
OVERVIEW

Key points

- The Australian anti-dumping system, which is based on agreed WTO 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 likely to be very small. And the ability for Australian industries, like those in most other countries, to use the system to address what are perceived by many to be ‘unfair’ trading practices, may have lessened resistance to more significant tariff reforms.
- This ‘political economy’ argument for retaining the system would be strengthened by changes 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 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 - measures can too easily become akin to long-term protection, or outdated in the face of changing market circumstances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 provisions 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 presumption in favour of measures where there has been injurious dumping or subsidisation.
 - But it would also detail a small number of specific circumstances where measures would not be in the public interest — for example, where they would be ineffectual in removing injury; or would impose large costs on downstream users relative to the benefits for the applicant industry.
 - Customs would have to complete assessments against the test within 30 days, and then advise the Minister on whether any of these circumstances applied.
- Other changes that should be made to the current arrangements to achieve a better balance between benefits and costs include:
 - allowing only one three-year extension of measures after the initial five-year term
 - providing for annual adjustments to the magnitude of all measures
 - aligning Australia’s list of actionable subsidies with the WTO lists
 - increasing the robustness of the appeals process
 - imposing a time limit on decisions by the Minister
 - enhancing public reporting on the basis for decisions and their outcomes.
- To provide stakeholders with time to adjust, there should be a two-year delay before the public interest test and changed continuation requirements take effect. The new arrangements should be reviewed five years after that.

Overview

Australia's anti-dumping and countervailing system ('the anti-dumping system') seeks to remedy injurious effects of 'dumped' imports on Australian industries.

- Dumping is said to occur when an overseas supplier exports a good to Australia at a price below its 'normal value' in the supplier's home market. If dumping causes, or threatens to cause, 'material injury' to local producers of 'like goods', then remedial action — mainly the imposition of special customs duties — can be taken against the imported goods concerned.
- Similarly, countervailing duties can be imposed on imports which benefit from any of a specified group of government subsidies and which cause or threaten material injury to a local industry producing like goods. (Box 1 and figure 1 provide further explanation and illustration of key concepts and processes.)

Australia's system is based on World Trade Organization (WTO) agreed rules and procedures.

Though there have been periodic reviews of the administrative arrangements, it is now more than twenty years since the last comprehensive examination of the system. In essence, the Commission's task in this inquiry has been to determine whether Australia should retain an anti-dumping system and, if so, how it should be configured to best serve the interests of the community as a whole.

Recent usage of the system

In the past, Australia was one of the major users of anti-dumping measures. However, its recourse to measures has declined in recent years (see figure 2). That said, the proportion of measures which have been extended beyond the initial, standard, five-year term has been growing.

For many years, almost all of Australia's measures have been dumping-related, with only one countervailing measure currently in force. Most of the 27 current measures apply to a relatively narrow range of basic industrial chemicals and plastics, base metal products, paper products and processed agricultural products — the bulk of

which are inputs to further manufacturing processes. And most are against suppliers from the Asian region, and against Chinese firms in particular.

Box 1 An outline of Australia's anti-dumping system

Australia's system is based on WTO agreements that, amongst other things, aim to discipline the use of anti-dumping measures as an alternative form of protection. Though not obliged to enact such legislation, WTO members must comply with the agreed requirements should they wish to take action against dumped imports.

The system is administered by the Australian Customs and Border Protection Service (Customs). It investigates claims of dumping and subsidisation and makes recommendations to the Minister, and also oversees measures in force.

The investigation process goes through several stages (mostly time-limited) and includes appeals arrangements (though some decisions are not appellable). Key requirements that must be satisfied before measures can be imposed include:

- The goods produced by the local industry seeking relief from dumped or subsidised imported goods must be 'like' those imported goods.
- The application must have majority industry support.
- In dumping cases (but not subsidy cases), the export price of the goods must be below the 'normal value'. In the first instance, this value is based on 'arms length' sales in the exporter's own country. However, where there are no or an insufficient volume of such sales, a hierarchy of alternatives comes into play.
- Dumping or subsidisation has caused or threatens material injury to the Australian industry producing like goods. Though 'material injury' is not defined in the legislation, it has been taken to mean 'not immaterial, insubstantial or insignificant and greater than that likely to occur in the normal ebb and flow of business'.

