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Submission on the Productivity Commission final report into Australia's Anti-Dumping and Countervailing System.

Productivity Commission Inquiry Report No. 48, 18 December, 2009.

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PolyPacific and Townsend Chemicals participated in the Productivity Commission Inquiry into Australia's Anti-dumping and Countervailing System by means of an initial submission to the Inquiry (July 2009) a submission following the Productivity Commissions Draft Inquiry Report (Sept 2009) and by presenting at the Public Hearing located in Melbourne on 15 October 2009. Notably, we were the only Australian manufacturer that directly represented themselves at the public hearings.

Our overall views with respect to the retention of an Anti-dumping and Countervailing System by the Australian Government as well as suggestions for improvements to the system are encompassed in our three previous submissions. In that respect our response to the Productivity Commissions final report and recommendations (Dec 2009) released in May 2010 is kept brief and is as follows:

INTRODUCTION OF A PUBLIC INTEREST TEST

Of the 20 in total recommendations made in its final report clearly the key recommendation of the Productivity Commission is the introduction of a public interest test.

The introduction of a public interest test has been the primary objective of the Productivity Commission.

From the outset of the inquiry the Productivity Commission has single mindedly promoted the introduction of a public interest test and has argued its adoption at each and every stage of the inquiry.

A public interest test is to be the Productivity Commissions' and the Commissioners' lasting legacy on Australia's Anti-dumping and Countervailing System.

PolyPacific and Townsend Chemicals oppose the introduction of any public interest test. We see a public interest test being a vehicle for the introduction of non specific ambiguity into the system.

For Australian Industry to successfully prosecute an Anti-dumping and Countervailing case it must be proved that goods are being exported from the country of origin at dumped prices. It must be proved that the dumping margins are significant. It must be proved that the Australian Industry has suffered and continues to suffer injury and that injury is as a direct result of the dumping.

In our view that should be it - game over - remedial action should be and must be put in place. Anything less than this is short changing Australian Industry.

We foresee the introduction of a public interest test as being counter productive to the intent of Anti-dumping and Countervailing applications - which is to bring to a stop the debilitating effects on Australian Industry caused by the selling of goods that have been investigated and found to have been dumped.

The introduction of a public interest test will be the cause of further delays in the imposition of remedial actions. It will add further costs for applicants. It will in all likelihood act as a further deterrent to legitimate applications being initiated in the first instance as it could be seen by prospective applicants as another hurdle for Australian Industry to overcome in order to obtain fairness and equity.

Should a public interest test be introduced into the system there is no doubt parties whose interests are served by not having dumping duties applied, will seek to exploit the inevitable delays that will be caused by its introduction.

Adoption of a public interest test does not serve any practical purpose other than create new opportunities for lobbyists, lawyers and academics from which to profit.

Providing fairness and equity to Australian Industry is of far greater importance and value than satisfying the egos of the Productivity Commission.

THE OTHER RECOMMENDATIONS

Of the 19 recommendations other than the one that deals with the introduction of a public interest test the following 7 are also not supported by PolyPacific and Townsend Chemicals:-

- 6.3 Provisional measures
- 6.5 Reviews of Anti-dumping/Countervailing measures and improving the currency of measures.
- 6.6 Mechanism for duty collection.
- 6.8 Aligning Australia's legislation regarding actionable subsidies.
- 7.1 Administrative rolls of the Minister, Customs and Border Protection and the Trade Measures Review Officer.
- 7.6 Comparative case analysis.
- 7.7 Additional annual reporting and improving transparency.

Our reasons for not supporting these recommendations have been detailed in previous submissions and at the public hearing so we will not repeat what has already been stated other than the emphasize we oppose any recommendation that is linked or related to the introduction of a public interest test.

The remaining 12 recommendations we can accept:-

- 6.1 Close processed agricultural goods provisions.
- 6.2 The practice of zeroing.
- 6.4 Limit to the scope for extending Anti-dumping/Countervailing measures.
- 6.7 Seeking feedback from interested parties.
- 7.2 Appeal arrangements (merit review of Ministerial decisions).
- 7.3 Extension timeframes for investigations.
- 7.4 Time limit for Ministerial decisions.
- 7.5 Resourcing and skilling.
- 7.8 Publication of measures and variable factors and improving transparency.
- 7.9 Accessing import data.
- 7.10 Implementation timeframes for new reforms.
- 7.11 A proposed public review of reformed Anti-dumping/Countervailing system.

There is a continuing need for Australia to have an accessible, effective affordable and user friendly Anti-dumping and Countervailing System.

Australian Industry can be and is vulnerable to dumping. Australia has low or zero tariffs. There is an increasing propensity to establish Free Trade Agreements with trading partners. There is an absence of non tariff barriers. By any definition Australia is a very easy and attractive economy to export to.

The opposite is often the case when Australian Industry wants to export. More often than not, it faces higher tariffs as well as non tariff barriers, - something its competitors do not face when exporting to Australia.

Australian Industry has accepted economic changes and significant structural changes leading to large reductions in or elimination of Australian import tariffs. Those industries that remain in Australia have undertaken restructure in order to survive the challenges presented by trade liberalization. In return Australian Industry deserves to have at its disposal, via its Government, the ability through a robust Anti-dumping and Countervailing system to have remedial action taken where imports it competes against in its domestic market are proven to be dumped.

As a result of this inquiry the Australian Government has an opportunity to reform Australia's Anti-dumping and Countervailing system and bring about improvements to the system.

In doing so the Australian Government should disregard the recommended introduction of a public interest test.