

Response of the Department of Agriculture and Food Western Australia to the summary of the Productivity Commission’s recommendations in their draft inquiry report into Australia’s Anti-dumping and Countervailing System

<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.	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 prima facie not be in the public interest.	Measures no longer imposed if they would be: ineffectual in removing injury; otherwise disproportionately costly for downstream entities; or damaging to competition in the domestic market concerned.
<p>Australian trade policy should seek to be as modern as possible in terms of the way it operates. As such the introduction of a bounded public interest test could be a useful addition in terms of adjudicating whether Australian businesses and products warrant anti dumping and countervailing measures protection, especially if it took a wider industry/economy view than a narrow individual product view.</p> <p>This would allow for a more informed choice after consideration was made as to the pros and cons of imposing such measures, especially in terms of whether it might unintentionally impose a cost burden on local businesses that use such products if duties are added.</p> <p>However, before the test can be put in place, the issue of the public interest will have to be defined. Will all industries be treated equally or do some have greater national importance than others? How will short term issues be treated as opposed to the longer term in a world where change continues to increase rapidly? Which tests used by other countries best capture the fuzzy notion of “public interest” and could be used as a model.</p> <p>The issue of food security has the potential to become a critical issue in the future as climate change and other geo-political issues arise in a complex, multi polar trading environment. Maintaining strong domestic agriculture and food industries to ensure a continued supply of reliable, healthy and safe food (which also contributes substantially to trade revenues and local employment) should be a goal of the Australian Government. Such a test would need to decide how such a long term industry development goal compares to short term issues of public benefit or interest.</p> <p>The issue of whether a business or industry deserves protection might also be influenced by the stage of development of that industry. One of the proposed circumstances within the test that would determine if measures were not in the public interest is “where the applicant industry’s share of the market is low, meaning that the impost on users would be large relative to the benefits that the industry and its suppliers would receive.”</p> <p>In the agricultural and food industries new industries/products continually arise and can be at an infant stage compared to more developed overseas suppliers. A public interest test may determine that the short term benefit of supporting such a small industry, or individual producer, may not stack up against immediate wider costs. How will the potential of that industry/business to expand and achieve scale to a point where it can compete and become a major import replacement option be taken account of as compared to short term factors?</p> <p>These are just a couple of issues that would need to be taken into account if a public benefit test was to be adopted. It is not the test itself that would be the issue, but what factors it considers in determining the notion of public interest and the weightings it allocates.</p>		

Supporting architectural changes		
<p>Aspects of the current requirements governing the imposition of measures (or mooted changes to them) detract from the delivery of appropriate outcomes for the community.</p>	<ul style="list-style-type: none"> • Limit extensions of measures to one three-year period and introduce a two year freeze on reapplication. • Provide for annual adjustments to the magnitude of measures. • Collect the correct amount of duty at the time of importation, rather than requiring importers to seek refunds of 'over-paid' duties. • Align Australia's list of actionable subsidies with the WTO lists. • Do not introduce 'zeroing' when calculating normal values. • Further examine the rationales for, and impacts of, the provisions for 'close processed agricultural goods', to determine whether they should be modified or abolished. 	<p>Complement the role of the public interest test in achieving a better balance between benefits and costs, including 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 • addressing inequitable treatment of particular parties • avoiding some unnecessary administration and compliance costs.
<p>Australian industry needs to recognise the dangers of relying on ongoing protection measures which will eventually be removed and which the longer they are in place make the adjustment period harder and more prolonged due to the lack of market signals influencing business practices.</p> <p>Australia's agricultural and food industries operate within a particularly distorted international marketplace. Over time Australian agriculture has adapted as local levels of protection were reduced to become amongst the most efficient farmers/producers in the world with some of the lowest levels of Government producer support in terms of tariffs and subsidies.</p> <p>The removal of outdated or unwarranted protection measures in the anti dumping and countervailing system should be an aim of the new system. However, local agricultural and food industries have the right to expect that because Australia has attempted to reduce protection to minimal levels and compete on a 'level playing field' that they deserve whatever protection is allowed them under World Trade Organisation rules against unfair foreign competition.</p> <p>Wherever possible Australia's rules and lists should be harmonized with the WTO and where less support is available than is reasonably allowed under WTO this should be changed.</p> <p>The administration of the system, in terms of more frequent reviews and adjustments, should also not make the system more costly or burdensome for local businesses to access wherever possible. The limitation on when measures should be withdrawn or on the amount of extensions available should also be dependent on whether the cause of the harm has been removed rather than setting arbitrary timelines.</p>		

