



August 31, 2010

National Manager Trade Measures
Australian Customs and Border Protection
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Attention: Geoff Johannes

Dear Mr. Johannes.

**Productivity Commission's Inquiry into Australia's Anti-Dumping and Countervailing System
Report No. 48 of December 2009**

As a company with recent experience in dealing with Australia's Anti-Dumping and Countervailing System, SCA Hygiene Australasia Pty Limited (**SCHA**) welcomes the opportunity to comment on the Productivity Commission's report filtered through the history of our recent Toilet Paper Anti-dumping case.

Our view is that it is critical to maintain an effective, responsive Anti-dumping and Countervailing Duty system that delivers clarity and consistency, is simple to access and can efficiently meet the needs of Australia and its business community.

From SCAHA's perspective the key matters that need to be factored into Australia's Ant-dumping system are:

Time & Cost Requirements in Anti-dumping Cases

As a general statement, the domestic industry is usually impacted by dumped product for a not inconsiderable period of time before the necessary data to support an application can be gathered and thereby the basis for the actual application clearly identified.

Further time is then required to research data on the goods in their place of origin, compile the necessary formal application and brief Customs. Post the Customs briefing process, the Customs investigation period requires a further 6 to 12-months before any decision is reached.

In the case of the Toilet Dumping matter, a period of some 2-years passed before a decision was made and relief provided to the Australian Industry. Such a period only serves to further damage the Industry in the short term, and can lead to significant changes to future investment decisions for the longer term.

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From a resourcing perspective, in addition to the actual man hours and travel expenditure committed by the business internally, there is a need for the engagement and payment of external experts to guide and assist with the process.

As a general statement, SCAHA is of the view that the costs and time involved in pursuing an Anti-dumping case can only be resourced by a significant enterprise. Small to mid-size companies would not be able to fund and resource same resulting in, prima facie, a denial of natural justice.

Customs and TMRO Resourcing

Recognising the challenge of adequately forecasting the upcoming/possible number of cases, it is critical that the appropriate level and investigative expertise of resources be made available to or within Customs (and the TMRO office) to reduce, for example, the past practices of case decision timeline extensions.

This extra resource requirement could be achieved via secondment from other arms of the Australian Public Service and/or Australian Federal Police. Alternatively, the use of financial and forensic resources from accredited private individuals or enterprises would meet this need.

Detailed Import & Export Resource Data

Report No. 48 of December 2009 highlights the need for the Australian industry to be able to freely access import and export data via the Australian Bureau of Statistics (**ABS**) systems in a timely and efficient manner

SCAHA wholly support the reduction in the level of suppression of this data by ABS to achieve better transparency and thereby decision making by all parties engaged in Anti-dumping matters.

To achieve this goal, SCAHA stand by their previous commitment to support improvement in this area by the allocation of resources to a reference and review forum of appropriate interested parties.

Material Injury Definition and Application Thereof

The professionalism of officers of the Australian Public Service and its Customs Branch are highly regarded. For them to continue providing this level of service it is important that a clear and accepted definition of 'Material Injury' be established to prevent any notion of subjectivity when this critical deciding factor is applied in an Anti-dumping matter.

Period of Anti-dumping Measures

Recommendation 6.4 of Report No. 48 to limit the extension of Anti-dumping measures to one three year period does not adequately reflect global market behaviours and would provide importers with a clear message for when dumping is acceptable.

SCAHA's view is that if dumping activities continue then anti-dumping measures should continue until the importers behaviour changes. Continuation reviews should remain to enable a considered investigation of all current practices and variables. Only by this process will we be able to drive out predatory practices in the Australian marketplace.

The nature and technicality of our particular industry demands a long term view. Accordingly a single short term extension would act as a disincentive in future plans and implementation of Capital expenditures

Public Interest Test

In the absence of any proposed definitions and the parameters or end result it would achieve, the implementation of a Public Interest Test in the Australian domain leaves SCAHA holding the view that, and as per the Material Injury definition commentary above, further uncertainty and possibly subjectivity would be introduced into Anti-dumping and Countervailing Duty's cases.

Specifically, what would be the focus of such a test? For example, is it likely to be environmental, end user pricing or employment impacts? Alternatively, is it proposed to be a weighted average impact of a number of indices?

Whilst there is some reference to the application of a Public Interest Test and particular reference to its success in another country, our research does not leave us forming the same view.

If the applicable Minister or his delegate already has the power to act with discretion, is there a need for an additional filter and/or for other factors to be considered when making a final determination?

Appeals Process

The Australian Toilet Paper manufacturing industry addressed all of the requirements of the Anti-Dumping System in substantiating that dumping had occurred enabling the then responsible Minister to determine and impose duties on certain importers from China and Indonesia.

Those importers then subsequently appealed under the processes outlined in the respective Legislation leading to a re-investigation by Customs personnel. The outcome of the re-investigation was to again find that dumping had occurred. However the second investigation determined that the previously decided Material Injury hadn't occurred and the original decision was reversed.

At no stage were SCAHA given the opportunity to provide further information or insight on the matters being appealed; particularly important due to a changing of the basis upon which the market impact was determined, ie. from the worldwide standard of weight to number of rolls.

As the legislation does not provide for any further appeal process, this situation defines in our view, prima facie, a denial of natural justice to the other party.

As we doubt that this was the intent of the draughtsman of the Legislation it is a fundamental aspect that needs to be addressed in the short term.

Summary

Our view is that it is critical to maintain an effective, responsive Anti-dumping and Countervailing Duty system that delivers clarity and consistency, is simple to access and can efficiently meet the needs of Australia and its business community.

Australian business' operate in a global market and require a level playing field to compete effectively and efficiently. This is particularly so for SCAHA where large sums of money are invested to combine assets, technology and significant direct and indirect employment in the communities in which we operate.

Notwithstanding the legislative complexity and arrangements to deliver the balance between the various parties impacted by such legislation, it is imperative that a comprehensive Anti-dumping and Countervailing Duty's legislation be in place; not as a barrier to competition but to support competition in our marketplace.

Anti-dumping measures are not protectionist but a critical component (or rules) for the global economy, are in effect in all countries and are recognised by the World Trade Organisation as necessary. They are in fact a necessary framework to allow for equitable trade.

Whilst this submission defines some of the areas that the legislation is lacking in, the collective objective should be to improve the ability of companies and sectors to access the legislation and arrangements, achieved preferably by a number of standard mechanisms that support and guide parties to understand what is required. Essentially, the framework and intention of the legislation is appropriate but with improvements efficiencies and effectiveness can be improved.

SCAHA would welcome the opportunity to contribute to implementing the improvements outlined above by supporting both in name and with resources to the establishment of a joint Government and Industry body charged with driving these improvements forward.

Yours Sincerely

SCA Hygiene Australasia Pty Limited

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Manager - Risk