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Dear Geoff,

**Re: Comment on the Productivity Commission's Inquiry Report No. 48 into Australia's Anti-dumping and Countervailing System.**

Thank you for the opportunity to make written comments to the Australian Customs and Border Protection Service (ACBPS) on the Inquiry Report No. 48 into Australia's anti-dumping and countervailing system prepared by the Productivity Commission.

Please note that this submission supplements and builds on A3P's submission dated 6 November 2009 to the Productivity Commission's draft Inquiry Report. A3P notes that there was very little amendment of the key recommendations by the Productivity Commission between the draft Inquiry Report consultation phase and the Final Report, despite substantial concerns raised in submissions by a wide range of stakeholders.

**1. THE AUSTRALIAN PLANTATION PRODUCTS & PAPER INDUSTRY COUNCIL'S (A3P) INTEREST IN THE ANTI-DUMPING SYSTEM.**

A3P is the national industry association representing the interests of all segments of the plantation-based wood products and paper manufacturing industry. A3P member's employ more than 13,500 people in plantation management, sawmills, panel board, and paper manufacturing plants, mainly in rural and regional areas. Each year A3P members create and sell more than \$4 billion of products, produce more than 12 million cubic metres of logs, 3 million cubic metres of sawn timber and more than 2 million tonnes of paper.

Paper and wood products are internationally traded commodities. Australian paper and wood products manufacturers face significant international competition, and increased incidence of competition from producers selling below 'normal value' and foreign producers that have government support (ranging from direct financial support to tariff assistance and tax credits) that may not reflect the 'true' cost of inputs for competing products around the globe. Examples include: Brazil and China providing financial assistance to new pulp and paper products; Thailand and Indonesia providing tax incentives; Vietnam tariff rates; and the United States provides a production subsidy through an exise tax credit.<sup>1</sup> Economic globalisation has increased this competition, and recently the global financial situation has added increased incentive for activities that constitute dumping. Examples include the rapid expansion in paper (of all types), sawn-wood and board manufacturing capacity particularly in Asia and Europe; and potential dumping activities of imported engineered wood products (EWP) and wood panels/plywood in the context of a depressed North American housing market.

Australian wood processors and paper manufacturers that have been directly involved in previous anti-dumping actions see the continued availability of a strong anti-dumping and countervailing measures regime, and the maintenance of safeguard provisions, as vital to the future of Australian industry. A4 copy paper, grey-back carton-board, plywood and toilet paper are four wood fibre based products which have been the subject of dumping investigations in recent times.

<sup>1</sup> Source: Pulp & Paper Industry Strategy Group - Final Report - *March 2010*

Australia's commercial environment is completely exposed to international trade and is not a level playing field. Although A3P members believe that the current anti-dumping system is complex, onerous, time consuming and costly, it is a mechanism that can be accessible and effective in addressing instances of external subsidies, predatory and anti-competitive behaviour in the international arena. A3P is concerned by implications in the PC report that access to the anti-dumping system is viewed as a 'benefit' to a small number of competing industries rather than a necessary framework to ensure equitable trade and fair competition.

***A3P strongly supports the continuation of an effective, efficient, and accessible anti-dumping system that supports a level playing field for Australia's competitive industries.***

## **2. RATIONALE UNDERPINNING THE ANTIDUMPING SYSTEM.**

Australian industry has every right under existing international trade rules to continue to have World Trade Organisation (WTO) sanctioned anti-dumping and countervailing measures to counter predatory pricing, and underpin fairness in trading outcomes. A3P supports the underpinning rationale of the anti-dumping system.

