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## Notes

# A Note on Dumping, Interest Groups and the Public Policy Process

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As a signatory of the General Agreement on Tariffs and Trade (GATT), Australia is permitted to impose duties on goods that have been imported below 'normal value' and have caused or threatened to cause 'material injury' to the domestic industry producing 'like goods'. There has been a recent push from various industries to increase protection for producers who have been injured by such practices. The Government is concerned, however, that harsher anti-dumping regulations will damage its position in the Uruguay Round of the GATT negotiations. As a result, a Senate Inquiry was established in 1990 to review Australia's anti-dumping legislation. The objective of this paper is to examine the effectiveness of the public policy process in addressing this issue. The analysis indicates that the process of devising new anti-dumping laws has failed to produce any significant improvements. A number of suggestions are made to make the policy more efficient and the process more effective.

## 1. Introduction

Since its inception less than half a century ago, the GATT has been used as a tool for regulating the tradeflow of commodities. In order to enforce competitive behaviour and correct disparities in market power between domestic and foreign producers, the GATT permits the use of anti-dumping and countervailing measures. The application of such measures to manufactured goods has proved to be relatively simple. Regulating the flow of agricultural products, however, is far more complex primarily because of the political sensitivity of agriculture in many countries, the long production process associated with most agricultural activities and the high incidence of agricultural over-production. In addition, producers of raw agricultural goods have been unable to take action against processed or

semi-processed goods because anti-dumping action has been confined by the GATT to the producers of 'like goods'. As the conflict between trade liberalisation and protectionism in agriculture has intensified, the incidence of trade disputes involving agricultural products has increased. This has forced the spotlight in the current Uruguay Round of negotiations to be focussed more closely on monitoring the tradeflow of agricultural commodities.

Australia has often exercised its right under the GATT to apply anti-dumping and countervailing duties to dumped or subsidised goods. However, there have been a number of recent cases which have questioned the efficacy of the anti-dumping process in Australia, particularly with respect to agricultural products. A notable example is that of the Australian canned ham industry. All but one of the eight domestic producers have ceased production since 1980, possibly because of competition from imported canned ham from Denmark, the Republic of Ireland and the Netherlands. Several dumping complaints were lodged with the Australian Customs Service by the canned ham industry. Despite the fact that some duties were imposed, the industry claims that these complaints were largely unsuccessful

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because the demise of many domestic producers was not halted (Senate Standing Committee 1991a, 18 March 1991, pp. 159-66). The canned ham industry, like many others, has therefore been calling for much tougher anti-dumping laws in Australia.

The issue at hand is whether anti-dumping laws are an effective mechanism to stop the unfair trading practices of many exporting nations or whether they are being railroaded by by vested interest groups in Australia in an attempt to replace the diminishing tariff wall surrounding inefficient industries. In order to examine this situation, the Government established a Senate Standing Committee Inquiry into Australia's anti-dumping legislation in 1990. The Government then made a formal response to each of the Committee's recommendations in late 1991 and necessary legislative amendments were carried out in 1992.

The objective of this paper is to examine the effectiveness of the public policy process in addressing the issue of dumping. To that end, some theoretical background is provided. Submissions to the Senate Standing Committee Inquiry into anti-dumping and countervailing legislation are used as the main data base for the analysis (Senate Standing Committee 1991a). The consistency of the Senate Committee's recommendations and resulting legislative changes with the proposals submitted by interest groups is evaluated. The implications for public policy formulation are discussed prior to conclusion.

## 2. Theoretical Considerations

Dumping is price discrimination conducted across national boundaries. Price discrimination occurs when a firm maintains different price-unit cost margins in separate markets. Boltuck (1987) has stated that a profit-maximising firm will only price discriminate if the following conditions are met: markets are

separable; the firm has market power in at least some markets; and different markets have different demand elasticities.

Tariffs and non-tariff measures are considered to be key variables keeping markets separable and preventing arbitrage from equalising price-unit cost margins. The argument that the elimination or reduction of all trade barriers may make price discrimination impractical is not necessarily correct as it is based on the classical view of price discrimination. There is another view of price discrimination, one which can be labelled as strategic price discrimination. While classical price discrimination is the result of a mechanistic, profit-maximising decision made by a firm operating in an essentially non-competitive environment, strategic price discrimination is the product of the efforts of a firm behaving aggressively in a meaningful competitive environment, trying to maximise the expected value of uncertain future profits. The resulting behaviour involves various offensive and defensive tactics which the firm employs to sustain its competitive advantage. This behaviour is radically different from the deterministic type of behaviour displayed in the classical case.

