



**Government
of South Australia**

**Submission to the Senate
Economics Committee's Inquiry
into the Customs Amendment
(Anti-Dumping) Bill 2011**

April 2011

EXECUTIVE SUMMARY

South Australia supports the general thrust to change existing anti-dumping measures to provide greater transparency and certainty to Australian manufacturers in pursuing anti-dumping rulings. South Australia recognises 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 (usually manifested by price suppression, declining sales and falling employment).

The South Australian Government is also supportive of the Productivity Commission's (PC) recommendation (in its report on Australia's Anti-Dumping and Countervailing System released in May 2010) that Australia maintains 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, while South Australia supports the current Senate Economic Committee's Inquiry into the Customs Amendment (Anti-Dumping) Bill 2011, we believe there needs to be even greater transparency, rigour and consultation in the process of formulating changes to the Customs Act. In order 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 its Minister, to Cabinet, with recommended legislative amendments.

South Australia is considering the amendments to the Anti-Dumping legislation and may make further comment in relation to this.

**SOUTH AUSTRALIA'S SUBMISSION TO THE SENATE ECONOMICS
COMMITTEE'S INQUIRY INTO THE CUSTOMS AMENDMENT (ANTI-DUMPING)
BILL 2011**

Introduction

The South Australian Government welcomes the opportunity to lodge a submission with the Senate Economics Committee's inquiry into the Customs Amendment (Anti-Dumping) Bill 2011.

It is noteworthy that in its draft report to the Australian Government, the PC made a number of valid points on Australia's anti-dumping system 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 injury² to domestic producers of like

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.

² Material injury may take the form of depressed prices; lost sales; a general decline in sales, market share, profits, productivity, return on investment; or underutilisation of production capacity. Also relevant are the volume of imports and any negative effects on employment, inventories, wages, and the ability to raise capital.

product. Australia is also able to take remedial action when other WTO member 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 duties³. 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 and effective anti-dumping laws. It is also worth noting that anti-dumping action does not interfere with competitive foreign products that are not engaging in dumping and/or other unfair trade practices reaching Australian consumers and that anti-dumping action does not prevent foreign competition on the Australian market.

At the same time, Australian industries – and for that matter South Australian industries also – have a right to expect that the conditions of competition will produce the natural competitive advantages enjoyed by overseas firms and that domestic businesses will not be exposed unilaterally to injurious dumping. The South Australian Government strongly supports this sentiment and states unequivocally that this sentiment in no way dilutes 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 crucial 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 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 critically important that South Australian industry has recourse to the range of retaliatory measures, authorised by WTO rules, where it can be established that material damage is being caused as a direct result of unfair trade practices such as dumping, whether or not through government subsidy.

³ *WTO Agreement on Subsidies and Countervailing Measures.*

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 require imported inputs, and that such inputs could be subject to anti-dumping duties which could affect the competitiveness of these industries. For example, the retail sector may 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 where other employment opportunities are few. This of course places a heavy burden on communities and families.

On balance, therefore, the South Australian government considers 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 anti-dumping action and subsequent trade remedies resulting from dumping is essential. Such a system would 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, is essential. Also setting

clear, consistent parameters for determining 'like product' would also be helpful. 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, South Australia supports the general thrust to change existing anti-dumping measures to provide greater transparency and certainty to Australian manufacturers in pursuing anti-dumping rulings. South Australia is considering the proposed legislation and may make further comment in relation to this.

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 indicated by 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 product (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.

However, the South Australian Government believes there needs to be greater transparency, rigour and a greater ability for all stakeholders to be consulted in the process of formulating changes to the Customs Act. In order 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 its Minister, to Cabinet, with recommended legislative amendments.