
4 Should Australia retain an anti-dumping system?

Key points

- The price raising effects of anti-dumping measures give rise to a range of benefits and costs for applicant industries and their suppliers, importers, downstream user industries and, in some cases, consumers; with ensuing effects on employment, activity and investment across the economy.
- Most of these impacts represent transfers between different domestic stakeholders. But there will be some adverse consequences for Australia's overall economic performance and community well-being.
 - Resources attracted to, or retained in, industries by virtue of anti-dumping protection will provide a lesser return to the community than if used elsewhere.
 - Longstanding anti-dumping measures that become akin to tariffs are likely to lessen the imperative for recipient industries to respond to import competition through innovation and other forms of productivity improvement.
 - There are costs for government in administering the system and for local (and overseas) suppliers in complying with its requirements.
 - An effect of the undertaking and duty refund provisions is that some duty revenue that would otherwise accrue to the Australian Government flows overseas.
- However, as the industry and product coverage of the anti-dumping system is narrow and diminishing, the aggregate cost is likely to be very small.
- Also, the ability for local industries, like those in most other countries, to use the system to address what are perceived to be 'unfair' trading practices and outcomes may have lessened resistance to more significant tariff reforms. Thus removal of an anti-dumping 'safety valve' could make it more difficult to address remaining tariff and related reform issues.
- Accordingly, and with practical and other considerations militating against using competition law as a generalised substitute for a dedicated anti-dumping system, there is a case for retaining a system.
- But the current arrangements have a number of significant deficiencies including:
 - a lack of consideration of the economy-wide impacts of imposing measures
 - inadequate mechanisms for updating the magnitude of measures
 - scope for repeated extensions of measures based on less demanding tests
 - insufficient transparency in the investigation process and its outcomes.
- Addressing these deficiencies would reduce the direct detriment of the system, and thereby strengthen the political economy arguments for its retention.

Anti-dumping measures have a range of specific benefits and costs for those affected by them.

To a considerable extent these impacts are offsetting, involving transfers of activity, employment, investment and income between different groups in the community.

But there will also be some broader effects on the efficiency of resource use, as well as a likely leakage of duty revenue to overseas entities. Whether the net impact for the community is positive or negative, and thus whether it will be in Australia's interests to retain an anti-dumping system, depends on whether there are sound efficiency or other rationales for taking action against injurious dumping or subsidisation.

Accordingly, this chapter:

- outlines the various benefits and costs of imposing anti-dumping measures
- discusses the main rationales for taking action against dumped or subsidised imports
- assesses in this light whether retention of an anti-dumping system would be desirable
- highlights some deficiencies in the current system which, if addressed, would enhance the case for retaining a system.

4.1 The benefits and costs of anti-dumping measures

In a general sense, and like other trade protection instruments, anti-dumping measures will potentially affect the price and availability of the goods concerned. However, the requirements that must be satisfied before measures can be imposed — and in particular the like goods test — mean that, in practice, there will rarely be a detrimental longer-term impact on product availability in the broad (see box 4.1). Hence, it is the price raising effects of measures that are of key concern in examining the benefits and costs for the various stakeholders.

The potential price raising effect of some of the current measures is significant. In ad valorem terms, the average measure is around 20 per cent, with some measures in excess of 100 per cent (see chapter 3). As discussed in section 4.2, the actual impact on prices will depend on a range of supply and demand factors and may be much smaller than these duty equivalents would suggest. But if measures are to be of benefit to local suppliers of the goods concerned, then there must be some price raising effect.

Box 4.1 Impacts of measures on the availability of goods

Where the imposition of anti-dumping measures significantly reduces the price competitiveness of the imported product concerned, the overseas supplier may cease exporting it to Australia. For example, the Commission understands that the imposition of measures on coated paper imports in the late 1990s saw Finnish and Japanese suppliers exit the Australian market. As noted by Casselle Commercial Services (sub. 2, p. 6), withdrawal from the market may be particularly likely where other export opportunities are available and where Australia is only a small market for the overseas supplier.

However, the operation of the like goods test means that, where measures are imposed, there must be very close substitutes available from a local supplier(s). And often very close substitutes are also available from other overseas suppliers. Thus, in the coated paper case referred to above, Indonesian and Korean suppliers replaced their counterparts from Finland and Japan. Accordingly, and recognising that product distribution arrangements and/or unique Australian specifications might sometimes preclude immediate access to alternative sources of supply, the withdrawal of a dumped product is unlikely, of itself, to permanently disadvantage downstream users to any significant extent.

That said, there may be some more subtle impacts on product availability over the longer term. In particular, in helping to sustain local production, measures may, at a cost, enhance availability in the Australian market at times when global supply is tight (see text following). Conversely, were measures to provide a local supplier with significant market power, then it is possible that the supplier might seek to boost its overall profits by restricting product volumes and charging higher prices in the domestic market, and redirecting surplus product to export markets. (However, as discussed in chapter 5, application of the lesser duty rule would moderate any impacts of this nature. So too would the commercial incentives which motivate suppliers to maintain good relationships with their customers.)

