

JOINT STUDY

SUMMARY OF ISSUES

Disclaimer

This document is made available only to assist interested parties in being aware of and understanding concerns identified in submissions received by the study. It does not purport to be a comprehensive summary of every issue in the submissions, and should not be relied upon as an authoritative statement of all or part of the position represented in any submission, or in any way representing views of the Australian Government. In developing commentary and advice on the administration of Australia's anti-dumping system, the Joint Study may take account of matters not mentioned in this document.

Topic	Concern	Proposal
<p><u>Access to import information to support an application</u></p>	<p>Lack of access to currently confidential ABS statistics and confidential info in submissions is problematic. (Submission # 3)</p> <p>Data collection hindered by confidentiality requirements & general tariff classifications (6)</p> <p>Non-disclosure of import data prevents Australian manufacturers from accessing data required for preparation of an a-d application (13) (p4)</p> <p>Suppression of import data by ABS retards industry's ability to adequately quantify the level of import penetration as well as evidencing the size of the Australian market (24, p2)</p> <p>Inability to obtain suppressed ABS data retards applicant's ability to provide information to Customs (26, p2).</p>	<p>Amend legislation to make ABS info accessible, subject to a rigorous confidentiality regime (3 - p6)</p> <p>Customs assist with provision of basic information, regard paid to effort by applicant to obtain info (6)</p> <p>Examine avenues for providing access to ABS import data (p4)</p> <p>Examine options for the release of import data for use by applicants (24, p2)</p> <p>Examine the restrictive nature of ABS suppression orders. (26, p2).</p>

