Australian Government

Streamlining Australia's anti-dumping system

An effective anti-dumping and countervailing system for Australia

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Australian Government reforms to the anti-dumping and countervailing system

Executive summary

Australia is an export-oriented economy. An open trade environment provides critical access to markets that keep our economy strong. For more than 30 years, Australia has had bipartisan support for some of the lowest barriers to trade in the world.

Australia is a defender of the rules governing multilateral trade. If everyone plays by the rules, business and the community can retain confidence in the benefits a global economy can bring.

An anti-dumping system has become a standard feature of the international trade policy landscape. More than 90 countries have one. As there is no international competition law regime, an anti-dumping system is the only means by which unfair market behaviour can be deterred at the global level.

A well-administered anti-dumping system has several welcome efficiency effects. These include avoiding the depreciation of the skills and capabilities of the labour force and of industry, encouraging capital investment by providing greater certainty in the competitive environment.

The Australian anti-dumping system provides an effective and relatively low cost means for import-competing firms to seek redress for material injury caused by unfair trading practices. A rigorous and well-resourced anti-dumping regime, will better secure our industries and our workforce from unfair trade practices.

These changes build on the changes made after the Gruen Review (1986) and the Willett Review (1996). There have been no substantial changes to the anti-dumping system in more than a decade.

The Government's reforms respond to the Productivity Commission Inquiry Report No. 48, *Australia's Anti-dumping and Countervailing System*, implementing 15 out of 20 recommendations in whole or in part.

The reforms also take into account the views of State and Territory Governments, the reports of the Senate Economics Legislation Committee of 22 June 2011 on the Customs Amendment (Anti-Dumping) Bill and the Customs Amendment (Anti-dumping Measures) Bill, and numerous submissions made by stakeholders.

The package of reforms to the anti-dumping system outlined here will provide significant improvements to the way we administer the global rules in Australia, and better align our laws and practices with other countries.

The changes will improve access to the anti-dumping system for businesses, and anti-dumping investigations will be resolved more quickly. There is a focus on improving decision-making by the renamed International Trade Remedies Branch (the Branch) within the Australian Customs and Border Protection Service, and ensuring greater consistency with anti-dumping administrations in other countries.

The Branch will have greater resources and expertise available to enable it to do its job. Ensuring compliance with anti-dumping measures is also a priority.

1. Better access to the anti-dumping system

1.1 Small and medium enterprise and downstream industry will be provided support to actively participate in anti-dumping investigations.

1.2 The Branch will work with the Australian Bureau of Statistics and a new International Trade Remedies Forum to examine options to access import data. In addition, the data requirements for initiating an investigation will be clarified, and information about countervailable subsidies in other countries will be made available to businesses that are considering applying for measures.

1.3 The circumstances in which shorter than normal investigation and injury periods may apply will be clarified.

1.4 Parties will more easily be able to update measures as a result of changes that will allow a partial review of measures that are in place.

1.5 A working group of the International Trade Remedies Forum will be established to determine the best way to resolve the problems faced by primary producers in accessing the anti-dumping system.

2. Improved timeliness

2.1 Staff in the Branch will be increased by 45 per cent, from 31 to 45 staff, over the next 12 months to ensure cases are not delayed by a lack of resources.

2.2 Guidelines will be developed to improve the timely provision of information and to ensure adequate opportunities for industry to respond to matters raised by other parties. Further consideration will be given to a new, ordered, evidence gathering process.

2.3 Provisional measures will be considered at the earliest opportunity – as soon as the Branch has sufficient information, without necessarily waiting to verify all data.

2.4 A 30 day time limit for Ministerial decision-making will be introduced.

3. Improved decision-making

3.1 The Branch will make greater use of experts including forensic accountants, industry specialists and others, in accordance with protocols to be determined after consultation with the International Trade Remedies Forum.

3.2 A working group of the International Trade Remedies Forum will be established to make recommendations to Government about how to improve the effectiveness of Australia's "particular market situation" provisions, consistent with World Trade Organization obligations.

3.3 A more rigorous appeals process will be introduced, with more resources, and with the Review Officer rather than the Branch making recommendations to the Minister.

3.4 The definition of what constitutes material injury caused by dumping will be amended to allow a more inclusive consideration of the impact of dumping on employment and investment, and to take account of profits foregone and other injury caused in new or expanding markets. The Branch will also clarify how it determines whether injury is caused by dumping or by other factors.

3.5 The Branch will have flexibility in seeking extensions of time to accomodate complex cases, and consider critical new information that could not reasonably have been provided earlier.

3.6 There will be greater transparency through publishing the Branch's approach to evaluation of applications, and by reporting on measures and applications.

4. Consistency with other countries

4.1 The current list of countervailable subsidies will be expanded to make them consistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures and Agreement on Agriculture.

4.2 The approach to determining whether parties are non-cooperative will be strengthened and clarified.

4.3 The method of determining the non-injurious price will be revised recognising that injury to industry can take different forms, and that more flexible consideration of relevant factors will provide a more effective remedy that is tailored to the injury caused in a particular case.

4.4 The parties permitted to participate in investigations, including by making submissions, will be clarified to include relevant industry associations, unions and downstream industry.

4.5 A more flexible approach will be taken to determining the appropriate form of a dumping or countervailing duty, including *ad valorem* duty, fixed duty, combination duty, or a floor price[1].

4.6 The Branch will take into account relevant cases and practices in other jurisdictions.

1 A glossary of terms is at page 32

5. Stronger compliance

5.1 There will be increased monitoring of compliance with anti-dumping measures.

5.2 A framework will be introduced to prevent the unfair circumvention of measures by the modification of products, sending products through third countries or exporters with a lower duty rate, or assembling parts in Australia.

The Government is proposing to retain the current approach to considering the wider impact of measures, the continuation of measures, zeroing[1] and basing its findings on an objective examination of positive evidence in accordance with Australia's World Trade Organization obligations.

The Trade Measures Branch of the Australian Customs and Border Protection Service will be renamed the International Trade Remedies Branch. This is standard terminology internationally. The Branch will develop a new case management system to enable faster dissemination of case information to parties, improving the timeliness of anti-dumping decisions.

The Government will also establish the International Trade Remedies Forum comprising parties with an interest in the anti-dumping system and government agencies to oversee the implementation of the reforms and monitor their effectiveness. A full independent review of the changes will be made in five years time.

1. Better access

1.1 Supporting access to the anti-dumping system

1.1.1 Small and medium enterprises

Presently, the Trade Measures Branch of the Australian Customs and Border Protection Service includes a liaison function, which involves providing information about the anti-dumping and countervailing system (ADS) to industry, including small and medium enterprises (SMEs).

The Branch is constrained in the advice it can provide to industry because it will ultimately make a recommendation to the Minister about whether dumping is causing injury to the industry.