If these requirements are met, then Customs can recommend to the Minister that duties be imposed up to the level of the assessed dumping margin (or the benefit from the subsidy provided by an overseas government). However, under Australia's 'lesser duty rule', a smaller duty sufficient to increase the price of the imported goods to a 'non-injurious' level may be applied. Alternatively, the overseas supplier can make a formal undertaking that would remove the injury.

Once in place, anti-dumping measures typically remain in force for five years, with scope for continuation for additional five-year periods, following further review.

With the exception of New Zealand, these provisions apply even to imports from Australia's bilateral preferential trade partners. Also, though any injurious dumping in Trans-Tasman trade is to be addressed through competition law, the Closer Economic Relations Agreement does not preclude either Australia or New Zealand taking countervailing action against the other.

Figure 1 How do dumping investigations proceed?

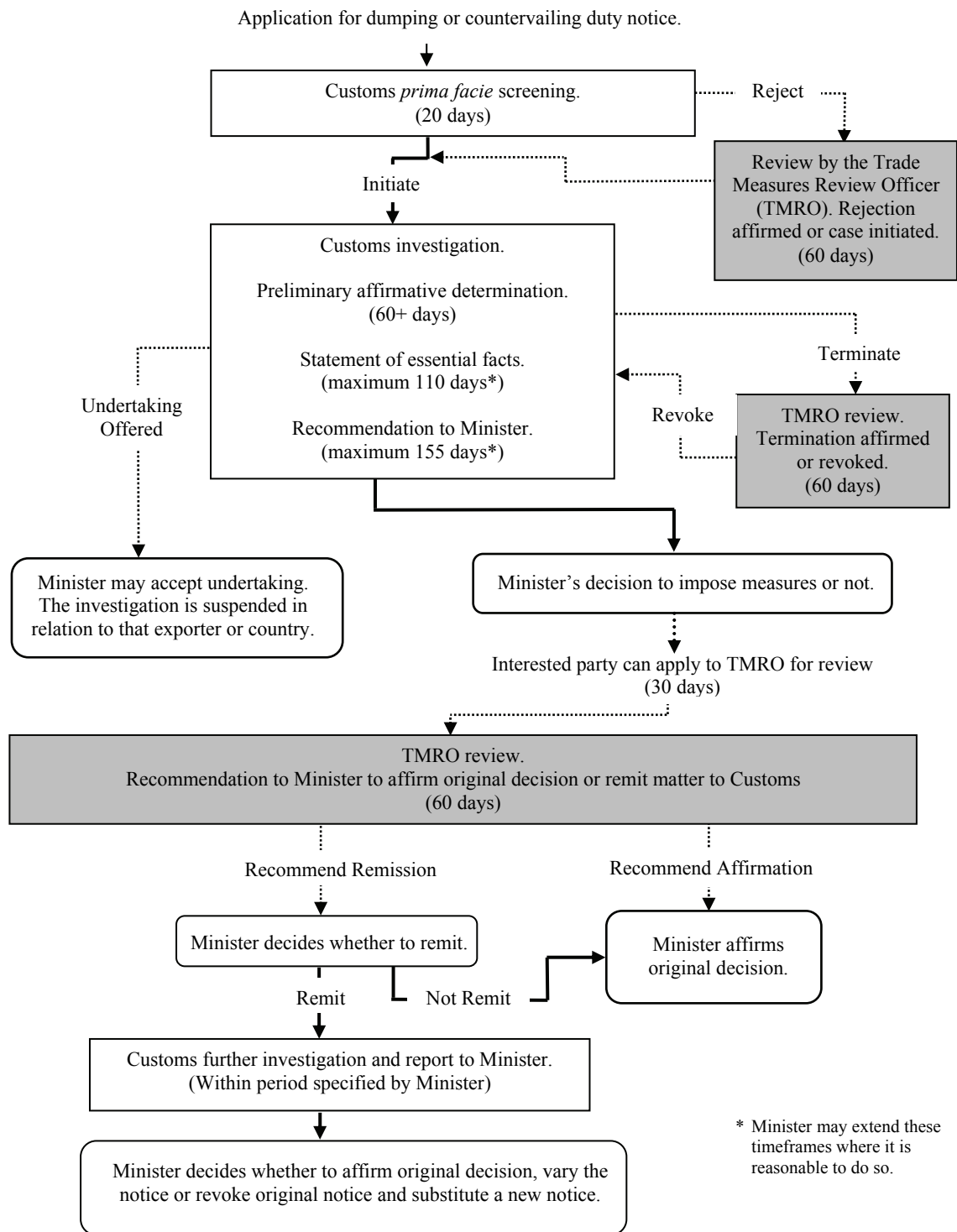
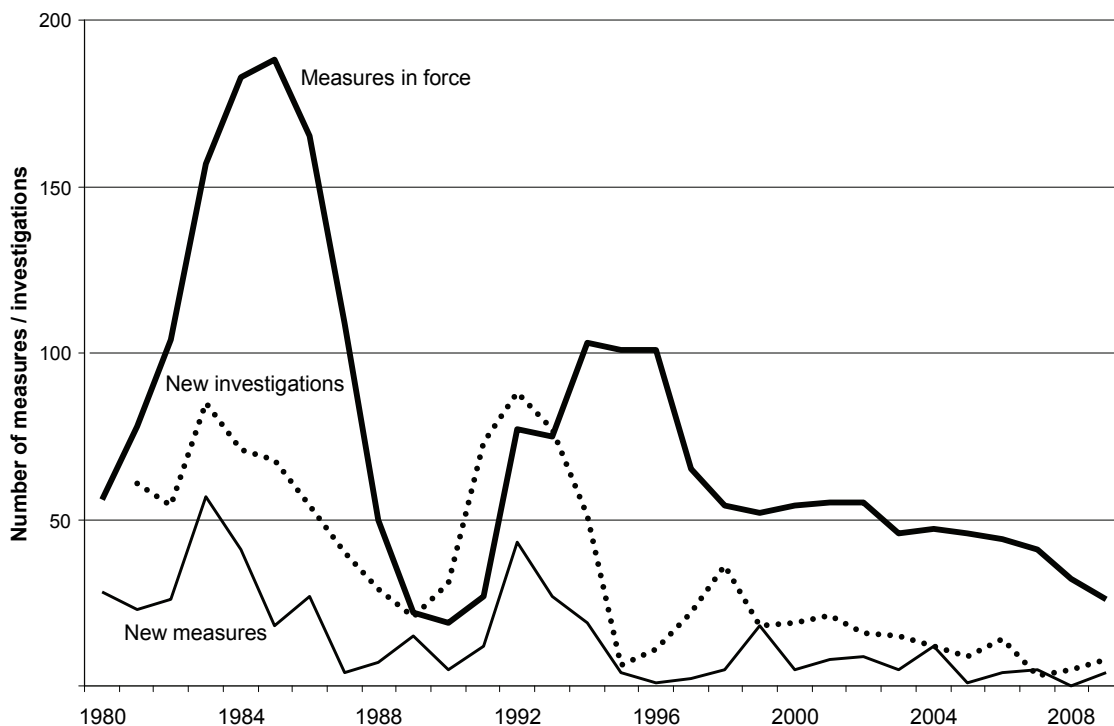


Figure 2 Australia's anti-dumping and countervailing activity



In the past, measures applied to a wider range of goods. But many of these goods (for example, outboard motors, washing machines and hypodermic needles) are no longer manufactured in Australia.

Magnitude of support

The support to local producers from some of the current measures is, at face value, considerable. Though specified in dollar terms, the ad valorem equivalent of a few measures exceeds 100 per cent, with the mean and median being 20 per cent and 8 per cent respectively.

