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## D Could anti-dumping protection improve efficiency?

### Key points

- Much dumping is similar to the sort of price discrimination that is frequently observed and sanctioned in other market contexts.
- Very few, if any, of the anti-dumping and countervailing measures currently in force in Australia apply to suppliers likely to be in a position to exercise market power were the local competitor or competitors to cease operations.
- There should be some onus on local suppliers to ‘weather the storm’ of episodic dumping, not least because these same firms are likely to benefit when demand is strong and supply tight at other times during the economic cycle.
- The use of anti-dumping measures to promote ‘strategic’ Australian industries, or to counter support provided by other countries, is likely to be costly relative to any benefits.
- If the benefits for downstream industries from having access to a local supply base are significant, these can generally be captured through normal commercial transactions, without the need for anti-dumping measures.
- Given that the direct efficiency arguments for anti-dumping measures are not compelling, the case for Australia to retain a system hinges on the broader political economy arguments discussed in the body of the report.

In chapter 4, the Commission has concluded that Australia should retain an anti-dumping system. However, that conclusion is based on the presence of broader political economy benefits rather than on the grounds that anti-dumping measures can more directly enhance economic efficiency. Indeed, the Commission’s assessment is that the narrow efficiency rationales are not compelling. This appendix provides more details on the underlying basis for this assessment.

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## D.1 The terminology detracts from dispassionate assessment

Efficiency rationales for anti-dumping measures have been widely explored in Australia and overseas, including in the last comprehensive review of the Australian system (Gruen 1986, pp. 24–26). However, an objective assessment of those rationales 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 (see box D.1). Indeed, 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.

Such considerations have led some commentators to call into question the whole basis for anti-dumping protection. Thus Litan (1994, p. 106) observed that the structure and administration of US anti-dumping laws were ‘riddled with economic nonsense’. Others have suggested that, stripped of the emotive descriptors, anti-dumping measures are little different from tariffs and other forms of border protection (see, for example, Lindsey and Ikenson 2001).

However, despite the problematic nature of aspects of the underlying foundations, there are some specific efficiency rationales for taking action against dumped or subsidised imports that cannot be immediately dismissed.

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### Box D.1 **Non-predatory price discrimination: not normally a policy target**

Price discrimination across geographic markets or individual customers at a point in time, or across time, is a widely practised commercial strategy. In particular instances, price discrimination may be motivated by predatory considerations. As such, it may be in contravention of the competitive conduct rules in place in most developed countries. However, in many cases, it will simply be directed at improving firms' more immediate commercial performance (and be perfectly legal). For example:

- Airlines typically differentiate fares within the same class of travel in order to tap demand from more price sensitive consumers. Though making relatively little contribution to airlines' overhead costs, carrying these more price sensitive consumers will still be preferable to having empty seats. Similarly, many hotels differentiate their room prices by using third parties such as Wotif.com to sell, at a discounted price, rooms that would otherwise be vacant.
- Retailers commonly use loss leaders to entice customers into their stores. Likewise, firms may be prepared to temporarily discount their product range to break into an export market.
- To the extent that they are able to maintain separate markets across Australia, retailers may seek to differentiate prices according to perceived capacity of their customers to pay.

Viewed in this light, the price discrimination focus of anti-dumping policy is somewhat unusual. Indeed, unless dumping is genuinely predatory, its main difference from geographic price discrimination within the domestic market — between customers in say Sydney's north shore and its western suburbs — is that the customers facing the higher prices are outside the national border. The 'tyranny of distance' may of course make it easier to price discriminate between countries than within the domestic market. But this does not alter the fundamental commonality of the practice.