***A3P also supports the following general findings from the Inquiry Report:***

- ***That the anti-dumping system has been found to be consistent with WTO guidelines***
- ***That the anti-dumping system is acknowledged by PC as a necessary, important and legitimate component of an Australia's open economy***
- ***That the anti-dumping system should remain under the control of the Australian Customs and Border Protection Service (Customs) and its Minister, and Customs, the Minister and the Trade Measures Review Officer (TMRO) should retain their roles and powers***

## **3. PULP AND PAPER INDUSTRY STRATEGY GROUP RECOMMENDATIONS**

The final report of the Pulp and Paper Industry Strategy Group (PPISG) was released on the 20 April 2010 by Senator the Hon Kim Carr, Minister for Innovation, Industry, Science and Research. The report was the result of a review of the pulp and paper industry commissioned by the Hon Kim Carr on 19 June 2009, allowing industry leaders, unions and expert advisors to work with government to create Australia's first pulp and paper industry strategy. The report demonstrates how Australia's GDP could be boosted by up to \$38.7 billion and jobs increased by over 3,500 by 2020 as a result of enhancement of the Australian paper manufacturing industry. With the right policy settings in areas such as plantation investment, renewable energy, trade, skill development, infrastructure and investment facilitation, these and other benefits would be achieved. One of the key areas targeted in the report was trade, specifically on initiatives to reduce comparable product dumping.

Under Recommendation 15, the Strategy Group recommends that:

- (15a) a working group with the Australian Customs and Border Protection Service (perhaps in conjunction with the Trade Remedies Task Force) be established to consider how to streamline the process for making a case that dumping or subsidy is occurring, in order to reduce costs and complexity for the industry;
- (15b) the Australian Customs and Border Protection Service provide business with a clear definition of material injury in relation to dumping actions and remedies;
- (15c) the Productivity Commission's draft recommendation to introduce a 'public interest test' be rejected;
- (15d) the Productivity Commission's draft recommendation on the continuation of measures be rejected.

***A3P supports the PPISG recommendations in regard to the antidumping system (under Recommendation 15) and urges the government (specifically ACBPS) to address and adopt these recommendations.***

A3P submits below more detailed comments to ACBPS on specific key recommendations made in the final Inquiry Report. Also refer to **ATTACHMENT A** for a reiteration of recommendations previously made in A3P's submission to the Productivity Commission's draft Inquiry Report (6 November 2009) that are still valid and need to be considered in ACBPS deliberations.

#### 4. THE 'PUBLIC INTEREST' TEST

The PC proposal under Recommendation 5.1, was to introduce a 'bounded' public interest test (conducted by ACBPS), containing a presumption in favour of measures where there has been injurious dumping or subsidisation, but detailing a list of circumstances where measures would prima facie not be in the public interest.

A3P is concerned by this proposal for the following reasons:

- The proposal is not seen to support or promote the efficiency and effectiveness of the anti-dumping system rather it seems designed to limit access of applicants to an already complex and resource intensive process, and to increase the possibility of political influence and drivers;
- The 'public interest' test framework seems to be based on the similar European Union (EU) test. It is understood that the EU test is seldom used in practice and often fails where the local industry share of the market is greater than the suspect imports;
- 'Public interest' analysis is subjective and usually ideologically driven – that, is an outcome, such as the continuation of industrial jobs in regional Australia, may be of no special value to the reviewer, but to another, may be seen as a desirable public interest outcome;
- It is understood that one such parameter the proposed 'public interest test' may decide as a basis for not imposing any measures is a 'lessening of competition', which every affected company would virtually always argue as a matter of course;
- An applicant industry's market share and being globally efficient are two parameters that the 'public interest test' includes within its consideration. These two parameters would prove to be difficult to demonstrate, as Australia is not a large market for many manufactured products and the ability for Australian companies to be globally efficient is difficult due to the size of our market.

A3P notes that the anti-dumping system has a series of checks and balances (including provision for the Minister to intervene in line with public interest) inherent in its current framework that makes getting a viable case across the line a comprehensive and non-frivolous process. When measures are imposed, these are still subject to appeal and review processes that will pick up changes in circumstances or market dynamics. It is considered that the introduction of a 'public interest test' would discourage future investment in Australia's plantation-based wood products and paper manufacturing industry.

***A3P does not support an additional 'public interest test' as it would add unnecessary complexity, additional time, cost, and uncertainty to an already complex comprehensive process. PC's recommendation to introduce a 'public interest test' should be rejected.***

#### 5. LIFE OF MEASURES

The PC proposal under Recommendation 6.4 was to limit extensions of measures to one three-year period (so in total anti-dumping measures are proposed to have a maximum 8 year term).