However, the actual price raising impacts will depend on various supply and demand factors. For example, un-dumped 'like goods' (or close substitutes) may be available from overseas suppliers at prices below the duty-inclusive price of the dumped import.

Should Australia retain an anti-dumping system?

The anti-dumping system provides benefits to a small and decreasing range of import competing industries. But these benefits can come at a significant cost to downstream industries and other users of the goods concerned. And there are some adverse impacts on Australia's overall economic performance (see box 2).

However, because of the narrow range of activity encompassed by the system, this net cost is likely to be very small in economy-wide terms. Moreover, there is a broader political economy argument that because local industries have had such a system to fall back on, they may have been less resistant to reductions in import protection generally.

Given the changes in Australia's trade policy landscape over the last two decades, such 'system preserving' benefits from promoting what are perceived to be 'fairer' trading outcomes, are likely to be more modest than in the past. Nonetheless, removal of an anti-dumping 'safety valve' could make it more difficult to address remaining tariff and related reform issues.

The Commission considered the possibility of using competition law as a substitute for a dedicated anti-dumping system. However, there are several practical and other considerations which militate against extending this approach beyond its current partial application to trans-Tasman trade under the CER Agreement.

Given this, and 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. Through the reforms outlined below, there are opportunities to reduce the costs of the system and thereby strengthen the political economy case for its retention.

In what ways is the current system deficient?

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

Box 2 **The benefits and costs of anti-dumping measures**

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

- In boosting the competitiveness of recipient industries against overseas production, they will support greater activity, employment and investment in those industries than would otherwise be the case.
- User industries will face higher prices with negative impacts on their activity and investment — though where measures prevent the exit from the market of upstream local producers, the user industries concerned may be partially compensated by more secure long-term supply.
- When measures are imposed on final goods, consumers may similarly face higher prices. However, for measures imposed on intermediate products, and where the final product can also be imported, consumers may not be greatly affected.

While many of these benefits and costs represent transfers among the different domestic stakeholders, 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 generally 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 (\$6 million a year) and for local (and overseas) suppliers in complying with its requirements. Reflecting its complexity, and the consequent heavy reliance on consultants, case costs for firms or industry organisations of up to \$400 000 have been reported.
- The undertaking and duty refund provisions mean that some duty revenue that would otherwise accrue to the Australian Government instead flows overseas.

However, as the industry and product coverage of the anti-dumping system is narrow and diminishing, this detriment is likely to be very small in aggregate.

- Reflecting this, since 2006, Customs has collected an average of only \$9 million a year in anti-dumping and countervailing duties (before refunds). These duty collections do not, of course, capture the higher prices for the locally produced like goods — or any increase in the prices 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 a year).
- While the mere existence of the anti-dumping system may cause some overseas exporters to price less aggressively in the Australian market, there is no evidence to suggest that such effects are significant. Similarly, while there may be incentives for local suppliers to seek to deter imports through threatening to take anti-dumping action, there are several factors diminishing the likely pay-offs from such behaviour.

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- 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, there are deficiencies that reflect the particular way that Australia has chosen to implement the requirements in the WTO agreements that can and should be addressed. Paramount amongst these is that decisions to impose anti-dumping measures do not involve consideration of the wider impacts on the economy and the community. The scope for repeated extensions to measures without any requirement to re-examine injury and causality issues, and shortcomings in the mechanisms for adjusting the level of measures in response to changes in market conditions, can similarly detract from good outcomes for the community. And despite various previous initiatives, the lack of transparency in the decision-making process and the outcomes that flow from it continues to be a major concern for most stakeholders (see box 3).

Introducing consideration of wider impacts

For both efficiency and equity (‘fairness’) reasons, policy in this or any other area should be predicated on promoting the interests of the community as a whole. Though there is currently some discretion for the Minister to take account of the public interest in deciding whether or not to impose anti-dumping or countervailing measures, no recommendation from Customs based on dumping/subsidisation and injury considerations has ever been amended on public interest grounds.