To the extent that measures do raise prices and thereby boost the competitiveness of recipient local industries against some or all of the overseas suppliers of the goods concerned, they will support greater activity, employment and investment in those industries than would otherwise be the case.

Though it is obviously difficult to isolate these effects from other influences on firm performance, several firms advised that the imposition of measures had been particularly important in giving them greater confidence to invest, with flow-on benefits for their activity and employment over the longer term (see box 4.2). Anti-dumping measures may also boost the competitiveness of competing imports not subject to measures — whether supplied by dedicated importers or by local producers to complement their product ranges. In this regard, Dow Chemical (sub. 3, p. 15) suggested that while penalising opportunistic importing activity, anti-

dumping measures can benefit ‘bona fide’ overseas suppliers/importers with a long-term commitment to supplying and servicing the Australian market.

Box 4.2 Activity, employment and investment effects: the views of stakeholders

A number of users of anti-dumping measures commented on their beneficial impacts, particularly in supporting investment.

- CSBP (sub. 15, p. 6) cited one of the main benefits of the dumping system as being the provision of a degree of certainty over long-term investments.
- Sulo (sub. 12, p. 4) argued that anti-dumping measures can ‘provide certainty for longer-term investment decisions and permit manufacturers to commit to innovative developments to enhance production supply’.
- CSR (sub. 10, p. 2) noted that even small amounts of un-remediated dumping ‘reduce the incentive for further investment or capturing market growth’.
- BlueScope Steel (sub. 19, p. 34) submitted that ‘intermittent dumping can make it more difficult for the domestic industry to pursue a normal investment and market development strategy’.
- Geofabrics Australasia (sub. 4, p. 2) said that access to the anti-dumping system was a crucial factor in the company’s decision to continue to invest in research and development, as well as in capital equipment.

However, as outlined in the text, the benefits to recipient industries typically come at a cost to downstream industries. For example, Palmer Steel (sub. 25, p. 1) said that measures on Hollow Structural (steel) Sections had increased the company’s input costs, and thus had directly impeded its ability to expand production and employment.

A number of participants further contended that the imposition of measures serves to stabilise prices to the benefit of downstream user industries (and final consumers), and that any price raising effects are often offset by the better after sales service provided by local suppliers. And some argued that if industries are forced to cease production in Australia because of persistent dumping, there will be some additional longer-term costs for their customers as a result of a diminution in the security of supply (see, for example, BlueScope Steel, sub. 19, p. 37). In discussions, several downstream user industries told the Commission that the ability to buy from a local supplier is often worth a small price premium.

But there are, of course, offsetting activity and employment effects. While some of these will be borne by overseas suppliers, any decline in demand for products subject to anti-dumping measures may also adversely affect the activities of locally-based importers of those products. And the price raising effects of measures will

have negative impacts on the activity, employment and investment of downstream industries using the goods concerned.

As discussed in the next section, these negative impacts will almost certainly outweigh any benefits for downstream users from greater supply security or better after sales service. By way of illustration, the imposition of measures in late 2003 on High-Density Polyethylene — a major input in the production of mobile garbage bins — was followed by a successful ‘compensating’ application for measures on imported garbage bins. In other words, the benefits of greater supply security and better after sales service will, at best, only partially offset the detriment from higher input prices.

As the preceding mobile garbage bin case also illustrates, in those instances where measures are imposed on final goods, consumers will be similarly disadvantaged. But they will generally be less affected by measures imposed on intermediate goods. This is because, in many cases, they will be able to switch from the now more expensive locally produced final good into an imported product unaffected by the imposition of measures on the intermediate good.

4.2 What is the net impact on resource use efficiency?

Many of the shifts in activity and employment discussed above simply result in a redistribution of income within the Australian community. Even so, there will be some impacts on the efficiency of resource use and thereby implications for overall community well-being.

A variety of efficiency-related arguments for taking action against dumped or subsidised imports have been advanced, including to counter predatory behaviour, address ‘episodic dumping’, promote efficient industry structures or offset ‘strategic predation’ by foreign governments.

However, in the Commission’s view, this suite of arguments does not provide any justification for Australia to retain an anti-dumping system.

An objective assessment of these arguments is made more difficult by the terminology and concepts that characterise the anti-dumping architecture.

- The use of the term ‘dumped’ to describe imports that are sold at a lower price than in the supplier’s home market almost axiomatically implies that the practice is undesirable. But it is only one particular manifestation of the common practice of price discrimination. In fact, as a strategy for helping firms to break into export markets, price discrimination or ‘dumping’ has implicitly been endorsed

by governments around the world. For example, Austrade (2006) has previously issued advice to prospective exporters that:

Marginal (or ‘differential’) costing is a technique commonly employed in export and produces a more competitive price to assist market entry ... It is particularly useful where a company has excess production capacity and needs to reduce its export prices to be competitive.

