

30 November 2014

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House of Representatives Agriculture and Industry Committee Inquiry into Australia's anti-circumvention framework.

The Australian Forest Products Association (AFPA) welcomes the opportunity to provide comment on the House of Representatives Agriculture and Industry Committee (Committee) Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures (Inquiry).

AFPA is the peak national body for Australia's forest, wood and paper products industry. We represent the industry's interests to governments, the general public and other stakeholders on matters relating to the sustainable development and use of Australia's forest, wood and paper products. Our industry makes a significant contribution to the Australian economy especially in rural regions.

Wood and paper products are internationally traded commodities. Australian wood and paper product manufacturers face significant international competition, and incidences of competition from foreign producers selling below 'normal value' and 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.

Australia's commercial environment is completely exposed to international trade and is not a level playing field. AFPA members consider that the anti-dumping system is complex, onerous, time consuming and costly even though recent reforms and the establishment of the Anti-dumping Commission (ADC) have improved aspects of the system.

The anti-dumping and countervailing provisions are the only mechanism available to Australian industry to help achieve a level playing field, and to redress subsidies on imported goods, and combat predatory and anti-competitive behaviour by international companies exporting into the Australian market.

It should be noted that the antidumping provisions applied to international exports into Australia are less stringent than regulations applied to Australian domiciled companies engaged in similar anti-competitive and predatory pricing activities in Australia (i.e. under Trade Practices Act, ACCC regulation etc).

Recent reforms and reviews have gone some way to improving the existing system however the current antidumping system's provisions and its implementation are still inadequate. Further improvement, in both the structure and especially the effective implementation of the system, is needed to make it more accessible, timely and effective.

In principle, AFPA supports reform processes that remove red-tape by improving the efficiency of regulation, are efficient, cost effective and create more certainty for trade (both import and export) especially in relation to our international competitors.

We understand the current status of the reform process of the antidumping system to be:

- establish a new Anti-Dumping Commission (ADC) to investigate dumping complaints (completed on 1 July 2013);
- increase resources for the ADC to better deal with cases (commenced on 1 July 2013);
- make the anti-dumping system easier for Small and Medium Enterprises (SMEs) to access and use (commenced on 1 July 2013); and
- strengthen remedies against overseas producers who deliberately circumvent Australia's anti-dumping rules (commenced on 1 January 2014).

The Committee's terms of reference cover both the operation of the anti-circumvention framework and areas which require further consideration or development including the effectiveness of anti-dumping measures.

In principle, AFPA supports regulation that can both cost-effectively and efficiently address circumvention issues related to antidumping. The following comments relate to the operation of, and potential improvements in, an anti-circumvention framework.

We have observed that the key issues for the circumvention of measures includes:

- "minor" or "slight" modifications to goods;
- country hopping of the goods, involving both exporters into Australia and/or Australian importers;
- duty absorption by the importer; and
- application of *ad valorem* measures.

An example is that the paper product industry is characterised by large international companies that often have operations in several countries, facilitating the potential ability to switch sourcing of the product if antidumping measures are applied.

We note that the 'minor' or 'slight' modification to goods are reflected in the anti-circumvention provisions in the European Union (E.U.), United States (U.S.) and South Africa. As an example, in Canada, the provisions exist for 'any matter' to be investigated, including circumvention activities. Additionally country hopping activities are addressed in the E.U. and South African antidumping system provisions.

Industry questioned the Antidumping Commission (ADC) for introducing the anti-circumvention provisions in Division 5A of the Customs Act in July 2013, with the 'minor' modification activity absent from the provisions. The ADC indicated in 2012 that it would address the 'minor' modification of goods, but in the final regulation failed to do so. This issue needs to be addressed.

The following areas for further enhancement/improvement are urged to be considered in the anti-circumvention measures:

- that preliminary affirmation determination (PAD) and provisional measures are applied from Day 60;
- that extensions to exporters for Exporter Questionnaire Responses be limited to 5 days;
- limit timeframe extensions (we are aware of two previous investigations where four extensions were approved by the Minister);
- *ad valorem* measures are not supported by industry as exporters can reduce export prices further without penalty; and
- abolition of the lesser duty rule for SMEs.

Following is broader comment on the effectiveness of anti-dumping measures that we urge the Committee to consider during the Inquiry:

- The *Anti-Dumping Commission* (ADC), investigates alleged dumping and subsidisation of goods imported into Australia and imposes duties to address material injury to the Australian industry that manufactures similar or the same goods. Since the establishment of the ADC the customer service focus and communication of activities, progress and outcomes has improved.
- *Antidumping Commission staff skills and industry experts.* ADC staff will continue to require broader training and skills in the relevant manufacturing industry processes and practices to better understand the basis of the specific complex cases that they investigate. Additionally the ADC will continue to need to be both adequately funded, and willing to engage and utilise independent industry experts on complex investigations.
- *Material injury provision and definition need further improvement:* Further clarification and implementation of the existing system is needed on what constitutes material injury resulting from dumping activities. This would help alleviate some uncertainty for parties that access the antidumping system.

- *Delaying the process:* Further consideration should be given by the ADC on how to address the occurrences of importers stalling and delaying of supplying relevant data, slowing the antidumping process down and effectively prolonging the length of time that dumping is allowed to continue.
- *New information submitted:* Consideration should be given to provide the facility to continue to submit new (additional) information after the formal application process and during the ADC's assessment and reporting (e.g. Statement of Essential Facts) phases, particularly if this information could not have been reasonably been provided earlier. This approach reduces the time required to lodge an application especially when sourcing some information (such as international data) can take time. Further, relevant economic condition forecasts of the Australian industry should be considered as admissible evidence in the process.
- *Import data collection improvements.* Australian industry has repeatedly identified the access (or lack thereof) to sufficiently detailed import statistics and the transparency or granularity of this data, as major constraints in evaluating antidumping applications. One such example is the suppression of country of origin information in the Antidumping Commission/ABS import statistics, common in many tariff codes. As a point of comparison, the U.S. system, allows industry 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. A similar framework should be implemented for Australian trade data. Australian industry appreciates the positive initiative; 'import data financial assistance program', which has been established by the Antidumping Commission to enable better access to import data. However industry feels that further improvement can be made in this area.
- *Data Coarseness.* Improving import data transparency and granularity is needed, as the country of origin data can obscure important information such as product grades. This has important ramifications, as the reporting of average pricing across product grades can obscure a comparable grade's pricing. Coarse product category data also makes it difficult to compare like products, where the cost of producing a particular product customised for the Australian market is not the same as the cost of producing an equivalent product in the importer's domestic market due to differing product standards etc.
- *Acceptance of information.* Again the ADC needs the discretion to substitute 'best available information' (including surrogate country information) where there is doubt over the veracity of data provided by exporters/producers.
- *Related and integrated businesses.* During an investigation the current administrative processes lack the necessary definition to adequately test the extent of an arms-length nature of the relationship especially between related and integrated businesses, and whether goods are sold at a profit.

- *Appeal process needs further review.* Antidumping applications and investigations are complex, information hungry and resource intensive for both companies and the ADC. If an appeals process (reinvestigation) occurs, the affected parties (both industry and the relevant investigation 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. The process needs to provide for appeal decisions to be referred to the Administration Appeals Tribunal. Currently the only final recourse is to the Federal Court which is a lengthy and costly process.

The forest, wood and paper products industry welcomes the opportunity to provide comment on the Inquiry and urges consideration by the Committee on the comments detailed above.

Should you have any queries please contact me on (02) 6285 3833.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ross Hampton', with a stylized flourish extending to the right.

Ross Hampton
Chief Executive Officer