
K Anti-dumping and countervailing activity

Dumping is said to occur when a foreign supplier exports goods at a price below the ‘normal value’ of the goods in the supplier’s home market. The price of the good in the exporter’s home market is generally used to determine the normal value, but in certain prescribed circumstances, alternatives such as the good’s price in another export market or a constructed price are sometimes used.

Under WTO rules, a country can apply anti-dumping measures on dumped imports if they cause, or threaten to cause, material injury to a competing domestic industry.

Countries may also apply countervailing duties where imports — benefiting from certain forms of subsidies in the country of origin — cause, or threaten to cause, material injury to a domestic industry.

Like other measures that raise the price of imports, anti-dumping and countervailing measures assist particular industries, but can also impose higher costs on other domestic industries and consumers.

Australia’s current anti-dumping and countervailing system, which took effect in July 1998, was described in the *Trade & Assistance Review 1997-98* (PC 1998).

This appendix outlines some recent developments in anti-dumping and reviews recent anti-dumping and countervailing activity.

K.1 Selected developments in anti-dumping

Over the last year:

- several countries launched WTO dispute resolution proceedings following changes to United States anti-dumping legislation;
- in May 2002, the ACCC accepted undertakings from Monsanto and Nufarm concerning future anti-dumping activity (discussed below); and
- a national competition policy review of Australia’s anti-dumping legislation, originally scheduled to be completed before June 2002, has been delayed.

United States anti-dumping laws

In October 2000, the United States enacted the Continued Dumping and Subsidy Offset Act (the Byrd amendment). The Byrd amendment permits duties assessed (and collected) under anti-dumping and countervailing actions to be distributed to parties affected by the dumping or subsidisation.

In December 2000, nine countries (including Australia) requested consultations with the United States regarding the legislation under WTO dispute resolution procedures. The two NAFTA countries (Canada and Mexico) initiated consultations in May 2001. These consultations failed to resolve complaints about the legislation.

Following this failure, a WTO dispute settlement panel was established to examine the issue. The 11 complainant countries argued that the United States legislation was in violation of several provisions of the WTO's *Anti-dumping* and *Subsidies & Countervailing Measures* agreements. The Australian Minister for Trade noted that:

the Bryd amendment provides a double remedy against dumped or subsidised imports, and unfairly disadvantages Australian exports to the US and to third country markets that are neither dumped nor subsidised. (Vaile 2002a)

The WTO panel found that the Byrd amendment was in breach of the WTO's *anti-dumping* and *subsidies & countervailing measures* agreements. The Panel recommended that the United States bring the legislation into conformity by repealing the Byrd amendment.

In October 2002, the United States appealed against the Panel's findings. Hearings before the Appellate Body were held in October. Its report is expected to be released in January 2003 (DFAT 2002c).

ACCC undertakings from Nufarm and Monsanto

Monsanto and Nufarm are both chemical-production companies that sell glyphosate¹ within Australia. Monsanto is Australia's sole producer of glyphosate.

In May 2001, Monsanto initiated anti-dumping actions against a Chinese supplier of glyphosate. Nufarm was an interested party in the proceedings and supported Monsanto's application. The Australian Customs Service (ACS 2002) conducted the investigation and found that no dumping of glyphosate had occurred and recommended that no action be taken — a recommendation that was subsequently accepted by the Minister responsible for Customs.

¹ Glyphosate is a herbicide widely used for the control of annual and perennial weeds.

In February 2002, Monsanto and Nufarm approached the ACCC seeking clearance for an arrangement under which Monsanto would appoint Nufarm as its sole distributor of Roundup (its brand of glyphosate) for agricultural uses. Monsanto also advised the ACCC that it had not decided whether to appeal against the Minister's decision. After an investigation, the ACCC found that the anti-dumping allegation had 'already had a negative effect on import competition and that any review of the Minister's decision would be likely to cause further disruption to competition'. The ACCC (2002) was also concerned that 'any review would undermine the competitive constraint arising from actual and potential import competition'.