<p><u>Difficulties in obtaining normal value information</u></p>	<p>Difficult for industry to collect information for cost of production in country(ies) of origin (2/4) (p2)</p> <p>Pricing info (on softwood sawn timber from o/s sources) not available (7)</p> <p>Obtaining relevant normal value info difficult, too much required at <i>prima facie</i> stage (6) (p3)</p> <p>Prohibitive cost of obtaining cost of production data from o/s sources (23 p3-4)</p> <p>Unreasonable rejection of surrogate prices (12, p2)</p> <p>Difficult for industry to collect information for cost of production in country(ies) of origin (12) (p1)</p> <p>Obtaining market price info in exporting country difficult. (p1-2) Result that must construct normal value from alternate sources, info available often doesn't line up with period under investigation (16) (p2)</p> <p>Prohibitive cost of obtaining cost of production data from o/s sources (23 p3-4)</p> <p>Prevailing prices & costs obtained in exporting country do not reflect prices/ costs in a market economy – question whether amendments to AD manual are effective (16) (p2)</p> <p>Prohibitive cost of obtaining cost of production data from o/s sources (23 p3-4)</p>	<p>Authorities to undertake, monitor and use information from other country administrations (subject to monitoring) (p2)</p> <p>Better process for obtaining statistical data and determining like goods (7 - p2)</p> <p>Satisfaction at <i>prima facie</i> stage from contemporary NV data. (p3)</p> <p>Govt role in obtaining market information (prices, subsidies) in other countries. 2. Draw on o/s evidence in a-d cases. (p4)</p> <p>Due consideration by Customs of limitations on the information available to applicants (p2)</p> <p>Acceptance of use of 'surrogate data' from third country (for normal value in China) at <i>prima facie</i> stage (p2)</p> <p>Authorities to consider contemporary nature of info available (p2) and provided guidance on when info is considered to be out of date. (p2).</p> <p>Govt role in obtaining market information (prices, subsidies) in other countries. 2. Draw on o/s evidence in a-d cases. 3. Reimbursement of costs for successful a-d applications</p> <p>Expand upon circumstances of 'artificially low prices' & provide examples where claims put forward would be further investigated (p2)</p> <p>Govt role in obtaining market information (prices, subsidies) in other countries. 2. Draw on o/s evidence in a-d cases. 3. Reimbursement of costs for successful a-d applications</p>
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<p><u>Consistency and approach to screening applications</u></p>	<p>Lack of consistency & feedback from Customs regarding calculation of export price & rejection of application. (6) (pp3-4)</p> <p>Inconsistency of interpretation of evidence in applications as ‘reasonable grounds’ for initiation. (5)</p> <p>Level of feedback/ communication during screening varies (6) (p4)</p> <p>20 day period often unfairly extended for minor reasons (26, p2).</p>	<p>Feedback to understand where miscalculations occurred. (6, pp3-4)</p> <p>Single unit of TM Branch to perform all screening in order to ensure consistency (5)</p> <p>Customs to inform of progress (p4)</p> <p>Customs should interact fully with applicant to understand the application and meet 20 period (26, p2).</p>
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<p><u>Standard for initiation/application form information requirements</u></p>	<p>Additional information requested by Customs beyond scope of a <i>prima facie</i> decision, Customs extending screening period to obtain additional info, lack of test/tolerance level for what info needed for <i>prima facie</i> judgement (6) (pp2-3)</p> <p>Investigations should not be initiated based on an unlikely possibility that dumping is causing material injury (10) (para 59)</p> <p>Should only be on the basis of proper evidence (11) (p3)</p> <p>Unreasonable to reject applicant assertion of ‘like goods’ (12) (p 2)</p> <p>Information requirements for initiation are extremely burdensome and resource draining (13) (p2)</p> <p>Customs should not require quality and kind of evidence to support a preliminary or final determination (18) (p7).</p> <p>The form needs to clearly set requirements and draw out all information that could reasonably be asked of applicants (10) (section 4, paras 28 and 32)</p> <p>Form is complex and requires a large amount of info. (11)</p> <p>Must remain comprehensive (18) (p3)</p> <p>Current screening process is appropriate and necessary (9) (p2)</p> <p>20 day period sufficient, extending for ‘new’ information causes delays down chain. (16) (p3)</p>	<p>Customs screening template to be adapted & forwarded as checklist to applicants, test what constitutes ‘incidental’ information at this stage, tolerance level for differences in appendix data. (pp2-3)</p> <p>An investigation should only be initiated if there is a likelihood of the application being successful (para 59).</p> <p>Focus on information requirements of application form is misguided and favours ‘clever’ filling of form over logical and credible information.</p> <p>Due consideration by Customs of limitations on the information available to applicants (p2)</p> <p>[no specific proposal]</p> <p>Customs manual or guidelines should set out the basic legal requirements applying to an applicant to provide information. Guidelines should be designed with particular regard to SMEs. Document should also set out the various methodologies and criteria used to assess a dumping application (p7).</p> <p>Form should be amended to ask if applicants are importers of the goods, ask whether local producers receive or provide rebates and include questions that would identify competition law issues (paras 28-31)</p> <p>less prescriptive and complex form, allow industry to explain case in own words (p3)</p> <p>No need to simplify current form (p3)</p> <p>Retain current strict screening process (9)</p> <p>New info should not ‘re-start the clock’, 20 day timeframe sufficient to screen as quickly as possible (p3)</p>
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<p><u>Standard for initiation/application form information requirements (cont)</u></p>	<p>Screening phase is too drawn-out and bureaucratic. 20 days often extended. Level of analysis by Customs goes beyond “reasonable grounds” requirement (24, p1)</p> <p>Information requirements go beyond that which should be required for initiation purposes. Often unreasonable for data to be supplied in specific format (26, p1).</p> <p>Reluctance to initiate where dumping margin low, additional tests beyond scope of <i>prima facie</i> decision (6) (p4)</p> <p>Given consequences [for importers], requirements should be substantial (8) (p2)</p> <p>There is a need to ensure that applications (and submissions) are accurate and open about all relevant data (10) (para 57).</p> <p>Prescriptive application may privilege form over substance (11)</p> <p>Rejection of application can be based on subjective determination that GUC not ‘like goods’ (12) (p2)</p> <p>Additional information requested by Customs beyond scope of a <i>prima facie</i> decision, Customs extending screening period to obtain additional info (12) (p2)</p> <p>Applicant should provide sufficient evidence to substantiate claim (14) (p2)</p> <p>Industry does not want de facto verification at screening stage (3, pp6-7)</p> <p>Standards applied to whether measures are continued (10-paras 158-166)</p>	<p>Customs not conduct forensic analysis at the application screening stage and meet 20 day deadline (24, p1)</p> <p>That Customs not seek information beyond that necessary to establish reasonable grounds (26, p1).</p> <p>[no proposal]</p> <p>Imposition of ‘Bond system’, repayable if application successful (p2)</p> <p>Customs should consider the use of statutory penalties for the provision of false or misleading information (para 57)</p> <p>Give greater attention to substance of the evidence in an application, consistent with requirements of ADA (pp3-4)</p> <p>Like goods considered after submissions from interested parties (p2)</p> <p>Verification process at this stage to only require evidence of ‘reasonable grounds’ (p2)</p> <p>Form to provide clear guidance on info & evidence to be included (p3)</p> <p>Consider a different test + penalty for vexatious use of anti-dumping applications (3, pp6-7)</p> <p>Continuation applications should be subject to the same standards as an original application and should take note of circumstances as at the date of expiry (10-paras 158-166)</p>
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<p><u>Standard for initiation/application form information requirements (cont)</u></p>	<p>No guidelines as to how to determine whether or not to accept an application for review or continuation of measures (18-pp35-36).</p> <p>Time and resources required for application (2/4) (p2)</p> <p>Time and resources required for application, including cost of data collection (12) (p1)</p>	<p>Should publish guidelines setting out the circumstances in which a Minister would initiate a review or continuation inquiry. Guidelines should incorporate principles from WTO panels. Reference in s.269ZHD(2) to material injury should be replaced with injury. (18-pp35-36)</p> <p>Possible model of a PAD in permanent existence for industry, with automatic review function for variables. (p2)</p> <p>[no specific proposal]</p>
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<p><u>Pre-lodgement advice to applicants (role of DLI Unit)</u></p>	<p>Info cleared by DLI challenged with Investigations team, prolonging investigation time. (6) (p5)</p> <p>Concern that DLU does not adequately address the needs of industry. Variable quality of advice and difficult, unnecessarily formal staff. Reluctant to provide specific examples (7) (p2)</p> <p>Assisting and assessment of case are too close. (8) (p2)</p> <p>Authorities undertaking investigation must be, and be seen to be, impartial (14) (pp8-9)</p> <p>Problem with drafts approved by DLU being rejected by an Investigation Section (18) (pp8-9)</p> <p>Authorities undertaking investigation must be, and be seen to be, impartial (20) (pp11-12)</p> <p>Scope & nature of advice to applicants unclear, authorities undertaking investigation must be, and be seen to be, impartial (22) (p3)</p> <p>Insufficient knowledge in Customs of agricultural products. (23 p4-5)</p> <p>Current system / DLU involvement in application process exposes Customs to criticism (11)</p> <p>Concern about level of information required and 'disconnect' between DLU and operations in TMB (13).</p> <p>Concern about acceptance of advice from DLU by operations in TMB (21).</p>	<p>Closer integration between DLI & Investigations teams, regard paid to issues cleared in drafting process. (6, p5)</p> <p>DLU to operate on a case management team basis. Liaison team with specific communication skills to understand clients. (7, p3)</p> <p>Liaison function to be divided more clearly, perhaps in another branch of Customs (8, p2)</p> <p>A separate Agency should determine whether claim is to be investigated. Nature of assistance provided to be disclosed (14, p9)</p> <p>Officers who advise on draft should not have any role in subsequent investigation. Critical to have guidelines identifying criteria taken into account when considering applications. Should be available on website (pp8-9).</p> <p>Federal Government should not assist potential applicants (p12)</p> <p>Federal Government should not assist potential applicants - if government to assist, must be limited in scope, all assistance publicly disclosed, not involve financial assistance, and be provided by other agency outside of Customs (pp3-4)</p> <p>Customs to hire experts in all industry sectors, including agriculture.</p> <p>Establish independent process / body to remove the screening process from Customs ('Aust Trade Remedies Panel') + modify screening practices (pp5-6). (11)</p> <p>will avoid using the DLU in future (13)</p> <p>Unlikely to use DLU or submit draft application in future. (21)</p>
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<p><u>Pre-lodgement advice to applicants (role of DLI Unit) (cont)</u></p>	<p>There should be limits to the level of advice provided to applicants by Customs (10) (para 23)</p>	<p>Assistance to applicants should be limited to explaining requirements and indicating the type of information required. Assistance should be provided by an element of the bureaucracy that is totally separate from the investigating body. (para 23)</p>
<p><u>Access for small/medium sized enterprises (SMEs)</u></p>	<p>SMEs alleged to be disadvantaged, but doubtful that many make full use of industry assoc. / DLU (9) (p2)</p> <p>DLU supported to fully assist SMEs in understanding process (16) (p3)</p> <p>Problem of complexity and considerable cost associated with making an anti-dumping application, particularly for SMEs. (18) (pp10-12).</p>	<p>DLU functions should not extend to assisting with preparation of applications (9) (p2)</p> <p>Further resources to ensure DLU can operate to maximum ability (p3)</p> <p>As in USA, Canada and the EC, Australia should provide assistance to SMEs including information gathering and access to official import statistics. Assistance should not include legal advice and no advocacy following initiation. (pp10-12).</p>
<p><u>Notifying parties of receipt of application</u></p>	<p>Process would be improved by all interested parties being made aware of lodgement of an application (10) (paras 49-54).</p>	<p>Other interested parties be given the opportunity to comment on defects in an application prior to a decision being taken on initiation (para 53)</p>
<p><u>Access for upstream primary producers</u></p>	<p>Agricultural producers cannot initiate - Falls to processing industry to initiate, not growers. (2/4) (p2)</p> <p>Aust pork industry and other agricultural sectors are excluded from legitimate use of the a-d system (19)</p> <p>Improve accessibility for agricultural producers (of close processed agricultural goods), where justified, without attracting unsubstantiated applications (23 p 1-2)</p>	<p>Capacity to initiate on the part of growers (p2) – NB: affects definition of ‘Oz industry’ – issue of ‘close-processed agricultural goods’</p> <p>Legislation change to ensure agricultural goods producers have access to a-d action + amendment to ADA via Doha round. (19 - p2)</p> <p>Consider opportunities to improve the ability of agricultural producers to access a-d where imported ingredients displace Aust inputs. (p3)</p>

