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

By email: [tmpolicy@customs.gov.au](mailto:tmpolicy@customs.gov.au)

Dear Sir/Madam

**RE: Submission in response to Productivity Commission Report No. 48 - Australia's Anti-Dumping and Countervailing System**

I refer to ACDN No.2010/19 announcing the release of the above Report and the request for submissions to address the Productivity Commission's findings.

CSBP Limited has prepared the attached submission in response to Report No.48.

If you have any questions concerning the attached, please do not hesitate to contact Mr Damien Renwick on (08) 9411 8622.

Yours sincerely,  
CSBP Limited

A handwritten signature in black ink that reads 'Ian Hansen'. The signature is written in a cursive style with a horizontal line underneath the name.

Ian Hansen  
Chief Executive Officer - Chemicals

## **CSBP Limited's submission in response to Productivity Commission Report No. 48 - Australia's Anti-Dumping and Countervailing System**

### **Introduction**

In its submission to the Productivity Commission ("the Commission") in June 2009, CSBP Limited ("CSBP") detailed its interest in Australia's Anti-Dumping System through its manufacturing operations including ammonium nitrate and polyvinyl chloride ("PVC") resin production.

CSBP also recounted the Government's Policy commitment to an effective Anti-Dumping System announced in the lead-up to the 2007 Federal Election.

CSBP is therefore concerned by the recommendations contained in the Commission's recently tabled Report No.48 on Australia's Anti-Dumping and Countervailing System. It is noted that the Commission considers the proposed introduction of a public interest test as the 'highest priority' for reform of the Anti-Dumping System. Hence the Commission has proposed introducing a public interest provision supported by a range of limiting criteria to accessing measures.

As indicated in its submission to the Commission, CSBP does not support change to the Anti-Dumping System that will further extend the investigation timeframes and raise uncertainty of outcomes. CSBP also does not support the Commission's administrative changes that are also contingent on the public interest provision.

The Commission has also proposed changes to the present continuation, review of measures, administrative review and collection of duties processes. The suggested changes will erode the worth of the Anti-Dumping System and its ability to address dumping and subsidization.

CSBP does not support a single, three-year extension of anti-dumping measures. CSBP similarly does not support the abolition of the present review of measures and administrative review processes – the latter is critical in ensuring the integrity of measures imposed. CSBP is concerned that an already effective dumping duty collection mechanism will be compromised and potentially openly exploited.

CSBP supports certain proposed administrative changes such as:

- the inclusion of decisions associated with the continuation of measures as appellable to the Trade Measures Review Officer ("TMRO");
- ensuring the Australian Customs and Border Protection Service ("ACBPS") and TMRO are appropriately resourced and skilled; and
- commencing consultation to ensure suppressed import data that is available from third party sources is released by the Australian Bureau of Statistics ("ABS").

### **Public Interest provision**

The Commission has linked its preference for the inclusion of a public interest provision in the Anti-Dumping investigation process by citing the existence of similar provisions in Canada and the European Union ("EU"). The operative provisions in both jurisdictions, however, do not extend to excluding particular industries from anti-dumping measures on the basis of specific parameters such as pricing or market share position. The Canadian provision enables consideration of the *lesser duty rule*, whereas the EU position is based upon a simplistic economic analysis of impact of measures versus contribution of local industry.

The Commission's proposed public interest provision will discourage legitimate applications for anti-dumping measures. In addition, the proposed arrangements involve the further extension of the investigation timeframe by an additional 30 days. It is CSBP's view that the nature of the information to be considered may well exceed a 30-day time limit and will involve considerable subjectivity to arrive at an outcome.

CSBP also considers that the proposed criteria to apply to the test are somewhat imprecise and difficult to quantify or define, for example, how one interprets "precluding effective choice", "significant", and "reasonable profit" is likely to differ materially in most cases. As a consequence, there will be considerable subjectivity and increased uncertainty and costs associated with considerations associated with the public interest test.

It is also not clear over what period such an assessment is conducted. CSBP believes that a long term view, along with the broader economy benefits provided by a sector, needs to be considered when assessing the costs and benefits of the anti-dumping system. CSBP is concerned that the proposed test would simply result in an examination of the lowest possible product cost at any given time without taking into consideration the benefits of reliable supply throughout the supply chain over a prolonged period of time. CSBP is also concerned that a short term spot price view will fail to take into account the impact of significantly higher import prices following the closure of domestic manufacturing operations as a result of injury due to dumped product.

CSBP maintains its stated position that the proposed public interest test would be unworkable and discretionary, only further increasing the uncertainty associated with the Anti-Dumping process.

### **Framework changes**

CSBP does not support key changes proposed to the administration of the Anti-Dumping System as it believes they are likely to diminish the effectiveness of the System.

#### *Provisional measures*

CSBP does not support the changes linked to the imposition of provisional measures at the time of a Preliminary Affirmative Determination ("PAD") that would precede the commencement of assessment of the broader public interest.