## D.2 **Countering predatory behaviour**

A longstanding argument for anti-dumping measures is that dumping may sometimes be motivated by predatory objectives — namely, to drive local suppliers out of the market and thereby allow the overseas supplier to reap monopoly profits. Were this to be the case, then any short term benefits for consumers and user industries from access to cheaper imported goods could potentially be outweighed by higher prices over the longer term. In this regard, the National Farmers' Federation noted:

... if the injury incurred by the domestic industry from dumping leads to domestic participants leaving the industry, in the longer term this can lead to market power issues and increased domestic prices as competition dissipates. (sub. 6, p. 7)

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The predatory behaviour argument is not without some in-principle merit, especially as there is no clear line between such behaviour and normal market competition. In a general sense, market competition is all about gaining an advantage over rival suppliers with the long-term objective of boosting sales and profitability. The benefits from addressing predation are explicitly recognised in s. 46 of the *Trade Practices Act 1974* (TPA) which prohibits behaviour designed to eliminate or substantially damage a competitor or prevent entry into a market. And as there is no international competition policy regime, the anti-dumping system is the only means by which predatory behaviour could be dealt with at the global level.

However, the market circumstances that would allow an overseas supplier to employ dumping to create anything more than a transitory monopoly in an export market are very narrow.

- In particular, for the dumping firm to secure an enduring monopoly position, there would need to be no, or only limited, competition amongst suppliers at the global level, or other constraints on effective foreign participation in the Australian market (such as prohibitive transport costs for most potential suppliers). Otherwise, any attempt by the dumping firm to charge a monopoly price after the exit of local suppliers from the market concerned would be likely to attract additional competition from abroad or from substitute products.
- Additionally, there would need to be constraints — such as large fixed costs — on the re-entry of local suppliers, or on the emergence of new local suppliers, once import prices rose to levels at which domestic production had previously been profitable.

Further, even in those rare circumstances where conditions allowing for predation did exist, as noted by the Australia-China Chamber of Commerce and Industry of New South Wales (sub. 7, p. 5), there may be other ways for an overseas supplier to secure a strong position in the domestic market were this to be its objective — for example, by merging with, or acquiring, a major domestic competitor.

In any event, it is clear that, in practice, Australia's anti-dumping system does not focus solely or even primarily on dumping that could be predatory in nature. Unlike the provisions in the TPA prohibiting predatory behaviour, there is no requirement that an overseas supplier subject to a dumping action have significant market power and/or a major share of the market. As outlined in chapter 2, the minimum market share for imports above which an application for anti-dumping or countervailing measures can proceed is very low. For example, in a dumping case involving goods from a developed country, this share can be as low as 3 per cent of total imports of like goods, with the share of the total domestic market, inclusive of locally supplied products, being potentially lower still.

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In fact, very few, if any, of the anti-dumping and countervailing measures currently in force in Australia apply to suppliers likely to be in a position to exercise market power were the local competitor or competitors to cease operations, a point acknowledged by many of those inquiry participants which have taken anti-dumping action. And Customs (sub. 33, p. 10) noted that ‘while aggressive selling by importers has been observed on occasion, [it] has not observed any instances of predatory behaviour in recent investigations’. Reinforcing this observation, for almost all of the products on which measures currently apply, there are multiple sources of imported supply (see chapter 3).

Thus, in sum, the scope to counter predatory behaviour by overseas suppliers does not provide a justification for Australia’s anti-dumping system, at least as it is currently configured and applied. Indeed, it is now close to a century since the predatory notions that underpinned early anti-dumping laws were superseded by much less restrictive criteria (see appendix B).

That said, the Commission notes that there are reasons to distinguish the arguments related to the general concept of predatory behaviour from those pertaining to what might be regarded as ‘state sanctioned’ predation through the provision by governments of subsidies that artificially boost the competitiveness of their exporters. The arguments that might apply in the latter circumstances are considered separately below.

### **D.3 Addressing ‘episodic’ dumping**

From time to time, overseas suppliers may look to offload surplus product in export markets at substantially discounted prices. In some cases, such ‘dumping’ may be of a one-off nature. But particularly in industries such as chemical or steel products, that are dominated by capital intensive, large scale manufacturing facilities, and where demand fluctuates considerably across the economic cycle, price discounting in export markets can occur quite regularly.

Though not predatory in nature, such ‘episodic’ dumping may nonetheless force local suppliers to temporarily scale back production, and even cease operations for a period of time. At the extreme, it is possible that the prospect of continued episodes of dumping might lead to the permanent cessation of local production (or impede the entry of additional domestic suppliers). And as Dow Chemical (sub. 3, p. 12) noted, such dumping can also have an adverse impact on established, long-term, importers.

