



5 December, 2014

Committee Secretary
House of Representatives Standing Committee
On Agriculture and Industry
P O Box 6021
Parliament House
Canberra ACT 2600

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Dear Committee Members,

Thank you for the opportunity to comment on the House of Representatives' Agriculture and Industry Committee's inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures.

The Construction, Forestry, Mining and Energy Union (CFMEU) consists of three Divisions, namely the Construction and General Division, the Forestry and Furnishing Products Division and the Mining and Energy Division. We are the major union in these industries, representing over 110,000 workers nationally.

The Australian Manufacturing Workers' Union (AMWU) represents around 100,000 workers across Australia across the range of manufacturing industries.

Both the CFMEU and the AMWU welcome the opportunity to make this brief submission.

Committee members may be aware that the CFMEU, AMWU, and the Australian Workers' Union (AWU) have worked closely together on anti-dumping policy matters in recent years, particularly in the period of significant Federal Government reform to the system from the years 2010- 2014.

This collaboration was due to our members' job security being under attack by a Productivity Commission proposal in 2009 which sought to significantly weaken Australian industry's rights to be protected against unfair trade practices, including through a proposal to make anti-dumping duties subject to a so-called 'public interest test'.

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Our unions worked together in response to Senator Xenophon's private members bill (Customs Amendment (Anti-Dumping) Bill 2011) and subsequently through our memberships of the International Trade Remedies Forum (ITRF), Prime Minister's Manufacturing Taskforce and Manufacturing Leaders Group (MLG), including throughout the periods of 'Streamlining' Reforms and the implementations of the Brumby Inquiry into the Anti-Dumping report's recommendations.

We support the detailed submission to this inquiry by the AWU. We urge the committee members to take note of the recommendations contained therein as a sure-fire way to make the system more responsive to the needs of Australian industry, and the workers and communities which it supports. In addition to supporting the more detailed AWU submission the CFMEU and AMWU offer the following information for the consideration of the committee.

The operation of the Legislation

One of the priorities for the unions throughout the 2010-14 period of reform to the anti-dumping system was securing the establishment on an effective and efficient anti-circumvention framework.

This task is an ongoing priority because circumvention activity and methods are constantly evolving as exporters and importers change their tactics and behaviour in reaction to anti-circumvention rules and activities.

In this regard the CFMEU's participation in the Greater Compliance Working Group which was a working group of the ITRF and the ITRF itself, represented an important forum to discuss developments in the anti-circumvention space, including new and emerging tactics by exporters and importers.

As per the legislation establishing the ITRF (noting that the *Customs Amendment (Anti-Dumping Improvements) Bill (No 2) 2011* received bi-partisan support though the parliament) the purpose of the ITRF is to:

- (a) to advise the Minister on the operation of Part XVB and of the Customs Tariff (Anti-Dumping) Act 1975;
- (b) to advise the Minister on improvements that could be made to that Part or Act

Given that the ITRF has not been convened (despite its legal requirement to meet two times a year) and may by all indications be abolished by the Government, there is no formal mechanism for industry as a whole to pass on advice about circumvention activity to the Minister, especially activity which needs to be captured by amending regulation.

In response to questioning about the ITRF Mr Trotman from the Department of Industry stated that the Department still has an active relationship with members of industry in relation to anti-dumping matters. So regardless of whether the ITRF meets or does not meet, the Department definitely still progresses the concerns of industry. One thing of interest to members of the inquiry is whether there has been any approach by industry to add a circumvention activity by regulation and if not, what the process to do this would be.

Regardless of the ability of the Industry Department to informally consult industry and unions on anti-dumping issues, this cannot possibly be as effective as the ITRF . Its formal structures and official role in advising the Minister should not be discarded by the Government.

The potential for reversal onus of proof to be used

The CFMEU and the AMWU were disappointed when Industry Minister MacFarlane informed the National Press Club that the Government would not be continuing with the policy that it took to the 2013 election; to reverse the onus of proof in anti-dumping investigations. Members of the Committee would be aware that both the CFMEU and AMWU believe that policy had some merit. When asked about its compliance with WTO rules at a public hearing for the inquiry into Senator Xenophon's bill the unions responded that:

“Our understanding is that Customs would, prima facie, adopt a certain degree of that onus of proof immediately upon commencing an investigation. So the extent to which the onus of proof is balanced is really what we are raising. We feel as if the balance is too far weighted toward the importer as opposed to our traded goods industries.”

The issue and the potential for a common sense application for a reversal of the onus of proof were highlighted recently in an interview with Mr Kashima, Australian Paper's CEO:

“Our view is that in Australia while those administering the system are doing their best, the current regulations around anti-dumping are cumbersome and time consuming. A reversal in the onus of proof would be a great starting point for improvement. *If product is on the shelf in Australia for a price that is dumped, taking into account the costs of getting it there, then that should be evidence that dumping is occurring and the importer should have to prove otherwise.*”

We hope that the Government's recent announcement still allows a common sense approach to the reverse onus of proof in investigations such as those outlined by Mr Kashima.

In addition to this, we note that there is no WTO rule which restricts preventing circumvention activity or reversing the onus of proof in anti-circumvention inquiries. Indeed, other examples highlighted by the AWU would suggest that Canada and the US apply the reverse onus of proof along with higher penalties to better deter circumvention activity than in Australia.

Given the above, it is reasonable that if on a prima facie basis circumvention activity is occurring then the onus should be on the exporters to prove that their trade into Australia is fair.

It should be noted and acknowledged that the purpose of anti-dumping duties is to remove injury to Australian industry caused by the dumped goods in question. Australian industry can continue to suffer from the dumped goods despite duties being place if the duties are insufficient to remove injury or if the duty is being circumvented. Both of these aspects of the anti-dumping system's effectiveness need further scrutiny by the Government, especially as we see an increased in dumping.

Is the Government losing its way on anti-dumping?

There is a general concern among both industry and unions that the Government is backing away from strengthening Australia's still comparatively weak anti-dumping system. Industry and unions still await the release of the government's anti-dumping policy, over 15 months after the government was formed. The only clarity provided has been to renege on the promise to reverse the onus of proof in anti-dumping investigations; a promise both the AMWU and the CFMEU supported, as outlined above.

Anti-dumping circumvention is an unfair trade practice that damages Australian industry, costs Australian jobs and only adds to the injury already felt by victims of dumping.

We commend the House of Representatives' Standing Committee on Agriculture and Industry for its interest in ensuring Australian industry and Australian jobs do not continue to be harmed by anti-dumping circumvention.

Yours sincerely,

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