The ACCC gave clearance to the agreement between Monsanto and Nufarm subject to the two companies undertaking not to:

- make an application for a review of the Minister's anti-dumping decision; and
- initiate any new anti-dumping actions unless an independent adviser (approved by the ACCC) had made inquiries and found that the action had 'good prospects' of success.

K.2 Recent anti-dumping and countervailing activity

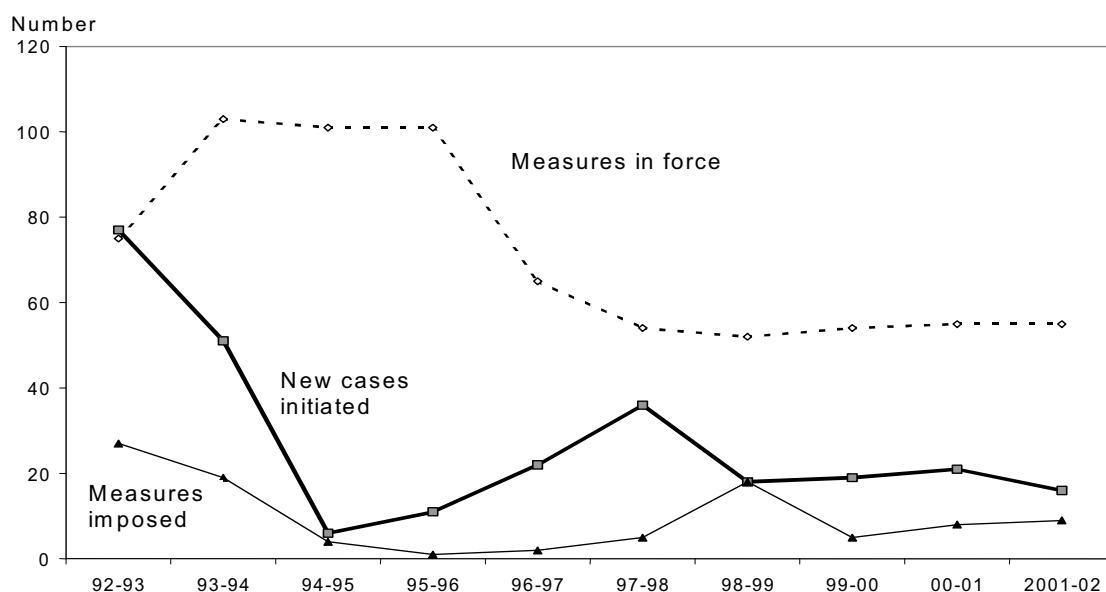
Anti-dumping and countervailing activity is shown by three statistics: *initiations*, measures *imposed* and measures *in force* (figure 2.6). A case is *initiated* when a complaint of dumping or subsidisation is first made. If after investigation the case is found to have substance, the Customs Minister may *impose* measures to remedy the situation. These measures generally last for five years (though it is possible that measures may be extended at the end of the period) and the stock of these measures at any point is reported as measures *in force*.

The number of Australian *initiations* of anti-dumping and countervailing cases has been relatively stable over the past four years, ranging from 21 in 2000-01 to 16 in 2001-02. The number of cases initiated in 2001-02 is almost three times that of 1994-95, but only around a quarter of the 1992-93 level. There were no initiations of countervailing cases in 2001-02. Table 2.1 lists the anti-dumping cases initiated in 2001-02.

There were 8 new measures *imposed* in 2001-02, the same number as in 2000-01.

The total number of measures *in force* has been relatively static over the last four years. As of 30 June 2002, there were 55 measures in force – the same number as 2001. This is around half of the roughly 100 measures that were in force between 1994 and 1997.

Figure K.1 Anti-dumping and countervailing activity^a, 192-93 to 2001-02



^a A measure or case is counted as an action applying to one commodity from one economy. If multiple economies are involved, they are counted as separate actions.

Data sources: ACS and Commission estimates.

