Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Industry Portfolio
Budget Estimates Hearing 2014-15
2-3 June 2014

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY

TOPIC: Anti-Dumping Regime Differences with other Countries

REFERENCE: Question on Notice (Hansard, 2 June 2014, page 38-39)

QUESTION No.: BI-16

Senator XENOPHON: I appreciate that, but I am familiar with the mechanism that takes place. I am happy to put that on notice; I am trying not to burn up time in relation to technical matters. In the United States and in Europe action was taken much earlier. Is that because the way the regime works there to do with dumping and countervailing measures is that they can initiate action without a complaint being received?

Mr Seymour: The approach taken in other jurisdictions is somewhat different to Australia's approach—

Senator XENOPHON: Is it fair to say that the approach in other jurisdictions such as the United States and Europe is one where they do not need to wait for a complaint—if they believe they have credible evidence of products being dumped in those jurisdictions, they can take action whereas we have a different process? I am not criticising the commission—

Mr Seymour: No, I understand the question. Essentially the processes are somewhat different. In Australia there is a requirement that the application be made domestically and that I be satisfied that the tests under the act are met. That can be a somewhat complex exercise and it can explain some of the time taken between date of application and, with Tindo, the date of initiation. It is a moot point to argue what is more efficient and effective in terms of different jurisdictions. The reason I do not want to get involved in a detailed conversation here—I am more than happy to write you a comparative on it—

Senator XENOPHON: I would be grateful for it on notice.

Mr Seymour: is that it is a complex matter.

Senator XENOPHON: My understanding is that in May 2012 the US imposed anti-dumping duties of more than 31 per cent on solar panels from China. They are ahead of the game by two years in that sense. Presumably, they are the same panels or same sorts of panels. In the meantime, it has been killing Australian industry in terms of being able to compete fairly.

Mr Seymour: That is the matter that we are currently investigating. I would make a general observation that the strengthening of the system must involve better information and awareness amongst Australian industry of the importance and the remedy that might be available to them under Australia's anti-dumping system. Getting that information out to industry is an important aspect of our role.

Senator XENOPHON: In terms of jurisdictional comparisons, is it fair to say that the model we have to deal with dumping cases is more reactive than proactive than, say, the United States?

Mr Seymour: You could make that observation, but I would like to take on notice an obligation to come back to report you.

ANSWER

The anti-dumping systems of Australia and the United States have a number of similarities in terms of the manner in which investigations are initiated and the processes adopted in establishing the need for anti-dumping measures. These commonalities reflect the legal basis on which the systems are founded – namely the World Trade Organization (WTO) Anti-Dumping Agreement.

Nevertheless, there are a number of key differences in the administration of the systems including the roles of the bodies that administer the system and the timeframes in which investigations are conducted, as detailed below.

In the United States, the anti-dumping system is bifurcated – ie anti-dumping laws are administered jointly by the US Department of Commerce (DOC) and the US International Trade Commission (ITC). Briefly, it is the role of DOC to receive petitions (applications) for anti-dumping measures and make determinations as to the existence of dumping or subsidisation. The ITC determines whether there has been any injury to the domestic industry and whether any injury has been caused by dumped or subsidised goods. In Australia, all of these functions are undertaken by the Anti-Dumping Commission.

Initiation of investigations

In both Australia and the US, generally an investigation into dumped or subsidised goods is initiated following an application from the domestic industry.

While both jurisdictions have powers to self-initiate investigations, these powers are rarely used in accordance with WTO disciplines in this area.

