

Australia's anti-dumping framework

- 2.1 This chapter provides definitions of dumping and circumvention, explores the anti-dumping and anti-circumvention frameworks and briefly outlines the work of the Anti-Dumping Commission.

Dumping

- 2.2 This section of the chapter defines dumping, subsidies and material injury, and explores anti-dumping action. The role of the Anti-Dumping Commission is briefly examined.

What is dumping?

- 2.3 The Department of Industry's submission to the inquiry outlined several definitions in relation to dumping. Firstly, the Department's submission defined dumping:

Dumping occurs when goods exported to Australia are priced lower than their 'normal value', which is usually the comparable price in the ordinary course of trade in the exporter's domestic market.¹

- 2.4 The submission explained further the definition of 'normal value':
- ... where the price in the ordinary course of trade is unsuitable, 'normal value' may also be determined using comparable prices of exports to a third country or the cost of production plus selling, general and administrative expenses and profit.²

1 Department of Industry, *submission 2*, p. 1.

2 Department of Industry, *submission 2*, p. 1.

2.5 The Department explained dumping in the context of trade agreements:

Dumping is not a prohibited practice under the World Trade Organization (WTO) agreements. Rather, the WTO agreements permit anti-dumping duties to be imposed when dumping causes, or threatens to cause, material injury to an Australian industry.³

Subsidies

2.6 The Department explained that, in a similar way to dumping, subsidies may also impact on Australian businesses:

A subsidy is any financial assistance (or income or price support) by a government that benefits, either directly or indirectly, an exporter of goods to Australia. If the subsidy causes, or threatens to cause, material injury to an Australian industry, remedial action may be taken.⁴

Material injury

2.7 The dumping of goods on Australian markets may cause material injury to Australian industry. The Department stated:

Material injury is typically demonstrated through prices, volume and/or profit indicators and is usually reflected by the Australian industry suffering a material reduction in selling prices, profit or market share. Material injury is considered to be above the normal ebb and flow of business.⁵

Anti-dumping action

2.8 The Department of Industry's submission explained that remedial action may be taken where dumping and/or subsidisation causes, or threatens to cause, material injury to an Australian industry.⁶

2.9 The Anti-Dumping Commission website discusses the potential for anti-dumping measures:

Anti-dumping or countervailing measures can only be imposed where the Minister is satisfied that goods exported to Australia have been dumped or subsidised, and that dumping or

3 Department of Industry, *submission 2*, p. 1.

4 Department of Industry, *submission 2*, p. 1.

5 Department of Industry, *submission 2*, p. 1.

6 Department of Industry, *submission 2*, p. 1.

- subsidisation has caused, or is threatening, material injury to an Australian industry producing like goods.⁷
- 2.10 The Department's submission explained further that the Australian industry or business concerned must demonstrate that there is dumping or subsidisation, and that the industry has suffered material injury as a result.⁸
- 2.11 The Department explained that, if dumped or subsidised goods are found to have caused, or threaten to cause, material injury to an Australian industry producing like goods:
- ... anti-dumping or countervailing measures may be imposed ... through the publication of a dumping duty notice or countervailing duty notice by the relevant Minister.
- 2.12 The Department's submission explained that an anti-dumping action is the imposition of a measure by the Australian Government, in the form of an additional duty on imports and/or a minimum export price, to remedy material injury to Australian manufacturers caused by dumping. Additionally, countervailing action is the imposition of a measure to remedy material injury caused by a subsidy.⁹
- 2.13 Australia's Anti-Dumping Commissioner, Mr Dale Seymour, explained that when anti-dumping or countervailing measures are imposed:
- ... additional dumping and countervailing duties become payable in respect of the exportation of those goods to Australia for a period of five years, unless revoked earlier. Those duties are payable by the importer of goods upon the entry of the goods into Australia ... The purpose of those duties is to level the playing field from a price perspective in the Australian market ... In simple terms, the uplift of the price of imported goods through the imposition of an additional duty is meant to provide relief to Australian producers and manufacturers.¹⁰

7 Anti-Dumping Commission - Explaining the system, <www.adcommission.gov.au/adsystem/Pages/Explaining-the-System.aspx>, accessed 13 April 2015.

8 Department of Industry, *submission 2*, p. 2.

9 Department of Industry, *submission 2*, p. 1.

10 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 27 November 2014, pp. 1-2.