During consultations, it became apparent that there is continuing and widespread concern about the ability of SMEs to access the ADS.

The Government will fund a position within a major industry association to assist SMEs with anti-dumping and countervailing investigations. The existing liaison function will continue to provide information about the system, but not detailed advice.

The SME Support Officer (SSO) will work with businesses to enable them to prepare applications and satisfy initial evidentiary requirements and assist other SMEs interested in a particular case to provide submissions to the Branch during an investigation.

The SSO will also be able to facilitate cooperation between businesses to ensure that their application reaches the "25 per cent of domestic producers of like goods" and "more support than opposition" thresholds for applications required by the World Trade Organization (WTO) Anti-Dumping Agreement (ADA) and Agreement on Subsidies and Countervailing Measures (ASCM). The SSO will achieve this through industry networks and other appropriate means.

The Government intends that these proposals will raise greater understanding of the ADS amongst SMEs, and will facilitate appropriate access to remedies for small businesses injured by dumping. The SSO is a pilot project. The position will be trialled for two years, and extended if it is effective in achieving these objectives.

1.1.2 Downstream industry

The SSO may also provide assistance to downstream industry.

During an anti-dumping investigation or continuation inquiry the Branch may identify domestic producers that use the goods under investigation and "like goods" as inputs. Presently, the Minister may consider the impact of measures on this downstream industry in determining whether to impose measures, however, once measures are in place, no further action is taken.

The possibility exists for trade measures to be undermined where measures on imports of a particular product result in an influx of downstream goods at a subsequent stage of processing, further damaging the domestic industry in those downstream goods and companies in its supply chain. To ameliorate that risk, the SSO will periodically review available data about downstream industries following the imposition of measures.

Where there are concerns about the possible dumping of the downstream products, the SSO may assist with the preparation of an anti-dumping or countervailing application in respect of those goods. The SSO may also refer the matter to the Minister to determine whether there are grounds for the Minister to initiate an investigation. Consistent with the WTO ADA and ASCM (ADAs), the Minister can only initiate an investigation where there are "special circumstances", and where there is *prima facie* evidence of dumping or subsidisation causing material injury to the domestic industry as a whole.

1.2 Access to import and subsidies data

The availability of import data in Australia is governed by the *Census and Statistics Act 1905*. This requires the Australian Bureau of Statistics (ABS) to preserve the confidentiality of data so that granting full access to import data on a transaction-by-transaction basis, as occurs in some other jurisdictions, is not open to the ABS.

The role of the ABS is to provide high quality statistical information for research and other statistical purposes. In keeping with this, the ABS disseminates a wide range of statistics compiled from both information it collects directly and information initially collected by other organisations, like the Branch.

The ability to collect this information is partially based on retaining the community's trust that the ABS will preserve the confidentiality of information that is likely to enable the identification of an individual business or person. This also ensures that commercially valuable data is not made available to competing firms or industries.

Potential applicants for anti-dumping or countervailing measures have reported difficulty in constructing applications because of the ABS practice of suppressing certain information in import statistics.

The Government recognises the benefits that would flow to potential applicants from increased access to ABS maintained import data. Availability of import statistics for clearly defined categories of goods would improve the accuracy of applications from Australian industry. It would also give applicants a better idea of whether to commit time and resources to lodging an application for measures.

The Branch will work with the ABS and the International Trade Remedies Forum (the Forum) to examine options for providing, on a customised cost-recovery basis, the alternative presentation of statistics that may be more useful to applicants in anti-dumping cases (see 7.1). This proposal builds on recommendation 7.9 of the Productivity Commission.

Nonetheless, detailed import data is not required to make an application for measures. Applicants need to provide enough data to make a *prima facie* case that dumping or subsidisation is occurring (and has caused injury to the Australian industry). Applicants can use market intelligence to estimate import volumes and provide estimates of export prices by deducing export prices from known selling prices in Australia, less an estimate of the importer's profit, costs in Australia and overseas freight. The SSO (see 1.1) may assist applicants with this process.

This practice will be clarified in the Customs Dumping and Subsidy Manual (the Manual) and in the other information provided to potential applicants for measures.

Further, to assist applicants seeking the imposition of countervailing measures, the Branch will develop and maintain a subsidies register. The register will be published on the Customs and Border Protection website and will provide a summary of subsidy programs previously investigated by the Branch. It will also outline the basis for its determinations as to whether or not each individual subsidy was an actionable subsidy. Where relevant, the register may also refer to subsidies found by other countries (see 4.6).

1.3 Investigation and injury periods

For the Branch to apply measures there must be evidence that the dumping or subsidy has caused material injury to the domestic industry. The Branch has commonly used 12-month investigation periods for dumping assessments, and three full years plus any subsequent and incomplete year, for injury analysis.

The WTO ADAs do not specify how long the investigation period should be, or specify the length of the injury period for an investigation. However, the current Branch approach is consistent with the recommendation of the Anti-Dumping Committee of the WTO that the period for data collection for dumping analysis should normally be 12 months, and in any case, no less than six months (that is, the investigation period). This period should end as close to the date of initiation as is practicable. Further, the period of data collection for injury analysis should normally be at least three years, including the investigation period.

Some stakeholders have indicated concerns that these requirements are unduly onerous.

The Branch will advise the Government, after consultation with the Forum, how to clarify the circumstances in which, consistent with our international trade obligations, it may be appropriate for Customs and Border Protection to deviate from its normal practice. The Manual will be revised accordingly.

1.4 Review of measures

Once imposed, measures can be periodically reviewed to ensure they are only in force for as long as and to the extent necessary to counteract the injurious dumping or subsidisation. This may occur no more than once in any 12-month period on the initiation of an affected party, or if initiated by the Minister, at any time.

Presently, the work involved in a review is said to be as significant as for the original investigation, arguably deterring parties from seeking a review.

The Government will enable businesses to apply for a partial review of measures. A partial review need not be comprehensive in terms of the exporters covered, or the variable factors or injury considerations examined.

The scope of the review will be specified in the notice of initiation of the review. This will provide the flexibility to reflect the scope and complexity of the particular review, rather than the current one-size fits all approach, reducing costs for business and the system overall. It will make it easier for parties to seek a review of measures.

The changes to the review provisions, which will enhance the existing market driven approach, are preferable to an automatic annual review, as recommended by the Productivity Commission (recommendation 6.5).

An annual review of measures would significantly increase compliance costs for Australian businesses, as well as the administrative costs to Government. Businesses affected by measures should continue to have the opportunity to apply for a review if they consider the measures are out of date rather than being compelled to participate in a costly exercise every year.

The new review procedures will require legislative amendment and will be consistent with Australia's international trade obligations. The new procedures are compatible with the Government's proposal before Parliament, which relates to the revocation provisions in the *Customs Act 1901*.