In practice, WTO compliant anti-dumping measures are rarely likely to be helpful in remediating the damage from ‘hit and run’ dumping. For example, in the case of a

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large shipment of goods supplied under tender, once a binding contract has been signed, it will be impossible to avert injury to the local industry, even if dumping duties are subsequently imposed. And though the WTO agreements and Australian legislation allow for action against dumped imports that threaten material injury, few measures have been imposed on this basis because the threat of injury is very difficult to substantiate. Thus, in Australia, it is more than two decades since the last finding of injury to a domestic industry was based on threat alone.

However, measures may be helpful to the local industry where an episode of dumping would otherwise have continued for a significant period of time. Also, as measures are normally applied for five years, a single measure might prevent some future dumping episodes.

Nevertheless, a rationale based on deterring or remediating episodic dumping remains problematic. If dumping is genuinely episodic, then there should be some onus on, and capacity for, otherwise competitive domestic firms to ‘weather the storm’ — especially as those same firms are likely to benefit when demand is strong and supply tight at other times during the economic cycle.

More generally, the possibility of a future episode of dumping is only one of many sources of risk, uncertainty and volatility that confront domestic firms in globally integrated markets. For good reasons, firms rather than governments are usually required to bear these risks and, as necessary, to take action to ameliorate their impacts. Indeed, in industries where demand is highly cyclical, acceptance of an episodic dumping rationale could provide the basis for anti-dumping measures to be applied almost continuously. There would then be little practical difference between anti-dumping measures and conventional industry protection.

## **D.4 Promoting efficient industry structures**

Some analysts have argued that governments can employ trade policies to promote the development of ‘strategic’ industries. In essence, the contention is that trade policies, including anti-dumping measures, can be used to foster industries in which there is potential to earn ongoing economic rents, or which generate significant ‘spillover’ benefits for other industries and therefore operate as engines for economic growth. (For an overview of the strategic trade theory argument, see Krugman 1987). In a similar vein, Ludwig (2006, p. 28) raises the possibility that persistent dumping, if not addressed, could lead to the diminution of the industry skill base. Likewise, Orica Australia (sub. 18, p. 4) contended that the anti-dumping system has a role in assisting ‘the retention of core skills and capabilities in Australian industry’.

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This suite of arguments again highlights that the distinction between anti-dumping measures and other forms of border protection is not always clear cut. That is, for the purposes of these arguments, anti-dumping measures and other border protection instruments are largely substitutable.

More importantly, the Commission sees little merit in the arguments. As several of those outlining an ‘in principle’ case for strategic trade interventions have acknowledged, the circumstances in which there could in practice be a benefit are very limited, especially when the costs imposed on ‘non-strategic’ industries are taken into account. And for the most part, the theories ignore the likelihood of retaliation by other countries which could see attempts to employ strategic trade interventions degenerate into a costly exercise for all involved (see IAC 1989, appendix 5). The global proliferation of anti-dumping regimes and the marked increase in the number of anti-dumping measures implemented, particularly in developing countries (see chapter 3), are noteworthy in this context.

### **Countering ‘strategic predation’ by other governments**

The flip side of the argument that anti-dumping measures can be used proactively to promote the development of strategic industries is that those same measures can be used to offset ‘strategic’ support from overseas governments for their industries. As alluded to earlier, if such support allows those countries’ exporters to undercut prices in overseas markets, it can in some senses be viewed as ‘state sanctioned’ predation.

The argument is most commonly made in regard to the provision by overseas governments of subsidies that in one way or another reduce costs for their exporters. It is sometimes also extended to the imposition of tariff barriers — specifically, where a tariff provides firms with an additional revenue stream in the domestic market that could, in theory, be used to subsidise sales in the export market.

However, the ‘direct’ economic case for using anti-dumping measures to respond to assistance provided by overseas governments is questionable. Especially for a small country such as Australia, such an approach could be economically costly. Reflecting this, in the last few decades, Australia has generally sought to address the distorting effects of subsidies and tariffs on global trade through participating in various multilateral and regional trade fora and negotiating bilateral trade agreements.

