19 November 2014

Dear Mr Ramsey

House of Representatives Standing Committee on Agriculture and Industry Submission to Inquiry into Circumvention of Anti-Dumping Laws

ABB offers the following contribution to the committee's inquiry into "circumvention" of anti-dumping laws.

ABB and the companies from which it originates have operated in Australia since the late 19th century. ABB is a genuinely global company, with manufacturing across the world. It employs 150,000 people across 100 countries.

In Australia, ABB employs over 2000 people at 13 sites. This includes highly specialised, high value-add manufacturing in Australia. ABB also imports manufactured goods to Australia. Our clients include some of Australia's largest businesses in competitive, trade exposed and cost sensitive industries, including in the power and automation industries.

ABB is committed to a high standard of integrity in its business practices and its business relationships. In particular, we believe in a competitive, free enterprise system, because it guarantees that our work and innovation will be rewarded.

ABB is proud of the huge contribution it has made to the development of Australia for well over a century - a positive contribution that it continues to make.

Our recent and planned projects include:

- huge projects such as the Ichthys LNG project in the Northern Territory, all three major Queensland LNG projects - QGC's Curtis Island, APLNG, and Santos Gladstone;
- Rio Tinto's massive electrical network infrastructure in the Pilbara;
- the majority of Australia's recent large wind farm projects, including Collgar, Mt Mercer, Musselroe, Bocco Rock, Taralga, Morton's Lane, Cape Nelson, Capital and Waubra;
- major power substations at Beaconsfield and Loganlea; and
- city and community projects such as the Barangaroo development at Darling Harbour, the Gold Coast light rail, and the Hervey Bay hospital.

Despite this proud history as an Australian company, ABB has recently been the subject of an anti-dumping investigation concerning power transformers which was motivated by a price complaint from a local manufacturer.

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In that investigation ABB has cogently and categorically defended itself against the implication that it sought to engage in the "dumping" of power transformers, such as might cause "material injury" to its Australian competitor. To ABB's very great concern, the investigation is now entering its 17th month, and two of its export suppliers remain exposed to the imposition of punitive dumping measures; arising from the application of "zeroing" methodology, something the Australian Government is on record as stating that it does not practice. ABB's suppliers did not "dump" the goods concerned. We deeply resent that implication.

ABB has become so concerned at the threat these developments represent to its ongoing business interests that it has submitted its concerns to the Harper Panel that is presently considering competition law in Australia. These submissions are attached, and we recommend them to you.

ABB's experience demonstrates that the anti-dumping regime in Australia has become so heavily biased toward protecting the interests of complainants, that it represents a serious distortion to the normal operation of markets and normal business practices.

ABB is concerned that the committee's present inquiry appears to be motivated by complaints from domestic manufacturers who have been aggressive users of the anti-dumping regime. This is particularly evident in the tone of the press release announcing the inquiry. It suggests that importing businesses that adapt their business practices and/or their pricing to remain competitive in the face of anti-dumping actions are motivated by a desire to cheat the system. This view does not reflect a fair understanding of how competition works. It is insensitive to the interests of import-users, many of whom are valuable manufacturers employing many Australians themselves. It neglects the interests of consumers. Increased supply chain costs for Australian industries puts Australians out of business and curtails investment and growth.

We believe this reflects a deeply unbalanced view of anti-dumping that prevails in Australia at present. In ABB's experience, Australia is at risk of becoming an outlier among international trading nations, so aggressive has the application of anti-dumping regulation become.

ABB urges the committee to reconsider the policy approach towards this important issue before any further damage is done to Australia's reputation among the international business community.

I am happy to assist further if the committee requires any further information.

Yours sincerely

Axel Kuhr
Country Manager
ABB Australia

10 September 2014

Professor Ian Harper
Chair
Competition Policy Review Panel
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Chair and Panel Members,

Submission in response to the Competition Policy Review Issues Paper
Australia's anti-dumping laws are an affront to competition policy

ABB is a global leader in power and automation technologies. Internationally, the ABB group of companies employs 150,000 people across 100 countries. In 2013 we enjoyed revenues of USD42 billion which delivered an operational EBITDA margin of 14.5%.

