THE ANTIDUMPING LAW OF AUSTRALIA

Australian producers filed 63 antidumping petitions between 1997 and 2004. Only 35% of these cases resulted in the imposition of antidumping duties. As illustrated in Figure 1, the number of petitions filed by Australian producers has decreased significantly since 2000; Australian producers filed 49 cases between 1997 and 2001 compared to only 14 cases between 2002 and 2004.

Figure 1

I. Legal Procedures

Australian industries requesting the imposition of antidumping duties must file a petition with the Australian Customs Service (Customs). Customs must determine whether there is reasonable evidence to commence an investigation within 20 days of the receipt of the petition. To make this determination, Customs analyzes the applicant’s claims, conducts industry verification visits, and collects information from Australian importers about the export prices of the foreign firms subject to the investigation.

Once Customs decides to initiate an investigation, it has 155 days to complete the investigation and submit a report to the Minister of Customs. Customs first contacts all known interested parties, including Australian importers, foreign exporters subject to the investigation and domestic producers, and invites them to respond to the claims made in the application. Responses are due within 40 days of the start of the investigation.

1 Industries may seek advice from the Dumping Liaison Unit of Customs about the antidumping investigation process and the information that needs to be included in petitions prior to filing their request.
2 If Customs instead rejects the petition, the applicants may appeal the decision to the Trade Measures Review Officer, an independent statutory appeal body.
3 All submissions must be accompanied by a non-confidential summary of information contained in the submission. The non-confidential version of the submission and non-confidential version of the application are included in the public file. Non-confidential summaries of submissions should be sufficiently detailed to allow for a reasonable understanding of the submission.
Customs verifies some of the information contained in these submissions by conducting visits to foreign exporters, for example.

As specified in the Antidumping Agreement of the World Trade Organization (WTO), Customs must (1) determine whether dumping is taking place and calculate the extent of this dumping and (2) determine whether this dumping is causing or threatening to cause material injury to the domestic industry.

Calculation of the Dumping Margin

In general, Customs calculates the margin of dumping as the difference between the foreign firm’s export price and the “normal value” of the product during the period of investigation. Customs will generally define the investigation period as the 12 months preceding the initiation date and the ending of the most recently completed quarter or month. However, the investigation period may cover a longer period to ensure that it includes a full financial accounting period. Australia’s antidumping legislation describes a number of methods by which dumping margins may be calculated. Customs may:

- compare the weighted average export price with the weighted average normal value over the investigation period;
- compare the export prices from individual transactions over the investigation period with corresponding normal values in the same period;
- combine the weighted average with the transaction to transaction method; or
- compare the weighted average normal value with individual transaction export prices.

The legislation specifies that Customs should use the weighted average method to determine the dumping margin except in the exceptional circumstances. The transaction to transaction method should be used only in less usual circumstances, such as if the normal value varies significantly from shipment to shipment, there are few domestic and export sales of the goods, or the specific type of product varies significantly by transaction. The weighted average normal value should be compared to transaction specific export prices only in rare circumstances. The normal value is based on the price payable for like goods sold in the domestic market of the country of export either by the exporter or by other sellers of the goods. In order to have an acceptable normal value, the sale needs to be at arms length and in the ordinary course of trade.

Typically, there are a number of different types/models/grades of the product under investigation. In this situation, Australian antidumping legislation requires a fair comparison, which leads to the determination of margins of dumping for each type or model. In assessing whether or not there is dumping at the product level, customs aggregates across the various types in order to determine the single product margin. In other words, the “product margin” measures the margin of dumping for the product by aggregating the margins of dumping for the discrete types or models.
Customs tries to compute a dumping margin for each exporter targeted in the investigation. If the number of exporters is so large that it is not practical to ascertain a dumping margin for each firm then Customs may calculate firm-specific dumping margins for only a subset of the foreign firms. This subset must be either a statistically valid random sample of firms or include the firms accounting for the largest volume of exports to Australia that can reasonably be investigated.\(^4\)

Exporters outside of the sample are assigned the “all others” margin, typically a weighted average of the dumping margins of firms within the sample. If an exporter outside of the sample submits the necessary information, Customs must calculate a dumping margin for this exporter unless to do so would prevent the timely completion of the investigation.