The three broad categories of dumping are: *sporadic dumping*, which occurs under conditions where the exporter does not want to disrupt the price structure in the home market and is willing to sell a temporary oversupply of goods on the export market for whatever price; *continuous dumping*, which is the outcome of classical price discrimination across national boundaries; and *strategic dumping*, whose objectives are to achieve a foothold in a new export market, to prevent the loss of world market share and to monopolise the export market. Both sporadic and continuous dumping are consistent with classical price discrimination. Sporadic dumping is, in effect, an economic method of disposing of surplus production cheaply. That is, the export market may be treated as peripheral to the

domestic market, and thus used to maintain high levels of capacity utilisation by serving as a safety valve for disposing of surplus production during slack economic periods in the domestic market. Ehrenhaft (1979) has referred to this as an example of dumping unemployment from the home market to an export market. Sandmo (1971) has developed an argument suggesting that the cost of capital to domestic producers may increase as a result of sporadic, cyclical dumping. He has also speculated that unstable demand may lead to a monopoly or oligopoly market structure when only a small proportion of firms are risk-neutral and all others are risk-averse, for the risk-averse group of firms will cease operating in the presence of greater risk-volatility.

One example of continuous dumping may arise when the price leader in a highly concentrated oligopolistic industry segments markets along international lines because domestic consumers have a stronger preference for the product than consumers in other countries and/or because domestic anti-trust or trade practices legislation deters geographic segmentation and price discrimination within the domestic market. Price discrimination for this reason will increase the firm's profits. Although continuous dumping is not likely to be permanent in a dynamic, real world setting, it is likely to have a more adverse effect on the profit and growth performance of firms in the export market than non-dumped imports. Furthermore, it may be more likely to prevent firms in the export market from developing comparative advantages in products with significant learning curve production benefits or economies of scale.

Within the strategic dumping category, there are two related types. The *predatory* form of strategic dumping has generally been considered to impose the greatest costs on firms, and eventually consumers, in the export market. The *gaining-a-foothold* form of strategic dumping has usually been assumed to produce a net positive impact in the export market.

However, it is conceivable that this type of dumping may create significant costs for the export market when the goods/services in question are intermediate goods/services. For these products, quality, reputation and close cooperation between buyer and seller are critical. An initial round of dumping, which displaces some firms in the export market as suppliers to some end users in that market, may gradually improve the exporter's competitive advantage vis-a-vis import-competing firms. For many classes of intermediate goods, regular contact with buyers is critical for sellers to keep informed of the buyer's changing needs. Once a supplier is displaced, the firm becomes increasingly less well informed and thus less capable of developing and providing the products required in the future. Consequently, strategic dumping to gain a foothold in the export market may seriously harm the growth prospects of import-competing firms in that market supplying technologically-intensive and/or specialised intermediate products. The current analysis will focus on strategic dumping as the main target of anti-dumping action.

### 3. The Senate Standing Committee Inquiry and the Amended Legislation

The Australian legislation that deals with the special provisions relating to anti-dumping duties is contained in Part XVB of the Customs Act 1901 and the Customs Tariff (Anti-Dumping) Act 1975. As Australia is a signatory of the GATT, these two legislative Acts must conform to GATT rules. While dumping is condemned in Article VI of the GATT, anti-dumping action is only authorised in some situations. The regulations pertaining to the imposition of dumping/ countervailing duties are set out in GATT Anti-Dumping and Subsidies Codes. The major obligations under the two GATT Codes are very similar and include:

not taking action unless there is evidence of dumping/subsidisation, material injury and a causal link between the two; notifying the government of the exporting country and interested parties when an investigation is initiated; taking provisional action only after a positive preliminary finding has been made; and leaving duties in place only as long as it is deemed necessary (GATT 1979).

The Customs Act defines dumping concepts such as 'normal value', 'export price' and 'like goods' and also establishes the Australian interpretation of GATT requirements for imposing anti-dumping and countervailing duties. Under the current Australian legislation, if duties are to be imposed, the dumped or subsidised imports have to cause or threaten to cause material injury to an Australian industry producing like goods, or materially hinder the establishment of such an industry (Sections 269TG(1) and 269TJ(1) Customs Act 1901). There are a number of apparent problems in applying these regulations. Firstly, the dumping requirements stipulated in both the GATT and the Australian legislation preclude producers of the raw agricultural product from initiating anti-dumping action against processed goods because they are not considered to be producing 'like goods'. Secondly, there is the problem of how much causality between injury and dumping is required. Thirdly, no clear guidelines are established on whether material injury is constituted by loss of market share or in value terms, or to what degree of injury constitutes 'material injury'.

In 1986, a review of the Customs Tariff (Anti-Dumping) Act was conducted (Gruen 1986). The major changes announced after the Gruen Report were the establishment of an Anti-Dumping Authority whose objective was to inform the Minister whether dumping or countervailing duties should be imposed, the introduction of a sunset clause restricting the life of duty notices to three years, and the legislative provision for prescribing statutory time limits (Gruen 1986).

On November 7, 1990, an Inquiry was established by the Senate to examine the procedures involved in Australian anti-dumping and countervailing actions and to evaluate the need for changes to Part XVB of the Customs Act. The resulting Senate Standing Committee received 67 submissions from vested interest groups including producer organisations, importers, State and Commonwealth Government departments, and local manufacturers. The Inquiry addressed a number of terms of reference as designed by the Senate. Following this, the Committee made a number of recommendations, the most important of which are examined below. The Government's response to these recommendations and the resulting legislative changes are also examined.