1.5 Close processed agricultural goods

Under the Customs Act, section 269T(4B) "like goods" can be "close processed agricultural goods" (CPAG) if the Minister is satisfied that:

(a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods, and

(b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods, and

(c) either:

(i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods, or

(ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be, constituted by the cost to the producer of those goods of the raw agricultural goods.

These provisions were introduced in 1991 to provide remedies for primary producers, who can be injured by dumping or subsidisation of goods that are like those manufactured by the processors to whom they sell their product.

Concerns have been raised with the present narrow definition of CPAG, particularly because primary producers cannot alone apply for measures against a dumped processed product. It has been argued that processors of a dumped agricultural product have a powerful incentive not to support anti-dumping actions, because the processor benefits from the low dumping price.

The Government is aware of concerns with the operation of the current legislative provisions relating to CPAG and believes that an examination of the provisions is warranted.

The Branch will convene an agricultural products working group comprising industry representatives and agencies to examine the provisions and report to Government. This relates to the Productivity Commision's recommendation 6.1.

2. Improved timeliness

2.1 More resources

Presently, there are 31 Customs and Border Protection staff involved in administering the ADS. This will be increased to 45 over the next 12 months.

Staff are involved in:

- conducting anti-dumping investigations, including reviews of measures, continuation inquiries and duty assessments (Operations)
- providing support to investigations by providing quality assurance, industry liaison, management of administrative and judicial review, and monitoring compliance (Operations Support)
- providing advice on policy and legislative issues, international liaison and engagement and strategic communication (Policy and Capability), and
- involved in the reforms to the ADS (Strategic Review).

Some stakeholders are of the view that the Branch needs more resources and this was acknowledged by the Productivity Commission (recommendation 7.5).

The Government agrees that maintaining an effective capability within the Branch is fundamental to the delivery of a timely and effective ADS.

The recruitment of an additional 14 staff, will boost the Branch's capabilities and provide for better decision-making.

The Senate Economics Legislation Committee recommended that the Government re-examine the statutory timeframes because investigations have exceeded existing timeframes. The Government believes that the better approach is to increase resources.

2.2 Process for providing evidence

Presently it is open to all parties to an anti-dumping investigation to make submissions at any time prior to the Branch issuing the Statement of Essential Facts (SEF), and again in the period between issuing the SEF and making the final report to the Minister.

This can result in parties manipulating the process to leave inadequate time for the other parties to respond to issues raised in their submissions. This is particularly the case where parties do not provide or approve non-confidential versions of a document early enough to allow a considered response.

The Branch will work with the Forum to develop guidelines based upon the existing legislative process, and consistent with Australia's international trade obligations, to ensure all interested parties have adequate time to respond to submissions and the Branch reports at the earliest opportunity.

The Government expects that this will result in quicker final reports to the Minister and accordingly quicker resolution of anti-dumping matters (see also 2.4). It will also provide greater certainty for parties to anti-dumping investigations, and avoid perceptions that natural justice has not been afforded when parties make late submissions.

The Branch will also consult with the Forum and make recommendations to Government about further improving the process for providing evidence. Further changes would be likely to

require legislative amendment. Any changes will be consistent with Australia's WTO obligations.

2.3 Earlier consideration of provisional measures

During the course of an investigation, the Branch may apply provisional measures on imports if they have made a preliminary affirmative determination (PAD) of dumping or subsidisation and consequent injury, and have judged that the measures are necessary to prevent injury being caused while the investigation continues.

The provisional measures typically take the form of a bond or security equal to the product of the preliminary estimate of the dumping or subsidy margin (per unit) and the quantity of imports. These are documentary securities.

The Customs Amendment (Anti-Dumping) Bill proposes to allow the application of provisional measures from day one of investigations. However, the WTO only allows provisional measures to be applied 60 days after the initiation of an investigation.

On average, the Branch has applied provisional measures around day 140 of the investigation, with the earliest at day 80. This is because the Branch has usually waited until completion of verification visits to exporters before making a PAD.

Stakeholders have expressed concern that this does not adequately prevent injury to Australian manufacturers and producers during the investigation, particularly given the length of time it can take to bring an application for anti-dumping or countervailing measures.

The Productivity Commission recognised the need for earlier application of provisional measures where warranted (recommendation 6.3) and the Government believes that earlier provisional measures will better prevent injury to Australian manufacturers and producers during the investigation.

The Branch will therefore consider making a PAD when it has adequate information, without necessarily waiting to verify all data. By day 60 (the earliest WTO consistent date a PAD can be considered) the Branch will usually have verified the domestic industry's data, and will have received data from the exporters.

If the data submitted by the exporters shows evidence of dumping or subsidisation, this may be sufficient evidence on which to base a PAD prior to verification. Exporters will be given adequate opportunity to respond to questionnaires before a PAD is considered.

Before provisional measures are imposed, the Branch will still need to have made a PAD of dumping or subsidisation and consequent injury, and have judged that the measures are necessary to prevent injury being caused while the investigation continues.

If as a result of verification the Branch finds no dumping or a lower dumping margin, the Branch can remove or adjust the level of the provisional measures. If at the conclusion of the investigation duties are imposed at a higher level than the provisional measures, the Branch can not retrospectively collect more duty than the value of the provisional measures.

This proposal can be implemented through changes to the Manual.

2.4 Time limits for Ministerial decisions

Unlike all the other decisions and processes in the ADS there are currently no legislative time constraints governing the Minister's decision.

There are clear benefits in imposing a time limit on Ministerial decision-making, providing greater certainty for parties, and ultimately reducing the overall timeframe to conclude an investigation.

The Government will adopt the Productivity Commission's recommendation (recommendation 7.4) and, subject to extenuating circumstances, the Minister will make a decision within 30 days of receiving the report on an investigation, continuation inquiry, review of measures, duty assessment, or report following a review of a decision.

This will require legislative change.

3. Enhanced decision-making

3.1 Greater use of experts

The Branch comprises people with a range of skills critical to anti-dumping investigations, including law, economics and accounting.

However, parties who have been involved in investigations have expressed concern that the Branch does not have specific in-house expertise in relation to the wide range of products, industries and countries in which anti-dumping investigations take place.

It is not feasible for any organisation the size of the Branch to have both the depth and breadth of expertise required by the diversity of investigations. Instead the Branch will bring in independent experts to supplement existing staff knowledge in complex cases and to provide advice on key issues. This might include issues such as determinations of like goods, production processes and costs, accounting arrangements, statistical analysis, economic modelling and economic impact studies.

The Branch will access expertise in accordance with a protocol, to be determined by the government in consultation with the Forum and the Branch. The protocol will require experts to declare all potential conflicts of interest, and it will address the need to comply with due process, evidentiary requirements and other relevant WTO obligations.

The use of independent experts should not, subject to extenuating circumstances, impact on the timeframes for making a decision.

It will still be open for parties to an investigation to procure expert opinions in support of their case, which the Branch will assess in making determinations and recommendations to the Minister.