If the margin of dumping for any individual exporter is *de minimis*, or less than two percent, the investigation against that particular exporter is automatically terminated without the imposition of dumping duties.

*Material Injury Determination*

The injury is assessed across the total Australian industry and not on a company specific basis. Injury is demonstrated in several ways but is generally categorized into loss of sales volume, loss of market share, and/or reduction in profits. Additionally, investigations may consider a range of other injury indicators such as employment and wages, production levels, capacity utilization, forward orders, return on investment, cash flow, ability to raise capital, investment, and increased inventory holdings (stock levels) caused by decreased sales volumes and pricing pressures. Moreover, Customs must consider the size of the dumping margin in their injury investigation. If imports from several countries are cumulated when determining whether the dumped imports have caused injury, the average margin of dumping for each country cumulated must be greater than two percent.

*Imposition of Duties*

Customs may impose provisional antidumping measures after 60 days if it makes a preliminary determination that dumped imports have caused material injury to the domestic industry. Regardless of whether provisional measures are imposed, Customs must publish a detailed statement of the essential facts on which it proposes to base its report to the Minister within 110 days. Interested parties then have 20 days to submit a response to this statement.\(^5\)

During the final 25 days of the investigation, Customs reviews the issues raised in these submissions and prepares its final report and recommendations to the Minister. After receiving Custom’s recommendations, the Minister makes a final determination regarding

\(^4\) Customs must consult with and obtain the consent of the exporters/producers involved to form this sub-sample.

\(^5\) The Minister may extend Custom’s deadline to publish the essential facts about the case and its final report, as well as the amount of time interested parties have to respond to the essential facts.
whether or not to impose antidumping measures. The antidumping duties imposed by the
Minister cannot exceed the dumping margin for the product calculated by Customs.

Interested parties have 30 days to appeal the Minister’s decision with the Trade Measures
Review Office (Review Office), a specialized independent appeal body in the Attorney-
General’s Department. If the appeal is accepted, the Review Office has 60 days to
conduct a review of the issues raised in the appeal. The Review Office can recommend
to the Minister that the case be remitted to Customs for further investigation if it
determines that the appeal has warrant. The Review Office does not, however, have
power to overturn a decision of the Minister.

Duties and undertakings are imposed for five years, unless revoked earlier. Provisions do
exist to consider whether extension of measures for a period beyond five years is
necessary. If after a comprehensive review, the Minister accepts Custom's
recommendation that measures should continue, measures may remain in force for an
additional period of five years.

Importers, exporters or the Australian industry may request that the Minister revoke
antidumping or countervailing measures if they have grounds to believe the measures are
no longer appropriate. Such an application can be made at any time after the Minister's
decision has been published. This provision has only been used to revoke antidumping
duties in exceptional circumstances – such as the demise of the Australian industry or the
cessation of a subsidy.

II. Compliance with the WTO Antidumping Agreement

On February 20, 1998, Switzerland filed a dispute with the World Trade Organization
(WTO) contending that Australia failed to comply with the WTO’s Antidumping
Agreement when it imposed provisional antidumping measures on Swiss imports of
coated wood-free paper. Switzerland contended that the investigation was not in
conformity with Australia’s commitments under Articles 3 (about Determination of
Injury) and 5 (about Initiation and Subsequent Investigation) of the Anti-Dumping
Agreement.

Australia terminated the coated wood-free paper sheet investigation on March 25, 1998,
thus removing the provisional antidumping measures. Switzerland notified the WTO that
the two countries had reached an agreement, thus the WTO’s Dispute Settlement Body
never reviewed Switzerland’s allegations.