

31st August 2010.

Mr Geoff Johannes
National Manager
Trade Measures Branch
Australian Customs & Border Protection Service
Customs House
5 Constitution Avenue
Canberra ACT 2601

Dear Mr Johannes,

Productivity Commission's Report On Australia's Anti-Dumping and Countervailing System

I refer to the joint Media Release dated 27 May 2010 from the Assistant Treasurer and the Minister for Home Affairs announcing the tabling of the Productivity Commission's Inquiry Report into Australia's Anti-dumping and Countervailing System and inviting interested parties to make submissions on the Report and its recommendations by 31 August 2010.

Set out below are the submissions of JELD-WEN Australia on the Productivity Commission's Report and recommendations.

1. Executive Summary

JELD-WEN Australia welcomes the Productivity Commission's Report and recommendations and, specifically, supports the following recommendations:-

- (a) the inclusion in Australia's anti-dumping and countervailing system of a public interest test to, amongst other things, preclude adversely affecting downstream users and consumers of the product in question;
- (b) Australia not adopt the practice of zeroing when calculating normal values;
- (c) anti-dumping and countervailing measures be limited to a maximum of eight years;
- (d) continuation reviews should comprehensively examine and recalculate all variable factors;
- (e) the magnitude of anti-dumping and countervailing measures be adjusted annually; and
- (f) the basis for collecting dumping and countervailing duties should be based on the actual export price relative to the export price at which no duty is payable, thereby obviating the need to apply for refunds, for the reasons set out later below.

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2. Background to JELD-WEN Australia

JELD-WEN Australia is part of the JELD-WEN group of companies, which is the largest manufacturer of windows and shower screens globally as well as a major supplier of doors and other building products.

JELD-WEN Australia supplies to the Australian market the well known brands Stegbar doors, Airlite windows and doors, Regency shower screens and wardrobes, Corinthian doors and William Russell doors.

JELD-WEN Australia employs over (number deleted) employees throughout Australia.

In addition, JELD-WEN has made significant investment in its businesses in Australia. JELD-WEN Australia recently completed a state of the art glass processing factory in Victoria that features world first technology and that employs a significant number of employees of employees in Victoria. For the reasons set out below, this investment could be compromised to the detriment of an Australian industry producing jobs for Australians if the Productivity Commission's recommendations are not adopted and implemented.

3. Recommendation 5.1 – Public Interest test

JELD-WEN Australia supports the introduction of a public interest test into Australia's anti-dumping and countervailing system because, as the Commission itself has noted, "*the anti-dumping system should serve the broader public interest, rather than only consider the interests of particular firms or sectors*": at p.57.

JELD-WEN Australia notes that, at section 5.4 of the Report, the Commission argues that a 'light-handed' approach would be to use explicit but separate public reporting of the wider impact if measures were to be imposed so as to require decision makers to consider the wider public interest when considering imposing measures.

The model being proposed by the Commission would be that, in parallel with the usual investigative procedures in a dumping or subsidy investigation, Australian Customs & Border Protection Service (**Customs**) would be required to;

- seek input from interested parties on the wider impact of imposing measures; and
- analyse and publicly report on those impacts and, in particular, on whether any of the public interest criteria had been met.

Presumably the Minister would be precluded from imposing measures if any one of the public interest criteria were met.

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JELD-WEN Australia supports the Commission's approach to the inclusion of a public interest test in Australia's anti-dumping and subsidy regime. While recognising that it will add to the complexity of investigations and possibly some additional cost, it nevertheless would make it incumbent on those interested parties who consider that the wider impact of imposing measures should be taken into account to detail what those wider impacts are likely to be accompanied by supporting evidence.

Also, by expressly setting out the public interest criteria that warrants the non-imposition of measures, this has the benefit of limiting the focus of interested parties and Customs to the specified criteria only and of limiting any evidence that needs to be obtained and provided to Customs.

In this respect, JELD-WEN Australia does not object to an exhaustive list of criteria as to when measures should not be imposed in the public interest. However, JELD-WEN Australia has reservations as to whether the criteria proposed by the Commission are sufficiently comprehensive of the circumstances when it would be in the public interest not to impose measures.

For example, one of the criteria is:

“the imposition of measures would preclude effective choice and competition in the Australian market for like goods, and the resulting scope for the applicant supplier to exploit market power could not be addressed through the application of the lesser duty rule”.

JELD-WEN Australia is concerned that this criteria may not address the situation where measures would benefit only one or two domestic producers of like goods but would materially adversely affect downstream users and consumers of the product in question.

Increasingly antidumping measures are being applied for in respect of a particular good by a domestic manufacturer that is the sole Australian manufacturer of the like good to the imported goods where both the imported good and the domestic like good are used as inputs to manufacture in Australia by downstream producers. Often the Australian manufacturer of the like good also has vertically integrated operations and produces the downstream products as well as supplying the like good to Australian producers of downstream products.

An example of this is clear float glass, which is used as an input to manufacture in the production of end products such as windows, shower screens, glass doors and the like. Companies like JELD-WEN Australia, which process clear float glass into end products, make a considerable economic contribution to the Australian economy with around 600 businesses and over 30,000 direct employees. This is graphically illustrated in the attached schematic that was filed with Customs in the dumping investigation into clear float glass. Further, the value added in the processing of clear float glass, essentially a commodity product, into end products is substantially greater than the value of the clear float glass. This is reflected in the difference in price between clear float glass and end products.