<p><u>Time bar on re-lodgement of applications</u></p>	<p>There is no justification for not having a time limit for re-lodgement of unsuccessful applications when a time bar applies to reviews of measures(10) (para 36).</p>	<p>12 month time bar on re-lodging an application following rejection (para 35). The ACCC and perhaps Treasury and Productivity Commission should be involved where an application is repeatedly unsuccessful.</p>
<p><u>Support for an application</u></p>	<p>Industry of numerous small producers has difficulty meeting 25% test (19)</p>	<p>No specific solution proposed – cites Ministers’ views on ‘accessible but robust’ a-d regime (19 - p3).</p>
<p><u>Determination of like goods</u></p>	<p>Agricultural goods be recognised as like goods, e.g. oranges and frozen concentrated OJ (4, page 1)</p> <p>Insufficient clarity & consistency in the way like product determinations are made (10, para71)</p> <p>Like goods test is often not sufficiently strictly applied (11, pp11-12)</p> <p>Analysis often considers characteristics irrelevant to determination (14, pp4-5)</p> <p>Current procedure is appropriate (18, p19)</p> <p>Analysis often considers characteristics irrelevant to determination (20, p9)</p> <p>Analysis often uses secondary tests such as market-based tests, legislation requires like goods determined only if identical or “closely resembling” (22 pp4-5)</p> <p>Difficult to define like goods in a manner that limits market so that material injury can be demonstrated, but does not facilitate circumvention. (25 p1-2)</p>	<p>Emphasis placed on market-based approach, more attention paid to growers of raw agricultural product as part of industry (4, p 1)</p> <p>Obtain guidance from ACCC (10, para 75)</p> <p>Apply strict like goods test to give greater validity to Customs’ final decisions (11, pp11-12)</p> <p>Clear guidelines on how a “like good” is to be assess (14, p5). Assistance to be obtained from experts in determination (14, p6)</p> <p>Clear guidelines on how a like good is to be assessed. Assistance to be obtained from experts in determination (20, p9)</p> <p>Clear guidelines on how a “like good” is to be assessed, end-use/substitutability tests cannot be determinative (22, pp4-5)</p> <p>Customs to monitor imports and take action against circumvention.</p>