ABB has been operating in Australia since the late nineteenth century. We presently employ over 2,000 people at our 13 sites in Australia. Our recent and our planned power and automation systems support:

- huge projects such as the Ichthys LNG project in Western Australia, all three major Queensland LNG projects - QGC's Curtis Island, APLNG, and Santos Gladstone;
- Rio Tinto's massive electrical network infrastructure in the Pilbara;
- the majority of Australia's recent large wind farm projects, including Collgar, Mt Mercer, Musselroe, Bocco Rock, Taralga, Morton's Lane, Cape Nelson, Capital and Waubra;
- major power substations at Beaconsfield and Loganlea; and
- city and community projects such as the Barangaroo development at Darling Harbour, the Gold Coast light rail, and the Hervey Bay hospital.

ABB is committed to a high standard of integrity in its business practices and its business relationships. In particular, we believe in a competitive, free enterprise system, because it guarantees that our work and innovation will be rewarded. This echoes the recognition of the benefits of competition that are referred to in the Introduction to your Issues Paper:

> *For the most part, more competitive markets lead to greater efficiencies in the use of scarce resources. The benefits of competitive markets include lower resource costs and overall prices, better services and more choice for consumers and businesses, stronger discipline on businesses to keep costs down, faster innovation and deployment of new technology, and better information allowing more informed consumer choices. Competitive markets are dynamic and innovative, which can benefit Australians both now and into the future.*

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Paragraph 2.1 of the Issues Paper identifies that *“[c]ompetition may be affected by restrictions that are not designed for competition purposes but for some other public policy objective”*. One of the restrictions identified at paragraph 2.2 is anti-dumping measures. With regard to such restrictions, the Issues Paper poses these questions:

> *Are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?*
>
> *Are there import restrictions, bans, tariffs or similar measures that, on balance, are adversely affecting Australians?*

We note that other submissions to your Inquiry have held that Australian competition arrangements, especially with regard to mergers, should in some cases define markets internationally and not domestically.

As both a product and systems manufacturer in Australia and an importer, ABB is intimately aware of the reality of doing business in a globalised economy. Anti-dumping measures, if they become used as a device to protect local industry against imports, can have the effect of rendering imported competition incapable of exerting price and service quality disciplines on local industry. ABB submits that the institutional arrangements and administration of anti-dumping in Australia have become anti-competitive constraints on the normal functioning of markets.

These constraints on competition arise where there is uncertainty and inconsistency in administrative processes and decision making, and where the salient issues effectively become uncontestable or are divorced from business reality and the national interest. The effect of this is to cause investment decisions to be deferred both by importing businesses and by their customers; to force up costs for industry; to increase prices for consumers; and to prevent and distort market outcomes.

In this submission, we will provide some insights into the specific experiences and observations of ABB that we believe demonstrate these concerns.

At present, ABB is directly involved in an anti-dumping investigative process – concerning power transformers - which has itself constituted an unwarranted regulatory impediment to competition. As well, ABB observes that the energy and resources sectors have been afflicted by similar processes, and by resultant import restrictions, that ABB would have no doubt are also adversely affecting Australians. Further, ABB notes that the guidelines for injury findings that favour Australian industry are so lacking in rigour and logic as to be exclusionary in their effect. Lastly, ABB wishes to draw attention to another facet of the anti-dumping laws – so-called “anti-circumvention” laws – that actively prevent and penalise fair competition and open investment.

A statutory process meant to be completed in 185 days has persisted for 406 days - and is still continuing.

ABB Australia is an importer of power transformers from its related group companies in China, Thailand and Vietnam. On 29 July 2013, at the behest of the Australian industry manufacturing power transformers, the Anti-Dumping Commission initiated an investigation into the alleged dumping of transformers from those countries, and from Indonesia, Korea and Taiwan. The investigation has now been extended by the ADC on no less than four occasions. A 14 month investigation such as this is economically inefficient. It creates market uncertainty, delays procurement decisions, suppresses commercial activity and forces up prices.