Provisional measures are required by applicant industries as early as is practicable following Day 60 of an investigation and certainly no later than Day 110 of the investigation. At present, accessing provisional measures prior to the publication of a PAD is the exception and not the rule. This position must be urgently examined as many investigations (i.e. in excess of 50 per cent) involve timeframe extensions that results in delays to accessing provisional measures.

It is CSBP's view that provisional measures are required from Day 60 to ensure material injury to the Australian industry is kept to a minimum.

#### *Continuation of measures*

The Commission has affirmed its position that anti-dumping measures should not be continued beyond a single three-year extension period. This is despite the fact that in the absence of the measures, the Australian industry will likely be subjected to a recurrence of material injury.

CSBP strongly opposes the three-year limitation on the extension of measures. As has been previously highlighted, anti-dumping measures apply to ammonium nitrate exported from

Russia. The measures reflect the government of Russia's involvement in suppressing gas prices to industrial consumers in Russia. The artificially low gas price is reflected in dumped ammonium nitrate export prices on the world market. Anti-dumping measures apply in the EU, USA and Australia against Russian exports of ammonium nitrate.

The WTO Anti-Dumping Agreement does not prescribe a maximum period of operation for measures, however, it does specify that measures should remain in place for as long as is only necessary to ensure an industry is not materially injured (or threatened) from dumping.

CSBP supports retention of the present arrangements whereby the continuation of measures is considered on a case-by-case basis.

#### *Review of measures*

The Commission has proposed the abolition of the present review of measures arrangements. Whilst conceding that applications for the review of measures occur relatively 'infrequently' the Commission has nevertheless proposed that measures should be reviewed annually to achieve a level of "currency" of the measures.

The Commission has further proposed that the annual reviews of measures should be based upon risk managed, desk audits to update each of the variable factors. CSBP considers that annual reviews of measures will involve considerable resourcing and will lead to the acceptance of less than adequate information from interested parties.

CSBP does not support a shift away from the present review of measures process. Annual reviews that are based upon a desk audit approach will diminish the integrity of the original verification investigations, ultimately resulting in the circumvention of measures.

#### *Administrative reviews*

The Commission has also proposed that the administrative review process be abolished. CSBP views the administrative review process as a means of maintaining the integrity of the Anti-Dumping System. It also contributes to enforcing currency of the measures.

CSBP is concerned that the Commission was not fully apprised of the impact of the administrative review process and how it underpins an effective Anti-Dumping System. Refunds of interim duty are only available through the administrative process where applicant companies can demonstrate that export prices were at a non-dumped or non-injurious price throughout the administrative review period.

The abolition of the administrative review process will negatively impact the effectiveness of the Anti-Dumping System and is contrary to the requirements of the WTO Anti-Dumping Agreement on the refund of dumping duties.

#### *Collection of duties*

The Commission has recommended that duty liabilities be determined at the time of importation by assessing the difference between the actual export price and the non-dumped export price as determined by ACBPS. The suggested change in the collection of duties reflects the Commission's intention surrounding the abolition of the administrative review process that permits a refund of the interim duty paid over a prescribed administrative review period.

The present duty payment process involves exporters paying a 'fixed' interim duty amount and ensures that the Minister's decision on the level of anti-dumping measures is enforced. The abolition of this process will result in exporters seeking to minimize duty liabilities that will be exploited through the annual review of measures methodology.

CSBP does not consider that a change in the duty collection process is in the interests of an effective Anti-Dumping System.

#### *Other administrative changes*

CSBP welcomes the following proposed changes which will enhance the administration of the Anti-Dumping System, including:

- retaining the present roles and responsibilities of the ACBPS, the Minister and the TMRO;
- including decisions about the continuation of measures are appellable to the TMRO;
- adequately resourcing the ACBPS and TMRO with appropriately skilled staff;
- requiring ACBPS to identify outcomes of overseas investigations and the relevance to goods under investigation;
- requiring ACBPS to seek feedback from interested parties on the impacts of anti-dumping measures;
- ensuring Australia's list of actionable subsidies are aligned with the lists in the relevant WTO agreements; and
- requiring the government to consult with the ABS about resolving problems associated with the suppression of import data that can ultimately be obtained from an alternate source.

There are some further proposed changes that CSBP does not support. These include:

- permitting ACBPS to seek an extension to the investigation timeframe at any time – *this will lead to lengthy delays and costs to industry through delays in accessing measures;*
- certain decisions by the TMRO are not subject to reinvestigation by ACBPS – *concerns exist with the level of the review analysis contrasted with the investigation process conducted by ACBPS;*
- the publication of information surrounding unsuccessful applications that did not proceed to initiation – *likely to have a negative impact of the applicant industry, and*
- the release of information about the level of dumping measures – *concerns about the disclosure of confidential non-injurious price information would be harmful to the Australian industry, just as would details about the exporter's prices and costs.*

#### **Conclusion**

CSBP does not consider that the Commission has adequately demonstrated a case for changing the architecture and administration of the current Anti-Dumping System. By its own admission, the impact of anti-dumping measures on the broader economy is quite small. The recommended changes are aimed at limiting access to measures for certain manufacturing

industries, as well as eroding the effectiveness of the Anti-Dumping System as it presently operates.