



Penrice Soda Products Pty Ltd

A.C.N 008 206 942

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31 March 2006

Trade Measures Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

VIA FACSIMILE 02 6275 6888

Attention: Antonina Bolschelarski

Dear Antonina

I am writing in respect of the Joint Study of the Administration of Australia's Anti-Dumping System. The Study was announced by the Minister for Justice and Customs, and the Minister for Industry Tourism and Resources, to examine current administrative practices and to consider improvements to the operation of Australia's anti-dumping system.

Penrice Soda Products Pty Ltd ("PSP") is Australia's only producer of soda ash and sodium bicarbonate. In February 2005 PSP sought anti-dumping action against Chinese exports of sodium bicarbonate ("BIC"). In November 2005 the Minister accepted Customs' recommendations and imposed interim dumping duties on exports of Chinese BIC.

PSP has drawn on its experiences during the recent BIC investigation to comment on certain aspects of the administration of Australia's anti-dumping system.

1. Access to the Anti-Dumping System

Initiation and Pre-Screening

Prior to formal application for anti-dumping measures, PSP submitted a draft application on BIC with an operations team within the Trade Measures Branch. Feedback received on the draft was moderately useful to PSP for its formal application. PSP was advised that suggested changes to the application could not necessarily be relied upon as Customs' final position in regards to certain matters for initiation purposes.

PSP was disappointed with this advice and felt there was a lack of confidence by Customs in recommending advice that an applicant could actively rely on in its application.

PSP submitted a formal application in February 2005 in respect of BIC. Customs sought clarification on items which resulted in extensions to the 20-day pre-screening period. Upon providing clarification of certain aspects of the application, Customs recommenced the 20-day pre-screening timeframe. Whilst PSP welcomed the opportunity to clarify aspects of the application with Customs, the company felt that the additional timeframe to initiation was not warranted based solely upon the response to questions supplied.



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PSP would be unlikely to consider the lodgment of a draft application in future (whether with the DLU or an Operations group) as Customs was unwilling to be held accountable to advice provided. PSP considers that an applicant company is powerless to prevent Customs from extending the 20-day pre-screening period as it desires – Customs can seek answers to questions of clarification and re-commence the pre-screening period as required. The alternative of Customs not clarifying aspects of the application is that most cases will be rejected during pre-screening – an outcome which is not conducive to the application process.

2. Transparency

Public File

Current arrangements in accessing the Public File are cumbersome and inefficient. PSP encourages the Reference Group to consider enabling interested parties access to the Public File information via the Customs' website (as is available to interested parties in US investigations).

Access to the Public File via the Customs' website would overcome problems associated with the timeliness of submissions and reports.

Confidentiality

Interested parties often omit significant amounts of detail from Public File versions of submissions and reports on the basis of commercial sensitivity. Non-confidential summaries that enable the reader to understand the substance of the information omitted are rarely provided (it at all). In circumstances where omitted data relates, for example, to adjustment claims to normal values by an exporter, it is difficult for the applicant to adequately respond to arguments presented in the absence of a non-confidential summary.

PSP considers that Customs should adopt a firmer approach to the policing of claims of confidentiality which omit information from a submission or report which has not been replaced with a non-confidential summary of the claimed sensitive material.

3. Conduct of Investigations

Artificially low prices - China

PSP is concerned by Customs' current approach to claims by applicant companies that raw material costs and/or selling prices in China are considered artificially low due to the influence of State Owned Enterprises ("SOEs") in the Chinese industry. In the BIC investigation, PSP asserted that raw material costs supplied by SOEs influenced domestic selling prices for BIC. Furthermore, selling prices for BIC were also heavily influenced by the predominance of SOEs in the Chinese BIC market, where SOEs account for approximately 90 per cent of companies in the industry.

Customs responded to PSP's assertions by claiming that raw material costs and the selling prices for BIC were determined by "market forces" and that the influence of SOEs on costs and prices was not evident.

PSP maintains that the market for soda ash and BIC is significantly influenced by the ownership and control exercised by SOEs in China. PSP considers that Customs did not adequately investigate the involvement and influence of SOEs on the BIC market in China. It is PSP's view that the onus of proof of establishing the impact of SOEs on costs and prices in China is not the responsibility of the applicant, rather, it is incumbent on the exporter to demonstrate that the involvement of SOEs in the sector do not influence costs and prices of the goods under consideration ("GUC"). PSP contends that investigation by Customs far beyond asking questions about the determination of costs and prices of the exporter is necessary to establish the role of SOEs in the sector.

Provisional measures

PSP supports the early imposition of provisional measures as early as practicable from Day 60 of an investigation. Currently, a preliminary affirmative determination ("PAD") is only published at the time, or some days following, the publication of the Statement of Essential Facts ("SoEF").

PSP encourages the Reference Group to recommend that a PAD be published as soon as Customs has received confirmation via its response to the exporter's questionnaire that dumping is occurring, and that material injury to the Australian industry has been established.

Present arrangements are all too predictable and allow importers to continue to import the dumped GUC causing material injury to the Australian industry up until the date of the SoEF (usually Day 110).

Retrospective measures

It is PSP's view that the current remedies within the anti-dumping system lack the necessary deterrent effect to discourage ongoing material injury. The Reference Group is asked to examine the drafting of guidelines to effect the imposition of retrospective measures in circumstances consistent with the WTO Anti-Dumping Code.

Penrice is of the view that this type of initiative, along with the early imposition of provisional measures, will act as deterrents to importers to continue to cause material injury to an Australian industry.

4. Monitoring and Compliance

PSP is aware that some importers may seek to circumvent the interim duties imposed following an investigation. Customs undertakes a monitoring and compliance activity which seeks to ensure the correct measures are levied on products to which measures apply.

PSP considers that the monitoring and compliance function requires increased resourcing to ensure that measures as imposed have the desired impact on selling prices in the market. This analysis requires interaction with the applicant industry to ensure relief is afforded to the injured industry. In certain administrations, anti-absorption inquiries are undertaken to establish whether measures are reflected in the selling price of the GUC or whether rebates are being paid to negate the effect of the measure to enable the exporter to maintain sales volume in the particular market.

PSP encourages the Reference Group to examine opportunities and improve resources available to the Trade Measures Branch to ensure the effective monitoring and compliance of measures imposed.

PSP welcomes the opportunity to discuss with members of the Joint Study any aspect of this submission. Please do not hesitate to contact the undersigned on (08) 8402 7245.

Yours sincerely

Mike Carter
General Manager Sales & Marketing