3.2 Particular market situation

The basis for determining whether goods have been dumped is set out in the WTO Anti-Dumping Agreement. Goods are dumped if their export price to Australia is less than their normal value in the country of export.

In determining the normal value for a dumping investigation involving a market economy, the Branch will first look to that country's domestic selling prices. In Australia this approach applies to all WTO members.

Where the domestic selling prices cannot be used because there are no sales in the ordinary course of trade, low sales volumes, or there is a "particular market situation", the normal value may be calculated using one of two alternative approaches.

The most common method used by the Branch is to construct a normal value in the domestic market in the country of export using the exporter's costs. The other is to use export prices to third countries. In certain circumstances, where exporters do not cooperate in an investigation, the Branch may consider "all relevant information".

A number of stakeholders have raised issues with the interpretation of what constitutes a particular market situation.

The Manual currently outlines some relevant considerations for assessing whether a particular market situation exists, however it could provide improved guidance including:

- the relevance and impact of government influence and assistance in respect of key inputs to the product
- circumstances where the proportion of

government owned enterprises might contribute to a particular market situation determination

- other circumstances where government intervention could result in distortion of domestic selling prices, and
- how the Branch will assess particular market situation where the government of a country, or exporters, do not cooperate.

The Manual could also provide improved guidance for determining an appropriate amount for profit when constructing a normal value consequent upon a particular market situation determination.

A working group of the Forum will be established to make recommendations to Government before the end of 2011 about how to improve the effectiveness of the market situation provisions, consistent with our WTO obligations. The working group will include representatives of relevant Government agencies, as well as domestic industry, overseas exporters and domestic importers. In developing these recommendations, the working group may also consider using independent experts. This is consistent with the new approach outlined in 3.1.

3.3 New appeals process

Presently decisions of the Minister may be appealed to the Trade Measures Review Officer, who is an employee of the Attorney-General's Department. The Review Officer must accept an application unless the applicant has failed to provide sufficient particulars of the findings to which the application relates.

Where the Review Officer reviews a decision of the Minister and recommends that a particular finding or findings warrant further consideration, the matter is referred back to the Branch to reinvestigate and make recommendations to the Minister as to whether to overturn or amend the original decision.

A number of concerns have been raised with the current Trade Measures Review Officer arrangements, including:

- the resourcing available
- the frequency of appeals – 80 per cent of Ministerial decisions are appealed to the Trade Measures Review Officer, and
- the perception that the Branch is conflicted in reinvestigating its own decisions.

The Government will establish a new process for administrative appeals to replace the current Trade Measures Review Officer. This new process will be consistent with Australia's international trade obligations and include the following key elements.

The Review Officer will no longer be an officer in the Attorney-General's Department, and in any particular case will be selected from a panel with relevant expertise.

The Minister will appoint the Panel and the Government will make available additional resources, in the form of administrative and research assistance, to support the efficient functioning of the Panel.

Before making a recommendation to the Minister, the Review Officer may request the Branch reinvestigate a particular finding and report to the Review Officer. Where a reinvestigation occurs, it will be limited to the findings the Review Officer has identified as flawed in the initial investigation.

Where the Review Officer finds in favour of an appeal the Review Officer will make a recommendation to the Minister, who will make a final determination.

As part of the new appeals process consideration will be given to amending the threshold for the Review Officer to apply in accepting applications for review. Any new threshold will be consistent with the Government's administrative law policy for merits review.

Other than the changes to the appeals process, the Minister, Review Officer and the Branch will retain their broad administrative and decision-making roles within the anti-dumping system. These reforms are consistent with the approach recommended by the Productivity Commission (recommendations 7.1 and 7.2).

The changes to the appeals process will require legislative amendment.

3.3.1 New information

Where compelling new evidence becomes known to a party after the investigation has concluded, the Minister will be able to exercise existing powers to initiate a review of existing measures or a new investigation, noting that in accordance with the WTO ADAs the latter can only be undertaken in "special circumstances". The proposed changes to extensions of time will also allow consideration of new evidence provided late in the investigation that could not reasonably have been known by the party when the SEF was published by the Branch.

Taking account of new information in an appeal would result in characterising the appeal as a continuation of the investigation. This would result in regularly exceeding WTO investigation time-limits, which would constitute a violation of Australia's international trade obligations and risk Australia becoming subject to dispute settlement litigation and possible retaliation against its exports. Therefore, reviews by the Review Officer and reinvestigations by the Branch will continue to be limited to the information that was part of the original investigation.

3.3.2 Appellable decisions

A number of decisions that are not presently able to be appealed will become appellable. This includes decisions of the Minister to continue measures or not, and to vary measures following review. However, decisions of the Minister on the advice of the Review Officer will only be able to be appealed to the Federal Court.

3.4 Material injury

Australia's domestic legislation (section 269TAE of the Customs Act) reflects the WTO ADA (Article 3.4)[2] which requires:

> "evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

Some stakeholders have suggested that certain injury factors are not adequately considered in

2 A similar provision is contained in the ASCM (Article 15.4)

assessing whether dumping or subsidisation has caused material injury. The impact on jobs and investment in an industry are two such factors. Stakeholders have also expressed the view that profits foregone and loss of market share should also be recognised as injury considerations.

Presently, section 269TAE(3) refers to "the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods".

The Government will amend the Customs Act to reflect that the Minister can consider any impact on jobs in the domestic industry producing like goods, not just the effects currently specified. As well as the wage rate and the number of workers employed, the Branch would be able to consider all aspects of the terms and conditions of the contract of employment, including hours worked and the incidence of part-time employment.

Section 269TAE(3) also refers to investment in the industry, the level of return on investment, and the ability to raise capital. The Government will amend the Customs Act so that the Minister can examine any impact on investment in the industry.

The Government will revise the current Ministerial Direction on Material Injury to confirm that profits foregone and loss of market share in an expanding market are relevant injury considerations. This revision recognises there may be circumstances where dumping or subsidisation may still result in injury where it has caused the rate of an industry's growth to slow, without causing it to contract, or where an industry suffers a loss of market share in a growing market, without a decline in profits.

Some stakeholders consider that the Branch is reluctant to find that dumping or subsidisation has caused material injury where other causes of injury are also evident.

The WTO ADAs require the Branch to examine known factors other than the dumped or subsidised imports that are injuring the domestic industry, and the Branch must not attribute the injury from those other factors to the dumping or subsidisation.

The Branch will amend the Manual to make clear that the mere existence of injury caused by other factors does not preclude a finding that the dumping or subsidisation has caused material injury.

The Branch will also amend the Manual to explain further its approaches to determining whether particular injury is caused by dumping or subsidisation, or other factors, ensuring that the requirements of the WTO ADAs to separate and distinguish the injurious effects of dumped or subsidised imports and the injurious effects of other factors are observed.