A3P's view is that an arbitrary limit to the extension of measures is problematic, unnecessary, and doesn't reflect the market situation if the subsidy, predatory behaviour or dumping activity continues to occur. In the case of countervailing actions, subsidies and support in exporting countries that directly lead to dumping activities do not just disappear or cease delivering an unfair competitive advantage after an arbitrary term.

Similarly, a company's policy of aggressive or forced entry to and dominance of a particular domestic market is not necessarily abandoned despite being adjusted by measures for a period of time.

***A3P does not support the proposal in relation to the life of measures, if the market circumstances and dumping activities continue, then anti-dumping measures should not be arbitrarily removed without review and demonstrable evidence that the situation has changed. PC's recommendation on the life of measures should be rejected.***

## **6. AUTOMATIC REVIEW OF MEASURES**

The PC proposal detailed under Recommendation 6.5 is that the current 'review of measures' provisions should be abolished. It is proposed that the system should provide for annual adjustments to the magnitude of measures by an automatic review of measures. A3P would see merit in an automatic review of measures based on major external factors having changed significantly, for example currency realignments and general world market price realignments. This has potential for providing improved outcomes in a world of changing economic circumstances and exchange rates.

A3P sees that this proposal should replace the present system of application for re-assessment within the 5 year period of the measures, rather than imposing an additional mechanism of review. Product prices, volumes and industry market shares over the period in which measures are imposed were not seen by A3P as appropriate to use in triggering such a review as these indicators do not reflect those which would apply if the measures had not been imposed.

The current common practice of Customs to accept undertakings at a fixed price from exporters would not be compatible with a system of automatic reviews and, in an environment of rapid world pricing movements and exchange rate realignments, reduces the effectiveness of the system significantly. Such undertakings, if accepted, should include a responsibility of the party making the undertaking to report regularly and in a fully documented way on variables such as the exporter's domestic price and cost of manufacture, in the country of manufacture.

In regard to the current mechanism, the ability of a party to apply for reassessment within the 5 year term of imposed measures (even after one year) without needing to show that the external environment has changed in such a way as to require a reassessment is seen by A3P as unduly onerous on the applicant, who must maintain, at significant cost, price intelligence services in the country of the exporter and to suffer the cost and business distraction imposed in meeting these reviews.

***A3P sees merit in an automatic review replacing the current "application for re-assessment" provisions but notes that the Inquiry Report does not detail the proposed criteria for such a review. A3P would not support the imposition of an additional mechanism of review. A3P notes that a 'review of measures' can be a costly, information intensive, and time-consuming process for parties in the anti-dumping system.***

## **6. A Clear Definition of Material Injury**

A3P is concerned by recent decisions by the Attorney General regarding the revocation of anti-dumping duties on toilet paper imports, and the ACPBS regarding the termination by statement of essential facts of an active plywood anti-dumping case. In both cases it was found that:

- the imported products were dumped;
- the Australian industry producing like goods suffered injury; but
- the injury to the Australian industry caused by dumping of the goods was deemed not to be material.

Both A3P and industry are perplexed and concerned about the outcomes from the two recent cases and the lack of rationale provided by Customs of how they have assessed material injury. The ACPBS Dumping and Subsidy Manual (2007) notes that 'material injury is neither defined in Australia's legislation or the WTO Agreements'.

The current system, the uncertainty of the current definition of material injury, and recent findings create significant uncertainty and further undermine the competitiveness of the Australian industry.

***A3P recommends that the ACPBS provide industry with a clear definition of material injury and the rationale behind their decisions in relation to dumping actions and remedies.***

## **CONCLUSION**

***The proposals contained in the Final Inquiry Report are seen to substantially weaken, increase complexity of, and reduce access to anti-dumping measures.***

The anti-dumping and countervailing provisions are all that is available to Australian industry to provide a semblance of a level playing field and to redress subsidies and predatory and anti-competitive behaviour by international companies.

To put it in context, the current provisions are less than those which would apply if the same anti-competitive and predatory activities were undertaken in Australia between Australian companies (ie Trade Practices Act, ACCC regulation etc), and as a result A3P would not support any further dilution of these very necessary provisions.

The plantation products and paper industry looks forward to working constructively with ACBPS when it looks to respond to PC's Inquiry Report into Australia's anti-dumping system.