<p><u>Consistency in methodology/approach to investigations</u></p>	<p>Widespread inconsistency across TM Branch & between teams (5, p2)</p> <p>Inconsistency in standards & decisions (6, p5)</p> <p>Failure of investigating officers to use statutory powers to obtain evidence relevant to decisions (10, para 70)</p> <p>Coles Myer would prefer a system modelled on Canadian/US practice (15, p3).</p> <p>Accelerated review process may not be consistent with legislation (14-pp11-12)</p>	<p>On-going high level training and a ‘more searching approach...before certifying compliance of determinations’ (5, p2).</p> <p>A position to be created to review decisions (6, p5)</p> <p>Customs to use statutory powers (10, para70)</p> <p>Customs to investigate dumping only, ACCC or PC to examine injury and causation (15, p3)</p> <p>Procedure & conduct of accelerated reviews reviewed to ensure compliance with statutory provisions & international obligations (14-p12)</p>
<p><u>Investigation timeframes</u></p>	<p>Reduction of 155 day limit may not be practical [p4] but reduced screening period suggested as possibility (3, pp4-5]</p> <p>Too short for thorough analysis & testing (8, p2)</p> <p>Tight timeframes have adverse impact on Customs’ analysis of material injury (9, p3)</p> <p>Periods required for the assessment of injury and dumping are too long (10, para 86)</p> <p>Continued injury results from delays to timeframes (13, p6)</p> <p>Delays are frequent and limit opportunity to impose provisional measures soon after day 60 (13, p5)</p> <p>Tight time limits are an impediment to transparency (11-pp7-8)</p>	<p>Reduce screening period (3, p5)</p> <p>N/a</p> <p>Lengthen timeframe for complex investigations (9, p3)</p> <p>Period of data used for injury assessment should be less than 5 years and period of assessment dumping should be six months (10, para 86)</p> <p>Consider early publication of PAD where an extension is approved (13, p6)</p> <p>Relax the current statutory time limits (11-p8)</p>