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The imposition of anti-dumping measures on a commodity product like clear float glass will have the effect of increasing the cost of sourcing clear float glass from overseas. This, in turn, is likely to have two consequences, namely:

- to compel Australian downstream producers to source the good that they require to produce the downstream product from the sole Australian manufacturer, who also may be its competitor in the production and sale of downstream products, at higher prices; and
- to compel Australian producers of downstream products to cease producing the downstream products in Australia and, instead, source the downstream product from overseas suppliers, with the consequent job losses in Australia and contribution to the Australian economy.

This is likely to be the case if anti-dumping measures are imposed on imports of clear float glass in the current anti-dumping investigation.

Producers of downstream glass products require clear float glass to produce their products and require the clear float glass to be supplied at competitive prices but with reliable quality and reliable delivery schedules. In this respect price is not the pre-eminent factor in the decision on where to source requirements of clear float glass.

The imposition of anti-dumping measures on imports of clear float glass will reduce the profitability of the downstream glass products industry. This, in turn, is likely to result in downstream producers ceasing to produce downstream glass products in Australia and, instead, source those products from overseas, with the consequent loss of jobs, loss of manufacturing expertise in Australia and contribution to the Australian economy.

The net position of the imposition of anti-dumping measures on imported clear float glass would be to benefit the sole Australian producer of clear float glass to the detriment of downstream producers of glass products, consumers of glass products and to the Australian economy. This would not seem to be in the public interest.

To address this situation, JELD-WEN Australia proposes that the following be added to the list of public interest criteria:-

“the imposition of measures would preclude effective choice and competition in the Australian market for like goods and would lead or would likely lead to material injury to downstream producers who use the imported and like goods to manufacture downstream products”,

or something similar. JELD-WEN would be pleased to meet with you and other government representatives to discuss this issue further if you wish.

Finally, JELD-WEN does not support the delayed introduction of the public interest test but recommends that it be introduced at the same time as the other reforms. The public has been aware of the Commission’s view that a public interest test for some time now, at least since the Commission’s draft report. Given the likely delay before the reforms are implemented, further delay in the introduction of a public interest test would seem unnecessary and not in the public interest.

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4. Recommendation 6.2 – Australia not adopt zeroing

JELD-WEN Australia supports the Commission's recommendation that Australia not adopt the practice of 'zeroing' in dumping calculations.

As noted by the Commission, 'zeroing' is the practice of inflating dumping margins by ascribing negative dumping margins a value of zero, thereby increasing positive margins instead of providing a weighted average between negative and positive margins. There is no justification in introducing such bias in dumping calculations.

JELD-WEN Australia also understands that the Panel and the Appellate Body have found 'zeroing' to be inconsistent with provisions of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

5. Recommendation 6.4 – Measures to be limited to a maximum of eight years

JELD-WEN Australia supports the Commission's recommendation that anti-dumping and countervailing measures be limited to a maximum of eight years, consisting of an initial five year term followed by, if determined in a continuation inquiry that the measure should be continued, for an additional three years. Thereafter, any further imposition of measures should be subject to the same requirements as in an original application.

JELD-WEN Australia is concerned that the continued imposition of measures should not become protective barriers shielding domestic industries from structural adjustments due to changes in the global economy and technologies. Hence its support for this recommendation of the Commission.

This is not to preclude domestic industries from seeking protection in appropriate circumstances from the injurious effects of dumping and/or subsidies. But, rather, a more stringent assessment equivalent to the analysis that an original application is subjected to should be undertaken, as opposed to the less stringent tests applied in a continuation inquiry.

6. Recommendation 6.4 – Continuation reviews should comprehensively examine and recalculate all variable factors

JELD-WEN Australia supports the Commission's recommendation that continuation reviews should comprehensively examine and recalculate all variable factors.

The current practice in continuation inquiries of only examining the likelihood of a continuation of or recurrence of the material injury that the measures in question were intended to prevent if they were allowed to expire, unless an application also is made for a review of the variable factors.

If no application is made for a review of the variable factors and the measures in question are continued following the continuation inquiry, this can have the result that the measures in force can be over five years out of date and not reflect current circumstances. Hence the need for the variable factors also to be reviewed and updated when measures are continued.

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7. Recommendation 6.5 - Magnitude of measures to be adjusted annually

JELD-WEN Australia supports the Commission's recommendation that there be a new mechanism whereby the magnitude of all anti-dumping and countervailing measures be adjusted on an annual basis in substitution of the existing review procedures.

This would provide a more effective and efficient method of precluding injury caused by imports at dumped prices and no more.

8. Recommendation 6.6 – Basis for collecting duties to be modified

JELD-WEN Australia supports the Commission's recommendation that the basis for the collection of dumping and countervailing duties be modified to the effect that duty collected at the time of importation is based on the amount, if any, by which the actual export price is less than the export price at which no duty is payable.

This would obviate the need for importers to seek refunds of duty, which can be onerous and not always available as the ability to obtain refund depends upon information being provided by an exporter who may not be co-operative, particularly if it is not a related body corporate of the importer as there is no benefit to it. It would incur the cost in preparing and providing the requisite information but no benefit flows to it on the importer obtaining the refund. Also, refund reviews are retrospective in nature and do not update the variable factors.

If you have any queries or wish to discuss any matter further, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Lapping', written over a horizontal line.

Nigel Lapping
Executive Vice President & CEO
JELD-WEN Australia Pty. Limited