ABB's customers have responded to these delays with frustration and worse. One customer (who cannot be identified) indicated that it now has to consider the impact of a potentially large increase in market prices for transformers, which is a major proportion of its capital investment, on the viability of its renewable energy project.

At present, renewable energy policy is politically fraught. The Australian resources industry is at a very low ebb. An unprecedented level of electricity subscribers face true hardship. Disconnections are at an all-time high. The community cost is not only financial, it is human as well, with fires and suffocations being caused by indoor cooking and heating with outdoor gas appliances. Against this background ABB just cannot accept that a Federal instrumentality is so apparently fixated on increasing the cost of the capital investment that contributes to increased electricity retail tariffs.

ABB asks – Is an investigation that interferes with normal competition for more than a year "warranted"? What recognition is given to the interests of the community and of the wider economy over those of one small private business and its desire for higher profits on top of its higher costs?

A number of exporters, including the ABB exporters, have been told they do not have dumping margins – but the investigation against them still has not been terminated.

ABB Thailand, ABB Vietnam and ABB China (Chongqing and Zhongshan) have all been informed by the ADC of "no dumping" margins, but each of them remains under investigation. Indeed, in respect of ABB Thailand, which was advised of a no-dumping margin in November 2013, of another no-dumping margin in February 2014, and then of an even higher no-dumping margin in July 2014, there are suggestions that the position is being reviewed. The ADC has now advised interested parties that the dumping margins may now "vary significantly" from those previously calculated.

ABB asks – Is it warranted that an investigation should continue against exporters that have been exculpated? Is it warranted that dumping margins should be allowed to vary significantly depending on the adoption of some obscure and different methodology? In the power transformer investigation, where comprehensive evidence of dumping has not been found in either a normal or a timely sense, have the processes and the parameters been changed in an active effort to construct such evidence?

The deleterious effects of anti-dumping on the energy and resources industries, which must significantly impact on their international competitiveness.

ABB finds that entities involved in two of its major customer areas – the energy and resources industries – are very significantly impacted by anti-dumping procedures and measures. Imported steel and aluminium used for mines, fabrication, structures, equipment, rail and pipelines routinely suffer from anti-dumping imposts. The materials used for exposing ore deposits and for the processing of minerals such as bauxite and gold are also frequent targets of anti-dumping action. In terms of energy and electricity, cables, solar panels and wind towers have been caught up in these processes, as well as power transformers.

ABB asks – How can these core Australian industries remain competitive – or even viable – if they are continually being denied access to capital equipment and production inputs at the prices available to their international competitors?

Dumping must cause injury that is material, however the policy guidelines for this are far too easily satisfied.

ABB is advised that over the past two to three years no anti-dumping investigation has been terminated except in cases where no or minimal dumping was found. (Minor exceptions to this general rule have been the structural timbers case, where some dumping was detected, but only amongst smaller exporters, and the quicklime case, where dumping was detected but the exporter's market penetration was evidently quite trivial.) In other words, the experience seems to be that there is little chance of establishing that material injury was not caused by dumping. The 2012 Ministerial Direction issued by the relevant Minister gives these mandatory decision-making guidelines to the ADC, amongst others:

> *I note that anti-dumping or countervailing action is possible in cases where an industry has been expanding its market rapidly, and dumping or subsidization has merely slowed the industry's rate of growth, without causing it to contract. In cases where it is asserted that the Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports, I direct that you be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline. I direct that it is possible to find material injury where an industry suffers a loss in market share in a growing market without a decline in profits.*
>
> *…*
>
> *I note that in cases where the dumped or subsidised imports hold a small share of the Australian market, it may be difficult to demonstrate material injury. I direct that no minimum standard should be used to determine whether dumped or subsidised imports have a sufficient share of the Australian market to cause material injury.*

The likelihood flowing from these guidelines is that even an impact on a healthy Australian industry, from a minimal volume of dumped imports, could be considered to be "material".