The Anti-Dumping Commission

- 2.14 The Anti-Dumping Commission (the Commission) administers Australia's anti-dumping and countervailing system. The Department provided some organisational details:
- On 27 March 2014, the Commission transferred from the Australian Customs and Border Protection Service to the Department of Industry to give effect to machinery of government changes announced following the federal election in September 2013.
 - In August 2013, Mr Dale Seymour was statutorily appointed as the Commissioner.¹¹
- 2.15 The Department of Industry's submission explained that, upon application by the Australian industry setting out prima facie evidence of the dumping or subsidy and the material injury, the Commission commences an investigation and reports to the relevant Minister whether anti-dumping or countervailing duties should be imposed on the goods from the countries named in the application.¹²

Anti-dumping Acts and regulations

- 2.16 The Department provided information on the foundation for the development of Australia's anti-dumping framework:
- Australia's anti-dumping legislation is based upon the [World Trade Organization] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures.¹³
- 2.17 The Commission administers Australia's anti-dumping and countervailing system under the following legislation:
- *Customs Act 1901* (Customs Act), particularly Parts XVB and XVC;
 - *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act);
 - *Customs Administration Act 1985*;
 - *Customs Regulations 1926*; and
 - *Customs Tariff (Anti-Dumping) Regulation 2013*.¹⁴
- 2.18 Further information on dumping, the Commission and the anti-dumping investigation process is available at the Commission's website.¹⁵

11 Department of Industry, *submission 2*, p. 2.

12 Department of Industry, *submission 2*, p. 2.

13 Department of Industry, *submission 2*, p. 2.

14 Department of Industry, *submission 2*, p. 2.

15 *Anti-Dumping Commission home page*, <www.adcommission.gov.au/Pages/default.aspx>.

Circumvention

- 2.19 This section of the chapter defines circumvention, outlines the anti-circumvention framework, recent amendments to the framework, and discusses the impacts of circumvention on Australian businesses. The use of the framework by Australian businesses is also briefly discussed.

What is circumvention?

- 2.20 The Department of Industry's submission defined circumvention as:

... a practice used by exporters and importers of certain products to avoid the full payment of dumping and countervailing duties. The outcome of these activities is that they ensure that the relevant goods do not attract the intended dumping or countervailing duty. This reduces the effectiveness of the trade remedy to Australian industry.¹⁶

- 2.21 The Anti-Dumping Commissioner described circumvention activity in detail:

Circumvention activities can take on various forms and exploit different aspects of the anti-dumping system. The objective of circumvention activities is generally to ensure that the goods do not attract the relevant dumping or countervailing duty that would otherwise be payable or, alternatively, that the relevant good attracts the duty, which is paid, but the payment does not have the intended price effect in the market. This reduces the effectiveness of the trade remedy to Australian industry.¹⁷

- 2.22 The scope, prevalence and impact of circumvention practices by foreign exporters and Australian importers is discussed in chapter three.

Anti-circumvention framework

- 2.23 The Department of Industry explained that the purpose of the anti-circumvention framework is to ensure that anti-dumping measures are effective and to ensure that there is relief for the injured domestic industry.¹⁸

16 Department of Industry, *submission 2*, p. 3.

17 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 27 November 2014, p. 2.

18 Department of Industry, *submission 2*, p. 4.

2.24 Australia's Anti-Dumping Commissioner, Mr Dale Seymour, discussed the introduction of the anti-circumvention framework:

In June 2013, new legislative provisions commenced in the *Customs Act 1901* for conducting anti-circumvention inquiries based on prescribed circumvention activities. These formed a central component of the previous government's Streamlining Australia's Anti-dumping System reforms package.

2.25 The Commissioner explained that the new provisions covered:

- assembly of parts in Australia;
- assembly of parts in a third country;
- export of goods through one or more third countries;
- arrangements between exporters; and
- any additional circumstances prescribed by regulation.¹⁹

2.26 The Commissioner explained the operation of the framework, including the ability to make regulations:

Australia's anti-circumvention framework is set out in Division 5A of the *Customs Act*. Included in this division is a provision that provides the relevant Minister a regulation-making power to add new behaviours designed to circumvent measures to those which can be investigated. This regulation-making power provides flexibility for emerging circumvention practices to be addressed, while sufficiently limiting the scope of behaviours so as to not catch activities which are not circumventing measures or lead to frivolous complaints. [As at 27 November 2014], no regulations have been made to prescribe additional circumstances which are defined to be circumvention practices.²⁰

Impact on Australian business

2.27 Many submissions to the inquiry discussed the potential negative commercial impacts that circumvention activities can have on Australian businesses that are already suffering due to dumping.

19 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 27 November 2014, p. 2.

20 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 27 November 2014, p. 2.