- ‘Injury’ from a ‘dumped’ product may, in practical terms, be little different from the loss of sales and/or profits that a local producer may suffer for a range of other reasons — including a reduction in its underlying competitiveness against imports or against other domestic suppliers, appreciation of the exchange rate, reductions in tariffs, or shifts in broader demand patterns. But through the link to the practice of dumping, such injury assumes a separate policy significance.

More specifically, as elaborated on in box 4.3 and appendix D:

- There is no evidence that in recent years dumping has been motivated by the sort of predatory intent that would, in a domestic market context, risk breaching the Trade Practices Act (TPA).
- There should be some onus on, and capacity for, otherwise competitive domestic firms to ‘weather the storm’ of episodic dumping during periods of global excess supply — especially as those same firms are likely to benefit when demand is strong and supply tight at other times during the economic cycle. Further, acceptance of an episodic dumping rationale could provide the basis for anti-dumping measures to be applied almost continuously in these sorts of industries, meaning that measures would, in practice, be little different from conventional industry protection.

Allocative and dynamic costs

In the absence of any soundly-based efficiency rationales for taking action against dumped or subsidised imports, resources attracted to (or retained in) industries as a result of the imposition of anti-dumping measures will generally provide a lesser return to the community than if used elsewhere. Though such ‘allocative efficiency’ costs can be hard to directly observe, especially for smaller scale interventions such as the anti-dumping system, they are a generally acknowledged consequence of virtually any trade policy instrument that seeks to artificially boost the competitiveness of particular industries.

Box 4.3 Efficiency arguments for anti-dumping protection

Countering predatory behaviour

A long standing argument for anti-dumping measures is to counter predatory behaviour aimed at driving local suppliers from the market, in order to allow the overseas supplier to ultimately charge higher prices and reap monopoly profits. However, the market circumstances that would allow an overseas supplier to employ dumping to create anything other than a transitory monopoly are very narrow. Specifically, there would need to be limited competition amongst global suppliers of the goods concerned and constraints on the re-entry of local suppliers, or the emergence of new suppliers, once import price levels rose.

Significantly, for almost all of goods recently subject to measures in Australia, there have been multiple sources of global supply (see chapter 3). Reflecting this, most inquiry participants acknowledged that countering predatory behaviour is not the focus of Australia's anti-dumping system.

Addressing 'episodic' dumping

From time to time, suppliers may look to offload surplus product in export markets at heavily discounted prices. Though not predatory, such 'episodic' dumping may still force local suppliers to reduce prices and/or temporarily scale back production.

However, the effectiveness of WTO compliant anti-dumping measures in dealing with 'hit and run' dumping is problematic. More generally, for good reasons, firms rather than governments are usually required to bear the risks associated with uncertainty and volatility in globally integrated markets. And as noted in the text, in capital intensive industries such as chemicals and steel products where demand fluctuates heavily across the economic cycle and where price discounting can occur quite regularly, a concern to remediate episodic dumping might effectively become a rationale for long-term industry protection.

Supply security

In helping to sustain a local supply base, anti-dumping measures may benefit customers through more timely delivery, better after sales service and greater supply security over the longer term. But if customers regard the benefits of access to local supply as being significant, there are various ways that those benefits can be, and are, obtained without the need to mandate higher prices for the goods concerned — and thereby remove customers' capacity to trade off such benefits against the opportunity to secure imported product more cheaply at certain times.

Other efficiency arguments advanced in support of anti-dumping measures include:

- promoting efficient industry structures and development
- countering 'strategic predation' by foreign governments.

However, as discussed in appendix D, none of these additional arguments, or arguments based on support for regional development, are compelling.

Additionally, longstanding anti-dumping measures that become akin to tariffs may lessen the imperative for recipient industries to respond to import competition through innovation and other forms of productivity improvement. It is now widely accepted that much of the gain from Australia's tariff reform program has come from 'dynamic' efficiency improvements resulting from firms' greater exposure to global competition. In this context, some anti-dumping measures in Australia have been in place for nearly 20 years (see chapter 3).

Finally, any system that provides for the restriction of price competition in certain circumstances can create incentives for 'strategic' use — in this case, including through the threat of actions, or the lodgement and subsequent withdrawal of applications (see box 4.4). While there are some factors diminishing the likely pay-offs from such behaviour, one of the potential benefits of the Commission's recommendation (7.7) to improve public reporting on applications for measures that do not proceed to initiation, would be to discourage more egregious applications.

Box 4.4 The strategic use of anti-dumping

The potential for local suppliers to use anti-dumping systems to advance their competitive position in unintended ways has long been recognised. For example:

- A supplier might use the threat of an anti-dumping action to deter downstream users from using an imported product, or to directly induce an importer to raise its prices.
- With greater globalisation of production, an increasing number of firms are augmenting their domestic output through importation, thereby extending the spectre of strategic behaviour to applications or (threatened applications) that target the imports of competing local suppliers.

Contentions of this nature have been widely explored in the literature (see, for example, Mankiw and Swagel (2005)), and were raised in this inquiry by the Australian Steel Association (subs. 28 and DR57). They were also an issue in the decision by the Australian Competition and Consumer Commission to seek an undertaking from OneSteel as part of its acquisition of Smorgon Steel Group in 2007 (ACCC, sub. 35, p. 27).