ABB asks – Is a test that could be taken to suggest that nothing less than unrestrained profiteering will contradict a finding of material injury conducive to the efficient operation of markets for goods in Australia, and to the optimisation of costs and prices of input-user industries and consumers? Is the question of whether material injury has been caused to an Australian industry at all contestable, or is it just a fact that is accepted by the investigating authority without question if "dumping" is detected?

Anti-circumvention laws prevent and penalise fair competition and open investment.

Assume that dumping duties are imposed on imported goods, and the importer pays the duties but absorbs part of those duties in its on-selling price. Good competitive practice, right? Wrong. If an importer does this it can be investigated - on the application of the Australian industry - for not increasing its price commensurate with the total amount of duty paid.

Of equal concern is the anti-circumvention law that would prevent ABB re-establishing a power transformer manufacturing capability in Australia, should dumping duties be imposed on imported transformers themselves. In that case the law says that ABB's imports of parts for transformers could themselves be subject to dumping duties, without evidence of their dumping and without evidence of material injury to the Australian parts makers.

ABB asks – Surely, from the competition perspective – indeed, from any domestic "freedom of trade" perspective - these laws must be considered to be nothing short of outrageous? Are they not completely at odds with the proposition that Australian consumers and industry should benefit from being exposed to international competitive markets, and that foreign investment and job creation are important policy goals?

As will be evident from the strength of our comments, ABB advocates a wholesale reconsideration and substantial recalibration of the operation of the Australian anti-dumping system. In ABB's opinion, it has been overtaken by interest groups that do not represent the views of the community and that care more about their own self-interest than the interests of the nation.

Yours sincerely,

Axel Kuhr
Country Manager
ABB Australia Pty Ltd

5 November 2014

Professor Ian Harper
Chair
Competition Policy Review Panel
The Treasury
Langton Crescent
Parkes
Australian Capital Territory 2600

Dear Chair and Panel Members

Submission in response to the Competition Policy Review draft report

ABB welcomes the opportunity to comment on the draft report of the competition review and would like to congratulate the Panel on its comprehensive work to date.

Introduction and summary

ABB notes that the issue of the inconsistency of Australia's anti-dumping laws and administration with competition law and principle is an issue that has not been considered in the draft report. ABB is aware that its submission on these matters was provided late in the development of the draft report.

However, consistent with the views expressed by the Panel in the draft report, we submit that the Panel should consider anti-dumping as:

- an area of law that should be added to the list of regulatory priority areas for further consideration; and
- an important consideration with regard to the Panel's proposal that sources of competition be explicitly defined to include imports and potential imports.

ABB submits that many aspects of present-day anti-dumping regulatory and policy arrangements are directly and egregiously inconsistent with competition law and regulation, including the following:

- the absence of application of a "long term interest of end user" or similar test;
- the different treatment of commercial pricing decisions that would be regarded as "normal business practice" when engaged in by a domestic firm; and
- 2012 ministerial guidance that can only be interpreted as suggesting to the Anti-Dumping Commission ("the ADC") that it should protect (indeed, overprotect) domestic competitors, rather than protecting competition.

The proposal by the Panel to define competition to explicitly capture the competitive influence of imports or potential imports into domestic markets is undermined by the operation of anti-dumping laws. These laws and regulations are creating barriers to imports not faced by domestic industry, and providing quasi-protectionist measures. Where dumping investigations and measures impact on imported goods, those goods and the businesses that use them are not allowed to compete on equal terms with domestic goods and businesses. The extent of this market intervention goes far beyond any reasonable concept of protection from unfair trade.

The proposal to include a form of effects test in Section 46 of the *Competition and Consumer Act* 2010 throws into relief the inherent conflict between competition law and the anti-dumping regime.

ABB submits that the Panel has rightly identified the need for reform of laws restricting parallel imports, saying they operate similarly to import restrictions such as tariffs that shield markets from overseas sourced competition. While parallel import restrictions can create import monopolies, the application of anti-dumping regulation promotes domestic monopolies.

