



**Government
of South Australia**

**Submission to the Australian
Customs and Border Protection
Service following release of the
Productivity Commission's final
report on Australia's Anti-
Dumping and Countervailing
System**

August 2010

EXECUTIVE SUMMARY

South Australia takes the view that while the Productivity Commission makes a number of valid points in its final report on Australia's Anti-Dumping and Countervailing System (No 48, 18 December 2009 released in May 2010), there are instances where the State's industry sectors may need recourse to effective anti-dumping measures, particularly if they are facing, or about to face, material injury (usually manifested by price suppression, declining sales and falling employment).

The South Australian Government is supportive of the Productivity Commission's recommendation to maintain an effective anti-dumping and countervailing framework so that manufacturers can make longer term, capital-intensive investments in the State's manufacturing sector.

Furthermore, given the complexities of the current trading environment, including global supply chains and retail dominance in certain sectors, Australia's anti-dumping system needs to be beyond reproach in terms of procedural application. It also needs to be seen to accord equity to all parties. Streamlined investigation procedures and clarification of the material injury test would greatly assist in this regard.

Therefore, to maintain and strengthen Australia's anti-dumping and countervailing system, the South Australian Government requests that the Australian Government establish a formal legislative review through the Commonwealth Department of Innovation, Industry, Science and Research to report through the Minister, to Cabinet, with recommended legislative amendments.

SOUTH AUSTRALIA'S SUBMISSION TO THE AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE FOLLOWING RELEASE OF THE PRODUCTIVITY COMMISSION'S REPORT ON ANTI-DUMPING

Introduction

The South Australian Government welcomes the opportunity to provide a submission to the Australian Customs and Border Protection Service following the release, in May 2010, of the Productivity Commission's (PC) report on Australia's anti-dumping and countervailing system (Customs Notice Number 2010/19 refers).

In its draft report to the Australian Government, the PC made a number of valid points, including, among others:

- That the Australian dumping system, which is based on WTO rules and procedures, essentially benefits a small number of import-competing firms, but imposes costs on the rest of the economy - though the net economic cost is likely to be very small.
- The ability for Australian industry to use the anti-dumping system to address unfair trading practices may have lessened resistance to more significant tariff reforms;
- That changes to the present arrangements should achieve a better balance between the benefits and costs.

The South Australian Government supported the rationale for the PC's Inquiry (that is to make recommendations on the future role of an anti-dumping system with the aim of improving the overall performance of the economy as well as ways to improve administrative efficiency and reduce compliance costs) since the Commission's findings have the potential to lead to a more effective and equitable anti-dumping system, which would ultimately be in the interests of all South Australians, especially those that are disproportionately affected by any unfair trade or dumping activity.

The focus of this submission, therefore, is on anti-dumping rules and importantly how an effective, transparent and consistent Australian anti-dumping regime is able to add value to the overall performance of the State's economy. From this analysis, some conclusions and recommendations are provided.

Anti-dumping and the WTO

Under World Trade Organisation (WTO) rules¹, Australia is allowed to impose anti-dumping duties on products that have been sold into Australia at a dumped price; where such sales can or do cause material injury to domestic producers of like products. Australia is also able to take remedial action when other WTO member

¹ Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on the Implementation of Article VI of the General Agreement on tariffs and Trade 1994.

countries impose damaging subsidies on product that subsequently causes material injury to Australian producers producing like product; this is usually in the form of countervailing duties². In addition, relevant WTO rules and agreements outline the conditions that govern when and how anti-dumping and/or countervailing measures can be imposed, and these are reflected in the *Customs Act 1901* and the *Customs Tariff (Anti-Dumping) Act 1975* (Commonwealth).

It is also worth noting that through the rules it has codified, the WTO does not consider anti-dumping action as an exception to free trade nor does it consider it to be a form of protectionism. Rather, through expressly dealing with unfair trade practices that dumping exemplifies, the WTO has demonstrated that its commitment to free trade is not incompatible with strong anti-dumping laws. It is also worth noting that anti-dumping action does not interfere with competitive foreign products that are not subject to dumping and other unfair trade practices reaching Australian consumers and that this action does not prevent Australian industries from foreign competition in the Australian market.

Australian industries – and for that matter South Australian industries also – have a right to expect that the conditions of competition will be those that result through the natural competitive advantages enjoyed by overseas firms and that they will not be exposed unilaterally to injurious dumping. The South Australian Government strongly supports these sentiments and states unequivocally that these sentiments in no way dilute the commitment it has to free (and fair) trade.