There are, however, a number of factors that will reduce the expected pay-offs from such strategic behaviour. In particular, the costs for firms taking anti-dumping action are significant. And only around one quarter of applications ultimately result in the imposition of measures (see chapter 3). Yet to be credible, threats of taking anti-dumping action must be underpinned by a reasonable likelihood of success if such action is in fact pursued.

Even so, it would be surprising if there were not some opportunities for local suppliers to use the system in a strategic fashion — just as there may be opportunities for overseas suppliers subject to anti-dumping actions to use aspects of the system to their advantage.

Administration and compliance costs

In addition to the ‘allocative’ and ‘dynamic’ efficiency costs, there are direct financial costs borne by the Australian Government (and consequently taxpayers) in administering the system, as well as costs for firms in taking and defending actions, and complying with measures imposed.

- In the case of the Government, these costs are mainly incurred by Customs — in recent years, expenditure by Customs on investigating dumping complaints and ensuring compliance with measures in place has ranged between \$5 million and \$6.6 million a year. For individual investigations, Customs has advised the Commission that its costs range from around \$250 000 for a relatively simple case to \$1 million for more complex cases. There are also costs attaching to the dumping-related activities of the Trade Measures Review Officer, though the Commission understands that these have generally been modest. And from time to time, there have been further costs for the Government arising from appeals to the Federal Court.
- For local suppliers, there are the costs of preparing applications and providing any follow-up information requested by Customs. As well as internal staff costs, there are usually considerable consultancy expenses, with a handful of specialist anti-dumping consultants or lawyers doing much of the procedural work involved in the lodgement of applications. The cost of an application generally appears to fall in the range \$100 000 to \$250 000 depending on complexity and availability of data, though costs as high as \$400 000 have been reported in particular cases (see box 4.5).
- While some of the compliance burden on those defending actions or subject to measures may be borne by overseas stakeholders, a considerable part of it can fall on Australian-based importers (see, for example, the submission to the Joint Study by the Food and Beverage Importers Association (2006, p. 1)). In addition, the costs for importers of seeking refunds of ‘over-paid’ interim duty payments (see section 6.7) can be considerable.

Transfer of duty revenue overseas

The revenue collected by the Government from a dumping or countervailing duty is an offset to the costs imposed on downstream user industries over and above the benefit received by the local supplier(s) of the goods concerned. As such, it is a part of the transfer of income within the Australian community that ensues when an anti-dumping measure is imposed.

Box 4.5 How costly is the current system for applicant industries?

Several participants provided information about the costs that local industries have incurred in applying for anti-dumping or countervailing measures. For example:

- The NFF (sub. 6, p. 5) reported that in the dumping case brought by Sunbeam Foods and the Australian Dried Fruits Association against Greek currants, the total application cost was approximately \$120 000, and that in the 'preserved mushrooms' case, the Mushroom Growers Association of Australia and Windsor Farm Foods spent approximately \$400 000.
- CSR (sub. 10, p. 5) suggested that launching an anti-dumping case could typically cost a firm \$200 000.
- Australian Pork (sub. DR39, p. 5) similarly suggested that the cost of preparing and lodging an application for measures is around \$200 000, with further costs involved in monitoring outcomes if an application is successful.

And in a submission to the Joint Study, Townsend Chemicals (2006, p. 3) said that it had spent \$235 000 on an application in 2002 for measures against thermoplastic polyurethanes.

The key contributors to these costs include:

- the need to employ consultants to prepare applications because of the complexity of the system requirements
- the amount of information required to establish a prima facie case, including on export prices and normal values, the benefit to the overseas supplier from an actionable subsidy (in countervailing cases) and evidence of injury and causation
- the difficulty in sourcing much of this information, particularly when import data are suppressed by the ABS for confidentiality reasons (see chapter 7).

In regard to the cost of engaging consultants, participants (such as PACIA, sub. 31, p. 11) noted that these are 'significant', although they did not provide numerical estimates of the split between consultancy and internal firm costs. However, in its submission to the Joint Study, Townsend Chemicals reported that \$90 000 of the \$235 000 total cost of its 2002 application was spent on consultants (with a further \$10 000 on legal opinions). Notably, virtually all participants indicated that few firms would have the capacity and experience to launch dumping actions without specialised help.

However, where an overseas supplier offers an undertaking not to export at below the non-injurious price, the revenue that would otherwise have accrued to the Australian Government is instead retained by the overseas supplier, thereby increasing the overall cost of the measure for the community. This may also be the case where a duty applies, but where duty payments are subsequently refunded as a result of the overseas supplier raising its export price.

How big are the direct efficiency costs?

Aside from the administrative and compliance costs, the size of the efficiency costs (and any revenue transfer overseas) arising from the imposition of anti-dumping measures will be correlated to the price raising effects.

In this regard, several local industry participants contended that anti-dumping measures do not in fact have any price raising effect per se, but merely return markets to the ‘normal’ or ‘fair’ conditions that should have prevailed in the absence of dumping (see, for example, Sulo, sub. 12, p. 4).