3.5 Extensions of time

Australia's ADS contains one of the shortest investigation timeframes in the world, at 155 days.

The Branch can seek an extension to this timeframe during the course of an investigation, but only one extension and only prior to the publication of the SEF at day 110. This can mean that extensions tend to be for significant periods, as the Branch needs to anticipate the possible further need for an extension.

Extensions have been sought in an increasing number of cases and for significant periods of time due to the size and complexity of recent investigations. In general, however, investigations are still being completed within shorter timeframes than other jurisdictions

Consistent with the Productivity Commission's recommendation 7.3, the Government will amend the Act to allow the Branch to seek more than one extension to the timeframe at any point during an investigation, review of measures, continuation inquiry or duty assessment.

The Minister will still have to approve all extensions of time. The Government will monitor the implementation of this proposal carefully to ensure it does not result in a blow out of investigation periods, and that the Branch is seeking extensions only in complex cases, not routinely.

This will enable the Branch to undertake robust analysis where investigations involve particularly complex arrangements, or involve large numbers of countries or interested parties. It will also allow consideration of a response to critical new information that could not reasonably have been provided earlier.

The Branch will notify parties of these extensions through the issue of an Australian Customs Dumping Notice.

The Government expects that increasing the resources available to the Branch (see 2.1) and the new process for providing evidence in anti-dumping cases (see 2.2) will reduce the number of cases that are not able to be resolved within 155 days.

The Branch will continue to provide in its annual report a consolidated summary of the timeliness of each of its investigations in the preceding 12 months.

3.6 Greater transparency

3.6.1 Criteria and methodology used to evaluate applications

Sections 269TB and 269TC of the Customs Act set out the requirements for making an application for publishing a dumping or countervailing duty notice. The Guidelines for Applicants provide further detail on the information that applicants must provide in an application and the circumstances in which an application will not lead to initiation of an investigation. In addition, the Branch has developed internal guidance for staff to assist in the evaluation of applications.

One of the consistent themes in consultation was the need for greater transparency in the Branch processes and decision-making. The Branch will amend the Manual to incorporate the criteria and methodologies that the Branch uses to evaluate applications. This may be of additional value to industry in determining whether to make an application, and how best to make that application.

3.6.2 Reporting on applications

The Branch does not currently report on the applications for measures that it receives.

The Branch will report on the number of applications for measures that do not proceed to investigation. This information will appear in the Customs and Border Protection Annual Report.

This will provide greater transparency about the Branch workload, and incorporates an important aspect of the approach recommended by the Productivity Commission (recommendation 7.7).

However, information about the exporter, country or industry sub-sector involved in an anti-dumping application that did not proceed to investigation will not be included. The WTO ADAs require the Branch not to publicise applications that do not proceed beyond the application stage.

This is to avoid unwarranted market disruption caused by publication of dumping and subsidisation claims and the prospect of the Minister imposing measures in a particular market.

3.6.3 Reporting on measures

Presently the Branch reports the magnitude of dumping and subsidy margins found during its investigations. However it has not usually reported the level of measures imposed, as the values which underpin those measures are based on commercially sensitive information.

A range of views have been expressed regarding whether the Government should provide more information about the magnitude of measures and the values that underpin those measures.

On the one hand, the release of such information can damage the commercial interests of the exporter. On the other, not releasing information can undermine confidence in the outcome of an investigation because of the inability to explain or understand the decision.

The Branch will publish the effective rate of duties for the measures imposed, (that is, the *ad valorem* equivalent of the measure). Consistent with the confidentiality requirements of the WTO ADAs, further information, such as the normal value of $X per kilogram, may only be published with the consent of the party concerned. This level of disclosure accords with the approach recommended by the Productivity Commission (recommendation 7.8).

The Branch will also report publicly on the outcomes of duty assessments and accelerated exporter reviews. This will cover information permitted to be publicly reported by the ADAs and will be included in the existing Branch monthly status report, which is published as an Australian Customs Dumping Notice on the Customs and Border Protection website.

The Government has also considered whether to allow lawyers and accountants to access commercial-in-confidence information under an “administrative protection order” or similar confidentiality agreement. However, it has been decided that this would add substantially to the costs for parties to anti-dumping actions, without commensurate benefits.

4. Consistency with other countries

4.1 Amending subsidies provisions

Provisions in the WTO ASCM specify the types of government subsidies that can be actioned by another country. The Howard Government failed to establish appropriate sunsetting arrangements in Australian law, for certain previously non-actionable subsidies that are now actionable under WTO rules. As a result, Australian companies cannot currently seek remedies in relation to these subsidies.

The Government will amend the Customs Act to reflect all countervailable subsidies including certain assistance:

- for research activities conducted by firms or by higher education and research establishments
- for disadvantaged regions pursuant to a general framework of regional development
- to enable firms to adapt to new environmental requirements, and
- for a variety of government programs that provide services or benefits to agriculture.

The Government will make further legislative amendments to better reflect other aspects of the ASCM.

This proposal addresses the Productivity Commission's recommendation 6.8.

4.2 Uncooperative parties

The Branch obtains information necessary to make determinations about the existence of injury, and dumping or subsidies through interested party questionnaires.

Consistent with the WTO ADAs, where a party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, determinations may be made on the basis of all relevant information. This may include information provided by the domestic industry and information from surrogate countries.

Presently, there is a perception that comparable jurisdictions take a firmer view than Australia in determining whether an importer, exporter or government is non-cooperative.

The Government will strengthen and clarify the approach to determining interested party cooperation.

The Branch will revise the Manual to clarify the circumstances in which a finding of non-cooperation may apply, and the consequences that may follow. In doing so, the Branch will take into account Australia's international obligations.

This will deter the selective provision of information and provide a fairer basis for assessing whether dumping or subsidisation is occurring. It does not affect the process for determining a dumping margin for a cooperating exporter.

The Branch will also examine the approach that the European Union (EU) applies to determine dumping margins depending on whether cooperating exporters from a particular country account for a high or low proportion of the total export volume to the EU from that country. In general terms, where cooperating exporters represent 80 per cent or more of the volume, information from those exporters will be used when working out a margin for the non-cooperating exporters in that country.

Where the cooperating exporters account for less than 80 per cent of the volume of exports, the margin for non-cooperative exporters will be determined using all relevant available information.

The Branch will consult with the Forum and recommend to Government whether a similar approach should apply in Australia.

4.3 Non-injurious price and the lesser duty rule

In applying anti-dumping and countervailing duties, the amount of duty is normally determined after applying the lesser duty rule. Application of the lesser duty rule means that duties are applied at the level adequate to remove the injury caused by dumping or subsidies, which may be a level less than the full dumping or subsidy margin. The Branch determines the lesser duty by calculating a "non-injurious price".