Recognising that there are practical limits on how far consideration of wider impacts can and should reasonably extend, and having regard to approaches in other jurisdictions, the Commission examined several options. However, it concluded that most would have significant drawbacks.

- Under an open-ended public interest test that embodied no presumption in favour of measures when there had been injurious dumping or subsidisation, it would be difficult to factor in a system preserving benefit from achieving a ‘fairer’ trading outcome in each particular situation.
- By itself, an explicit requirement for the Minister to take account of the public interest would not guarantee appropriate consideration of such matters.

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- Increasing the stringency of the existing assessment criteria would not necessarily screen out those cases where the imposition of measures would have been most costly.
 - As a stand-alone approach, separate public reporting on wider impacts would be a weak option for encouraging consideration of the public interest in the decision-making process.

Box 3 Lack of transparency

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 by those directly affected by the outcome of the process.

Also, 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 inability for parties to appeal some key decisions — for example, the continuation of measures beyond the initial term
- limited general reporting on the magnitude of measures and on the number of applications for measures that do not lead to investigations.

A 'bounded' public interest test

In the Commission's view, a 'bounded' (presumptive) public interest test, drawing on similar tests that apply in Canada and more particularly the European Union, would be a more practical approach that would continue to give appropriate recognition to the system preserving benefits that underpin the current arrangements. The test would be administered by Customs and, like the EU's community interest test, would apply to all new investigations and reviews to determine whether existing measures should be continued beyond their initial term.

This test would not involve an attempt to calculate the ‘system preserving’ benefit that would arise from imposing a measure to address any particular instance of injurious dumping or subsidisation and then weighing that benefit against the probable direct efficiency cost of doing so. Rather, there would be a starting presumption in favour of measures whenever there had been injurious dumping or subsidisation, with the implicit judgement being that the system preserving benefit would generally exceed the efficiency costs.

However, the test would also specify a small number of circumstances where it would not be in the public interest to impose measures — for example, where those measures would be ineffectual in removing injury, or would impose large costs on downstream users relative to the benefits for the applicant industry (see box 4). Importantly, and in contrast to the somewhat more discretionary test suggested in the Draft Report — these would be the only circumstances where the presumption in favour of measures would not apply. As such, the additional uncertainty for stakeholders would be kept to a minimum. Indeed, given the constrained nature of the test and the proposed accompanying application guidance, there might be less room for discretion than is the case for many aspects of the current assessment process.

Where, based on the advice of Customs, the Minister was satisfied that any of the specific circumstances for overturning the presumption in favour of measures applied, measures would not be imposed (the EU approach) rather than simply reduced in magnitude (the Canadian approach). Where the presumption was not overturned on public interest grounds, there would continue to be scope to apply a duty lower than the full dumping or subsidy margin if this would be sufficient to remove the injury for the applicant industry.

To allow for assessments by Customs against the test, the current investigation period would be extended by 30 days. Given that much of the information needed for these assessments would have been assembled when considering dumping and injury matters, this timeframe should not be unduly demanding. And although the overall process would be longer, provisional measures would be applied in all cases where there was a finding of injurious dumping or subsidisation, prior to consideration of public interest matters.

Finally, Customs’ public interest test assessments would be included in an expanded ‘Statement of Essential Facts’, with a synthesis of the commentary from stakeholders on those assessments included in the final reports to the Minister.

Box 4 When should the presumption in favour of measures be overturned?

The proposed public interest test would specify that if the Minister was satisfied that any of the following five circumstances applied, measures would not be imposed.

- One would be where measures, by removing or significantly reducing the ability of importers of the like goods to participate in the Australian market, could provide an applicant supplier with substantial market power. (Importantly, the price raising effect of measures would not, of itself, trigger this ‘damage to competition’ component of the test.)
- Two would be where measures would not be effective in removing injury being experienced by the applicant industry, and hence where the ensuing costs for other parties would be needlessly incurred:
 - even with the imposition of measures, the (duty-inclusive) price of the imported goods concerned would be likely to remain significantly below local suppliers’ costs to make and sell
 - un-dumped ‘like goods’ could be readily obtained from other overseas suppliers at a comparable price to the dumped imports.