<p><u>Approach to assessment of injury and causal link</u></p>	<p>Need to ensure proper attention is given to whether other factors have caused injury (10, paras 126)</p> <p>Customs has difficulty taking into account customer preferences that are not price-related (11, p12)</p> <p>Failure to take account of all relevant economic factors, particularly capacity of local industry to supply quality product and meet multiple supplier requirement (1, p1)</p> <p>Imports required as risk – management strategy so not linked to import pricing (1, p1)</p> <p>More detailed and considered analysis of injury is required (15, p3)</p> <p>No detailed analysis of impact of dumped goods on domestic selling prices (20, p10)</p> <p>No detailed analysis of impact of dumped goods on domestic selling prices & all associated economic factors/alternative causes of injury (22, pp6-8)</p>	<p>Issues of competition and competition policy should be considered (10, para 123)</p> <p>Develop guidelines to give greater weight to non-price factors in purchasing decisions (11, p12)</p> <p>Consider other imperatives for import requirement [essentially a ‘public interest’ economic analysis] (1, p1)</p> <p>Improve analysis of causation (1, p1)</p> <p>Establish a system of guidelines and examples of what constitutes material injury (3, p7).</p> <p>Split investigations or enable Customs to access expert economic analysis of injury and causation from the ACCC (15, p3)</p> <p>More rigorous injury/causation analysis, analysis to link extent of dumping to amount of reduced revenues/profits (20, p10)</p> <p>More rigorous injury/causation analysis, analysis & reports to link extent of dumping to amount of reduced revenues/profits, matters such as price undercutting/suppression/depression of themselves do not constitute injury (22, pp6-8)</p>
<p><u>National interest test</u></p>	<p>Concern over the need to minimise the anti-competitive effects of anti-dumping measures (10, paras 182-188)</p> <p>Interests of Australian industry taken into account to exclusion of other parties (20, p3 & 7)</p>	<p>Priority should be given to considering a national interest test and could, in some instances at least, be delegated or on a report by the ACCC or Productivity Commission (10, paras 182-188)</p> <p>Inclusion of public/national interest test to ensure AD regime takes into account interests of all parties affect (20, p7)</p>

<p><u>Loss of potential profits as an injury indicator</u></p>	<p>Need to clarify approach to loss of potential profits in examination of material injury (18, pp14-18)</p> <p>Customs narrow interpretation of Ministerial Directions and Guidance and reluctance to view a loss of market share as evidence of material injury in its own right (26, p5)</p>	<p>Ministerial guidance should recognise that a loss of potential profits is one factor in determining whether material injury exists. The reference to “diminution of profits” should be omitted. The reference to observable fact in the Guidelines should be replaced with “positive evidence”, the term used in the WTO agreement (18, pp14-18)</p> <p>New Ministerial Direction is required to clarify the injurious nature of a loss of market share and recognise the substantial short-term and long-term injury implications of profits forgone (26, p5).</p>
<p><u>Preliminary affirmative determinations and securities</u></p>	<p>PADs published at same time as SEF (12, p5)</p> <p>Limited instances where PADs published before SEFs (16, p4). Lack of provisional measures means no disincentive to continue dumping & cause of injury (16, p5)</p> <p>There is no requirement for PADs to be based on verified information (18, p26-28)</p> <p>PAD long after day 60, at the time of publication of SEF (21, p3).</p> <p>Cautious approach by Customs to imposing provisional measures is too predictable and can further injury to industry (24, p3)</p> <p>PAD and provisional measures as early as practicable after day 60 This action will ensure that Aust industry is not subject to unnecessary injury and will promote the effectiveness of Aust a-d system (25 p2)</p> <p>Cautious approach by Customs to imposing provisional measures is too predictable and can further injury to industry (26, p4)</p>	<p>Early publication of PAD, in advance of SEF (12, p5)</p> <p>Imposition of provisional measures as soon as possible after day 60 – used to provide disincentive (16, p5)</p> <p>A PAD should be made as soon as possible after day 60 of an investigation and no later than day 90 (18, pp26-28)</p> <p>Publish PAD immediately dumping is confirmed (21, p3).</p> <p>That a PAD be made and securities imposed as soon as possible after day 60 when a preliminary view of dumping and material injury has been established (24, p3).</p> <p>That a PAD be made and securities imposed as soon as possible after day 60 when a preliminary view of dumping and material injury has been established (26, p4).</p>