The Manual currently outlines a hierarchy of options, developed in 2004, for determining the non-injurious price. Initially, the Branch will look to the selling prices at a time unaffected by dumping. If there are sound reasons for not taking this approach, the Branch will construct a price based on the domestic industry's cost to make and sell, with an allowance for profit. Finally, if that is not appropriate, the selling price of any imports that have not been dumped in the Australian market will be used.

Concerns have been raised that the Australian approach to determining the non-injurious price, upon which the lesser duty is based, should be improved to ensure injury to Australian industry is adequately addressed. Injury to Australian industry can take different forms. It could have effects on volume, price, profits or a range of other economic factors.

Before finalising the details of an approach to calculating non-injurious prices the Branch will consult with the Forum and advise Government of factors relevant to the determination of non-injurious prices. Revised guidelines will be developed for assessment of such prices and appropriate amendments will be made to the Manual.

Provided the non-injurious price is properly determined, routine application of the lesser duty rule ensures Australia's anti-dumping and countervailing system is effective in remedying injurious dumping or subsidisation, while minimising the impact of measures on the wider economy. The Government believes that this approach is appropriate and economically responsible, and does not propose to change the application of the lesser duty rule.

To improve transparency, the Branch will also report annually on the number of cases where the lesser duty rule has resulted in the imposition of duties less than the full dumping or subsidy margin.

Once duties have been imposed, importers of goods subject to duties have the right to periodically apply for refunds where duty has been paid in excess of the amount of duty payable.

The Branch currently considers the lesser rate of duty at the refund stage. Other jurisdictions provide a refund only where the duty paid is in excess of the full margin of dumping, even where the original duty was imposed based upon the lesser duty rule. The Branch will examine the practices of other jurisdictions and Australia's international trade obligations, and consult with the Forum in determining whether Australia should adopt a similar approach. Such a change would require legislative amendment.

A revised approach to determining the non-injurious price would permit more flexible consideration of relevant factors, tailored to provide a more effective remedy for the injury caused by dumping that has been found in a particular case. This could include, for example, Australian industry's costs, prices, profits and returns on investment.

4.4 Parties to proceedings

An "interested party" to an investigation is currently defined in section 269T of the Customs Act to comprise, in broad terms, domestic manufacturers and producers, importers, exporters, trade organisations and foreign governments.

Some submissions to Government have made the point that in the present system certain stakeholder groups are not properly engaged in anti-dumping investigations.

The Government will amend the current definition to clarify that industry associations, trade unions and downstream industry (whether or not they are an importer) who have a direct interest in a particular matter should be treated as interested parties and confirm that these parties can formally participate in an investigation.

This change will not affect the present standing requirements. The Branch will only be able to initiate investigations in the same way that it can now. Usually, the application must meet the "25 per cent of domestic producers of like goods" and "more support than opposition" thresholds for applications required by the WTO ADAs. Alternatively, the Minister may initiate an investigation. Consistent with the WTO ADAs, the Minister may initiate an investigation only if there are "special circumstances", and only where there is *prima facie* evidence of dumping causing material injury to the domestic industry as a whole.

The Government will consider further amendments to allow these parties to participate in reviews as part of the reforms of the appeals process (see 3.3).

4.5 Setting the form of duty

The WTO ADA does not prescribe what form a duty should take. It could be for example an *ad valorem* (percentage) duty, a fixed amount of duty, a combination duty (having fixed and variable components), or a floor price.

Presently, Australia's dumping duty is a combination duty. The effect is to impose an up-front duty that is never less than the fixed component of the duty regardless of the level of the actual export price (the variable component of the duty applies where the actual export price falls below the floor price).

While a combination duty has certain benefits it will not suit all circumstances. This is especially the case where export prices are subject to frequent variation, which may result in the amounts ascertained at the conclusion of an investigation becoming outdated.

Further, where prices are rising, the protective effect of the fixed duty component can be eroded. Where a large number of types and models are subject to an investigation, ascertaining amounts for each type increases administrative costs and complexity.

Other jurisdictions (including Canada, the EU, and the USA) commonly apply *ad valorem* dumping duties. They also retain the right to vary the type of dumping duty, recognising that a particular case may require a different type of duty.

The Productivity Commission recommended a rigid approach based upon a floor price in all cases (recommendation 6.6).

The Government is proposing that the Australian ADS will take a more flexible approach to the form a duty can take, to increase the effectiveness of anti-dumping duties. Depending on the facts of the particular case, the Branch will be able to apply, for example, an *ad valorem* duty, a fixed amount of duty, a combination duty, or a floor price. This will reflect the range of options available under the WTO Agreements.

The Branch will also re-calculate the level of measures when conducting a continuation inquiry. This will remove the need for separate review and continuation inquiries occurring in close proximity.

The above changes will require legislative amendment.

The Government will retain a duty assessment system consistent with our obligations under the WTO Agreements. Abolishing the provisions for importers to apply for a determination of their final duty liability and a refund of any overpaid duties would be inconsistent with mandatory provisions of the WTO ADAs.

4.6 Consideration of cases and practices in other jurisdictions

Some stakeholders have expressed the view that the Branch does not adequately consider the findings of other dumping administrations in conducting its investigations. The Branch is required to conduct its own investigation to determine whether dumping or subsidies are causing material injury to Australian industry. Outcomes of investigations undertaken in other jurisdictions may not align with an investigation conducted under the ADS for a range of reasons, including differences in the legal frameworks, domestic markets, goods being investigated, parties involved in the investigation and periods examined in determining whether goods have been dumped.

However, in particular cases, it is sensible to consider relevant information from other jurisdictions, for example:

- subsidies found to be operative on particular industries in particular countries, and
- the existence of measures in other jurisdictions as a factor that may indicate the likelihood of dumping recurring should measures be removed in Australia.

While this has generally been the practice of the Branch to some degree, it will in future specifically consider details of relevant cases in comparable jurisdictions, and include this information in investigation reports to the Minister. This reflects an approach recommended by the Productivity Commission (recommendation 7.6).

It is also important that the Branch is conducting investigations and reviews of measures consistent with practice in comparable jurisdictions. The Branch will undertake regular reviews of anti-dumping practices in comparable jurisdictions to inform future policy and practice changes, including through technical exchanges with dumping administrations overseas.

5. Stronger compliance

5.1 Compliance monitoring

Non-compliance with anti-dumping and countervailing duties undermines the effectiveness of trade remedies. Anti-dumping and countervailing duties are applied in order to offset injurious dumped or subsidised imports. However, such measures are rendered meaningless if importers are allowed to avoid paying applicable duties.

An importer may try to avoid paying duties by deliberately misdescribing goods on import or claiming that the goods have been supplied by an exporter with a lower rate of duty. The Branch has a range of powers under the Customs Act to address this behaviour and ensure that goods have been correctly reported to Customs and Border Protection and the correct amount of duty paid.