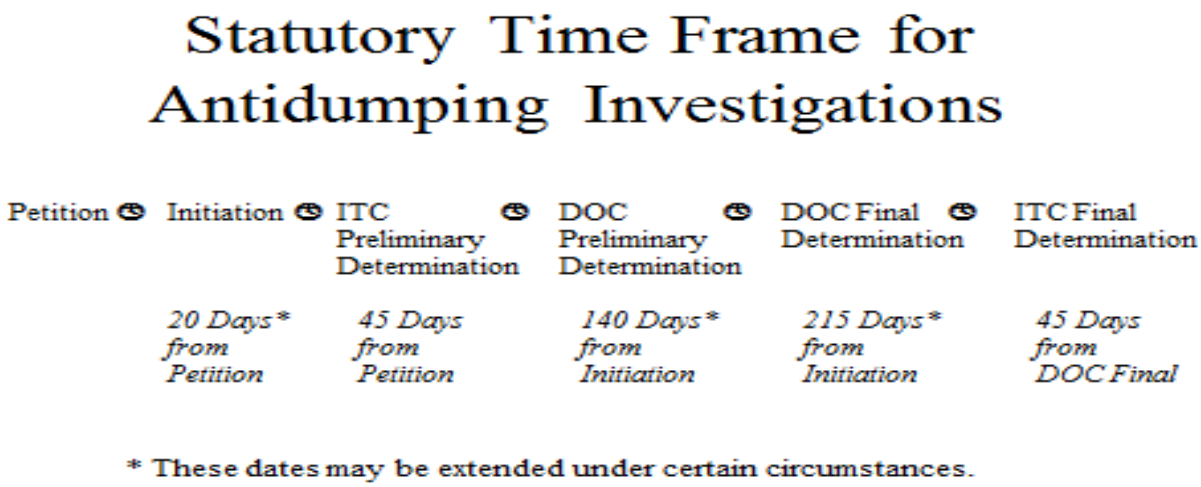
In relation to the US anti-dumping duties on solar panels exported from China, the investigation was initiated by the DOC following the filing of a petition by the domestic industry (SolarWorld Industries America Inc.) on 19 October 2011. The DOC announced its final determinations from that investigation on October 10, 2012 (following its preliminary determination of 17 May 2012).

Investigative timeframes

The legislated timeframes for investigations vary significantly between the two systems, as represented below. The key differences (noting that in both jurisdictions timeframes can be extended) include:

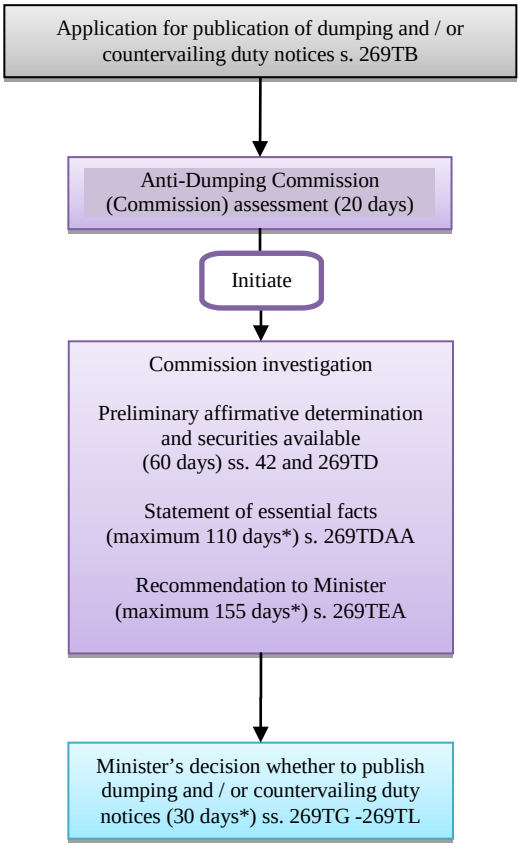
- the time in which preliminary determinations are made (from day 60 of the investigation in Australia, day 140 of the investigation in the US); and
- the timeframes for concluding the investigation (155 days in Australia, 260 days in the US).

Overview of US investigative timeframe



Source: www.enforcement.trade.gov/petitioncounseling/ppt/statutory-time-frame-for-investigations.ppt

Overview of Australian investigative timeframe



* Minister may extend reporting time.

Source:www.adcommission.gov.au/system/documents/DumpingandSubsidisationInvestigationProcessFlowchart.pdf