However, in looking at the direct impacts of measures, this rationales-based contention is irrelevant. Whatever the merits of measures, in practical terms, they are intended to reduce the price competitiveness of the imported products concerned, thereby enabling competing local producers to achieve higher sales and/or set higher prices than would otherwise be the case. And in the absence of any compelling efficiency rationale for measures, these price raising effects will in turn have direct efficiency costs of the sort discussed above.

That said, while the magnitudes of some of the current anti-dumping measures are very significant, and the costs for particular user industries may be sizeable, there are several reasons why the efficiency impacts are likely to be very small in an overall sense.

- The impact of measures on prices will depend on supply and demand conditions in the markets concerned. For example, un-dumped (or non-subsidised) substitute products may be available from overseas suppliers at prices below the duty inclusive price of the dumped import, thereby constraining the price raising effect of the measures. As measures are imposed on the ‘free-on-board’ export price, their proportionate impact on the landed price of the goods into Australia will be diluted by freight costs. And any duty absorption by the overseas supplier via ‘rebates’ to importers or other mechanisms, will similarly limit the price raising effects. In fact, it appears that the resulting uplift in prices for some of the products subject to sizeable measures has been low or even negligible.
- While Australia’s anti-dumping system may, in some cases, deter aggressive pricing behaviour by overseas suppliers — with consequent price impacts that are not reflected in the measures in place at any point in time — any such ‘silent policeman’ effect is unlikely to be large (see box 4.6).
- Most of the measures currently in place apply to a relatively narrow range of basic industrial chemicals and plastics, base metal products, paper products and processed agricultural goods, with this product range narrowing further over time. Indeed, as the like goods test effectively precludes anti-dumping action in

any market where there is more than minimal differentiation amongst product offerings, the range of activity that could be encompassed by the anti-dumping system will necessarily be quite limited.

Box 4.6 The silent policeman effect

Various economists have looked at the extent to which the mere existence of an anti-dumping system can reduce price competition in markets, especially in the context of the EU and US systems (see, for example, Mankiw and Swagel (2005) and Vandebussche and Zanardi (2006)). The underlying premise is that exposure to the possibility of anti-dumping measures may cause overseas suppliers to price less aggressively, thereby diminishing the need for domestic industries to actually take or threaten action.

However, there are several factors that are likely to limit any such silent policeman effects, particularly in the Australian context.

- As well as reducing the likely pay-offs for firms from threatening to take anti-dumping action, the significant costs for industries of bringing actions and the small share of measures that are ultimately successful will also weaken the general deterrent effect of the system.
- Exporters to Australia, particularly in developing countries, may not know a lot about the anti-dumping system until they are caught up in it.
- Even when aware of Australia's system, as noted earlier, opportunistic exporters may view Australia as a potentially expendable minor market, price aggressively and simply withdraw from the market if they become subject to an anti-dumping action.
- Retrospective measures have not been applied in Australia for many years.

Also, in constraining the range of goods that could potentially be subject to measures, the like goods test will limit any silent policeman effect to a similarly narrow group of industries and products.

Indicative of how small the economy-wide efficiency costs are likely to be is the amount of anti-dumping and countervailing duty payments collected by Customs — an average of only \$9 million a year (before refunds) since 2006. These duty collections do not, of course, capture the higher prices for locally produced like goods — or any increase in the price of un-dumped imports. Nonetheless, they are minute in comparison to total taxes on trade (\$6 billion a year) and the total value of imported goods (\$240 billion in 2008-09).

Given the likelihood of a very small overall impact (as well as the difficulty of quantifying some of the specific effects of anti-dumping measures), the Commission has not undertaken any formal economic modelling of the net direct

efficiency costs of the system. However, it notes that the US International Trade Commission (USITC 1995) estimated that removing the directly quantifiable costs of that country's somewhat more 'aggressive' system would have delivered a direct welfare gain equivalent to just 0.03 of one per cent of US GDP.

In responding to the Draft Report, a few participants criticised the absence of any formal modelling. Most notably, the Australian Steel Association (sub. DR57, paras. 296–317) called for quantification of both the overall impacts of the system on efficiency and of its impacts on particular industry sectors. And in a paper prepared for the Association, Professor Pasquale Sgro from Deakin University argued that welfare costs of 0.03 per cent — equivalent to around \$250 million a year in contemporary Australian GDP terms — are non-trivial, and that various other US studies suggest that the modelling approach applied in the USITC exercise understated the true costs (sub. DR57, p. 55).

The Commission agrees that, even though very small in economy-wide terms, a net efficiency cost of the order of \$250 million a year would not be inconsequential. Indeed, viewed in isolation, any direct efficiency cost associated with the imposition of anti-dumping measures would constitute an argument for Australia to abolish its anti-dumping system. However, as discussed in the next section, there are also some important political economy arguments for retaining a system which are relevant in this context.

