection task***

It is accepted that simple, unsubstantiated assertions should not provide sufficient grounds for initiation of an anti-dumping investigation. However, the task of providing a basis for a claim is a significant and costly exercise. This is particularly the case when dealing with relatively small enterprises, where there are a significant number of players in an industry and/or where there is a large number of like but not identical products in the market place.

A3P commends the introduction of a small and medium enterprise officer allocated by Customs to aid small and medium enterprises in initiating anti-dumping cases. This was implementing an outcome from the 2006 Review of the anti-dumping system. The initiative has been beneficial to smaller companies that do not have the human resources to progress an application than an active case themselves, or have the financial means to fund the services of a consultant. However, much larger enterprises still find many aspects of the anti-dumping system difficult to navigate.

As a result, it is recommended that more be done by Customs to reduce the complexity of the system, be more proactive, offer more assistance, increase audits, and improve feedback, in order to allow the full range of enterprises to utilise the anti-dumping system.

- **Available data**

A key issue is access to the required information to adequately support an anti-dumping case, for example the Australian sawn-timber industry recently sought information on the pricing of softwood sawn-timber in a number of countries. Information was obtained on the basis of tariff classifications. For some countries statistics were only available at a relatively high level (six digit tariff classification). However, even where data was available on a ten digit code basis this could not distinguish between different sizes of materials (sawn-timber) which may have significantly different values in the market place.

In such instances industry needs to be able to work with Customs to identify more accurate and timely data collection formats (and tariff codes) for determination of like goods.

d. Transparency of the process and outcomes;

A3P members' experience regarding the transparency of the anti-dumping system and outcomes is somewhat negative in that there is limited transparency, lack of feedback, and some inconsistencies in the assessment and investigation processes.

Improvement in these areas would ease potential applicants' concerns pre-application and avoid follow-up and misunderstandings post-outcomes being applied or dismissed.

e. Conduct and timeliness of the investigations;

- **Accounting data**

In regard to the information requirements and standards imposed by Customs in considering anti-dumping applications, A3P members have previously expressed concerns about the willingness of Customs to accept individual company accounting procedures and standards.

In a specific circumstance Customs have not accepted procedures for the allocation of expenses as accurately reflecting actual costs of production even though these procedures were widely used and endorsed by internal and external audit systems. While Customs do not necessarily accept accounting data from the applicant, they are required to accept audited accounts from overseas exporters into Australia, even when they may suspect that the audited accounts may be potentially erroneous.

A3P suggests that Customs should have discretion to substitute 'best available information' and lean towards the more verifiable Australian-sourced data where there is an alternative.

- **Industry liaison**

A3P has previously expressed concern about the failure of the Customs Dumping Liaison function to adequately address the reasonable needs of industry.

A3P again recommends that the Dumping Liaison Unit should operate on a “case management team” basis providing consistent advice and continuing support to the industry throughout the process and A3P suggests that a liaison team with specific communication skills who could spend time understanding the client and assisting industry would be invaluable and a large step forward.

- ***Application Timelines***

In regard to timing for launching/conducting investigations the legislative framework makes it difficult for an investigation to be conducted within the allotted time. This leaves Customs requiring the manufacturers to essentially prove their case before an investigation is initiated.

It is suggested that the timeframe for launching/conducting investigations needs review in order to address this issue.

- f. **Costs of compliance;**

The costs of compliance of the anti-dumping system are considered prohibitive. Some of the costs of compliance identified by A3P members via practical experience include:

- The costs of compiling the substantial information requirement applicants must satisfy to have a investigation initiated, and frequent delays during the screening of an application;
- The difficulty in obtaining “normal value” information and import data where its availability is restricted for confidentiality reasons or by lack of transparency in overseas markets; and
- The expense of using consultants, which is often hard for applicants to avoid because of their limited understanding of anti-dumping practices and the application process – especially small and medium enterprises.

- g. **Post-imposition monitoring of measures;**

After an adverse finding of dumping has been made, an affected international exporter can potentially avoid having antidumping duties imposed by making an undertaking not to sell below a nominated price. This does not provide any real protection in a market where key input costs and sell prices fluctuate over a wide range. It is suggested that the standard penalty be a calculated anti-dumping duty, with the alternative of an undertaking the potential exception in special circumstances.

There is no retrospectivity to the findings or imposition of measures. Experience has shown that between identifying dumping from basic information and a finding, the time delay is often at least a year with the preparation of the detailed case, the investigation and the finding being made. This means the local industry will potentially endure the identified injury for a considerable time before a finding is made and there is no risk to the international exporter during that time.

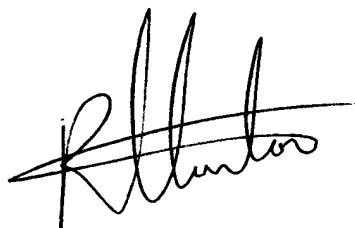
A potential alternative is the comparable US system, duties are imposed at the time an initial finding of prima facie dumping is made (a relatively quick process) and then revised if necessary at the end of the process. While it is believed that the Australian legislation has some provision for this, it is not known whether it has ever been applied in this way.

After a dumping case is accepted potential measures are initially imposed for a five year term, but after one year an international exporter can apply to have the measures lifted on the basis that dumping is no longer occurring. Often the measures are lifted at this point, which makes the initial successful anti-dumping process a very time consuming and poor investment for the domestic producer. *It is suggested that the finding review timeframe is extended to underpin application of the finding outcomes.*

The plantation timber industry looks forward to working constructively with the Productivity Commission in the finalisation of the Productivity Commission's Inquiry into Australia's anti-dumping system.

If you have any questions in relation to the matters raised above please contact Gavin Matthew (02 6273 8111 or gavin.matthew@a3p.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Stanton', with a horizontal line drawn through the middle of the signature.

RICHARD STANTON
Chief Executive Officer

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