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31 March 2011

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

(e) economics.sen@aph.gov.au

Dear Sir/Madam,

Re: Australian Plantation Products and Paper Industry Council Submission to the Senate Standing Committee on Economics Inquiry into the Customs Amendment (Anti-dumping) Bill 2011.

Thank you for the opportunity to make a written submission to the Senate Standing Committee on Economics (SEC) Inquiry into the Customs Amendment (Anti-dumping) Bill 2011 (Anti-dumping Inquiry).

1. THE AUSTRALIAN PLANTATION PRODUCTS & PAPER INDUSTRY COUNCIL'S (A3P) INTEREST IN THE ANTI-DUMPING & COUNTERVAILING 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 foreign producers that have government support (ranging from direct financial support to tariff assistance and tax credits) that may not reflect the 'true' cost of inputs for competing products around the globe.

Examples include: Brazil and China providing financial assistance to new pulp and paper production facilities; Thailand and Indonesia providing tax incentives; Vietnam tariff rates; and the United States provides a production subsidy through an excise tax credit.¹ Economic globalisation has increased this competition, and recently the global financial situation has added increased incentive for activities that constitute dumping.

Australian wood processors and paper 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, plywood and toilet paper are four wood fibre based products which have been the subject of dumping investigations in recent times.

Australia's commercial environment is completely exposed to international trade and is not a level playing field. Although A3P members consider that the current anti-dumping system is complex, onerous, time consuming and costly, it is a mechanism that can be accessible and effective in addressing instances of external subsidies, predatory and anti-competitive behaviour in the international arena.

¹ Source: Pulp & Paper Industry Strategy Group - Final Report - *March 2010*

2. PRODUCTIVITY COMMISSION INQUIRY RECOMMENDATIONS

A3P provided a submission to the Productivity Commission (PC) on their draft 2009 report into the Australian antidumping and countervailing system and subsequently to the Australian Customs and Border Protection Service (Customs) on the PC final report (No.48) in 2010. In those submissions A3P detailed the following:

2.1 General Points

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.

The following general findings from the PC Report were supported:

- That the anti-dumping system has been found to be consistent with WTO guidelines
- That the anti-dumping system was acknowledged as a necessary, important and legitimate component of an Australia's open economy
- That the anti-dumping system should remain under the control of Customs and its Minister
- Customs, the Minister and the Trade Measures Review Officer (TMRO) should retain their roles and powers

2.2 The 'Public Interest' Test

The PC proposal under Recommendation 5.1, was to introduce a 'bounded' public interest test containing a presumption in favour of measures where there has been injurious dumping or subsidisation, but detailing a list of circumstances where measures would prima facie not be in the public interest. A3P noted that the anti-dumping system has a series of checks and balances (including provision for the Minister to intervene in line with public interest) inherent in its current framework that makes getting a viable case across the line a comprehensive and non-frivolous process. A3P does not support an additional 'public interest test' as it would add unnecessary complexity, additional time, cost, and uncertainty to an already complex comprehensive process.

That the Customs Amendment (Anti-dumping) Bill 2011 ('Bill') does not include such a test is welcomed by A3P.

2.3 Life of Measures

The PC proposal under Recommendation 6.4 was to limit extensions of measures to one three-year period (so in total anti-dumping measures are proposed to have a maximum 8 year term).

A3P's view is that an arbitrary limit to the extension of measures is problematic, unnecessary, and doesn't reflect the market situation if the subsidy, predatory behaviour or dumping activity continues to occur. In the case of countervailing actions, subsidies and support in exporting countries that directly lead to dumping activities do not just disappear or cease delivering an unfair competitive advantage after an arbitrary term. Similarly, a company's policy of aggressive or forced entry to and dominance of a particular domestic market is not necessarily abandoned despite being adjusted by measures for a period of time. A3P does not support the proposal in relation to the life of measures, if the market circumstances and dumping activities continue, then anti-dumping measures should not be arbitrarily removed without review and demonstrable evidence that the situation has changed.

That the Bill does not include such a provision is welcomed by A3P.

2.4 Automatic Review of Measures

The PC proposal detailed under Recommendation 6.5 is that the current 'review of measures' provisions should be abolished. It is proposed that the system should provide for annual adjustments to the magnitude of measures by an automatic review of measures. A3P would see merit in an automatic review of measures based on major external factors having changed significantly, for example currency realignments and general world market price realignments. This has potential for providing improved outcomes in a world of changing economic circumstances and exchange rates. The imposition of an additional mechanism of review was not supported.

A 'review of measures' can be a costly, information intensive, and time-consuming process for parties in the anti-dumping system.

3. PULP AND PAPER INDUSTRY STRATEGY GROUP RECOMMENDATIONS

The final report of the Pulp and Paper Industry Strategy Group (PPISG) was released on the 20 April 2010 by Senator the Hon Kim Carr, Minister for Innovation, Industry, Science and Research. The report was the result of a review of the pulp and paper industry allowing industry leaders, unions and expert advisors to work with government to create Australia's first pulp and paper industry strategy. One of the key areas targeted in the final report was trade, specifically on initiatives to reduce comparable product dumping.