More specifically, all of the indications are that the outcomes of a general equilibrium modelling exercise would be hard to distinguish from computer 'machine noise'. And modelling focussed on the even smaller impacts on individual industry sectors would be more problematic again. Notably, Professor Sgro (sub. DR57, p. 55) agreed that 'full modelling would be difficult and perhaps not warranted'.

4.3 Political economy considerations

The main arguments

Promoting what are perceived to be 'fair' trading practices and outcomes is a widely posited objective of anti-dumping measures. In undertaking the last comprehensive review of Australia's anti-dumping system, Gruen (1986, p. 24) observed that 'fair trading practices — both nationally and internationally — command widespread Australian community support'. This remains the case today.

For some, the promotion of 'fairness' in trading outcomes is a self standing and sufficient argument for an anti-dumping system (see box 4.7).

Box 4.7 Some views on fairness as a rationale for an anti-dumping system

[I]n the absence of trade barriers the Anti-Dumping System is a 'speed hump' that encourages fair trade. It is an essential remedy in the multi-lateral trading environment that ensures Australian industry can continue to supply its own domestic market — provided it has the opportunity to compete on the basis of fair prices. (Sulo, sub. 12, p. 3)

CSBP committed to large capital investments ... on the understanding that it would compete against fair prices on the Australian market ... Access to anti-dumping measures to remedy unfair trading behaviour is a reasonable expectation for Australian industry ... (CSBP, sub. 15, p. 4)

The CIF does not view the Anti-Dumping System as impacting comparative advantage, rather, it is a mechanism to provide relief from exporters seeking to secure an unfair competitive advantage. (Cement Industry Federation, sub. 9, p. 3)

Rather than being a protectionist measure, tough anti-dumping rules are an entitlement under the WTO to protect open and fair trade. It is important that these rights are exercised in the national interest rather than serving other agendas, including furthering the interests of consumers and importers when it is at the direct expense of local industry. (The Australian Workers' Union, sub. 32, p. 14)

While people may at times legitimately debate the meaning of fairness, in the anti-dumping context the notion is wrongly used to signify some kind of economic unfairness, i.e., it is supposedly unfair to expect local manufacturers to be able to compete profitably against dumped imports. (Australian Steel Association, sub. DR57, para. 324)

For others, the belief is that if Australia's trading partners have anti-dumping systems, then it is only fair that Australia should too. In this regard, OneSteel stated:

It would be inappropriate for Australia to consider any unilateral action regarding reducing access to anti dumping measures, when all our major trading partners (including China) have adopted both anti-dumping and subsidy agreements [and enacted] them into their domestic law. (sub. 22, p. 4)

However, amongst economists and policy makers, catering for what are perceived to be fair outcomes is more commonly linked to building and sustaining support for a more liberal trading order. Bhagwati (1988, p. 35) encapsulated this argument in the following terms.

An economist is right to claim that, if foreign governments subsidise their exports, this is simply marvellous for his own country, which then gets cheaper goods and thus should unilaterally maintain a policy of free trade. He must, however, recognise that the acceptance of this position will fuel demands for protection and imperil the possibility of maintaining the legitimacy, and hence the continuation, of free trade. A free trade regime that does not rein in or seek to regulate artificial subventions will likely help trigger its own demise ...

This line of thought supports the cosmopolitan economist's position that the world trading order ought to reflect the essence of the principle of free trade for all — for

example, by permitting the appropriate use of countervailing duties and anti-dumping actions to maintain fair, competitive trade.

In a similar vein, a number of submissions noted that the broad support of business for Australia's tariff reform program that began in the mid-1980s was underpinned by an implicit understanding that companies would have ongoing recourse to anti-dumping measures. The Trade Remedies Task Force, for example, commented that:

... Australian industry (like industries in other countries) has endorsed the removal of trade barriers, provided that anti-dumping systems remained to deal with unfair and uncompetitive trading practices. (sub. 26, p. 7)

And generalising this argument to the international level, the Cement Industry Federation observed that:

The reduction of tariffs in the Uruguay Round of [WTO trade] negotiations was achievable in the full knowledge that member countries could rely upon the provisions within the Dumping and Countervailing Agreements to remedy unfair trading practices. (sub. 9, p. 3)

The Commission's assessment

In the Commission's view, the key issue from a policy perspective is the significance of any 'system preserving' benefits that flow from promoting what are perceived to be 'fairer' trading outcomes. In its judgement, absent such benefits, fairness would not provide a basis for Australia to retain an anti-dumping system. Indeed 'fairness', as it relates to anti-dumping arrangements, is not a straightforward concept. For instance:

- As discussed earlier, the benefits for import competing suppliers and their employees from anti-dumping measures come at the expense of others in the community, including downstream users and firms which compete with the recipient suppliers for labour and other inputs. Not all would regard these redistributions of income and resources as unambiguously fair.
- The bulk of Australia's anti-dumping measures are imposed on products exported from less developed countries (see chapter 3). Restricting market opportunities for those less well off than most Australians might also be viewed by some as unfair, especially where the suppliers concerned do not have overtly predatory motivations.
- It is debatable whether the fairness arguments for measures apply equally to the two main components of anti-dumping regimes. Thus as Banks (1990, p. 22) argued, action to offset a subsidy provided by an overseas government seemingly has a stronger link to fairness than taking action against an overseas supplier that simply engages in (non-predatory) price discrimination.