(Though elements of the WTO requirements are ostensibly designed to limit the imposition of ineffectual measures, neither those requirements nor the Australian legislation appear to preclude measures in these sorts of situations.)

- Two would be where the imposition of measures would impose disproportionate costs on downstream users, or otherwise unreasonably penalise them:
 - prior to the commencement of injurious dumping or subsidisation, the applicant industry’s share of the market was low, and would be likely to remain so even with measures in place — meaning that the impost on users would be large relative to the benefits that the industry and its suppliers would receive. (Under the EU’s community interest test, an injury-based finding in favour of measures can also be overturned on this basis)
 - the dumped product is sourced from a plant established primarily to service export markets, at a price which covers the overseas supplier’s (fully distributed) costs to make and sell and the value of any identifiable input subsidies, and provides for a reasonable profit margin. Even within the confines of the anti-dumping framework, invoking measures on profitable exports based on a price differential with a home market that accounts for only a very small proportion of the overseas supplier’s overall sales seems highly problematic.

As noted in the text, this list of circumstances for overturning the presumption in favour of measures where there has been injurious dumping or subsidisation would be exhaustive. It is, of course, possible that other circumstances might arise that would militate against the imposition of measures on public interest grounds. But rather than making the list non-exhaustive with the attendant uncertainty for stakeholders, it would be better to wait until the review of the new arrangements (see later) and then assess the adequacy of the list (and the associated application guidance) in the light of actual case history.

Likely impact of the public interest test

The precise impact of the new test will of course depend on the nature of the cases that come forward (and on whether any applications for measures are deterred). However, in recognition of the system preserving benefits from providing access to an anti-dumping safety valve, the test has been designed so that measures would only be precluded on public interest grounds in a small minority of cases. By way of illustration, the broadly similar community interest test in the EU has apparently resulted in the non-imposition of measures in around 10 per cent of cases where injurious dumping or subsidisation has been established.

Supporting changes to the current arrangements

To avoid complicating the introduction of the public interest test, the Commission has not recommended extensive changes to the existing legislative requirements, or to the accompanying administrative arrangements for applying them. Thus, for example, it is not proposing any changes to the ‘like goods’ test, the basis for determining ‘starting’ normal values, or the injury and causality provisions. Similarly, though it has some reservations about aspects of the current assessment and decision-making arrangements, it is nevertheless recommending that Customs, the Trade Measures Review Officer (TMRO) and the Minister retain their current responsibilities for the time being at least. However, the efficiency and effectiveness of these arrangements within the refocused system should be examined at the next review.

Further, though Australia’s recognition of China as a market economy raises some particular issues for anti-dumping investigations, this is a much broader policy issue and beyond the purview of this inquiry. In any event, the change to the treatment of Chinese exports in dumping cases has not stopped measures being applied to them. Indeed, there are currently more measures in place on goods from China than on goods from any other country. Also, as in the recent ‘preliminary affirmative determination’ for aluminium extrusions, Customs can employ an alternative calculation methodology in cases where government involvement in markets artificially lowers input costs or output prices.

However, some aspects of the current arrangements clearly detract from the delivery of appropriate and transparent outcomes for stakeholders and the community.

- As discussed above, despite their consistency with the WTO agreements, the provisions that allow for repeated extensions of measures beyond the initial five-year term are difficult to justify. In future, there should only be scope for one

three-year extension. And though the Commission is no longer proposing a two-year freeze on reapplications after a measure has expired, such reapplications should be subject to the same requirements as the original application (including assessment against the public interest test).