Yours sincerely



**RICHARD STANTON**  
Chief Executive Officer

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**ATTACHMENT A: A3P RECOMMENDATIONS PREVIOUSLY MADE IN A3P'S SUBMISSION TO THE PRODUCTIVITY COMMISSION DRAFT INQUIRY REPORT ON THE 6 NOVEMBER 2009**

**CUSTOMS FEEDBACK ON THE IMPACTS OF MEASURES**

The PC proposal under part of Recommendation 7.8 requiring Customs to seek feedback on the impacts of measures.

***A3P supports this proposal in principle, as having an active, engaged responsible organisation (Customs) seeking feedback from the marketplace, determining whether measures are working, or circumstances may have changed would seem to be a positive step and one that would underpin a pro-active and efficient system.***

**CUSTOMS AND TMRO RESOURCING**

The PC proposal under Recommendation 7.5 is to ensure that Customs and the TMRO are adequately resourced to undertake their functions under the anti-dumping system.

***A3P supports this proposal as adequate resourcing for the key administrators of the anti-dumping system is essential for the system to be effective and efficient.***

**MEASURES NOT IMPEDED**

The PC revised proposal under Recommendation 7.9 is for the Australian government to consult with the Australian Bureau of Statistics on the best way to ensure that import data is not suppressed when the same or similar information can be publicly accessed from other sources (such as the export statistics of other countries).

***A3P sees merit in this proposal to consult on issues about the suppression of relevant information.***

**INCREASED TRANSPARENCY OF ANTIDUMPING SYSTEM**

The PC finding under Recommendations 7.6, 7.7 & 7.8 is to require Customs to indicate what account it has taken of overseas investigations and to report more extensively on: applications for measures that do not proceed to initiation; the magnitude of measures imposed and the underlying parameters; and the timeliness of its investigations.

***A3P supports this proposal as previous negative outcomes from the anti-dumping system have been characterised by limited transparency, lack of feedback, and some inconsistencies in the assessment and investigation processes.***

Improvement in these areas would ease potential applicants' concerns pre-application and avoid follow-up and misunderstandings post measures being applied or dismissed. **This is especially topical post negative decisions made on tissue and plywood recently.**

## **ASSESSMENT TIMEFRAMES**

A part of PC proposal under Recommendations 7.3 & 7.4 is to increase the scope for Customs to seek extensions of time for consideration of anti-dumping cases but offset this change by imposing a 30-day limit on Ministerial decision-making.

***A3P supports the proposal to increase the scope and ability of Customs to analyse complex anti-dumping cases coupled with a reduced Ministerial decision-making time frame, as this would lead to better, efficient and more considered outcomes.***

## **COSTS FOR STAKEHOLDERS IN THE ANTI-DUMPING SYSTEM.**

*A3P considers the administrative and compliance costs (including consultant costs and information gathering) to lodge an application to be high and in many instances prohibitive and action should be taken to address this issue.*

## **ADDITIONAL HELP FOR APPLICANTS.**

***A3P suggests that more be done by Customs to reduce the complexity of the system, be more proactive, offer more assistance, increase audits, and improve feedback, in order to allow the full range of enterprises to utilise the anti-dumping system.***

***A3P again suggests that a liaison team with specific communication skills spend time understanding the client and assisting industry.***

## **DATA COLLECTION**

***A3P recommends that the current system is reviewed and that the US system which gives full access to import data on a transaction by transaction basis with full detail of what is being imported by who, from where, and at what price, is implemented as the model framework for trade data. In the comparable US system, duties are imposed at the time an initial finding of prima facie dumping is made (a relatively quick process) and then revised if necessary at the end of the process.***

***A potential solution suggested was Customs (in conjunction with industry and potentially Austrade) being more pro-active in benchmarking prices and costs in other 'Free Market Economies' in order to form an opinion if a 'Market Situation' exists or what the 'Normal Value' may be. This potential approach would be a significant improvement over the current approach where it is up to the applicants to prove pricing in a foreign country.***

## **INVESTIGATIONS - ACCOUNTS AND UNDERTAKINGS**

***A3P again proposes that Customs should have discretion to substitute 'best available information' and lean towards the more verifiable Australian-sourced data where there is an alternative.***