Table K.1 New Australian anti-dumping initiations, 2001-02

Commodity	Exporting economy
Carpet gripper	China, USA
Dichlorophenoxy-acetic acid	China, UK, India
Polyvinyl chloride	Indonesia, Israel, Norway, Sweden, Taiwan
Sodium metabisulfite	China, Thailand
Structural steel sections	South Korea, South Africa, Thailand
Steel ladders	China

^a Complaints formally initiated by industry. Initiations are defined as actions applying to one commodity from one economy.

Source: ACS.

Industry incidence

The *Petroleum, coal, chemical & associated products* industry accounted for 10 of the 16 initiations in 2001-02, with *Wood & paper products* and *Metal product manufacturing* accounting for the remainder (table 2.11). In the case of the *Petroleum, coal, chemical & associated products* industry, multiple initiations by two firms accounted for eight of the 10 initiations. Three particular initiations — polyvinyl chloride, dichlorophenoxy-acetic acid and structural steel sections — accounted for 11 of the 16 initiations in 2000-01.

The pattern of initiations in 2001-02 is similar to that of previous years. The three most prevalent users of anti-dumping actions over the past six years have been the *Wood & paper products*, *Petroleum, coal, chemical & associated products* and *Metal product manufacturing* industries. These three industries also account for all of the 2001-02 initiations. Similarly, the *Petroleum, coal, chemical & associated products* industry, which accounts for the most (41 per cent) of the initiations over the past six years, also accounted for the majority of initiations in 2001-02.

Country incidence

During 2001-02, Australian firms initiated anti-dumping complaints against firms from 12 economies (table 2.12). Of the 16 initiated complaints, the majority (10) were against firms from Asia, while only two were against European firms.

Relative to import shares, the number of initiations against Australia's trading partners in North America and the European Union have historically been much lower than against economies in the Asian region. This trend has abated somewhat over the last couple of years as more of Australia's imports have been sourced from Asia. In 2000-01, Asia accounted for nearly one half of all imports to Australia (ABS 2002 – Publication 5422). However, the number of anti-dumping actions against Asian firms fell from 15 in 2000-01 to 10 in 2001-02.

There have been no Australian initiations against imports from New Zealand since July 1990 when the two countries agreed to eliminate anti-dumping and countervailing actions in trans-Tasman trade under changes arising from the Closer Economic Relations Agreement. Since then, competition laws under the *Australian Trade Practices Act 1974* and the *New Zealand Commerce Act 1986* have covered anti-competitive conduct in trans-Tasman trade.

Table K.2 Anti-dumping and countervailing cases^a, by industry, 1996-97 to 2001-02

<i>Industry^b</i>	1996 -97	1997 -98	1998 -99	1999 -00	2000 -01	2001 -02	<i>Six-year period</i>	
							<i>Total</i>	<i>Per cent of total^c</i>
Food, beverages and tobacco	–	–	–	–	5	–	5	4
Textiles, clothing, footwear and leather	–	1	5	–	–	–	6	5
Wood and paper products	–	14	2	5	1	2	24	18
Printing, publishing and recorded media	–	–	–	–	–	–	–	–
Petroleum, coal, chemical and associated products	11	13	10	5	5	10	54	41
Non-metallic mineral products	6	1	–	5	–	–	12	9
Metal product manufacturing	2	3	1	4	1	4	15	11
Machinery and equipment manufacturing	1	–	–	–	7	–	8	6
Other manufacturing	2	4	–	–	2	–	8	6
Total	22	36	18	19	21	16	132	100

– Nil. ^a Complaints formally initiated by industry. Cases are defined as actions applying to one commodity from one economy. Cases where dumping and subsidisation are alleged for the same economy and commodity are counted as two distinct initiations. ^b Based on Australian and New Zealand Standard Industry Classification subdivisions. ^c The sum of percentages for individual industries may not equal the total due to rounding.

Source: ACS.

International trends

In 2000-01, Australia accounted for 21 (or 6 per cent) of the 339 anti-dumping and countervailing cases initiated internationally (table 2.13). This made Australia the seventh largest user of anti-dumping and countervailing duties in 2000-01 (as opposed to the fifth largest in 1998). The largest users of anti-dumping and countervailing duties in 2000-01 were the United States, the European Union, Canada, Argentina and India. These countries accounted for more than three-quarters of the initiations in 2000-01.

