
1 About the inquiry

1.1 The Commission's terms of reference

Australia's anti-dumping and countervailing system (hereafter the anti-dumping system) seeks to remedy material injurious effects of 'dumped' or subsidised 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.

Australia's anti-dumping system is based on internationally agreed rules and procedures under the auspices of the World Trade Organization (WTO). Nearly all other developed, and many developing, countries have similar anti-dumping regimes. Hence, the objectives and broad concepts underpinning Australia's system have widespread endorsement.

However, some argue that a significant deficiency in most anti-dumping regimes, including Australia's, is that there is insufficient consideration of the wider effects of imposing anti-dumping measures. Aspects of the more detailed design and administration of Australia's arrangements have also come in for criticism.

Over the past two decades, several reviews have been instigated with the aim of improving the administrative efficiency of Australia's anti-dumping system. But it is now more than twenty years since Professor Fred Gruen (1986) conducted a 'root and branch' examination of the system. A comprehensive review had been scheduled under National Competition Policy (NCP) as part of the Legislation Review Program, with the need for such an assessment subsequently highlighted by both the Commission in its examination of the NCP reforms (PC 2005, p. 261) and the Regulation Taskforce (2006, p. 130). In July of last year, the Council of Australian Governments (COAG 2008, p. 4) agreed that anti-dumping should be one of the priority areas for further competition reform.

Against this backdrop, the Australian Government has requested the Commission to inquire into Australia’s anti-dumping system, including both policy and administrative aspects, and to:

- assess the policy rationale for, and objectives of, the system and the effectiveness of the current arrangements in meeting those objectives
- examine the economy-wide benefits and costs of the system
- make recommendations on the future role of an anti-dumping system with the aim of improving the performance of the economy, having regard to the interests of industry, importers and consumers
- assess the administration of the system, giving consideration to the key decision-making steps in the investigation process and advising on ways to improve administrative efficiency, reduce compliance costs and increase certainty for business.

The Commission is to have regard to other relevant studies — including the 2006 Joint Study undertaken by the Australian Customs and Border Protection Service (Customs) along with several other Australian Government entities. That study was initiated to ensure that the administration of Australia’s anti-dumping system reflects best practice and to respond to concerns of Australian industry about the effectiveness of the system.

The full terms of reference for the inquiry are set out at the front of this report.

1.2 The Commission’s approach

A broad focus

Consistent with both its own legislation and the terms of reference (paragraph 4a), the Commission’s assessments of the current anti-dumping system and possible options for change have been predicated on furthering the well-being of the community as a whole. That of course encompasses the interests of those industries which support the continuation of an anti-dumping system as a protection against ‘unfair’ trading practices.

However, anti-dumping measures can raise costs for downstream user industries and consumers (where final consumption goods are involved), and lead to less efficient resource use across the economy. And longstanding measures that become akin to tariffs may reduce the imperative for productivity improvement in recipient

industries, or delay necessary adjustment in response to underlying structural changes in market demand and supply.

Accordingly, the Commission has taken into account both the benefits and the costs of Australia's anti-dumping system with a view to determining:

- whether maintaining a system would be in the interests of the community as a whole
- if so, how the system should be configured to best serve those interests.

Judgements informed by evidence of benefits and costs

Achieving an appropriate balance between the competing interests and policy goals in this area requires considerable judgement. As elaborated on in subsequent chapters:

- 'Fairness' is a multi-faceted and sometimes nebulous concept. Hence, while looming large in this area, it is not an easy notion to translate into specific policy settings.
- There are broad political economy rationales for having an anti-dumping system which transcend the system's more immediate and readily identifiable impacts.
- Australia's obligations under the WTO agreements governing anti-dumping and countervailing action may preclude some changes to the current system which might otherwise offer the prospect of better outcomes for the community.

To inform its judgements, the Commission has had regard to all of the available evidence, qualitative and quantitative, relevant to assessing the benefits and costs of the current system and of alternative arrangements. For example, on the quantitative front it has:

- obtained and analysed information on the magnitudes of anti-dumping measures
- looked at quantitative indicators of the likely significance of the anti-dumping system for Australia's overall economic performance and community well-being.

However, the Commission has not undertaken any formal economic modelling. As elaborated on in chapter 4, all indications are that the economy-wide effects of Australia's anti-dumping system are very small, meaning that such modelling would not provide guidance on the merits of different policy options.

Provision for extensive public input

In preparing this report, the Commission actively sought input from key stakeholders.

- It met informally with a broad cross-section of interested parties within Australia, including: local firms and industries benefitting from anti-dumping measures; those who import products that have been subject to measures; downstream user industries; various industry organisations, consultants and lawyers representing these stakeholders; Customs, the Trade Measures Review Officer, the Australian Competition and Consumer Commission and several other Australian Government entities; the Australian Workers' Union; and some State Governments.
- To get an overseas perspective on Australia's anti-dumping system, and to explore the extent to which the system might usefully draw on different approaches in other countries, the Commission also held discussions (via video and teleconference) with representatives from the European Commission and from the Canada Border Services Agency and the Canadian International Trade Tribunal.
- Shortly after receiving its terms of reference, the Commission released an Issues Paper outlining a range of matters on which it was seeking information and advice. In response to that paper, 34 organisations and individuals — predominantly representing local suppliers that have previously sought anti-dumping measures — made written submissions.
- In September 2009, the Commission released a Draft Report setting out its initial findings and preliminary recommendations for changes to the current anti-dumping system. To elicit feedback on those findings and recommendations, it held a public hearing and invited further written comment.
 - Six parties participated in the public hearing held in Melbourne in October 2009.
 - The Commission received a further 27 submissions.

Further details on consultations and submissions, and on other aspects of the inquiry process, are provided in appendix A.

The Commission thanks all of those organisations and individuals who contributed to the inquiry. It is especially grateful to Customs for its advice on various operational aspects of the anti-dumping system and for the variety of data it provided on the usage and impacts of the system.

1.3 A road map to the rest of the report

The remainder of this report is structured as follows.

- Chapter 2 looks at how Australia’s anti-dumping system operates and how it compares with regimes applying in other countries.
- Chapter 3 reports on trends in the usage of Australia’s system, the product and country incidence of anti-dumping measures, the nature of those measures and the magnitude of support provided to recipient industries, and how these outcomes sit in an international context.
- Chapter 4 examines the particular benefits and costs of Australia’s system. Though concluding that Australia should retain a system, it details some specific deficiencies in the current arrangements that can add to its costs.
- The subsequent three chapters discuss reforms to address these deficiencies and thereby strengthen the case for retaining a system.
 - Chapter 5 assesses options for introducing consideration of wider benefits and costs into the decision-making process.
 - Chapter 6 sets out some additional modifications to the existing legislative framework to support this change to the focus of the system.
 - Chapter 7 canvasses changes to the administrative and public reporting arrangements, as well as detailing how the proposed reform package should be implemented.

Additional supporting analysis is contained in appendixes to the report.