There is no long term interest of end user test in the anti-dumping regime to mitigate the risk posed by these market distortion effects when anti-dumping remedies are considered by the Anti-Dumping Commission. Successive reviews of anti-dumping arrangements have considered the question of a national interest test, which takes into account wider considerations, such as the interests of end users and consumers. ABB sees absolute merit in the adoption of such a test. Equally, ABB calls for greater rigour in the definition and determination of what actually constitutes injury, so that markets are not open to manipulation by inefficient or moribund market participants. That is, domestic industries exposed to competition will by definition have their inefficiencies or lack of innovation exposed. Anti-dumping regimes must not act to protect industries from the consequences of these internal inefficiencies.

ABB's ongoing experience with the Australian anti-dumping system

As described in ABB's primary submission, ABB and the companies from which it originated have operated in Australia since the late 19th century. ABB directly employs more than 2,000 people in Australia. Globally, ABB employs more than 150,000 people across 100 countries, and enjoyed revenues of US$42 billion in 2013.

In our primary submission, ABB provided a summary of the investigation of ABB's imported power transformers – a statutory process supposed to be completed in 185 days that been extended four times and had dragged on for 406 days at that time. At the time of our first submission, ABB Australia had been advised that no-dumping margins[1] had been found by the ADC in respect of all four of its overseas suppliers, yet the investigations continued. At that time, the ADC had advised ABB that it was considering yet another form of calculation that would extend its investigation further and could result in a reversal of the no dumping findings.

Since then, ABB has been advised that the ADC has employed an internationally controversial methodology in its determination of dumping, known as "zeroing", and that this calculation had resulted in a new preliminary finding of a *dumping margin* of 3.6% on imports from Thailand, compared to a *no dumping margin* of 10% that the ADC had found using the previous method. The same reversal of the ADC's margin calculations, from a *no dumping* position to a *dumping* one, was advised to ABB in respect of its imports from Vietnam.

Zeroing is a practice of discounting those imports where there is found to be no dumping margin and instead basing the dumping margin calculation *only* on those instances (ie, sales) where the comparison of the imported price to the normal (or home market) price indicates that dumping has occurred.

That is, the net effect of zeroing is to disregard export sales that are not dumped in calculating a dumping margin on a weighted average basis.

Not only was this the first time, to ABB's knowledge, that the ADC has used "zeroing"[2] but, in doing so, the ADC has acted contrary to guidance in the Explanatory Memorandum to the *Customs*

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1 "Dumping" occurs where an exporter's home market price for a product is less than its export price for the same product. This generates what is known as a dumping margin (or "positive margin"). The reverse situation - where an exporter's home market price for a product is more than its export price for the same product – generates a no-dumping margin (or "negative margin").

2 In *Trade Measures Report No 39 – Certain A4 Insert Ring Binders from Malaysia* (11 May 2001) the Australian Customs Service made reference to the adoption of a Section of the Act - Section 269TACB(3) - that the Anti-Dumping Commission has in ABB's current case used as an excuse to apply "zeroing", but it is not clear whether "zeroing" was used in that 2001 case.

Amendment (Anti-Dumping Amendments) Act 2011. This explicitly states that Australia proposed to *"maintain its long-standing practice"* of not applying zeroing.[3]

Further, the adoption of this methodology occurred over a year after the commencement of the antidumping investigation, and subsequent to the application of the more usual methodologies that had yielded no dumping outcomes for all of ABB's imports.

These experiences confirm ABB's view that the administration of the anti-dumping regime is being conducted in a partial manner, with a bias toward finding positive evidence of dumping, even if that requires novel approaches to be used in investigations. The ADC's administration of the anti-dumping system does not take place in a policy vacuum, and accordingly ABB must surmise that it is current-day policy settings that are driving such behaviour.

The protectionist and anti-competitive extreme that has been reached is no better demonstrated than by the *Ministerial Direction on Material Injury* issued to the ADC in 2012.[4] In part, this Direction is to the effect that there should be no minimum share of the Australian market at which the ADC determines it is possible to conclude there is injury to the domestic industry, and that even evidence that the Australian industry's sales and profits are increasing less quickly than they would absent dumped imported competition is sufficient to find that "material" injury has been caused to the industry.