Role of Strong and Effective Anti-Dumping Laws in Industry and Trade Development

Strong industry development and export activity are critical elements in the State's future economic prospects and to this effect, the State Government has developed plans, in partnership with industry, for growing the State's industrial base.

Indeed, South Australia's manufacturing sector is recognised nationally and internationally for the provision of advanced and innovative products, services and solutions. The South Australian Government's vision for industries in the State is for them to be advanced, internationally competitive and connected into global trade chains, diversified, globally connected and commercially and environmentally sustainable.

For this vision to be realised, it is essential that industry operates in an environment that is fair, open and competitive and one where the trading rules are applied in a consistent way. Accordingly, it is important that South Australian industry has recourse to the range of retaliatory measures, authorised by WTO rules where it can be established that significant damage is being caused as a direct result of unfair trade practices such as dumping, whether or not through government subsidy.

At the same time, the State Government notes that while industry may on occasion need recourse to anti-dumping action, the same or other industry sectors may also

² *WTO Agreement on Subsidies and Countervailing Measures.*

require imported inputs, and that such inputs could be subject to anti-dumping duties. In addition, the retail sector would also be able to benefit from access to lower-priced imports and potentially pass these benefits on to end consumers. To that extent, there are sectors that could potentially be affected by anti-dumping duties and the South Australian Government acknowledges this.

However, the critical issue here is the extent to which sectors are affected by dumping actions undertaken by other countries. If dumping has a disproportionate effect on certain industries, in terms of significantly reduced production, lost sales, lost export opportunities, reduced employment levels and lesser value-added production, the damage borne by the affected sector can often be very substantial and difficult to recover from, even when dumping ceases to occur. By then it can be too late to resurrect the affected industry, leaving the State Government to deal with the fallout from affected stakeholders.

There are also regional impacts to consider. On occasions, firms affected by dumping are located in regional centers and often are the largest employer. In such situations, the impacts of dumping are very disproportionate, resulting in sharp drops in employment, both direct and indirect, in rural and regional areas. This of course places a heavy burden on communities and families.

On balance, therefore, it would appear that the downsides of dumping have a more detrimental impact on the State's economy than any positives. Again, to promote industry and trade development in the state, a system that allows effective recourse to trade remedies resulting from unfair trading practices is essential. Such a system would also encourage greater investment in the State's manufacturing capacity, adding to value-added production, employment and exports, thereby adding value to the overall economic performance of the State.

Ways to Improve the Present Anti-dumping System

Given the complexities of the current trading environment, including global supply chains and retail dominance in certain sectors, Australia's anti-dumping system needs to be beyond reproach in terms of procedural application. At the same time, the anti-dumping legal architecture (characterised by Customs conducting the initial investigation, and if necessary, followed by a review by the Trade Measures Review Office, located in the federal Attorney Generals' Department) needs to be seen to accord equity to all parties.

To this end, providing increased transparency in relation to the criteria used in assessing whether material injury has occurred, or is threatened, and the extent to which threatened injury is taken into account in practice, would be helpful. Also setting clear, consistent parameters for determining 'like product' would also be helpful. Such clarification of the material injury test, together with streamlined investigation procedures would greatly assist industry in providing it with consistency in decision making. This would encourage greater investment in manufacturing capacity and add to the State's focus on industry development.

Conclusions and Recommendations

Recognising the importance of an effective and equitable Australian anti-dumping system to successful industry and trade development in the State, the South Australian Government notes that:

- There are instances where the State's industry sectors need recourse to effective anti-dumping measures, particularly if they are facing, or about to face, material injury, which is usually manifested by indicators such as price suppression, declining sales and falling employment.
- In such instances, an effective and equitable anti-dumping and countervailing mechanism is essential to maintain integrity in the system – and at the same time enable the State's manufacturers to make long-term, capital-intensive investments in productive capacity.
- Industry needs access to the complete range of anti-dumping and countervailing measures in order to effectively respond to imports of dumped products (as defined by WTO rules relating to dumping and/or damaging subsidies).
- Given the complexities of the current trading environment, including global supply chains and retail dominance in certain sectors, Australia's anti-dumping system needs to be beyond reproach in terms of procedural application and moreover, it needs to be seen to accord equity to all parties. Streamlined investigation procedures and clarification of the material injury test would greatly assist in this regard.

Therefore, to maintain and strengthen Australia's anti-dumping and countervailing system, the South Australian Government requests that the Australian Government establish a formal legislative review through the Commonwealth Department of Innovation, Industry, Science and Research to report through the Minister, to Cabinet, with recommended legislative amendments.