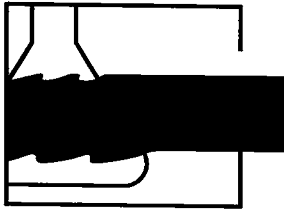

TOWNSEND CHEMICALS PTY LTD
A.C.N. 005 074 073

12th May, 2006.

Ms Antonina Bolschelarski
Director Projects
Trade Measures Branch
Australian Customs Service
CANBERRA ACT 2600

Dear Ms Bolschelarski,

I refer to the joint study on the administration of the Anti-Dumping system announced on February 23, 2006.

Townsend Chemicals was established in 1974. It is a wholly owned Australian manufacturer of plasticisers, polyesters and thermoplastic polyurethanes. These goods are sold for use in the paint, plastics, rubber and adhesives industry. Over the past 10 years, Townsend, on average, has employed at any one time 30 people in its business.

In 2002 Townsend Chemicals applied for anti-dumping duties against imports of thermoplastic polyurethanes from Germany, Italy and USA. Our application ultimately failed and we feel this joint study is an appropriate forum to make some comments and reflections on our experience.

We believe that the personnel within the Trade Measures Branch who administered our application had insufficient knowledge and expertise to allow them to adequately understand a case dealing with chemicals/polymers. They did not seek to obtain impartial, independent technical opinion or advice in situations where there was conflicting evidence. Rather, they relied on statements from the market (end-users), from importers and from the exporters on critical issues and formed their views without properly testing the veracity of the information. This was more than evident in the issue of Like Goods, which after the release of an Issues Paper and months of argument and volumes of evidence, resulted in the Trade Measures Branch concluding that Townsend Chemicals did not produce "like goods" to those being the subject of the application. This finding would have had the effect of immediately bringing the investigation to an end. It was only after Townsend presented an opinion from a Professor of Materials Science to the effect that the Trade Measures Branch finding was utterly wrong that they reversed their decision and this allowed the investigation to continue. However, the view with the Trade Measures Branch remained coloured by other erroneous non Like Goods assumptions.

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The Trade Measures Branch, in our opinion, were far more prepared to accept as true or reliable, information provided by the market, by importers and by exporters – all of whom had a clear vested interest in ensuring our application failed. It was as if we were the ones being investigated and the evidence we provided was scrutinised and we were cross examined to a far greater degree.

The Trade Measures Branch appeared to be influenced by the fact that the exporters we named as "dumpers" were large multi nationals of high reputation and by definition the evidence provided by them must be sound. Townsend (a small Australian enterprise) could not have the same credibility as the large multi nationals. These same multi nationals have recent histories of being prosecuted and heavily fined in both Europe and the USA for participating in anti competitive behaviour.

We received conflicting advice and directions from different members of the Trade Measures Branch that we had contact with during the investigation and this led to confusion over issues relating to our application. There was evidence that different officers within the Trade Measures Branch interpreted the legislation differently and comments were made by Consultants that an outcome could be different depending on the makeup of the investigation team.

As a small, Australian manufacturer with no international affiliates, we found it extremely difficult to access market information on pricing, credit terms, etc., in the exporting country. Our inability to access data from Australian import statistics inhibited our attempts to provide important data that may have enhanced our application.

Townsend believe that the Trade Measures Branch did not sufficiently scrutinize exporters as far as domestic pricing in the country of origin was concerned and that the dumping margins as assessed in the investigation were consequently understated. The exporter that Townsend identified as the most serious offender wasn't visited and data from another exporter was used to construct costs and dumping margins. This was despite clear evidence that the exporter we were most concerned about was the lowest price seller in the Australian market.

At all times during the investigation of our application we felt that we had to prove beyond any possible doubt anything and everything we said yet end-users, importers and exporters were allowed to create doubt by being misleading and not subject to equal scrutiny. In every sense we were the ones being investigated.

The Trade Measures Branch investigation of our application concluded that dumping was proven but the injury caused by the dumping was negligible. They concluded that our business had suffered injury in the form of price undercutting, price suppression, loss of sales, loss of market share, loss of profit and profitability, reduced utilisation and reduced capacity to invest. They concluded that the injury was not as a result of the dumping. According to the Trade Measures Branch, Townsend was the cause of their own injury. Some of the 'self inflicted' injury, as assessed by the Trade Measures Branch, "include a lack of technical support (especially after a particular Townsend staff member left)…. and the unwillingness by Townsend to provide extended credit terms to a company during cash flow problems, causing that customer to urgently change suppliers (Customs noted that this particular end-user had a history of late payment and that this proposed extension of credit terms was in addition to late payments)". Refer Trade Measures Report No. 65:8.3 p33.

Townsend provided evidence in response to the SEF that totally repudiated those findings yet the Trade Measures Branch continued to use it to build their case for a negative finding on our application. Imagine us being penalised for eventually wanting to be paid for what we had sold (in this particular case 90 days later). To conclude that as being self inflicted injury is offensive and insulting.

In our opinion, the Trade Measures Review process is not satisfactory. It is conducted by a member of the Australian Customs Service seconded to the Attorney Generals Department. That, in our view, is not truly independent.

Following a review by the TMRO of our case which found no grounds for asking Trade Measures to re-look at their finding, the option open to us was to take our case to the Federal court. We sought the opinion of a QC (another $10K) who specialises in this area and the opinion provided was that the finding was challengeable in a number of significant areas but the cost to take it to the Federal Court may run as high as $350,000.

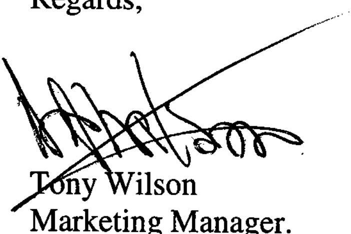
The concern we have with the current administration is the prohibitive cost involved. As explained at the start of this letter, Townsend is a small enterprise. With regard to this application, because of cost constraints, we decided to limit the use of consultants and lawyers. However, to get to the point where we obtained the opinion of the QC, we have estimated the direct costs of our application was $235,000 (this did include consultant fees of $90,000).

This is clearly a great deal of money for a small enterprise and is a massive disincentive to proceed with an application in the first place.

The above highlights our concerns with the present administration of Australia's Anti-Dumping provisions and we look forward to the Joint Study initiatives improving the effectiveness of Australia's Anti-Dumping System.

Should you have any questions, please do not hesitate to contact Mr. Les Latimer (03 9793 6000).

Regards,



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