Presently, the Branch reacts to market feedback about possible non-compliance and conducts a limited number of proactive compliance monitoring programs.

Stakeholders have indicated that the degree of compliance monitoring conducted by the Branch could be improved.

A dedicated position will be created within the Branch to develop and implement an improved program of monitoring compliance with anti-dumping and countervailing measures.

The program will strengthen the existing compliance function by proactively:

- identifying, assessing and responding to non-compliance (such as not paying duties or the right amount of duty) with anti-dumping and countervailing measures
- monitoring key indicators (such as import data, commercial documentation) for anomalies that could indicate non-compliance, and
- assisting importers and others to comply with border laws regarding anti-dumping and countervailing measures and encouraging compliance across industry groups.

The Government intends that the compliance-monitoring program will include initial monitoring of measures shortly after their imposition to ensure early compliance and assist importers meet their obligations, followed by periodic monitoring throughout the life of the measures.

5.2 Anti-circumvention framework

Presently, where importers change their behaviour following the imposition of measures in an attempt to circumvent those measures, the Branch will use existing powers to address non-compliant behaviour insofar as it may breach the current legal framework as described in the previous section (see 5.1).

However, the present system does not contain a meaningful framework for identifying and taking action in respect of circumvention where an importer or exporter:

- makes a slight modification to a product to make it fall outside of the description of the goods subject to the measures
- imports a consignment of the product subject to measures via a third country
- reorganises export sales through exporters benefiting from a lower individual duty rate, or

- purchases parts and assembles them in Australia or a third country.

Some stakeholders have expressed concern about the current ability of importers to circumvent anti-dumping and countervailing duties in this way.

The Government will introduce a framework to specifically prevent the circumvention of duties, which could include measures to address the circumstances described above.

This framework will be developed by the Government in consultation with the Forum and informed by a consideration of the anti-circumvention regulations of comparable overseas administrations. Implementation will most likely require legislative amendment, and will be consistent with Australia's international trade obligations.

6. Other matters

6.1 "Bounded" public interest test

The Productivity Commission's proposed "bounded" public interest test (recommendation 5.1) provided that anti-dumping or countervailing measures would automatically not be imposed where one of five criteria was met.

The Government will not adopt this proposal. It is a costly and disproportionate response to the possible consequences that might arise from the small number of anti-dumping and countervailing cases brought in Australia each year.

The purpose of the ADS is to provide redress for manufacturers and producers injured by dumping or subsidisation. A public interest test could unfairly remove the remedy available to those manufacturers and producers.

The Government did consider a number of other options for taking account of the wider impact of measures. However, any such approach would undermine the purpose of the ADS for Australian manufacturers and producers. It would increase the cost and complexity of the ADS, and the Government believes it would increase business uncertainty, affecting investment decisions.

The Minister currently has an unfettered discretion not to impose measures. The Government believes this is adequate for the Minister to take account of the public interest when circumstances warrant broader matters be considered, subject to the changes outlined in 6.2.

6.2 Minister's discretion

As indicated in 6.1, the Minister has an unfettered discretion not to impose measures. In reporting its findings to the Minister, the Branch will now include an assessment of the expected effect that any measures might have on the Australian market for the goods subject to those measures, and like goods manufactured in Australia, and in particular any potential for significant impacts on this market.

Potential market impacts and relevant factors are likely to differ in each case. However, the additional assessment that Customs and Border Protection will provide the Minister may include matters such as an assessment of the expected effect of any measures on market concentration and domestic prices. Customs and Border Protection will also report on any claims regarding impacts on downstream industries.

This is not expected to affect current investigation processes or timeframes, or the information requirements on business.

The Branch already examines the effect on the market in determining the causes of injury to the industry and in determining the non-injurious price, and it is now proposed the Branch will provide the Minister with information specifically on these matters.

The Minister will provide a direction to the CEO of Customs and Border Protection to give effect to this approach, which is intended to better inform the Minister prior to making a decision whether to impose anti-dumping or countervailing measures.

6.3 Continuation of measures

Where anti-dumping or countervailing measures have been imposed they remain in force for five years unless earlier revoked. After five years there is an opportunity for Australian industry to apply to have the measures continued for a further five years. There is no restriction on the number of times measures can be continued.

The Productivity Commission's recommended that continuation of measures be limited to one three-year term (recommendation 6.4).

The Government considers that current arrangements relating to the continuation of measures are appropriate. They are the same as all of our major trading partners and are consistent with the WTO ADAs. Measures are not intended to be long-term protection for industry. Rather they are to combat unfair trading practices.

Under the WTO ADAs, measures may only remain in force as long, and to the extent necessary to counteract injurious dumping or subsidisation. Measures should not cease where injurious dumping or subsidisation is occurring, or likely to recur, if measures are removed.

The Government does not consider it appropriate to introduce an arbitrary limit on the duration of measures and therefore does not support the Productivity Commission's recommendation. If industry is required to bring a new application, even if dumping or subsidisation is still occurring, then Australian manufacturers would be vulnerable to material injury caused by dumping or subsidisation for a period of up to two years before measures could be imposed again.

Successful applications for the continuation of measures are infrequent. Over the past five years, 46 measures were due to expire. Applications for continuation were made in 20 cases, and only eight of these cases resulted in continuation of the measures.

While the average duration of measures has risen recently, it is not attributable to being lax in granting extensions. It is a result of the falling number of new measures in recent years. If the number of new measures falls continuously, as it has since the 1980s, the sample from which the average duration is measured will come to be dominated by older measures, so that average duration rises without there being any change in the expected duration of measures at their introduction.

6.4 Zeroing

Zeroing refers to a particular method to calculate dumping margins in which a negative (less than zero) dumping margin for a particular model or transaction is discounted and instead allocated a "zero margin". This practice inflates the dumping margin, thereby increasing the likelihood of a finding of dumping.

Australia has a long-standing practice of not zeroing in calculating dumping margins and, consistent with the recommendation of the Productivity Commission (recommendation 6.2), the Government does not propose to change this approach.

6.5 Onus of proof

Some members of the Senate Economics Legislation Committee have supported further consideration of a reversal of the onus of proof in determining whether dumping is occurring, and whether dumping is the cause of injury, as proposed in the Customs Amendment (Anti-Dumping) Bill.

This proposal cannot be supported by the Government. It is not compliant with our WTO obligations, particularly the WTO requirements for objective examination and positive determinations by the investigating authorities.

However, the Government has recognised the concerns raised by industry about the information provided by parties, and is proposing changes accordingly (see 4.2).

Similarly, the Government understands the desire for clarification of how the Branch determines whether injury is caused by dumping or other factors (see 3.4).

7. Implementation

7.1 International Trade Remedies Forum

There is currently no stakeholder body to provide feedback to Government on the operation of the ADS.

The Government will establish the International Trade Remedies Forum to provide strategic advice and feedback to the Government on the implementation and monitoring of the proposed reforms. It will also play an ongoing advisory role, including reporting to Government on options for further improvements.

