

Anti-dumping

Cooperation assists in expediting a complex process

Australian industry benefits when there is early cooperation and close liaison between Customs and industry to expedite an anti-dumping investigation.

Dumping occurs when goods are exported to Australia at a price that is below the domestic price of the goods in the country of export. Dumping, a form of price differentiation, is not a prohibited practice under international trade agreements, but remedial action may be taken where dumping causes, or threatens to cause, material injury to an Australian industry.

Similarly, a subsidy is any financial assistance, or income or price support, paid by a foreign government that either directly or indirectly benefits an exporter. If the effect of the subsidy causes, or threatens to cause, material injury to an Australian industry, remedial action may be taken. A countervailing duty is imposed to counteract a subsidy and these usually apply for five years.

Customs, through its Trade Measures Branch, investigates matters relating to imports into Australia of goods that are dumped or subsidised.

In the majority of cases, Customs commences investigations in response to applications by Australian industry. If Customs decides to initiate an investigation it invites other interested parties, including importers, exporters and end-users, to participate by providing submissions supported by evidence.

During the investigation, Trade Measures staff visit the Australian industry and other interested parties to verify the information provided.

The Australian anti-dumping and countervailing system works on one of the shortest investigation timeframes in the world. Once an application is received, Customs must decide within 20 days whether there are reasonable grounds for initiating a full investigation. If an investigation is commenced, Customs must place a statement of essential facts on the public record within 110 days, and report to the Minister within 155 days. Customs can impose preliminary anti-dumping or countervailing measures after 60 days where there are sufficient grounds to do so.

At the end of an investigation, Customs reports to the Minister for Justice and Customs and makes recommendations about whether countervailing measures should be imposed, based on the best information available.

Given the complexity of some cases and the special circumstances of some industries, importers and exporters, there is the potential for delays to occur during the investigation process. Where necessary, Customs may seek an extension of time for the statement of essential facts and report to the Minister. Delays can be frustrating for Australian industry, importers and exporters alike, as there is inevitably some uncertainty (and, in some cases, a degree of

Cooperation with the Australian steel industry

Recent experience in the context of the Federal Government's commitment to assist the Australian steel industry has highlighted the benefits of early cooperation.

On 19 March 2002, the Australian Government established a Ministerial Task Force comprising the Ministers for Foreign Affairs and Trade, Industry Tourism and Resources, and Justice and Customs working jointly with the Australian steel industry and peak union representatives. This followed the imposition of safeguard measures on steel imports by the USA and the consequent responses to that action by the European Union, China and other significant steel markets.

The Ministerial Task Force also established a Monitoring Committee tasked with the monitoring of steel imports. Customs has been working with Australia's steel industry to develop a system that provides early warning of significant changes to steel import patterns where there is a risk of dumping. The type of information compiled by the Monitoring Committee ranges from an overview of all steel imports to specific price and volume information for each steel import category. Australian Bureau of Statistics confidentiality restrictions are rigorously applied to this information to ensure that individual exporters are not exposed where they have been granted confidential treatment of their data.

Customs also offered to assist members of the Australian industry contemplating an anti-dumping application by arranging for company visits by a dedicated team of senior and experienced Trade Measures staff.

The expert team assisted those companies who took up the offer by:

- providing advice on the procedures for lodging an application
- providing more specific guidance on what is required in an application
- assisting industry to ensure that their information gathering activities were appropriately focused to obtain relevant information
- assisting industry to present their application in a format which best presents their arguments.

Advice from Trade Measures staff at this early stage assists the Australian industry to focus on the key aspects of its claims. For example:

- whether and how it is being injured by dumped imports
- which indicators clearly demonstrate this injury
- where further data or information may be required to support its claims
- any other factors relating to its business or the industry as a whole that may also be causing injury.

"Industry is closer to its own business and is therefore in a better position to explain how the industry operates, domestic and global trends in the industry, the factors that influence its financial position, and other issues of concern," Ms Pitman commented.

She said that following cooperation with the Australian industry at this early stage, Trade Measures staff are better equipped to analyse the significant issues raised by the Australian industry's application. Typically, industry is then better prepared for the investigation process that follows.

disruption) in the market while an investigation is in progress.