<p><u>Approach to establishing unsuppressed selling prices</u></p>	<p>Ignoring undumped imports when establishing a USP creates a protectionist bias (10, para 132-140)</p>	<p>More regard should be had to undumped imports when establishing a USP. Submissions should be sought from Treasury, the ACCC and the Productivity Commission on this issue (10, paras 132-140)</p>
<p><u>Case management/investigation methodology issues</u></p>	<p>Customs too readily accepts due allowance claims by exporters without applying sufficient investigation rigour (6, p6)</p> <p>Whether investigation occurs with same rigour in exporter country (12, p3)</p>	<p>More extensive use of independent consultant and rely on independent industry reports would improve the process (6, p6)</p> <p>Apply same investigative process in exporter countries (12, p3)</p>
<p><u>Cost of production analysis – training – verification issues</u></p>	<p>Too much reliance on export country’s accepted accounting standards (6, p8)</p> <p>Concern about Customs’ reluctance to accept industry cost allocations (7)</p> <p>Too much reliance on export country’s accepted accounting standards (12, p3)</p> <p>Ease with which an exporter can demonstrate that financial records are kept according to country’s accepted standards (16, p4)</p> <p>Obtaining evidence of government influence on costs and prices (12, p4)</p> <p>PSP asserts that onus of proof to establish impact of SOEs on costs and prices in China is Customs’ responsibility (21, pp2-3)</p> <p>Need for rigorous examination of whether prices are artificially low (24, p3)</p> <p>Need for rigorous examination of whether prices are artificially low (26, p3)</p>	<p>International Standards given preference (6, p8)</p> <p>Inquire into other administration’s approach for acceptance of financial data (12, p3)</p> <p>Investigate methodologies to verify “beyond reasonable doubt: that records maintained to country’s standards (16, p4)</p> <p>Examine approach to evidencing costs/prices for exporters (12, p4)</p> <p>More intensive investigation of Chinese SOEs by Customs. (21, p2-3)</p> <p>That Customs conduct a thorough examination of pricing and/or raw material costs. The onus of proof should be on the exporter to establish that State-Owned Enterprises do not exert an influence (24, p3).</p> <p>That Customs conduct a thorough examination of pricing and/or raw material costs. The onus of proof should be on the exporter to establish that State-Owned Enterprises do not exert an influence (26, p3).</p>

<p><u>Cost of production analysis – training – verification issues (cont)</u></p>	<p>Problems with methodology applied in cases where ‘sales dumping’ and duty absorption may be occurring (17, pp1-4).</p>	<p>Review processes for calculating export prices and incorporate EU mechanism for dealing with duty absorption (17, p4).</p>
<p><u>Methodology for subsidy investigations</u></p>	<p>Lack of methodology for calculating ‘pass through’ of foreign agricultural subsidies (19, p4)</p>	<p>Develop guidelines for identifying and calculating ‘pass through’ (19 - p4)</p>
<p><u>Decision-making body</u></p>	<p>Decision to publish a dumping duty notice should be delegated to officials (15, p5)</p>	<p>Codify decision process to remove discretion or specify the basis on which it is exercised, and set 20 day time limit (15, p5)</p>
<p><u>Time limit for Minister’s decision</u></p>	<p>Time limit for minister’s decision (3, p6)</p>	<p>Maximum period for Minister to make decision (3, p6)</p>
<p><u>Role of TMRO</u></p>	<p>TMRO not empowered to substitute findings or make appropriate recommendations (15,pp3-4).</p>	<p>Restructure process for independence, transparency and impartiality (15, pp3-4)</p>
<p><u>Judicial review process</u></p>	<p>There needs to be an expedited process for prompt court review (10-paras 153-157)</p>	<p>Consideration should be given to establishing a specialty court or specialty division of the Federal Court for dumping matters (10-paras 153-157)</p>

<p><u>Retrospective measures</u></p>	<p>Predictability of timing means imports are not deterred prior to SEF (13, p6)</p> <p>Uncertainty over when Customs is in a position to apply retrospective measures (18, pp29-31)</p> <p>Current remedies lack deterrent effect because they are generally not retrospective (21, p3).</p> <p>The imposition of retrospective measures would further discourage injurious dumping (24, p4)</p> <p>The imposition of retrospective measures would further discourage injurious dumping (26, p4)</p>	<p>More robust approach to the imposition of measures (13, p6)</p> <p>Guidelines should be prepared to establish the evidentiary standard and factors relevant to attributing required knowledge to importer (18, pp29-31)</p> <p>Draft guidelines for imposition of retrospective guidelines (21, p3)</p> <p>Examine options for Customs to consider retrospective action where legislative requirements are met (24, p4).</p> <p>Examine options for Customs to consider retrospective action where legislative requirements are met (p4).</p>
<p><u>Duty absorption</u></p>	<p>Need for scheme to address duty absorption (18-p32)</p>	<p>That guidelines be prepared based on the administrative options available to Customs (18-p32)</p>
<p><u>Country hopping</u></p>	<p>Rules for dealing with country hopping are unduly restrictive (13, p6)</p> <p>Must go through entire application process if occurs (6-p7)</p> <p>Must go through entire application process if occurs (16-p5)</p> <p>Concerns about 1992 guidelines (18-p33).</p>	<p>Remove timeframe / restrictions for country hopping applications (13, p6)</p> <p>Fast-track process to apply (6-p7)</p> <p>Fast-track process to apply, leading to 'accelerated' relief (as occurs in South Africa) (p5) – NB: Draws attention to ministerial guidance in 1990s that indicated truncated investigations could apply to here importers switch sources. (16-p5)</p> <p>That new guidelines be issued (18-p33)</p>