ABB submits that:

- the effect of the "zeroing" test is to almost automatically conclude that dumping has occurred in any given situation of competition between domestically produced products and imports; and

- the ministerial directions to the ADC render the test of whether those imports have caused material injury meaningless.

Accordingly, it can be concluded that almost all imports into Australia that are competitively priced are exposed to the imposition of dumping duties at the behest of an Australian industry producing the same product.

Implications for consideration of effective competition policy

ABB submits that the implementation of anti-dumping regulations in Australia has become so extreme that is irreconcilable with the principles and regulatory application of competition law. These regulations now represent a serious impediment to the market, to consumers, and to imported competition.

As we discussed in our initial submission, ABB believes this area of regulation has been captured by interest groups and does not strike a balance between the legitimate interests of the domestic industry to be protected from unfair importing practices and the interest of the broader community and of national economic welfare in maintaining vibrant and domestic markets that are exposed to both domestic and international competition.

For this reason, ABB believes that the Panel must consider anti-dumping regulation for inclusion in its list of priority areas for review.

Zeroing – clear discrimination against imported competition

As ABB has now experienced, and as we have described above, "zeroing" is just one example of a practice that has crept into anti-dumping administration and that is inconsistent with competition

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3 That Australia does not wish to apply "zeroing", and that it does not wish its trading partners to do so, is reflected in two of Australia's most recent free trade agreements (Article 6.8 of the Korea-Australia FTA and Article 7.2 of the Malaysia-Australia FTA).

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regulation. The use of "zeroing" to determine if a product has been dumped is directly inconsistent with the principles applied in the administration of competition law.

Zeroing, as applied in the case of allegations against ABB in the transformer market, has the effect of discounting circumstances where an importer is found to be selling its products at a margin above the normal price, and focuses only on those sales where there is a dumping margin. The practice of zeroing is comparable to suggesting that any decision by a domestic firm to sell goods or services at below cost in a particular circumstance constitutes anti-competitive conduct, whether or not the firm has significant market power and whether or not the decision causes a lessening of competition. Indeed it is far worse, because in the anti-dumping context it is not only a below cost sale that constitutes dumping – it is any sale that is below the exporter's home market price, *even if both the home market price and the export price are fully profitable*.

The practice of zeroing denies foreign producers the right to compete in the Australian market on the same terms as domestic producers. Clearly and obviously, it is detrimental to consumers, and contrary to competition policy, to maintain such differential treatment. Yet this appears to be the message that has now been sent to foreign exporters and local importers by the approach adopted by the ADC in relation to the dumping complaint levelled against ABB and other power transformer exporters.

ABB believes that the present operation of the anti-dumping regime undermines the Panel's proposed changes to the definition of competition. Essentially, there is an uneven playing field for importers. ABB agrees that, in a globalised economy, the competition regulator should consider competition from imports as being no different from domestic production. However the anti-dumping instrument as it is presently being administered in Australia provides far too extensive protection for domestic industries, shielding them from the need to compete.

The commercial impacts ABB now faces because of zeroing, and because of other aspects of the thinking of the ADC regarding injury to the domestic industry, are profound, as are the implications for the competitive operation of the energy markets that are affected by this process. Zeroing has not been applied to all exporters, and some will not have dumping duties imposed on them. Accordingly ABB will be held back from competing on the same terms as the domestic industry and other importers. The situation ABB now finds itself in is absurd. It is as far removed from the direction of 30 years of policy that has intended to create a more competitive and international economy as one can imagine.

Normal competition is not "injurious" nor is it a "circumvention" activity

ABB would also like to feature two other matters. The first of these is the way too easy instruction that the *Ministerial Direction on Material Injury 2012* gives to the ADC in relation to the assessment of whether injury has been caused by dumping. We refer you to our previous submission in this regard, and to our explanations above. These directions allow weak impacts on an Australian producer that are nothing more than *competitive* to be treated as being *materially injurious*.