- 2.28 A wide range of industries subjected to dumping and circumvention of anti-dumping measures are represented in submissions made to the inquiry. Those industries include:
- steel;²¹
 - aluminium;²²
 - cement;²³
 - electric cables;²⁴
 - paper;²⁵
 - ammonium nitrate;²⁶
 - agricultural chemicals;²⁷
 - preserved fruit;²⁸
 - dried fruit;²⁹ and
 - vegetables.³⁰
- 2.29 The impacts of circumvention of anti-dumping measures can be profound. Data supplied in the Australian Steel Institute submission provided evidence of circumvention, showing a ten-fold increase in imports of certain so-called 'alloy' steel products since anti-dumping measures were imposed on the regular carbon steel products in July 2012.³¹
- 2.30 The Australian Steel Institute added that this circumvention impacts on revenue to the Australian Government and negatively impacts on jobs in the industry.
- 2.31 Capral Ltd also discussed the significant impact on Australian jobs:
- Capral is a manufacturer of aluminium extrusions ... In recent times in our industry, over 500 direct jobs and almost 2,000 in total, which is about one-third of the workforce, have been lost in

21 BlueScope Steel Ltd, *submission 9*; Arrium Ltd, *submission 11*; Australian Steel Institute, *submission 18*; Bureau of Steel Manufacturers of Australia Ltd, *submission 22*.

22 Capral Ltd, *submission 7*.

23 Cement Industry Federation, *submission 16*.

24 Australian Cablemakers Association Ltd, *submission 11*.

25 Australian Forest Product Association, *submission 6*.

26 Orica Ltd, *submission 17*; Manufacturers' Trade Alliance, *submission 23*.

27 Manufacturers' Trade Alliance, *submission 23*.

28 SPC Ardmona, *submission 21*.

29 Manufacturers' Trade Alliance, *submission 23*.

30 AUSVEG, *submission 3*.

31 Australian Steel Institute, *submission 18*, p. 6.

Australia. We put this down mainly to unfair dumping of extrusions.³²

- 2.32 Mr Phil Jobe, Director, Capral Ltd, discussed the production of aluminium overseas and the impact of product dumping on the Australian aluminium industry:

Imports from China ramped up rapidly over a number of years, to 40 per cent of our industry. If you look at smelters in China, it is one industry where they do not have a cost advantage. They have to import bauxite, electricity is not cheap, and there have been independent reports showing that in China the cost to manufacture billet, the feedstock, is something like 20 to 30 per cent higher on average than the rest of the world. Yet, they can sell that 17 per cent cheaper on average over some periods. The Chinese government owns over 50 per cent of those smelters. So I think we were able to clearly demonstrate ... the injury to Australia.³³

- 2.33 AUSVEG explained that dumping has negative impacts on the economy by allowing foreign producers the chance to gain market share where they would otherwise not be competitive.³⁴ AUSVEG discussed the impact of dumping on the Australian vegetable industry and the broader implications for regional areas:

The position of the vegetable industry in the Australian food marketplace has been established through decades of hard work and high production standards, leading to widespread recognition of the high quality of Australian vegetables. Exporters who dump vegetable commodities into the Australian market below the cost of production undermine this position and eat into the market share of vegetables in the Australian shopping basket by undercutting Australian suppliers on price while offering produce of lower quality.³⁵

- 2.34 AUSVEG claimed that this behaviour can have serious impacts on the national economy, and, significantly, on economies in the regions in which suppliers work and operate:

When a supplier's profitability is impacted by anti-competitive behaviour like dumping, they are inevitably unable to contribute

32 Mr Phil Jobe, Director, Capral Limited, *Committee Hansard*, Canberra, 26 February 2015, p. 1.

33 Mr Phil Jobe, Director, Capral Limited, *Committee Hansard*, Canberra, 26 February 2015, p. 2.

34 AUSVEG, *submission 3*, p. 2.

35 AUSVEG, *submission 3*, p. 2.

to their regional economy – hours are cut, jobs are lost, and less revenue flows into other businesses in the area.³⁶

Continued or recurring material injury

- 2.35 Several submissions to the inquiry described continuing material injury suffered by industry due to circumvention of anti-dumping measures.
- 2.36 BlueScope Steel's submission provided a list of products for which anti-dumping measures have been imposed.³⁷ BlueScope Steel stated that, despite the imposition of anti-dumping measures, in certain instances the anti-dumping measures have been avoided resulting in a recurrence of material injury. BlueScope referred to monthly ABS import data, which:
- ... reflects a ninety-fold increase in import volumes as classified under the 'other alloy' statistical tariff code for galvanised steel for the period October 2013 to September 2014.³⁸
- 2.37 BlueScope Steel estimates that the value of the interim dumping duties foregone by the Australian Government on the circumvented import volumes is between one and three million dollars for the same period.³⁹
- 2.38 BlueScope Steel stated that the cost of the circumvention has been:
- ... the ongoing injury in the form of lost domestic sales, reduced selling prices and reduced profitability from the lower price offers from circumventing exporters and importers that do not pay the imposed dumping duties. BlueScope is consequently forced to price-match against the measures-free imports in the commodity product market in Australia, even though the modified goods have been sold to the same customers and same end-use applications ...⁴⁰
- 2.39 BlueScope Steel provided estimates of loss in revenue:
- Even taking the most conservative approach, using the smallest avoided dumping margin of 2.6 per cent on imported galvanised steel, over the past twelve months this translates to an annual loss of revenue to the company of approximately \$15 to \$20 million. If based on highest margin of 8.5 per cent for exports from Taiwan, the price-impact would be up to \$50 million.⁴¹

