



31st March 2006

Trade Measures Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2600

ATTENTION: MS ANTONONIA BOLSCHELARSKI

Dear Ms Bolschelarski,

Joint Study of the Administration of Australia's Anti-Dumping System

I wish to make a brief submission to the abovementioned study on behalf of the Australasian Paper Industry Association Ltd (APIA).

Background to APIA

APIA came into being recently as a result of an official amalgamation of two existing industry bodies – the Independent Paper Group (IPG) and the National Paper Council (NPC). It was formed with the aim of comprehensively representing and promoting the entire paper industry, including merchants, overseas suppliers and local manufacturers. A list of current members (will increase) is attached at Attachment A.

It will be noted that the current membership comprises some 28 senior executives of merchants, overseas suppliers and the local paper manufacturer, Australian Paper, supplying the overwhelming proportion of papers and paperboards to the Australian and New Zealand markets. The Australian paper market has been subject to a number of anti-dumping actions over the past decade and a half.


Relevance of Study to APIA

Put in the above context, it will be readily appreciated that APIA has a strong interest in this study. Being comprised of both importers and the sole local manufacturer of fine papers, APIA believes that Australia's anti-dumping system must be efficient, balanced and, above all, fair to all of the competing interests.

Aim of Study

The terms of reference require the Joint Study Group to examine Customs' current administrative practices and consider options to improve the operations of Australia's anti-dumping system, particularly for small to medium enterprises. In this regard, a recent media report stated that the Trade Remedies Task Force, representing local

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producers, believed that the current system was too lengthy, costly and often required the assistance of a specialist consultant to lodge and prosecute an application. Additionally, it is alleged that the Trade Measures Branch wants a case to be almost confirmed before an investigation is even launched.

In view of the above, the Joint Study Group says it will focus on:

- access to the system;
- the application process and security of applications;
- the investigation of alleged dumping; and
- the imposition of measures and monitoring of their effectiveness.

Access to the System

As outlined in the 'Issues for Consideration' document, Australia's anti-dumping legislation places the onus of proof on the applicant to establish reasonable grounds for the initiation of an investigation and sets out specific timescales for the screening of applications and various stages throughout the investigation and finalisation of recommendations to the Minister. Unfortunately there is no set time within which the Minister makes his or her decision.

Currently applicants are required to complete an application on an approved form setting out details of alleged dumping, the dumping margin (normal value minus export price), and the material injury (loss of sales, market share and/or profits etc.) caused by the allegedly dumped goods. Again, the issues paper correctly points out that conclusive evidence is not required by Customs but claims of dumping and injury must be reasonably based. Simple assertions, unsubstantiated by evidence is not acceptable.

It is our experience that access to the system is open to all local producers, although it is fair to say that most applications appear to be lodged by larger manufactures and/or groups. While it is alleged that small and medium enterprises are disadvantaged in terms of expertise and cost, it is doubtful that many make full use of their associations and/or the services of the Dumping Liaison Unit of the Trade Measures Branch (who offer assistance with information requirements and the screening and investigation process). These services (by the Liaison Unit) should not extend to assisting in the preparation of applications, as this would compromise subsequent actions by Customs.

The Trade Remedies Task Force apparently also believe that the Customs screening process (20 days) is too stringent – with applicants required to submit almost conclusive proof before an investigation is launched. In APIA's view the current screening process is both appropriate and necessary. The legislation requires Customs to be convinced that a prima facie case exists and the issue of an anti-dumping notice by the Minister warranted. Thus Customs must insist that all aspects of alleged dumping and injury be supported by written evidence or fact before it proceeds, as the commencement of any subsequent investigation involves substantial costs (in the hundreds of thousands of dollars in most cases) incurred not only by the applicant but the relevant importers, exporters, Customs, ministerial staff and ultimately consumers. Under the circumstances the current strict screening process must be retained in the interests of balance and fairness to all.

The Investigation of Alleged Dumping

The anti-dumping legislation provides for timescales for completion of the various stages of an anti-dumping investigation, following the screening and acceptance of an application – these stages being:

- the initial stage of the investigation involving Customs' visits to importers, exporters and local manufactures and receipt of submissions from interested parties;
- the imposition of provisional measures if warranted;

- the issue of a Statement of Essential Facts by Customs for comment by all parties – at or before 110 days from commencement of investigation;
- the receipt of submissions (on SEF) and preparation of report to Minister – within 155 days of commencement of investigation;
- decision and report by Minister – no time limit for Minister to make decision.

Given that the above stages and timescales are laid down in the legislation, it would not appear that the Study Group can consider any shortening of the process. More importantly, however, it is our firm view that Customs is already under severe pressure in completing these complex investigations – within the current timescales. Indeed, some latitude is made and should be made to lengthen the time taken for the more complex inquiries, particularly in the final analysis of evidence gathered and before the preparation of the Statement of Essential Facts. In this regard, we believe that the tight timeframes appear to have an adverse effect on Customs' analysis of material injury, particularly injury caused by factors other than dumping. This is an area that needs some further examination.

Ministerial Decision-Making Process

Customs must present its findings and recommendation to the Minister within 155 days of commencing an investigation. However, under current legislation, the Minister is not subject to any time constraint in making his or her decision on whether a dumping notice, imposing anti-dumping measures, should be issued. This lack of time constraint has caused great concern to all parties involved in the system. Overseas exporters and importers have been particularly affected, as extensive lobbying of the Minister by the local producer/s has led to some decisions being delayed for up to twelve months or more. This has a negative effect on the relevant market and activities of both the producer and importers. It is our view that a time limit of 60 days for ministerial decisions be provided in the legislation and all parties be advised that no further information or submissions would be considered after the date of close of comment on the Statement of Essential Facts.

Post Imposition of Measures

We are not aware of any particular problems associated with the Customs oversight of the operation of provisional measures; however, we doubt that Customs would be able to undertake the level of monitoring for remedial effectiveness in economic terms as indicated in the issues paper.

Summary

In summary, it is our view that any improvement in administration processes and costs are limited by the evidential and time constraint requirements contained in the current legislation. However, there does appear to be scope for improved access to the system by small and medium enterprises through more use of industry associations and/or the Dumping Liaison Unit of Customs. Additionally, gains would be achieved by inserting a time limit of 60 days for the ministerial decision-making process.

We will be pleased to elaborate on the above and/or provide additional information if required.

Yours sincerely,

A. S. Wood
Chairman

Cc. APPIA members

LIST OF CURRENT APIA MEMBERS