- While there are two sets of provisions in the current arrangements for adjusting the magnitudes of anti-dumping measures where there have been changes in market conditions, one set is very cumbersome and costly and thus relatively rarely used, and the other can only be triggered by an importer seeking a refund of overpaid duties. The latter is also a retrospective review and does not adjust measures prospectively. As a result, there is the potential for some measures to quickly become either ineffective in removing injury, or unreasonably punitive.
 - Accordingly, the current provisions should be replaced by a single new mechanism that would allow for more timely and cost-effective adjustments to the magnitude of *all* measures on an annual basis. This mechanism would employ the sort of risk-management approach applied by Customs to the current duty refund provisions, but with greater reliance — wherever possible without significantly reducing investigative rigour — on desk-audits of information provided by the relevant parties, international price indexes, or other relevant price benchmarks.
 - There should also be related changes to the basis for determining the duties payable on individual consignments of imported goods subject to measures that would see the correct amount of duty collected at the time of importation.
- The current appeals provisions are not sufficiently robust. In particular, some important decisions are not appellable. And where an appeal against a decision by the Minister is upheld by the TMRO, the case is simply returned to Customs for reinvestigation. As well as extending appeal rights to decisions relating to the continuation of measures beyond the initial five-year term, where a Ministerial decision is successfully appealed, the Minister should then make a decision on the basis of the competing advice from Customs and the TMRO, unless the TMRO explicitly recommends reinvestigation.
- As a result of the past emphasis on improving the timeliness of Australia’s anti-dumping system — which is now one of the speediest in the developed world — target investigation timeframes are often insufficient to allow for thorough and rigorous assessments in more complex cases. Apart from an increase to the current timeframes to allow for the application of the public interest test, Customs should have greater flexibility to seek extensions of time. However, imposing a 30-day limit on decisions by the Minister would provide a potential

time saving, as would the change to reduce the need for reinvestigations by Customs where a Ministerial decision is successfully appealed.

- In a system that relies so heavily on judgement, it is crucial that the basis for decisions is properly explained and documented, and that the outcomes of the decision-making process are similarly clear. To this end, there should be more extensive public reporting on the magnitude of anti-dumping measures and the underlying calculations, and on the number and nature of applications for measures that are rejected in the initial screening process.

The Commission's reform package also provides for: greater recognition of the outcomes of relevant overseas investigations; better monitoring of the effectiveness of measures in addressing injury; changes to the procedures governing the early revocation of measures; the alignment of Australia's list of countervailable subsidies with the somewhat wider list permitted by the WTO; and adequate and appropriate resourcing for Customs and the TMRO to effectively undertake their functions under the new system. And it is further recommending that:

- Australia not adopt the US practice of converting negative dumping margins on particular sales to zero
- a working group be convened to examine the impacts of the provisions that allow producers of raw agricultural goods to form part of dumping actions against imports of processed primary products, and to advise the Minister on what changes, if any, should be made to the provisions
- the Government consult with the Australian Bureau of Statistics on the best way to ensure that import data are not suppressed on confidentiality grounds when the same or similar information can be publicly accessed through other sources — for example, from the export statistics of other countries. In these circumstances, suppression serves no useful confidentiality purpose, but can make it more time consuming and costly to get anti-dumping cases initiated.

Implementing the reform package

The Commission's reform package is summarised in table 1, with key aspects of the proposed new arrangements depicted in figure 3. While continuing to recognise the system-preserving argument for providing access to protection against injurious dumping or subsidisation, those new arrangements would help to ensure that:

- anti-dumping measures are not imposed if they are likely to be ineffectual or otherwise disproportionately or unreasonably costly for downstream entities

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- where measures are imposed, they do not become a ‘crutch’, akin to tariff protection, that lessens or delays the need for the industry to adjust to fundamental changes in its competitive position.

Most of the changes should be introduced as soon as practicable. However, to give the parties time to adjust, the introduction of the public interest test and the more stringent continuation arrangements should be delayed for two years. And there should be an independent and public review of the new requirements after they have been fully operational for five years.

