AMWU

30th March, 2011

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

By Email: economics.sen@aph.gov.au

Dear Sir,

Re: Submission to Economics Legislation Committee - Inquiry into the Customs Amendment (Anti-Dumping) Bill 2011

The Australian Manufacturing Workers Union (AMWU) supports the intent of the amendments to the Anti-Dumping Bill 2011. The amendments are consistent with the views put in a joint submission by the AMWU, CFMEU and AWU to Customs and Border Protection following on from the Productivity Commission Inquiry into Australia's anti-dumping system. Our views on these matters are in part influenced by how Australia's anti dumping system failed in the case of Kimberly-Clark.

As Senator Xenophon said in his second reading speech on the proposed amendments on 2nd March, 2011:

> *"In 2008, the Government imposed dumping duties on the Chinese and Indonesian tissue products after investigations found that Chinese products were being sold at 2 to 25 percent below the cost in its domestic market, while Indonesian toilet paper was found to have been dumped at 33 to 45 percent below value.*
>
> *However, this decision was overruled in 2009 following a review by the Trade Measures Branch of Customs, which determined that there was "no material injury" to Australian manufacturing as a result of these imports.*
>
> *By removing these dumping duties, the Government basically said to Kimberley-Clark – 'Go on, fend for yourself', even though they knew there was no way they could compete with the dumped products.*
>
> *In February 2011, Kimberly-Clark announced it was closing two of its four tissue machines and selling a pulp mill in and near the regional town of Millicent, costing around 235 jobs.*
>
> *And for every job that's directly lost, more jobs are lost as well, and the impact on the community of Millicent, and indeed on the entire state of South Australia will be significant.*
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Australian Manufacturing Workers' Union
Registered as AFMEPKIU
National Office
Level 4
133 Parramatta Road
Granville NSW 2142
Telephone: 02 9897 9133
Facsimile: 02 9897 9274
amwu@amwu.asn.au

Now it's fair to say that other factors were at play in this case however there is no doubt in my mind that Kimberley-Clark could have withstood competitive pressures if the Federal Government had stood up for Aussie manufacturing and stopped the dumping of cheap paper imports into the country...

"...while there are international rules around dumping, under the World Trade Organization's Anti-Dumping Agreement (Agreement on Implementation of Article VI (Anti-dumping)) which was finalised during the Uruguay Round in 1994 and sets up a framework for how countries can implement anti-dumping duties, the appropriateness and application of these rules needs to be seriously re-considered.

Indeed, it should not be a case of – 'They're the rules, no questions asked', rather as circumstances change and situations emerge the system needs to adapt in the interest of local industry and the Australian Parliament needs to act in the interest of Australian industry and Australian jobs.

This Bill is an important step in giving greater opportunities of redress to Australian manufacturers when it comes to fighting cases of dumping.

This Bill seeks to redress the flaws in the current framework and strengthen the provisions under the Act that will give greater support to Australian manufacturers during the application and investigation processes and in any review of decisions by the Trade Measures Review Officer or the Minister."[1]

The AMWU is particularly supportive of amendments to the current appeal process for dumping parts of which are incorporated within the proposed amendments. As the AMWU, CFMEU and AWU anti dumping submission pointed out, the toilet paper dumping case (Report 138) and the subsequent reinvestigation report (158) highlighted a serious technical flaw in Australia's anti-dumping system and the appeal process.

In the original decision:

- Customs and Border Protection found that some toilet paper from Indonesia and China was being dumped into Australia causing material injury. In December 2008, the Minister imposed dumping duties.

- As is the practice in Australia's system, an appeal led to the Minister calling for a reinvestigation of the findings that were carried out by the Trade Measures Review Officer. (TMRO). The main finding of the reinvestigation was that factors other than dumping were more important in causing material injury. Accordingly, the original decision was overturned.

- However under Section 269ZZL(2)(9)(i), in conducting the review Customs and Border Protection must have regard only to information and conclusions based on the relevant information in the original case.

If the conditions of the review do not satisfy this requirement of Section 269, there are no grounds for a technical appeal. As Kimberly Clarke Australia have put the case:

> *"The current legislative process affords aggrieved parties the ability to raise objections to the TMRO, who can request a reinvestigation. Once customs undertakes such a reinvestigation, should the determination change as has happened in the Toilet Paper*

[1] Senate Hansard, 2 March 2011, pp 972, 973

case, there is no formal process (to) enable the new aggrieved party to be represented in the change of finding.

There is an option to pursue errors of law through the Federal Court, but this is limited and does not permit review of the merits of the finding.

Some mechanism needs to be provided to enable representations outside a Federal Court appeal of errors of law."

Given this situation, the unions recommended that:

- Following a reinvestigation by the Trade Measures Review Officer (TMRO) and prior to a final decision by the Minister, the parties to the appeal be provided with the TMRO's draft recommendation and reasons for decision. That from the commencement to the conclusion of a reinvestigation there be a requirement for the TMRO to specifically identify the grounds for requesting a re-investigation and the evidence presented supporting this. If any party to the appeal has evidence that Section 269ZZL (2) (9) (i) has been breached, a ten-day technical appeal process will occur.

- In addition, the Unions proposed that Customs would have on retainer two experienced "Section 269 Advocates" who could be called upon to:

  (a) interview and review the findings and material utilised by the original investigation team;

  (b) interview and review the findings and material utilised by the TRMO and the second investigation team; and

  (c) provide the TRMO with a finding as to whether the conditions of Section 269 have been satisfied.

It is the assessment of the AMWU that some of these considerations are picked up in the proposed amendments the Senate is considering. They may also be addressed in Legislation the Government has foreshadowed flowing on from the Productivity Commission inquiry.

Other parts of the amendments take that a step further. For example, the amendments, if they were implemented (i.e. in the case of an appeal, the amendments were found to be consistent with our WTO obligations) would ensure that the onus of proof for dumping would be with the importer and that it is the importer who would have to bear the cost and risk of proving the imported product is not dumped. The amendments would also seek to ensure that once dumping and material injury are proved the material injury would be linked to dumping rather then other factors as was alleged to be the case in the Kimberly –Clark case.

From the AMWU's perspective, these changes to the system would provide greater certainty for manufacturers to make significant investments in Australia without having to worry about being undercut by dumped overseas imports with all the consequences this has for manufacturing jobs. We commend the amendments to the Senate.

Yours sincerely.

DAVE OLIVER
NATIONAL SECRETARY

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