

Dumping Investigations and the role of an importer

By RUSSELL WIESE, Principal – Hunt & Hunt Lawyers

2020 has seen a surge in dumping investigations by the Australian Government. The focus has been on steel and aluminium goods from China. The imposition of dumping duties can effectively end supply chains as the result can be dumping duties exceeding 100%. Often the importer can feel helpless, as much of the investigation focuses on the foreign exporter. This raises the question, what can the importer do when an investigation is commenced.

Make sure the exporter is aware of the investigation

The most important initial task of an importer is to make sure your supplier is aware of the investigation and the importance of being involved. You cannot trust the Anti-Dumping Commission (ADC) to identify and inform your suppliers. Too often we only see suppliers becoming involved once the ADC has set a high dumping duty rate. By this stage it is too late for the supplier to get their own rate.

Does the supplier understand Australian investigations

Of course, it is not enough to merely be aware of the investigation, they need to understand what is required under the Australian system. The important point is that it is not simply a question of whether or not the exporter is selling goods at a loss. Often the key issue is whether the ADC will take into account the supplier's

actual domestic sale prices or whether it will use a constructed value. Even if it uses actual domestic sale prices, the ADC may not refer to all domestic sales.

To have the best chance of avoiding duties or obtaining a low rate, the exporter needs to complete an exporter questionnaire and will most likely need assistance from specialist advisors. If an exporter attempts to navigate the Australian system on their own, the likely outcome is a very high dumping duty rate. A supplier may not be aware of this unless you inform them.

Causation submissions

Before dumping duties can be imposed, it must be shown that there was (1) dumping, (2) material injury to the Australian industry, and (3) the material injury was caused by the dumping. The last point relates to causation and is an area where importers are better placed to comment than exporters. You will know the industry and why the Australian manufacturer is suffering the claimed injury. It may be due to product difference, decreasing demand, bad business decisions, currency movement, increases in production costs, availability of alternative products or cheap imports from countries not the subject of the investigation.

The ADC will not seek out these alternative causes of loss and the local manufacturer is unlikely to volunteer them. In the past few years, we have been involved in Investigations where dumping was found, but the ADC still proposed to terminate the investigation as it was convinced that the dumping did not cause the alleged injury.

Importer questionnaires

In some cases, the importer can greatly assist their supplier by completing an importer questionnaire. The importer questionnaire can be especially important for related party importers. The ADC will use this information to verify that the Australian sales are profitable, and pricing is arm's length. If the ADC cannot be satisfied of this, it may not base the export price on the actual sales price, but will derive it from the Australian sale price. This could reduce the export price and increase the dumping margin.

Keeping the ADC accountable

There are many elements of a dumping investigation that involve choices being made by the ADC. If the only Australian submission received by the ADC is from the local industry, it will likely adopt that approach. The relevant topics will be guided by the particular investigation but could include:

- what goods are and are not included in the goods under consideration
- who should be treated as the exporter
- what method for imposing duties should be selected
- should the ADC use the exporter's actual domestic sale price or a constructed value
- if there is a surrogate/benchmark steel price used, which steel price should it be
- whether security measures should be imposed
- whether the local industry has actually suffered injury

What is less relevant, and will generally be dismissed by the ADC, are arguments regarding the public interest in having free and open trade and preventing local manufacturers developing (or maintaining!) a monopoly position.

While there can be debates about the merits of Australia's dumping system, it is important that all interests are heard. Local manufacturers should not be the sole Australian voice. International supply chains are important and can bring benefits to the whole Australian economy. Importers and their customers pay the costs of dumping duty, so it is crucial that their voices are heard.



hunt & hunt
lawyers