



31 March 2011

Senate Economics Legislation Committee
Attn: Committee Secretary
PO Box 6100
Parliament House
CANBERRA ACT 2600

20 Queens Road
Melbourne VIC 3004
PO Box 7622
Melbourne VIC 8004
Australia

ABN 76 369 958 788

Tele: +613 9867 0111
Fax: +613 9867 0199
www.aigroup.asn.au

by email: economics.sen@aph.gov.au

Dear Committee Members

I write on behalf of the Australian Industry Group (Ai Group) and as Chair of the Trade Remedies Task Force (TRTF). The TRTF, operating for over a decade, is a grouping of around 50 Australian manufacturing companies and industry associations. We appreciate the opportunity to contribute the views of industry to the Senate Economics Legislation Committee (the Committee) review of the *Customs Amendment (Anti-Dumping) Bill 2011* (the Bill).

As the Committee would be aware, dumping occurs when foreign companies sell products in a country below the cost it sells those products for in its own country. This practise makes it very difficult for Australian companies to compete with dumped imports. Thus, Ai Group and the TRTF strongly support the retention and strengthening of an anti-dumping and countervailing system as an integral component of a framework to assist Australian industry meet unfair international trade competition.

An effective anti-dumping and countervailing system should support a stable business environment for industries affected by dumped imports, upon which material injury has been inflicted. In doing so, the system needs to provide a mechanism to counter predatory pricing and dissuade the practice of dumping onto the Australian market. However, there is growing, widespread concern among Australian industry and employees that the current system is not working effectively.

In drafting the Bill, Senator Xenophon has identified several issues which are of great concern to Australian industry regarding the current implementation of Australia's anti-dumping system.

The Bill attempts to redress the inadequacies of the current framework and strengthen the provisions under the Act, to provide greater support to Australian manufacturers during the application and investigation processes undertaken by Customs and Border Protection (Customs) and in any review of decisions by the Trade Measures Review Officer (TRMO) or the Minister.

Dumping cases are prohibitively expensive and time consuming to run. With the onus of proof falling on the injured Australian industry, companies do not bring cases without significant consideration and research.

Improved investigative expertise within Customs may assist to address the imbalance between the standard of proof required of Australian industry and the veracity of evidence received from overseas suppliers. To reverse or shift the onus of proof from Australian industry to the importer may go some way to “level the playing field”.

Australian companies currently countenance tremendous financial burden, through the anti-dumping application process, in an attempt to prove goods are being dumped. Our members have advised that costs to initiate anti-dumping investigation can exceed hundreds of thousands of dollars to prove their products are under threat from dumping.

We strongly support the amendment of the Bill which makes provision for the importer of the goods, being the subject of the application, to bear the onus of proving that the imported goods have not been dumped or subsidised for export into Australia. Under this amendment, once Customs receives an application it will be able to approach the overseas manufacturer and importer and the onus will be on them to prove they are not dumping. Further, the provision will recognise that a lack of cooperation by the importer of the goods could lead to a presumption of dumping.

To request Customs to initiate an anti-dumping investigation requires Australian manufacturers to compile evidence for one year or more before they can make an application to commence the investigation process, in an attempt to have dumping measures applied.

This investigation process in itself can take in excess of 18 months. Thus even if successful, which is not often the case, Australian manufacturers have suffered injury for a significant period of time due to the nature of the system. It is unacceptable and should be addressed by the amendments contained within this Bill.

Another cause of concern regarding the current system is the inability for new or updated information to be provided at various stages during the investigation process. The Bill attempts to address this issue by allowing new or updated information that could not have been reasonably provided earlier during the application, investigation and review processes. It would also allow for applicants to provide evidence from as recently as 90 days prior to the application being submitted. A 90 day period could be useful for intermittent dumping case. A consistent approach to time frames would be beneficial to all applicants. We strongly support the amendment of the Bill which allows for consideration of new information during the application, investigation, review and appeal.

A key concern of Australian industry is the absence of relevant industry expertise in the application, investigation or review process. We would support the provision for consultation with industry experts, in a timely manner, as part of the investigation and review processes. We note that some cases may necessitate that experts are not only Australian, but could also require offshore independent expertise. We also support the inclusion of trade unions in the listing of interested parties.

Another concern for industry is the factors considered when determining material injury in an anti-dumping investigation. There are international rules dealing with dumping, under the World Trade Organization’s (WTO) Anti-Dumping Agreement (Agreement), which provide a framework for how countries can implement anti-dumping duties.

While the WTO Agreement does not define material injury, it does provide a list of indicative factors. Article 3.1 of the Agreement does not allow for decisive or mandatory guidance of factors which would singularly determine injury. It does not, however, prohibit the impact of dumping on jobs and capital investment in a particular industry from being given due deference and consideration along with other factors.

We strongly support the inclusion of amendments to the legislation which would allow consideration of impact on jobs and capital investment as factors in determining material injury in a WTO consistent manner.

Similarly, we would support the inclusion of WTO consistent amendments which provide Australian manufacturers greater protection from predatory practices such as allowing preliminary affirmative decision to be applied once an investigation has been initiated, and better protection of commercially-in-confidence information. We support the amendments which would open up applications to Australian industry with a smaller than 50% market share (but larger than 25% for individual businesses) and allowing cumulative applications from businesses which represent in total a minimum of 25% market share. In addition, we support amendments, so far as they are WTO consistent, which recognise in instances where dumping has been proven and material injury has been proven, there is a presumption that the material injury is determined to be as a result of the dumping.

Some elements of the proposed amendments require further investigation and consideration. For example, the Review of Operation of Part XVB of Customs Act may not be essential to make the current anti-dumping system more effective. There has been a recent review by the Productivity Commission and previous reviews which have provided some improvements to the system. It is the effective functioning of the system which is key.

Further, although the current appeals process through the TRMO poses some difficulties these are in large part due to resourcing constraints. The referral of decisions to the Administrative Appeals Tribunal may not be necessary if the Trade Measures Branch at Customs and the TRMO within the Attorney-General's Department were fully resourced and fully functional. With sufficient resourcing supporting operational effectiveness, a new layer of review would not be required because the system would be working appropriately.

A strong anti-dumping and countervailing regime should be central to Australia's global competitiveness agenda and ensure that international trade remains fair. Industry does not want protection but rather clear standards and enforced safeguards. Access to anti-dumping and countervailing measures does not in anyway isolate the Australian market from fair competition by foreign manufacturers. This Bill will go a considerable way to making the current system more effective.

We await with great interest the Committee's response to the proposed Bill, which could greatly affect the future viability of many Australian businesses.

Yours sincerely

Innes Willox
Director – International and Government Relations