<p><u>Monitoring of measures</u></p>	<p>Monitoring of effectiveness is an industry responsibility (5-p2)</p> <p>Only importer/exporter activity monitored (8-p3)</p> <p>Doubts Customs' ability to undertake economic analysis (9-p3)</p> <p>Monitoring of interim duties not high- priority (12-p5)</p> <p>Not convinced current approach ensures AD measures are deterrent to future dumping & material injury (16-p6)</p> <p>Measures do not necessarily have the desired impact on selling prices (21-p3)</p> <p>Monitoring is an important aspect of overall effectiveness of measures (24, p4)</p> <p>Monitoring is an important aspect of overall effectiveness of measures (26, p4)</p> <p>Lack of severe penalty (12-p6)</p> <p>Applicants have difficulty substantiating rebate of interim duties by exporter (13-p7)</p>	<p>Customs should thoroughly investigate claims of circumvention and non-compliance supported by evidence. (5-p2)</p> <p>Complainant activity to be monitored to ensure measures in place for minimum time (8-p3)</p> <p>Improve resources to Branch for monitoring, ongoing liaison with applicant industry (12-pp5-6)</p> <p>Expansion of monitoring program, ongoing liaison between Customs & applicant to convey impacts of measures, monitoring to involve regular examination of market selling prices & export prices (16-p6)</p> <p>Examine opportunities for effective compliance monitoring and improve resources available to Customs. (21-pp3-4)</p> <p>Customs to regularly undertake sales route exercises. Regular liaison between Customs and industry re circumvention. Adequate resources for compliance function (24, p4)</p> <p>Customs to regularly undertake sales route exercises. Regular liaison between Customs and industry re circumvention. Adequate resources for compliance function (26, p4)</p> <p>Severe penalties, ongoing monitoring of activities, deterrence factor of heavy fines (12-p6)</p> <p>More compliance monitoring to ensure interim duty flows through to price of imported goods. (13-p7)</p>
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<u>Drawback of dumping duties</u>	Drawback/ Absorption of dumping duties dilutes provision of effective AD system (6-p7)	Amend regulation to prevent drawback on goods incorporated as inputs for finished goods for export (6-p8)
<u>Duty assessment information requirements</u>	The current assessment provisions operate in a protectionist way (10-paras 144-146)	It should not be necessary to provide full information on normal values and export prices (10-paras 144-146)

