

Senate Standing Committee On Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

15th April 2014

Dear Sir/Madam

Submission to the Senate Standing Committee on Economics – Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015 and Customs Tariff (Anti-Dumping) Amendment Bill 2015

Please find attached a submission by the informal Manufacturers' Trade Alliance ("MTA") to the Standing Committee Inquiry into the Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015 and the Customs Tariff (Anti-Dumping) Amendment Bill 2015.

The Manufacturers' Trade Alliance includes the following member companies (with contact details):

Company	Key Contact	Position	Email Contact detail
Orica Australia Pty Ltd	Mr. Malcolm Hart	AN Product Manager	
Bisalloy Steel Group Limited	Mr. Tom Matinca	Business Development and Strategy Manager	
Cement Industry Federation	Ms. Margie Thomson	Chief Executive	
Nufarm Limited	Mr. Bernard Lee	Industry and Government Affairs Manager	
Australian Paper	Mr. Garry Jones	Planning & Development Manager	
Dried Fruits Australia	Mr. Phil Chidgsey	General Manager	
CSBP Pty Ltd	Dr. Barney Jones	Business Manager-Ammonium Nitrate	
Arrium	Mr. Matt Condon	Manager-Trade Development	
BlueScope Steel Limited	Mr. Alan Gibbs	Development Manager-International Trade Affairs	
SPC Ardmona	Ms. Shalini Valecha	Strategy and Government Affairs	

The MTA looks forward to addressing any questions the Committee may have concerning the attached submission.

The MTA has a scheduled briefing on these two Amendment Bills by the Department of Industry and Science on the 21st April and as a result of this, a supplementary submission from the MTA to the Committee should be expected.

Yours faithfully

Alan Gibbs
Development Manager-International Trade Affairs
BlueScope Steel Limited
On behalf of the Manufacturers Trade Alliance

Matters for Consideration

The MTA seeks to provide the Senate Standing Committee with comments in respect of certain elements of the Customs Amendment (Anti-Dumping Measures) Bill (No.1) 2015 and Customs Tariff (Anti-Dumping Measures) Bill 2015. Matters not identified are considered by MTA to aid the improvement of the administration of Australia's Anti-Dumping System.

(i) Submission deadlines

The MTA welcomes the Federal government's initiative to encourage interested parties to lodge submissions in response to the commencement of an investigation by Day 37 (currently Day 40) of the investigation period. The reduction in timeframes by 3 days will enable the Commission to readily plan for potential exporter visits and the publication of a Preliminary Affirmative Determination ("PAD") as early as practicable from Day 60 of an investigation.

Delays to accessing an early PAD are influenced by extensions granted to exporters to provide completed Exporter Questionnaire Responses ("EQRs") by Day 40. Extensions of 7 days (and in some cases 14 or 21 days) are often granted to cooperative exporters. To ensure the new 37-day deadline is respected, it is recommended that extensions only be granted to interested parties up to a maximum 7 days (i.e. not beyond day 44). An extension will only be available to interested parties for the lodgment of information not included in questionnaire responses submitted on Day 37. Blanket extensions in time for large portions of the questionnaire response will be rejected.

(ii) Lodgment and publication requirements

The proposed changes are intended to enhance the receipt of applications, withdrawal and notification procedures within the Anti-Dumping process.

The MTA supports the cost-saving initiative concerning a change in the notification of key milestones in an investigation from the publication of a notice in the national newspaper, to notices published on the Anti-Dumping Commission and Anti-Dumping Review Panel websites, where appropriate.

(iii) Clarify normal value provisions

The intent of the proposed change is to clarify that there is no hierarchy in determining the appropriate method for determining normal value. MTA supports the proposed change.

(iv) Clarify the dumping margin period

When calculating dumping margins, the investigation period may currently be divided into periods of no less than two months. The proposed change enables the Minister to consider dumping margins determined at one-month intervals. This change will permit the Anti-Dumping Commission more flexibility in assessing dumping margins where a degree of volatility is involved, prior to the weighted-average calculation for the full investigation period.

(v) Clarify the definition of a subsidy

The MTA will be seeking further clarification on this aspect of the Amendment during a briefing with the Department of Industry and Science on the 21st of April, before making any submission to the Senate Standing Committee on Economics.

(vi) Amend provisions relating to new exporters

The proposed changes involving the treatment of new exporters in accelerated reviews are generally accepted. However, MTA does not support the date of effect of the variable factors for the new exporter as

the date of lodgment of an application for accelerated review. MTA considers that it is likely an incomplete application will be submitted to the Commission in a hurried manner to achieve a lodgment date. Subsequent information will be forwarded by the new exporter in support of its application for accelerated review, with an eventual initiation date far exceeding the prescribed 20-day screening period.

MTA recommends that the effective date for the new variable factors be the initiation or commencement date of the accelerated review investigation.

(vii) Dumping findings (material injury)

The proposed changes are intended to address possible interpretations that dumping and material injury has occurred prior to the investigation period.

MTA agrees with the proposed changes.

(viii) Clarify provisions regarding the use of the lesser duty rule

Changes were made to the mandatory consideration of the lesser duty rule in amendments to the Customs Act and the Dumping Duty Act in 2013. A further change is proposed by the amendments in respect of the mandatory consideration of the lesser duty rule in a countervailing investigation. Where the exporting country has not submitted an annual notification of subsidies in the specified compliance period (i.e. two most recent biennial periods), the Minister does not have mandatory regard to the lesser duty rule.

MTA welcomes this proposed change to the consideration of the lesser duty rule. MTA also considers that in anti-dumping investigations where a particular market situation is determined, and in cases involving an Australian industry single SME, the mandatory consideration of the lesser duty rule should equally not apply. This later MTA proposal extends beyond the proposed current amendment and is considered a necessary change to current practice.

(ix) Fee for review by Panel

The proposed introduction of a fee to apply for a review by the Anti-Dumping Review Panel (“ADRP”) is intended to “ensure businesses seriously consider the merits of their appeal before applying” along with assisting in the costs of administering the review mechanism.

The explanatory memorandum proposes reduced fees for SMEs. Possible future changes to fees and fees for different applications are contemplated.

The MTA does not support the introduction of fees for review. The proposed fee structure whereby SMEs will pay a reduced fee is open to manipulation where high-turnover exporters will seek reviews by encouraging the smaller, lower turnover, importer to make an application for review rather than subjecting themselves to a higher fee.

The MTA considers the review process should be exempt from fees. The objective of discouraging frivolous applications for review can be achieved by raising the threshold in respect of acceptable grounds for review.

(x) Higher procedural and legal threshold for reviews to be undertaken by the Anti-Dumping Review Panel

The proposed change to raise the legal threshold for the acceptance of a review application is welcomed by MTA. This initiative will limit applications for review that lack substance and permit the rejection of the review application. MTA is also supportive of the proposed conferencing arrangements to assist the ADRP in understanding the applicant’s ground for review, along with the proposed introduction of a consideration for the ADRP to seek further information from the Commissioner.

MTA encourages transparency in review investigations including disclosure of relevant information the ADRP's review decision. MTA therefore considers that the requirement to include summaries of conference discussion points is appropriate.

(xi) Withdrawal of review applications

MTA acknowledges the need for a withdrawal of a application for merits review, in a prescribed form. As MTA does not support the introduction of fees for merits review, consideration of a partial refund is not required.