



STREAMLINING AUSTRALIA'S ANTI-DUMPING SYSTEM

The improvements summarised here are the result of extensive stakeholder consultation, consideration of the Productivity Commission Inquiry Report No. 48 of 18 December 2009 *Australia's Anti-dumping and Countervailing System*, and consideration of the Customs Amendment (Anti-Dumping) Bill 2011.

The changes will improve access to the anti-dumping system for businesses, improve timeliness of decisions and the quality of the decision-making process.

The changes are in line with Australia's World Trade Organization (WTO) obligations. They will also provide greater consistency with the anti-dumping systems of other jurisdictions such as Canada, the EU and the USA, and deliver stronger compliance mechanisms.

THE IMPROVEMENTS AT A GLANCE

Better access to the anti-dumping system

Access to the anti-dumping system will be improved by:

- supporting SMEs and downstream manufacturers and producers to actively participate in anti-dumping investigations with a new Support Officer resource, based within a major industry association
- improving access to import and subsidies data, and clarifying the data requirements for making an application
- clarifying circumstances in which shorter than normal investigation and injury periods may apply
- providing a more flexible basis for parties wishing to seek a review of existing measures
- examining the best way to resolve the problems faced by primary producers in accessing the anti-dumping system.

Improved timeliness

Timeliness in administering the system will be improved by:

- increasing resources in the Branch responsible for administering the system by 45 per cent
- developing guidelines to improve the timely provision of information and ensure all interested parties have adequate time to respond to submissions
- allowing the earlier consideration of provisional measures
- imposing a time limit of 30 days on Ministerial decision-making.

Improved decision-making

Decision-making will be improved by:

- greater use of external expertise during investigations
- introducing a more rigorous appeals process
- clarifying the list of injury factors that can be claimed by domestic industry to include any impact on jobs or investment
- clarifying the approach to injury determinations
- providing flexibility in allowing extensions of time to complete complex cases, and to allow consideration of critical new information that could not reasonably have been provided earlier
- ensuring greater transparency by making the criteria and methodologies used to evaluate applications and certain reports on measures publicly available
- considering options to improve the effectiveness of the "particular market situation" provisions.

Consistency with other countries

Greater consistency with other countries will be achieved by:

- allowing all countervailable subsidies to be actionable under Australian law
- strengthening and clarifying the approach to determining non-cooperation
- consulting on a flexible approach to calculating the non-injurious price to take account of all relevant considerations
- clarifying in legislation the definition of “interested party” to include industry associations, trade unions and downstream industries
- taking a more flexible approach to setting the form a duty can take so that it reflects each case more appropriately
- considering details of relevant cases in comparable jurisdictions.

Stronger compliance

Our compliance mechanisms will be strengthened by:

- developing and implementing an improved compliance-monitoring program
- introducing a framework to specifically prevent the circumvention of duties.

IMPLEMENTATION

The Government will establish the International Trade Remedies Forum (the Forum) to oversee the implementation of the reforms and monitor their effectiveness. The Forum will comprise representatives of relevant Government agencies, as well as domestic industry, overseas exporters, downstream users and domestic importers. This Forum will be recognised in legislation.

Improvements that can be achieved through an alteration of current practices will take effect as soon as practically possible, allowing for consultation and feedback from interested businesses, industry associations and trade unions.

It is anticipated that the majority of other changes will be implemented within six to 18 months, subject to the successful passage of legislation.

Reforms that require legislative amendment will take more time. Priority legislative changes will be introduced as soon as possible, while others will be introduced following consultation with the Forum.

Customs and Border Protection will also introduce an integrated case management system and electronic public record to enable faster dissemination of case information to parties. This electronic system will be a single source of information for policies, procedures and individual cases.

There will be a broad and independent public review of Australia's anti-dumping system five years after the reform package is fully operative.

KEY IMPROVEMENTS

Support for SMEs and Downstream Industry

A SME Support Officer (SSO) will be established, as a two-year pilot, within a major industry association. The SSO will work with businesses to enable them to prepare applications and satisfy initial evidentiary requirements. The SSO will also monitor downstream industries that may be affected by measures that have been put in place.

Earlier consideration of provisional measures

Customs and Border Protection may only 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.

Earlier provisional measures will better prevent further injury to Australian producers. Exporters will be given adequate opportunity to respond to questionnaires before a PAD is considered.

New appeals process

A dedicated Review Officer (RO) will be selected from a panel with relevant expertise, and will be supported with administrative and research assistance and external expertise as required.

Before making a recommendation to the Minister, the RO may ask Customs and Border Protection to reinvestigate a particular finding and report to the RO. Where a reinvestigation occurs, it will be limited to the findings that the RO has identified as flawed in the initial investigation.

Where the RO finds in favour of an appeal, the RO will make a recommendation directly to the Minister.

Changes to non-injurious price

It is proposed to consult the Forum regarding a flexible approach to calculating the non-injurious price. Instead of following a hierarchy, Customs and Border Protection would be able to consider all relevant factors, such as the Australian industry's costs, prices, profits and return on investment.

This proposal is not expected to change the factors under consideration, just the manner in which they are considered, resulting in more effective remedies tailored to the circumstances of each case.

FURTHER INFORMATION

For more information visit the anti-dumping page on the Customs and Border Protection website at www.customs.gov.au