The second is the set of "anti-circumvention" laws that were hurriedly introduced by the previous government. The law that says that an importer that pays dumping duty on an imported product and makes a profit on its resale of that product can then be penalised by even higher dumping duties is nothing short of scandalous.[5]

ABB now observes that a House of Representatives inquiry into "anti-circumvention" was announced on 16 October 2014.[6] To ABB's great concern, the terms of reference for the inquiry, and political statements made about the inquiry, suggest a strong and continuing bias among policy makers against import competition, to the extent that dumping measures are considered to be for the purpose of "punishing" importers and that anti-circumvention laws are not tough enough. The chairman of the House of Representatives Standing Committee on Agriculture and Industry, in announcing the inquiry, said it was motivated by complaints from the Australian steel, aluminium and food industries that

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5 *Customs Act* 1901, Section 269ZDBB(5A)

6 http://www.aph.gov.au/Parliamentary_Business/Committees/House/Agriculture_and_Industry/Anti-Dumping

importers were changing their practices after the imposition of a dumping duty, and suggested this was *"not acceptable"*. At no point in the press release announcing the inquiry is it suggested that there may be a legitimate, competitive explanation as to why a business should change its practices in these circumstances.

These attitudes from policy makers are creating a growing sense that imported competition is unwelcome in Australia.

Conclusion

There are contradictions between anti-dumping policy and competition policy. ABB's point is that aspects of the current implementation of Australia's anti-dumping regime are *fundamentally* and *extremel*y inconsistent with competition policy. ABB submits that a careful reconsideration of the anti-dumping regime from the perspective of competition policy is warranted.

The Panel should be concerned that the seemingly arbitrary application of Australia's anti-dumping laws will create new and higher barriers to trade, after Australia has been reducing tariff barriers and further reductions are being negotiated down to minimal or zero levels. The better approach is suggested by competition law, which uses concepts of *market power* and *injury to competition* as its protective mechanisms to ensure that domestic and international players compete fairly in Australian markets.

Policy makers should work to ease the trade-distortive effects of the ever-increasing number of anti-dumping obstacles that are being created. Competition policy dictates that antidumping law must be less arbitrary and less tilted in favour of domestic industries. This will require the concepts of "unfair" trade practices in domestic and in international trade to demonstrate greater convergence.

ABB finds support in the findings of the Productivity Commission in its 2010 report *Australia's Anti-Dumping and Countervailing System*, in particular in its findings that:

> *The 'political economy' argument for retaining the system would be strengthened by changes to address a number of deficiencies in the current arrangements which can add to the costs for the community. In particular.... there is no consideration of the wider economic impacts of anti-dumping measures... measures can too easily become akin to long-term protection, or outdated in the face of changing market circumstances...*
>
> *Introduction of a 'bounded' public interest test, drawing on similar provisions overseas, would be a practical means to take account of wider impacts and prevent the imposition of measures that would be disproportionately costly.... The test would embody a presumption in favour of measures where there has been injurious dumping or subsidisation... But it would also detail a small number of specific circumstances where measures would not be in the public interest - for example, where they would be ineffectual in removing injury; or would impose large costs on downstream users relative to the benefits for the applicant industry.*[7]

ABB is not the only international business that has serious concerns about the impact of anti-dumping rules and of the investigating authorities that administer them on its ability to do business. As well as banning practices like "zeroing", and ensuring that injury is truly "material" and not just imagined, we see a role for formal involvement by the ACCC or one of its Commissioners in the administration of anti-dumping law.

Even if the issues are complex or beyond the scope of the Panel to resolve the Panel is asked to recognise that there is a pressing need for reform of the anti-dumping regime and to at least consider making a recommendation that this be a topic for further urgent review to bring the regime into line with the global nature of the Australian economy, to reduce regulatory barriers to market entry and participation, and to promote competition and the benefits that flow from competition. This is the mandate of the Panel, and the mantra of the draft report.

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We ask the Panel to consider this in its further deliberations, and to make a recommendation or recommendations which result in further investigation of the anti-dumping regime with a view to correcting the clear contradictions between that regime and competition law and policy.

Yours sincerely

Axel Kuhr
Country Manager
ABB Australia