Cooperation before lodging an anti-dumping application

One area in which delays may arise is the time taken for Australian industry

to prepare an anti-dumping application in accordance with statutory requirements. Further delays can result if Customs needs to gather and analyse more information from the Australian industry once an investigation is initiated.

Customs National Manager Trade Measures Branch Sue Pitman said, "The provision of detailed and accurate information in an anti-dumping application allows Customs to develop a clearer and more comprehensive picture of an Australian industry's complaint before an investigation is initiated. It also reduces the time needed to gather and analyse additional Australian industry data once an investigation has commenced."

The Dumping Liaison Unit within the Trade Measures Branch plays an important role in providing industry members with detailed advice about the type of information that is required in an anti-dumping application, the investigation timeframes and process, and how the Australian industry can assist Customs to expedite the process by providing detailed information and data in support of its claims.

Cooperation during the investigation

Customs recognises that once an investigation is initiated, a speedy resolution that minimises uncertainty in the market is in the interests of all concerned.

However, the progress and outcome of an investigation is heavily influenced by the quality and timeliness of the information provided to Customs by interested parties, both before and during the investigation.

Interested parties are invited to make submissions to an investigation during the first 40 days of the investigation, and again within 20 days after Customs issues the statement of essential facts. Customs is obliged to consider all information provided by interested parties when formulating its report and recommendations to the Minister.

In the recent Federal Court challenge brought by Pilkington (Australia) Pty Ltd against the decision of the Minister in relation to exports of clear float glass from Indonesia, the Full Federal Court emphasised the need to preserve the legislative aim of a timely investigation process.

In summary, the Court held that the Minister, when deciding whether to impose anti-dumping measures, is not required to consider material beyond the Customs report (which includes consideration of the submissions made by interested parties during the investigation). However, the Minister is not prohibited from doing so in appropriate circumstances—for example, in the rare case where clear evidence comes to light after the report, which has the effect of falsifying significant parts of its contents.

“We agree ... that to require the Minister to go beyond the CEO’s Report would be subversive of the elaborate statutory process governing the preparation of the Report, being a statutory process put in place to produce the transparency and timeliness required of Australia by the [WTO Anti-Dumping] Implementation Agreement ... We do not see in the legislation a positive proscription on the Minister informing himself or herself of matters beyond the CEO’s Report¹.”

Confining the information before the Minister in this way allows Customs to meet its statutory and international obligations within legislative timeframes and provides greater certainty to all interested parties.

Cooperation after trade measures are imposed

Once trade measures are imposed, they remain in place for five years unless revoked earlier (following an application by an interested party). Customs seeks to ensure the effectiveness of the measures imposed by monitoring subsequent imports on a regular basis and identifying any compliance problems.

The Dumping Liaison Unit in the Trade Measures Branch monitors imports of products subject to trade measures, generally in response to complaints by interested parties.

“The sources of complaints vary from the Australian industry expressing concern about the selling prices of imported goods remaining unchanged

after the imposition of dumping duties, to importers concerned that they are unable to match the selling prices of other importers,” said Petri Povel, Acting Director Dumping Liaison Unit.

“The Dumping Liaison Unit also initiates monitoring activity in certain circumstances where a high volume of imports of products subject to dumping or countervailing duties occurs.

“Where there appears to be compliance problems, the Dumping Liaison Unit will undertake a detailed investigation of the costs and selling prices associated with the imported goods. If sales by the importer are found to be below cost, Customs undertakes duty recovery action where possible,” added Ms Povel.

Further action may include seeking approval from the Minister to undertake a formal review of the level of the measures where appropriate. Interested parties can also seek a review of the measures after they have been in place for 12 months.

Information about trade measures

Australian producers injured by dumped or subsidised imports may wish to contact the Trade Measures Dumping Liaison Unit, which can provide guidance in the requirements for making a formal application. For an application to result in an investigation, evidence of dumping (or subsidisation), material injury and causal link between the two needs to be provided.

Importers, consumers, or exporters to Australia may wish to participate in ongoing investigations if they believe that they will be adversely affected by the imposition of trade measures. Information on products that are currently subject to trade measures can also be obtained from Customs or from the Customs website.

For further information go to www.customs.gov.au, or contact the Trade Measures Office on telephone 02 6275 6547.

¹ *Pilkington (Australia) Ltd v Minister of State for Justice and Customs* [2002] FCAFC 423 at p46