Table 1 A summary of the Commission’s recommendations

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Consideration of wider impacts and the broader public interest		
Wider impacts and the public interest currently ignored, at potential cost to the economy and community.	Introduce a ‘bounded’ public interest test, containing a presumption in favour of measures where there has been injurious dumping or subsidisation, but detailing a list of circumstances where measures would not be in the public interest.	Measures no longer imposed if they would be ineffectual in removing injury or otherwise disproportionately or unreasonably costly for downstream entities.
Supporting framework changes		
Aspects of the current requirements governing the imposition and application of measures (or mooted changes to them) detract from the delivery of cost-effective and appropriate outcomes for the community.	<p>Limit extensions of measures to one three-year period.</p> <p>Provide for more timely and cost-effective annual adjustments to the magnitude of measures.</p> <p>Determine and collect the correct amount of duty at the time of importation and abolish the duty refund system.</p> <p>Impose provisional duties prior to assessments against the public interest test.</p> <p>Require Customs to seek feedback on the impacts of measures, using that feedback as a means, where relevant, to expedite the revocation process.</p> <p>Align Australia’s list of actionable subsidies with the WTO lists.</p> <p>Do not introduce ‘zeroing’ when calculating normal values.</p> <p>Further examine the ‘close processed agricultural goods’ provisions to determine whether they should be modified or abolished.</p>	<p>Complement the role of the public interest test in achieving a better balance between benefits and costs through:</p> <ul style="list-style-type: none"> • reducing the likelihood that measures will become akin to long-term tariff protection • ensuring that measures do not become outdated in the face of changed market conditions • promoting equitable treatment of the various stakeholders • avoiding some unnecessary administration and compliance costs.
Administration of the system		
Efficacy of current institutional arrangements within a refocussed system still to be determined.	Reconsider roles and responsibilities at time of next review (see below).	Performance of the existing decision-making entities examined in the light of actual experience under the new arrangements.

(continued next page)

Table 1 continued

<i>Current problem</i>	<i>Proposed response</i>	<i>Main benefits of change</i>
Administration of the system (continued)		
<p>Deficiencies in appeal arrangements, target timeframes that are often insufficient for more complex investigations, and inadequate public reporting on outcomes and the underlying basis for them, detract from rigorous and transparent assessment and decision-making.</p>	<p>Widen the list of appellable decisions; and require the Minister to make a final decision following a successful appeal without reinvestigation by Customs, unless the TMRO recommends further assessment.</p> <p>Extend assessment timeframes by 30 days to allow for consideration of public interest matters and increase the flexibility for Customs on when to seek extensions of time. (But offset these changes by imposing a 30-day limit on Ministerial decision-making and by reducing the need for reinvestigations where appeals are upheld.)</p> <p>Require Customs to report more extensively on:</p> <ul style="list-style-type: none"> • applications for measures that do not proceed to initiation • the magnitude of measures imposed and the underlying parameters • the timeliness of its investigations • the relevance of similar overseas investigations. <p>Ensure that Customs and the TMRO are adequately and appropriately resourced to effectively undertake their functions under the new system.</p>	<p>Complement the role of the public interest test in achieving a better balance between benefits and costs, through ensuring that:</p> <ul style="list-style-type: none"> • there is appropriate access to merits review; and that any 'moral hazard' from Customs re-investigating itself is minimised • there is adequate time to enable rigorous assessment and to consider public interest matters, while addressing avoidable delays in the current arrangements • the basis for decisions is properly documented and their outcomes are similarly clear • effective application of the new arrangements is not impeded by counterproductive resourcing constraints within Customs and the TMRO.
Other matters		
<p>Suppression of import data by the ABS on confidentiality grounds increases the cost and difficulty of applying for anti-dumping measures.</p>	<p>Government to consult with the ABS on the best way to ensure that such data are not suppressed when the same or similar data can be publicly accessed through other sources.</p>	<p>Applications for measures not impeded by unduly restrictive suppression provisions.</p>
Implementation and review		
	<p>Introduce most reforms as soon as possible, but delay introduction of the public interest test and the new continuation requirements for 2 years.</p> <p>Independently and publicly review the requirements 5 years after they are fully operational.</p>	<p>Parties provided with time to adjust to major changes to the current system.</p> <p>Enable assessment of impacts of the new system, and what further changes may be required.</p>

Figure 3 Key aspects of the new anti-dumping and countervailing system