That said, as discussed in chapter 4, there may be broader political economy reasons for taking action through the anti-dumping system against specific instances of such distorting government support — particularly when subsidies are involved.

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## D.5 Enhancing supply security

Some local suppliers contend that anti-dumping measures benefit not only their activities but also assist their customers — in particular, through helping to sustain a local supply base, leading, in turn, to more timely delivery, better after sales service and greater supply security over the longer term. For example, BlueScope Steel stated:

The presence in the local market of domestic suppliers can have important benefits for customers, particularly those for whom short supply chains and just-in-time deliveries are important competitive considerations. In addition, in a small market like Australia's, it could be risky to depend for supplies on an overseas firm that has demonstrated through its dumping its ability to control prices and sales volumes. In times of a buoyant business cycle and possible short supply situations resulting from unexpectedly strong global demand, the Australian customer could find himself without a reliable, price competitive supplier. (sub. 19, p. 37)

Such benefits have been acknowledged by some of the customers of industries in receipt of anti-dumping measures.

However, to the extent that measures effectively mandate payment of higher average prices to sustain the domestic supply base, they remove a customer's capacity to trade-off the ensuing benefits against the freedom to secure imported product more cheaply at certain times in the economic cycle. Indeed, if the benefits from access to local supply are regarded by customers as significant, there are various ways that these can be, and are, obtained without the need for anti-dumping measures.

- For example, to reduce the risks of supply disruption and/or high prices associated with periods of global undersupply, customers can, and often do, enter into long-term purchasing contracts or establish commercial relationships with a range of suppliers.
- And those customers who value more timely delivery or a higher level of after sales service, whether from a domestic supplier or importer, would presumably be willing to pay a premium for it.

The Commission also notes that companies supported through anti-dumping measures will still have incentives, during periods of strong global demand, to charge their local customers higher prices or to redirect product to other markets — at least to the extent that such actions would be consistent with maintaining productive commercial relationships with those local customers.

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## D.6 Supporting regional development

While not based on efficiency, another commonly cited rationale for anti-dumping protection is that it can support regional development. Some of the local industries that have benefitted from anti-dumping measures are significant contributors to employment and industrial activity in regional areas of Australia. For example, the Australian Workers' Union commented that consideration of the effects of dumping:

... must account for the impact on centres which are disproportionately reliant upon steel for a living, such as Port Kembla, Whyalla, Newcastle and Westernport ... Where dumping occurs, it will have a disproportionate impact on the sustainability of employment in regional Australia relative to metropolitan centres. (sub. 32, p. 12)

The Australian Plantation Products and Paper Industry Council (sub. 21, pp. 1–3) noted its members employ more than 13 000 people, mainly in rural and regional areas. It went on to argue that the continued availability of a strong anti-dumping and countervailing system is 'vital to the future of Australian industry'. And the Member for the Victorian seat of Mildura, Peter Crisp, stated:

Based on horticulture and the industries that support horticultural production, Mildura has become a significant regional centre in Australia ... Anti Dumping and countervailing measures form a vital part of risk management for the Growing Industry in the Mildura region ... [They] must remain as an effective and available instrument to protect Mildura's industries from short term attack resulting in long term harm. (sub. 30, p. 1)

While recognising the regional importance of such industries, the Commission emphasises that the anti-dumping system is not intended to operate as a regional development mechanism. And though particular measures may benefit regional activities in a general sense, the system would, for the most part, be a poorly targeted and uncertain mechanism for delivering regional support. Thus, in the Commission's view, any public support of this nature would be better provided explicitly and transparently through dedicated and targeted instruments.

## D.7 Concluding remarks

In light of the preceding assessment, the Commission has concluded that the imposition of measures on dumped or subsidised imports is highly unlikely to enhance efficient resource use. Indeed, the opposite is likely to be the case, with measures detracting from resource use efficiency over both the short and long term, as well as having administrative and compliance costs (see chapter 4).

Hence, in the Commission's view, the case for retaining an anti-dumping system must be based on the broader political economy benefits that it can provide. Specifically, as discussed in chapter 4, removal of the anti-dumping 'safety valve' could make it more difficult to address remaining tariff and related reform issues.