The Forum will comprise representatives of manufacturers, producers, and importers, as well as industry associations, trade unions and relevant Government agencies.

The Forum and its role will be established in legislation.

7.2 New case management system

The Branch will introduce an integrated case management system and electronic public record to enable faster dissemination of case information to parties, improving the timeliness of anti-dumping decisions.

The new case management system will replace the current Electronic Public Record and Customs and Border Protection's anti-dumping webpage with a single source of information for policies, procedures, and individual cases. It will also improve the consistency of the Branch decision-making by making information about all cases readily accessible.

7.3 Timing

Many of these proposed reforms can be achieved through an alteration of the Branch practice, and corresponding changes to practice guidelines (primarily in the form of the Manual). These proposed reforms should take effect as soon as practically possible, consistent with the views of the Productivity Commission (recommendation 7.10), allowing for consultation and feedback from interested businesses, industry associations and trade unions.

Other reforms will require legislative amendment. Priority legislative changes will be introduced as soon as possible, while others will be introduced following consultation through the Forum.

The Government will ensure that these reforms are implemented consistent with Australia's international trade obligations.

The Forum (see 7.1) will be consulted on implementation.

7.4 Independent review

There will be a broad and independent public review of the ADS five years after the reform package is fully operative to examine, among other things:

- whether experience reveals any gaps or deficiencies in the tests applied in determining applications for anti-dumping and countervailing measures
- the need for any further changes to the legislative architecture of the ADS

- the administrative efficiency of the Branch, the appeals mechanism and the Minister in administering the ADS, and whether any change to their responsibilities is warranted in the light of experience
- whether resourcing of the assessment and appeals procedure is adequate and appropriate
- what changes, if any, are required to the statutory timeframes for the conduct of investigations, or to the related provisions governing extensions to those timeframes
- the effectiveness of the changes to the public reporting requirements in promoting more transparent decision-making and outcomes, while continuing to provide appropriate protection for commercially sensitive material submitted by the parties, and what more can be done in this regard
- whether there have been changes to overseas anti-dumping regimes that are relevant to the Australian system, and
- any unintended consequences of the reform package.

The proposed review accords with the approach recommended by the Productivity Commission (recommendation 7.11). It is anticipated that it will be conducted by an independent and highly respected person with extensive experience of the ADS.

Response to Productivity Commission recommendations

Recommendation		Response	Ref
5.1	Introduce a public interest test	Not accept	6.1
6.1	Establish a working group to examine the close processed agricultural goods provisions	Agree	1.5
6.2	Not adopt the practice of zeroing	Agree	6.3
6.3	Earlier consideration of provisional measures	Agree in principle	2.3
6.4	Change arrangements for continuation of measures	Not accept	6.2
6.5	Replace the current review of measures and administrative review provisions with an automatic annual review	Not accept	1.4
6.6	Modify the basis for collecting anti-dumping and countervailing duties	Not accept	4.5
6.7	Replace the current arrangements for revocation of measures with the annual review provisions	Not accept	1.4
6.8	Update Australia's actionable subsidies to align with the latest relevant World Trade Organization agreements	Agree	4.1
7.1	Retain the broad administrative and decision-making roles of Customs, the Minister and the Trade Measures Review Officer	Agree in part	3.3
7.2	Make changes to the current appeal arrangements for anti-dumping decisions	Agree in part	3.3
7.3	Allow Customs to seek extensions of the investigation period at any time during an investigation	Agree	3.5
7.4	Introduce a 30 day time-limit for the Minister to make decisions	Agree	2.4
7.5	Provide adequate resourcing for Customs and Border Protection and the Trade Measures Review Officer	Agree	2.1 3.1
7.6	Advise the Minister in investigation reports of the details of comparable recent cases in other countries	Agree	4.6
7.7	Improve reporting on applications for anti-dumping measures	Agree in part	3.6.2
7.8	Publish the maximum amount of information on the magnitude of individual anti-dumping and countervailing measures	Agree	3.6.3
7.9	Consult with the Australian Bureau of Statistics regarding better access to import data	Agree	1.2
7.10	Implement reforms of the anti-dumping system as soon as practically possible	Agree	7.3
7.11	Review these reforms five years after implementation	Agree	7.4

Glossary

ABS	Australian Bureau of Statistics
Actionable subsidy	A subsidy as defined in the ASCM in respect of goods exported to Australia
***Ad valorem* duty**	A percentage rate of dumping or countervailing duty, for example X per cent of the export price
ADA	WTO Anti-Dumping Agreement
ADAs	Anti-Dumping Agreements – refers to the WTO ADA and the WTO ASCM
ADS	Anti-dumping system – refers to the anti-dumping and countervailing system
All relevant information	All facts available to Customs and Border Protection upon which it can base a particular finding
Applications	Anti-dumping or countervailing applications
ASCM	WTO Agreement on Subsidies and Countervailing Measures
Branch, the	Trade Measures Branch – to be renamed the International Trade Remedies Branch
Customs	Australian Customs and Border Protection Service
Combination duty	Dumping duty with both fixed and variable components
CPAG	Close Processed Agricultural Goods
Countervailing	The remedy taken in response to actionable subsidies, usually in the form of a duty
Dumping	Where the export price of goods exported to Australia is less than their normal value
Export price	The price at which goods are exported to Australia
Fixed duty	A fixed amount of dumping or countervailing duty, for example $X per kg
Floor price	The minimum price at which exporters can export goods to Australia before incurring a variable component of dumping duty

Forum, the	International Trade Remedies Forum
Investigations	Anti-dumping or countervailing investigations
Lesser duty rule	Applying an amount of dumping or countervailing duty (based on the non-injurious price) less than the full dumping or subsidy margin, where the lesser amount is considered sufficient to remove the material injury caused by the dumping or subsidisation
Like goods	Goods that are identical or closely resemble the allegedly dumped or subsidised goods
Manual, the	Customs and Border Protection Dumping and Subsidy Manual
Measures	Anti-dumping or countervailing measures
Minister	Minister for Home Affairs
Non-injurious price	The minimum export price necessary to prevent the material injury caused by dumping or subsidisation
Normal value	In relation to goods exported to Australia, the normal value is the comparable price for like goods sold in the country of export – can be based on an actual selling price or a constructed price
PAD	Preliminary Affirmative Determination
Particular market situation	A particular situation in the market of the country of export that renders actual selling prices unsuitable for normal value
SEF	Statement of Essential Facts
SMEs	Small and medium enterprises
SSO	SME Support Officer
Variable component of duty	The amount by which the actual export price of goods exported to Australia is less than the floor price
WTO	World Trade Organization
Zeroing	The practice of setting a negative dumping margin to zero, the effective result of which is to disregard undumped goods in determining the dumping margin on a weighted average basis