<p><u>Public file information – access – content – timeliness</u></p>	<p>Parties may not fully understand the grounds for claims set out in non-confidential summaries. (3-p6)</p> <p>Need for more meaningful non-confidential summaries of information provided in confidence. (5-pp1-2)</p> <p>content of non- confidential summaries (6-pp5-6)</p> <p>Public versions too scanty, preventing testing & disproof (8-p2)</p> <p>Non-confidential summaries usually contain insufficient information to allow interested parties to defend their interests. Australia is lagging behind world best practice on confidentiality issues (10-paras 93-101)</p> <p>content of non- confidential summaries (12-p3)</p> <p>Interested parties are not required to provide adequate summaries where confidential information is removed from submissions (13-p3)</p> <p>content of non- confidential summaries (16-p3)</p> <p>Remains issue of concern. Clear definition of what is ‘confidential’ needed. Blanked out sections do not meet requirements (18-pp20-22).</p> <p>Content of non- confidential summaries, unjustified claims of confidentiality (22-p5)</p> <p>Documents are blacked out with little indication of what information has been omitted (24, p2)</p>	<p>Additional guidelines on what is confidential + provision of information under a rigorous confidentiality regime (3-p6)</p> <p>Require meaningful summary or (public?) statement of reasons for inability to provide summary. (5-p2)</p> <p>greater onus to provide meaningful summary (6-pp5-6)</p> <p>Greater onus to provide meaningful summary (8-p2)</p> <p>There needs to be clear guidelines on what is confidential and procedures for an open challenge to claims of confidentiality. Could consider administrative protective orders as in USA and Canada (10-paras 93-101).</p> <p>greater onus to provide meaningful summary with rejection of application considered for lack of (12-p3)</p> <p>Increase scrutiny by Customs where commercial sensitivity is claimed. (13-p3)</p> <p>greater onus to provide meaningful summary, clear guidelines to ensure this available to all parties. (16-p3)</p> <p>Customs to impose greater discipline on provision of non-confidential summaries. Manual should include advice on what is considered to be confidential. Admin Protective Order system too complex and expensive (18-pp20-22).</p> <p>Summary to contain sufficient detail to facilitate informed debate (22-p5)</p> <p>Non-confidential summaries should be provided where information has been omitted. More rigorous approach by Customs to ensure interested parties</p>
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<u>Public file information – access – content – timeliness (cont)</u>		
	Interested parties not able to understand substance of information omitted (25 p1)	aware of substance of information. Non-consideration where non-confidential summary not provided (p5)
	Documents are blacked out with little indication of what information has been omitted (26, p2)	Reference group to examine options for ensuring sufficient information in public file documents + Customs to adopt a more stringent approach to claims of commercial sensitivity.
	Timeliness of reports on public file (6-pp5-6)	Non-confidential summaries should be provided where information has been omitted. Tougher stance by Customs to ensure interested parties aware of substance of information (26, p5)
	Inadequate notification and access to information on the public file. (11-pp9-11)	Sufficient time for debate for all docs placed on public file (6-pp5-6)
	Timeliness of reports on public file, lack of timely access by all parties (12-p3)	Implement time limits for non-confidential versions to be filed and enable electronic access to public file (11-p10)
	Current access arrangements are slow and cumbersome (13-p4)	Sufficient time for debate for all docs placed on public file, public file to appear on website (12-p3)
	Not all information & evidence that Customs relies upon made available (14-p12)	Examine viability of electronic access via Customs' website (13-p4)
	Access to public file due to physical location in Canberra, obtaining info in a timely manner (16-pp3-4)	All evidence relied upon for findings included, greater onus to provide meaningful summary of confidential summary, file maintained in electronic format as well as hard copy (14-p12)
	Remains issue of concern. Problem with timeliness. (18-pp20-22)	Place all public file docs in secure location on Customs website (as done in US) (16-p4)
	Information & evidence that Customs collects not provided on timely basis (20-p13)	Electronic public file system. Prepare document setting out process and conditions for accessing public file. (18-pp20-22)
		All evidence relied upon for findings placed upon file in timely manner (20-p13)

<p><u>Public file information – access – content – timeliness (cont)</u></p>	<p>Current arrangements are cumbersome and inefficient. (21-p2)</p> <p>Difficulties with accessing public file held in Canberra (24, p2)</p> <p>Difficulties with accessing public file held in Canberra (26, p3)</p> <p>Timely access is a major concern (25 p1)</p>	<p>Web access to public file (21-p2)</p> <p>Access to public file through website (24, p2)</p> <p>Access to public file through website (26, p3)</p> <p>Web access to public file. Timely placement of visit reports to interested parties on public file (25, p1).</p>
<p><u>Improvements to Customs' website</u></p>	<p>Customs Anti-Dumping topics/ investigations not easy to find on website (14, p13)</p>	<p>Reconfiguration of webpages applicable to AD (14, p13)</p>
<p><u>Approach to reinvestigations</u></p>	<p>Customs' response to TMRO findings often reasserts that original findings not flawed, effectively undermining review process (14 & 20, p13)</p>	<p>Customs should proceed in a reinvestigation on basis original findings flawed, and reassess accordingly (14 & 20, p13)</p>
<p><u>Training</u></p>	<p>Training occurs internally within Customs (14 & 20, p13)</p>	<p>Training should involve experts outside of Customs from various fields of expertise (14 & 20, pp13-14)</p>
<p><u>External review</u></p>	<p>AD authority must maintain best- practice and compliance with legal obligations (14 & 20, p14)</p>	<p>External consultants engaged periodically to review investigation procedures (14 & 20, p15)</p>

SUBMISSIONS RECEIVED

Submission No	Stakeholder
01	Brickwood Holdings Australia Pty Ltd
02	Sunraysia Citrus Growers Inc
03	The Law Institute of Victoria
04	Final Sunraysia Citrus Growers Inc
05	Roger Simpson & Associates
06	Australian Vinyls Corp
07	A3p Australian plantation products & paper industry council
08	Food & Beverage Importers Association
09	Australasian Paper Industries Association
10	Australian Steel Association
11	Moulis Legal
12	Windsor Farms
13	Qenos Pty Ltd
14	Law Council of Australia
15	Coles Myer
16	Orica
17	Trade Consultants (Vic) Pty Ltd.
18	Trade Remedies Task Force
19	Australian Pork
20	Rio Tinto
21	Penrice Soda Products Pty Ltd
22	Australian Services Roundtable
23	National Farmers Federation
24	HSS Industry
25	Sulo
26	OneSteel Manufacturing Pty Ltd