Administration of the system		
<p>Limits on appeals rights, an over-emphasis on investigative speed, and inadequate public reporting, detract from rigorous and transparent application of requirements.</p> <p>Efficacy of current institutional arrangements within a refocussed system still to be determined.</p>	<p>Reconsider roles and responsibilities at time of next review.</p> <p>Widen list of appellable decisions; and require decisions to be made following a successful appeal without reinvestigation by Customs.</p> <p>Extend assessment timeframes by 30 days to allow for consideration of public interest matters and increase the scope for Customs to seek extensions of time. (But offset these changes by imposing a 30-day limit on Ministerial decision-making and by removing the requirement for reinvestigation where an appeal is upheld.)</p> <p>Require Customs to indicate what account it has taken of overseas investigations and 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. <p>Require Customs to seek feedback on the impacts of measures.</p> <p>Ensure that Customs and the TMRO are adequately resourced to 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, including through ensuring that:</p> <ul style="list-style-type: none"> • all significant decisions are subject to merits review; and that any 'moral hazard' from Customs investigating itself is avoided • there is adequate time to enable rigorous assessments and to consider public interest matters, while addressing avoidable delays in the current arrangements • the basis for decisions is properly explained and documented and their outcomes are similarly clear • there is better information on the effectiveness of measures and on any circumvention • effective application of the new arrangements is not undermined by resourcing constraints within Customs and the TMRO.
<p>Any additional requirements or updates to the process, such as the introduction of a public interest test, should try to ensure that they provide as much protection as possible to local industries in both a timely and streamlined manner to ensure it reduces the potential injury they incur. The process also needs to be as simple and low cost as possible for businesses to raise issues, albeit while often operating in a very complex international trading environment.</p> <p>Most of the food businesses within Western Australia and other States are small and medium sized enterprises with limited resources and time to go through a long, drawn out process to reduce the impact on their business of dumped or subsidized products and so this needs to be taken in account when designing the process.</p> <p>The admission in the Productivity Commission's draft report that "This new test would involve some additional uncertainty for stakeholders, and somewhat higher administrative and compliance costs" should not result in such costs being passed on to businesses choosing to raise issues with Customs.</p>		

Other matters		
Suppression of import data by the ABS on confidentiality grounds increases the cost and time of applying for antidumping measures.	Current Australian Law Reform Commission review to consider precluding suppression when the same or similar information can be publicly accessed from the export statistics of other countries.	Applications for measures not impeded by unduly restrictive suppression provisions.
Implementation and review		
	<p>Introduce most of the reforms as soon as possible. But delay introduction of the public interest test and the new continuation and reapplication requirements for two years.</p> <p>Independently and publicly review the requirements five years after they are fully operational.</p>	<p>Parties provided with time to adjust to the key elements of the new system.</p> <p>Enable assessment of impacts of the new system, and what further changes may be required.</p>
<p>The introduction of the new test needs to occur over a time period sufficient to study other countries methods and then allow some level of analysis of which option best suits Australia's needs. Businesses and industry bodies should also be canvassed and asked to contribute and any proposed changes should be implemented at a rate that local businesses can adjust to so as not to disadvantage them.</p> <p>A review at a later date of the effects of the changes and if more are needed would be sensible.</p>		