Australia had 61 measures in force in 2000-01. This was 4 per cent of the 1191 measures in force around the world. This left Australia as the seventh largest user of anti-dumping and countervailing duties in terms of the number of measures in force. The United States, the European Union and India accounted for over half of the anti-dumping and countervailing measures in force in 2000-01.

Table K.3 **Australian initiations of anti-dumping and countervailing cases, by trading region and economy^a, 1996-97 to 2001-02**

Region/economy							Six-year period	
	1996 -97	1997 -98	1998 -99	1999 -2000	2000 -01	2001 -02	Total	Per cent ^b
North America	1	2	1	–	1	1	6	5
Canada	–	1	–	–	–	–	1	1
United States	1	1	1	–	1	1	5	4
European Union	7	13	3	3	5	2	33	25
Austria	–	1	–	1	–	–	2	2
Belgium/Lux	–	1	1	–	–	–	2	2
Finland	–	1	1	1	–	–	3	2
France	–	2	–	–	1	–	3	2
Germany	3	3	–	–	1	–	7	5
Italy	–	1	–	–	2	–	3	2
Netherlands	1	2	–	–	–	–	3	2
Sweden	2	1	–	–	–	1	4	3
UK	–	1	1	1	1	1	5	4
Other EU	1	–	–	–	–	–	1	1
Asia	9	13	9	15	15	10	71	54
China	3	2	–	1	3	4	13	10
Hong Kong	–	1	–	–	–	–	1	1
India	1	1	–	1	–	1	4	3
Indonesia	1	3	2	5	2	1	14	11
Japan	–	1	–	1	2	–	4	3
South Korea	–	2	1	2	2	1	8	6
Malaysia	1	–	2	1	1	–	5	4
Singapore	–	1	1	1	1	–	4	3
Thailand	1	–	2	1	3	2	9	7
Taiwan	2	2	1	2	1	1	9	7
Other	5	8	5	1	–	3	22	17
Saudi Arabia	–	–	2	–	–	–	2	2
South Africa	–	3	–	–	–	1	4	3
Other	5	5	3	1	–	2	16	12
Total	22	36	18	19	21	16	132	100

– Nil. ^a Cases are defined as actions applying to one commodity from one economy. Cases where dumping and subsidisation are alleged for the same economy and commodity are counted as two distinct initiations.

^b The sum of the percentages for the individual economies may not add to the regional totals due to rounding.

Source: ACS.

Table K.4 International anti-dumping and countervailing actions, 1999-2000 and 2000-2001

Country	Initiation		Provisional measures		Definitive duties		Price undertakings		Measures in force		Per cent of total measures in force ^c	
	99-00	00-01	99-00	00-01	99-00	00-01	99-00	00-01	99-00	00-01	99-00	00-01
US	30	92	45	47	43	32	4	-	346	284	28	24
EU	57	41	32	20	24	41	14	2	203	238	17	20
India	27	37	44	52	32	41	-	-	91	121	7	10
South Africa	13	24	9	11	16	13	-	-	104	110	9	9
Canada	16	44	17	41	21	14	-	1	95	98	8	8
Mexico	7	4	6	4	5	6	-	-	90	67	7	6
Australia	19	21	4	6	5	4	-	4	53	61	4	5
Brazil	17	10	6	-	12	1	-	3	48	52	4	4
Argentina	23	44	7	8	10	13	10	1	48	48	4	4
South Korea	4	5	4	0	-	1	2	2	27	29	2	2
Turkey	2	2	-	-	8	2	-	-	13	15	1	1
New Zealand	6	5	-	2	-	3	-	-	15	13	1	1
12 WTO Members	221	329	174	191	176	171	30	13	1072	1136	88	95
All WTO Members	257	339	206	205	204	188	21	17	1216	1191	100	100

- Nil. ^c The sum of the percentages for individual countries may not equal the total due to rounding.

Source: WTO (2001a and 2002a).