Similarly, there should be no automatic presumption that because our trading partners have anti-dumping systems in place, so too should Australia. That is, Australia's decision on whether or not to maintain an anti-dumping system should be determined, in the first instance, by the particular benefits and costs associated with the system, and not on how other countries manage the trade-offs involved.

The Commission further observes that the 'system preserving' benefits that attach to Australia's anti-dumping system seem unlikely to be large in any overall sense.

- Beyond the claimed relationship between Australia's tariff reform program and the maintenance of an anti-dumping regime, there are no obvious examples of reform initiatives in Australia that have been aided by the presence of the anti-dumping 'safety valve'.
- There appear to be very few instances where the threat of anti-dumping action by Australia has influenced the actions of our trading partners. Gruen (1986, p. 25) observed that a decision by a previous New Zealand Government to phase out its main form of export subsidisation 'probably had something to do with the USA's and Australia's new found enthusiasm for countervailing'. However, no other examples have come to light in this inquiry, with the Australian Steel Association (sub. 28, p. 18) contending that there is no demonstrable evidence that anti-dumping measures are effective in driving trade liberalisation in our trading partners.¹
- More broadly, the changes in Australia's trade policy landscape over the last two decades suggest that these benefits would be more modest than in the past.

Even so, in the Commission's judgement, they cannot be dismissed as inconsequential. In particular, the capacity for the Australian Government to point to the existence of an appropriately configured anti-dumping system may continue to be helpful in dealing with aspects of protectionist sentiment within industry and the community, especially during downturns in the economy. Accordingly, removal of an anti-dumping 'safety valve' could make it more difficult to address remaining tariff and related reform issues. In this regard, it is important to recognise there is still a considerable degree of domestic support for the anti-dumping system,

¹ Also, though not a consideration directly relevant to any unilateral decisions by Australia on the future of its anti-dumping system, at the global level, anti-dumping measures are likely to have systemic costs as well as benefits. Most obviously, WTO imprimatur for conforming anti-dumping regimes has underpinned the global proliferation in these regimes in the last two decades. As discussed in chapter 3, in recent years, Australian exporters have only been subject to a small number of anti-dumping actions. However, it seems almost inevitable that for some Australian exporters — and especially those seeking to break into new markets — the growing number of anti-dumping regimes will have constrained what would otherwise have been profit-enhancing export strategies.

including from some who have been disadvantaged by particular anti-dumping measures (see, for example, trans., p. 47).

The Commission further notes that, in a collective sense, the scope for countries to impose countervailing duties on subsidised exports may help to constrain the practice. Hence, even though there are many ways for countries to recalibrate their subsidy support to render it WTO compliant, this component of Australia's anti-dumping system, in conjunction with counterpart components in other systems, can reinforce the more general WTO processes directed at reducing/eliminating subsidies.

4.4 A modified system should be retained

As well as looking at the various benefits and costs for the community of a dedicated anti-dumping system, the Commission considered the alternative of using competition law to deal with dumping matters (see box 4.8). As reflected in paragraph 4(b) of the terms of reference, particular policy interventions should not only deliver a net benefit to the community, but should be more efficient and effective than alternative approaches for meeting the underlying objective.

However, there are several practical and other considerations which militate against extending the competition law approach beyond its current partial application to trans-Tasman trade under the Closer Economic Relations (CER) Agreement.

Given this, and the fact that the potential broader benefits from providing access to anti-dumping protection seemingly come at very small overall cost to the community, the Commission has concluded that an anti-dumping system should be retained.

But this is not an endorsement of the status quo. The current system has a number of significant deficiencies. Addressing these deficiencies would lessen the direct detriment that generally ensues from the imposition of anti-dumping measures without undermining the broader benefits of providing access to an anti-dumping safety valve. The political economy arguments for retaining a system would thereby be strengthened.

Box 4.8 The competition law approach

A possible alternative put forward to a dedicated anti-dumping regime is to deal with dumping through the misuse of market power provisions contained in s. 46 of the TPA. Under the Closer Economic Relations (CER) Agreement, this approach already applies to trade between Australia and New Zealand, though either country can still take countervailing action consistent with WTO rules. Trade within the EU and between Canada and Chile under the Canada-Chile Free Trade Agreement (CCFTA) is similarly exempt from the application of anti-dumping measures that apply to third countries, and instead subject to applicable competition law (though under the CCFTA, it is again permissible for either country to take countervailing action).

As a generally applicable mechanism, the approach has some in-principle attractions.

- In particular, it would limit the imposition of anti-dumping measures to circumstances where dumping was genuinely predatory and hence most likely to be directly detrimental to efficiency.
- Also, bringing dumping matters within the remit of the TPA could increase the scope to take account of inter-relationships with some other competition issues. For example, the strength of import competition might be a potentially important consideration in assessing whether a proposed merger would significantly reduce overall competition in the marketplace.