36 AUSVEG, *submission 3*, p. 2.

37 BlueScope Steel, *submission 9*, p. 8.

38 BlueScope Steel, *submission 9*, p. 8.

39 BlueScope Steel, *submission 9*, p. 8.

40 BlueScope Steel, *submission 9*, p. 8.

41 BlueScope Steel, *submission 9*, p. 8.

- 2.40 The submission from SPC Ardmona discussed the financial implications for companies in fighting dumping:

Substantial investment is incurred in raising an anti-dumping application and participating in the investigation. This investment is undermined when companies with anti-dumping duties imposed are able to bypass their obligations through circumvention activities.⁴²

Use by Australian businesses

- 2.41 Since the introduction of the anti-circumvention framework in 2013, and as at 31 March 2015, there has been only one anti-circumvention application lodged with the Anti-Dumping Commission.⁴³

- 2.42 The Department of Industry provided details on the subsequent investigation into the avoidance of the intended effect of duty applicable to certain aluminium extrusions exported from the People's Republic of China:

This application was lodged by Capral, an Australian manufacturer of aluminium extrusions, on 19 March 2014. Capral asserts that circumvention has occurred which is avoiding the intended effect of the duties. On 14 April 2014, the Commission's first expedited anti-circumvention inquiry was initiated.⁴⁴

- 2.43 The Anti-Dumping Commissioner further described the timeline of the investigation:

I reported my findings and recommendations to then Parliamentary Secretary to the Minister for Industry, on 23 December 2014. On 9 February 2015 the Minister for Industry and Science accepted my recommendations and the reasons for my recommendations.⁴⁵

- 2.44 The Commissioner described the outcomes of the investigation:
... five importers identified by the applicant, Capral, were found to be avoiding the intended effect of the duty, by selling the goods without increasing the price commensurate with the total amount of duty payable. Based on this finding, the Minister altered the original dumping duty and countervailing duty notice in respect

42 SPC Ardmona, *submission 21*, p. 3.

43 Department of Industry, *submission 2*, p. 8.

44 Department of Industry, *submission 2*, p. 8.

45 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 26 March 2015, p. 2.

of PanAsia, which resulted in an increase of combined interim duty from 10.1 per cent to 57.6 per cent.⁴⁶

- 2.45 The Commissioner further explained that the outcomes of the anti-circumvention investigation apply retrospectively as well as prospectively:

Retrospective duties took effect from 14 April 2014, the date of initiation of the inquiry, and applied to the exports from PanAsia of certain aluminium extrusions to the five importers, who were examined during the inquiry. Prospective duties took effect from the date of publication of the minister's declaration on 19 February 2015 and applied to all exports from PanAsia. So, prospectively, all are captured; retrospectively, [the alterations apply to] the five importers who were examined by the inquiry.⁴⁷

- 2.46 The Department explained that, given the investigation involved a number of complex issues, the inquiry timeframe was extended on several occasions.⁴⁸

- 2.47 The Commissioner also discussed the conduct of this first investigation, and lessons learned:

As this was the Commission's first anti-circumvention inquiry, it raised a number of complex legal policy and operational issues, as you can well imagine. This has provided for the identification of any areas that need to be addressed through future reform. We are working closely with the Department's anti-dumping policy team on those issues.⁴⁹

Anti-circumvention in other jurisdictions

- 2.48 The Department of Industry briefly outlined circumvention of anti-dumping provisions that have been implemented in other jurisdictions. The Department noted that the frameworks for each jurisdiction feature different approaches and processes to address circumvention practices.⁵⁰

46 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 26 March 2015, p. 2.

47 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 26 March 2015, p. 2.

48 Department of Industry, *submission 2*, p. 8.

49 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 26 March 2015, p. 2.

50 Department of Industry, *submission 2*, p. 8.

- 2.49 The Department's submission provides a summary comparison of some of the features of comparable jurisdictions' anti-circumvention frameworks.⁵¹
- 2.50 Further analysis can be found in chapter four of this report.

Recent amendments

- 2.51 A new type of circumvention activity addressing the issue of slight modification of goods was prescribed through regulation on 1 April 2015.⁵² This circumvention activity is further discussed in chapter three and chapter four.

51 Department of Industry, *submission 2*, Attachment D.

52 Mr Dale Seymour, Commissioner, Anti-Dumping Commission, *Committee Hansard*, Canberra, 26 March 2015, p. 1.