Under Recommendation 15, the Strategy Group recommends that:

- (15a) a working group with the Australian Customs and Border Protection Service (perhaps in conjunction with the Trade Remedies Task Force) be established to consider how to streamline the process for making a case that dumping or subsidy is occurring, in order to reduce costs and complexity for the industry;*
- (15b) the Australian Customs and Border Protection Service provide business with a clear definition of material injury in relation to dumping actions and remedies;*
- (15c) the Productivity Commission's draft recommendation to introduce a 'public interest test' be rejected;*
- (15d) the Productivity Commission's draft recommendation on the continuation of measures be rejected.*

The PPISG final report can be found at:

<http://www.innovation.gov.au/INDUSTRY/PULPANDPAPER/PPIIC/Pages/PulpandPaperIndustryStrategyGroupFinalReport.aspx>

A3P supported the PPISG recommendations in regard to the antidumping system and has urged the government to address and adopt these recommendations.

4. CUSTOMS AMENDMENT (ANTI-DUMPING) BILL 2011 & OTHER ISSUES

4.1 A Clear Definition of Material Injury

A3P is concerned by recent decisions by the Attorney General regarding the revocation of anti-dumping duties on toilet paper imports, and Customs regarding the termination by statement of essential facts of an active plywood anti-dumping case. In both cases it was found that the imported products were dumped; the Australian industry producing like goods suffered injury; but the injury to the Australian industry caused by dumping of the goods was deemed not to be material.

A3P is perplexed and concerned about the outcomes from the two recent cases and the lack of rationale provided by Customs of how they have assessed material injury. The current system, the uncertainty of the current definition of material injury, and recent findings create significant uncertainty and further undermine the competitiveness of the Australian industry. A clear

definition of material injury and the rationale behind Custom's decisions in relation to dumping actions and remedies would provide more certainty to industry.

The Bill's proposed provisions to promote more clarity and extension to the definition of 'material injury' are welcomed by A3P and further clarification is urged.

4.2 Other Bill Provisions

A3P welcomes the intent of the following types of proposed provisions contained in the Bill:

- Amendment and clarification of existing key definitions within the antidumping system such as injury, and affected and interested parties. Any clarification of existing key definitions should help alleviate some uncertainty for parties that utilise the antidumping systems and Customs who maintain it.
- Reduction in the data requirements for an antidumping application, such as the requirement for supporting data reduced to the last 90 days, currently 1 year. The antidumping system is very information intensive in its current form adding to its complexity.
- Reduction in timelines of the process where practicable should help alleviate some uncertainty, and potential injury, for parties that utilise the antidumping systems and Customs who maintain it.
- New information submitted after the formal application process which could not have been reasonably been provided earlier be considered in the process. This provision reduces the time required to lodge an application especially when some information (international data) can take time.
- Economic condition forecasts of the Australian Industry are to be considered as admissible evidence in the process.
- Enabling decisions to be referred to the Administration Appeals Tribunal. Currently only recourse is to the Federal Court which is lengthy and costly process.

While the sentiment underpinning the provisions contained in the Bill that propose a reversal of the onus of proof and causal link is acknowledged, A3P understands that it may be difficult to apply this in the Australian trade and commercial environment. It is suggested provisions that further define and clarify the system framework (especially the definition of 'material injury') would be very helpful and effective in improving the current antidumping system.

4.3 Additional help for applicants

The administrative and compliance costs (including consultant costs and information gathering) to lodge an antidumping application are high and in many instances prohibitive and continued action should be taken to address this issue.

More needs to 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. The implementation of a Customs liaison team with specific communication skills that spends time understanding the client and assisting industry would be very useful and effective.

4.4 Import data collection

Australian manufacturing industry has identified access (or lack of) to sufficiently detailed import statistics as a major issue in progressing antidumping applications. 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 where, and at what price, should be the framework that should be implemented as the model framework for trade data in Australia. In 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.

4.5 Investigations - accounts and undertakings

Customs practice of accepting undertakings at fixed price from overseas exporters is seen as problematic in a trade environment of rapidly changing prices and exchange rates. Customs should have a framework and associated discretion to substitute 'best available information' and should lean towards the more verifiable Australian-sourced data where there is an alternative.

4.6 Parties in the appeal process

As antidumping applications and investigations are complex, information hungry and resource intensive for both companies and Customs, if an appeals process (reinvestigation) occurs the original parties (both industry and the relevant Custom's team) should be allowed to participate. This will aid understanding of the complex case, industry and market issues, and ultimately is seen to be more equitable and speed up the process.

5. CONCLUSION

The anti-dumping and countervailing provisions are all that is available to Australian industry to provide a semblance of a level playing field and to redress subsidies and predatory and anti-competitive behaviour by international companies exporting into the Australian market. To put it in context, the current provisions within the antidumping system (i.e. tariff measures) that may be applied to international companies exports into Australia, are less than those which would apply if the same anti-competitive and predatory pricing activities were undertaken in Australia between Australian domiciled companies (ie Trade Practices Act, ACCC regulation etc).

A3P strongly supports the continuation of, and improvement in, an effective, efficient, and accessible anti-dumping system that supports a level playing field for Australia's competitive industries.

A3P welcomes and supports many of the proposed provisions contained in, and the sentiment of, the *Customs Amendment (Anti-dumping) Bill 2011*. The Bill addresses some but not all of the necessary changes and improvements needed to ensure the anti-dumping and countervailing system is efficient, effective and accessible for Australian industry.

If the Bill does not pass, A3P calls on the Government to develop and implement another pathway to strengthen, simplify and improve the current anti-dumping and countervailing system. In any event the process of improving and clarifying the anti-dumping and countervailing system should continue.

The plantation products and paper industry looks forward to working constructively with the SEC inquiry.

Yours sincerely

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Chief Executive Officer - A3P

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Published by A3P Braddon, ACT, Australia
