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## Customs, Trade & Transport e-alert

# Productivity Commission issues draft report in Anti-Dumping Inquiry

We have previously reported on the Productivity Commission's review of Australia's Anti-Dumping and Countervailing systems.

On 10 September 2009, the Productivity Commission issue its draft Inquiry Report ("**Report**"). The Report is a substantial piece of work and reflects a large number of submissions with some divergent views and interests.

The Report contains a number of recommendations which are open for further submission including two public hearings. Taken directly from the Report, the "Key Points" of the Productivity Commission are as follows:

- The Australian anti-dumping system, which is based on WTO agreed rules and procedures, benefits a small number of import competing firms, but imposes greater costs on the rest of the economy.
- However, this net economic cost is small. And the scope for Australian industries, like most other countries, to fall back on the system to address what are perceived by many to be 'unfair' trading practices, may have lessened resistance to more significant tariff reforms.
- The 'political economy' argument for retaining the system would be strengthened by reforms to address a number of deficiencies in the current arrangements which can add to the costs for the community. In particular:
  - there is no consideration of the wider economic and other impacts of anti-dumping measures;
  - measures can too easily become akin to long-term protection, or outdated in the face of changing market circumstances;
  - decision-making and its outcomes are not sufficiently transparent.
- Introduction of a 'bounded' public interest test, drawing on similar tests overseas, would be a practical means to take account of wider impacts and prevent the imposition of measures that would be disproportionately costly.
  - The test would embody a starting presumption in favour of measures where there has been injurious dumping or subsidisation.
  - But it would also detail specific circumstances where measures would, prima facie, not be in the public interest – namely, where they would be damaging to competition or ineffectual in removing injury; or would impose large costs on downstream users relative to the benefits for the applicant industry.
  - Assessments against the test would be completed within 30 days.
- Some other changes to the current arrangements should be made to achieve a better balance between benefits and costs, including to:
  - allow only one three-year extension of measures beyond the initial five-year term;
  - require annual adjustments to the magnitude of measures;
  - eliminate over-collection of duties at the time of importation;
  - align Australia's list of actionable subsidies with the WTO agreements;
  - increase the robustness of the appeals process;
  - impose a time limit on decisions by the Minister; and
  - enhance public reporting of the basis for decisions and their outcomes, and improve monitoring of the impacts of measures.
- To provide the parties with time to adjust, there should be a two-year delay before the public interest test and changed continuation and reapplication requirements take effect. The new arrangements should be independently and publicly reviewed five years after that.

There has been significant immediate response. The Australian Industry Group has announced that it will actively lobby against the adoption of any 'public interest' test, which it perceives will work against the interests of Australian industries, and would add to the complexity of the current system, including additional time, cost and uncertainty.

It needs to be kept in mind that the Report is only a draft and there will doubtlessly be significant additional submissions. Further, whatever is contained in the final Report, it still remains to the Government to determine whether to accept the final recommendations, in an environment where the Government is taking other steps to address the interests of Australian industry, for example in its attempt to limit the availability of the EPBS and TCO concessions.

We will be making additional submissions in response to the Report and will be pleased to assist others in their own submissions.

For further information please contact Andrew Hudson.