But notwithstanding its use in a trans-Tasman context, the feasibility of competition law as a general substitute for Australia's anti-dumping system is highly questionable.

- It would require the cooperation of other countries which, based on the retention of the scope to take both anti-dumping and countervailing action in Australia's other preferential trade agreements, could not be guaranteed.
- It would also require better developed competition institutions and legal instruments for enforcing judgements on any dumping-related misuse of market power than exist in some of Australia's major trading partners.
- Most of the penalties prescribed in the TPA for breaches of s. 46 are retrospective and may significantly exceed the gain to the offender from the contravention. Conversely, anti-dumping and countervailing measures provided for by the WTO agreements are generally prospective and set to remediate damage to the local supplier, rather than to punish the transgressor. While a harsher penalty regime that punished and deterred genuinely predatory dumping might be intrinsically desirable, taking punitive action against an overseas supplier benefitting from a countervailable subsidy would be especially problematic — as exemplified by the retention of the generally applicable countervailing provisions under the CER Agreement.

More broadly, it is unclear whether the competition law approach, with its focus on enhancing and preserving market competition, could adequately recognise the system preserving arguments for allowing action against injurious dumping or subsidisation.

Appendix E provides further elaboration on these matters and participants' views on them.

4.5 Deficiencies in the current system

Some of the deficiencies in the current arrangements reflect the complex and arcane nature of the system, and the WTO agreements on which it is based.

- Almost irrespective of any efforts to make the specific assessment criteria more precise, the need to retain the flexibility to deal with a diverse range of cases means that their application will inevitably involve considerable judgement.
- The complexity of the requirements also means that their application will necessarily be time consuming and costly. Given the changes that have been made over the last decade or so to streamline the system, there is only limited scope for further improvement on this front.

However, other deficiencies reflect the particular way that Australia has chosen to implement the requirements in the WTO agreements. These can and should be addressed.

Lack of consideration of wider impacts

As in most other countries, dumping assessments by Customs focus solely on whether dumping or subsidisation has occurred and, if so, whether it has caused or threatens material injury to the local industry concerned. Hence, there is no consideration of the wider impacts and the broader public interest in the advice provided to the Minister. Yet the costs of particular anti-dumping measures for downstream industries, other stakeholders and the community, can be significant relative to the benefits for recipient industries. And while the Minister can ostensibly take into account other factors — including the public interest — when deciding whether to impose measures, as far as the Commission is aware, no Minister has done so.

Significantly, the WTO agreements do not preclude the inclusion of public interest test requirements, with several countries having implemented them (see chapter 5).

Inadequate mechanisms for adjusting the magnitude of measures

As discussed in chapter 2, Australia's anti-dumping system sets measures on a prospective basis, with duties based in the first instance on dumping margins (or the subsidy benefit) determined during the investigation period.

While there are two sets of provisions that allow for adjustments to the magnitudes of measures where there have been changes in market conditions, these provisions have some significant drawbacks (see chapter 6). As a result, there is the potential for some measures to quickly become either ineffective in removing injury, or unreasonably punitive. For example, in a rising market, both the normal value and export price of a good subject to a dumping duty may exceed the unadjusted, duty

inclusive, ‘floor’ price established by that measure. Hence, the measure may no longer be effective in preventing any dumping. Conversely, in a declining market, an unadjusted floor price may become punitive and require the overseas supplier to price above the contemporary normal value.

Other deficiencies in the legislative framework

Some other aspects of the current arrangements are not conducive to securing appropriate and fair outcomes. As elaborated on in chapters 6 and 7, particular deficiencies include:

- the opportunity for repeated extensions of measures without any requirement to re-examine injury and causality issues. Indeed, as noted earlier, some measures have been in place for nearly 20 years
- a lack of robustness in the appeal arrangements. For example, decisions on whether to continue measures beyond the initial five-year term are not appellable
- a more limited list of countervailable subsidies than that permitted by the WTO. As well as reducing the scope for Australian industries to bring countervailing actions, this creates perceptions of unfairness.

Lack of transparency

As submissions from across the spectrum of interests have emphasised, there is insufficient transparency in the decision-making process and the outcomes that flow from it. In particular, assessments by Customs of whether there has been injurious dumping or subsidisation and, if so, its extent, rely heavily on information provided by the parties. But important parts of this information are kept confidential. And the provisions requiring public summaries of information submitted in confidence are widely regarded as ineffectual. Hence, the detailed basis for Customs’ advice to the Minister cannot be readily determined.

Moreover, when measures are imposed, none of the affected parties receives full information on the key underlying parameters. One consequence is that local suppliers cannot be certain what the impacts on selling prices of the imported goods should have been and thus whether they received a good return for the time and cost involved in applying for measures. Another is that there is a widespread misconception that the lesser duty rule is applied more frequently than is actually the case (a little under half of the measures currently in place).

Other features of the process that detract from transparent outcomes include:

- the aforementioned inability for parties to appeal some key decisions
- limited general reporting on the magnitude of measures and on the number of applications for measures that do not lead to investigations.