A condensed version of some of the submissions made to the Senate Inquiry is displayed in Table 1. The organisations presented in the Table constitute the group of submissions that most adequately addressed the terms of reference of the Inquiry. According to Table 1, the producer groups were rather unified in their approach. All of the producer groups argued that producers should be included in the assessment of material injury, that a new inquiry might not be necessary after countervailing duties had lapsed, and that a clearer methodology for estimating material injury should be developed. Of the producer groups presented in Table 1, only the Australian Citrus Growers' Federation did not believe that the implementation of cash securities at the *prima facie* stage of investigation was desirable. The other producer groups believed that the imposition of cash securities at an earlier stage of the investigation might create some hesitation among foreign exporters with respect to their plans to export goods below cost. On the question of the consistency of Australia's interpretation of GATT rules with other GATT signatories, all of the producers believed that Australia's interpretation was much harsher towards agricultural producers than the position taken by other nations.

Among the other interest groups presented in Table 1, there was some debate on the efficacy of some of the terms of reference. Only the Australian Customs Service was against the development of a clearer methodology for estimating material injury and also in favour of having a new inquiry after a countervailing duty had lapsed. On the important question of the inclusion of producers of raw materials when assessing material injury, the Department of Foreign Affairs and Trade controversially argued that producers should not be included. The organisations were divided on the issue of the desirability of implementing cash securities at the *prima facie* stage. The National Industry Association's Anti-Dumping Task Force, the Australian Council of Trade Unions and the Society for Balanced Free Trade all believed that the implementation of cash securities at an earlier stage of investigation was desirable, while the Food and Beverage Importers' Association, the Australian Chamber of Commerce, the Department of Foreign Affairs and Trade and the Australian Customs Service all argued otherwise.

Also presented in Table 1 are the recommendations made by the Senate Standing Committee, the Government's response to those recommendations and whether any legislative changes were made. The key observation about Table 1 is that the recommendations of the Senate Committee and the Government's response were generally consistent with the recommendations of agricultural producer groups. The apparent consistency in Table 1 between the Government's response and the Senate Committee's recommendations, however, does not indicate total Government compliance with the Senate Committee's recommendations. For instance, while the Government agreed with the Senate Committee about the need for a clearer methodology in estimating material injury, it did not agree with the solution suggested by the Senate Committee. Nor did the Government believe that a review of the application of confidenti-

ality provisions to import statistics was necessary despite the fact that it did believe that adequate statistical data were not available. Consequently, only a few of the recommendations made by the Senate Committee resulted in changes to the legislation. Legislative changes were introduced on issues such as the provision for producers of raw agricultural products to be included in the definition of 'domestic industry', the extension of the sunset period and the possibility of extending dumping measures prior to the end of the sunset period.

In its first recommendation, the Senate Committee suggested that the Government continue its efforts to change the GATT definition of 'domestic industry' to include the producer of the raw agricultural product. In its submission to the Inquiry, the Australian Citrus Growers Federation stated that "natural justice demands that if growers are being injured by dumped or subsidised imports, then growers must be eligible to seek and obtain protection through anti-dumping or countervailing actions" (Senate Standing Committee 1991a, 25 March 1991, p.546). The Government believed that the legislative changes detailed in the 12 March 1991 Industry Statement sufficiently provided for upstream agricultural producers. These changes included drafting new legislation, similar to section 1326 of the United States (US) Trade and Competitiveness Act 1988, which accounts for injury caused to agricultural and horticultural industries as a result of dumping (Hawke *et al* 1991, section 5.18). The Senate Committee obtained information on the legality of the US legislation from the Department of Foreign Affairs and Trade during the course of the Inquiry. While the Department was able to show that the legislation "has not been rejected by the Code Committee", this does not necessarily mean that the legislation was accepted. In fact, until the US next uses that particular clause, it will not be known whether it is GATT legal (Senate Standing Committee 1991a, 30 April 1991, p.1177-78). Australia

**Table 1: Responses to the Senate Standing Committee Inquiry's terms of reference<sup>a</sup>**

	Should producers of raw materials be included when assessing injury?	Should securities be applied at the prima facie stage? <sup>b</sup>	Is a clearer methodology for estimating material injury needed?	Is a new inquiry needed after counter-vailing duties have lapsed?	Is adequate statistical data available?	Is Australia's GATT interpretation consistent with other nations?
<b>Producers</b>						
ACGF	Yes	No	Yes	No	No	No
ADFA	Yes	Yes	Yes	No	No	No
UDV	Yes	Yes	Yes	No	Yes	No
WFSA	Yes	No Comment <sup>b</sup>	Yes	No	No	No Comment
CFICA	Yes	Yes	Yes	No	N/A <sup>c</sup>	No
AHGC	Yes	Yes	Yes	No	N/A	No
CDEM	Yes	Yes	Yes	No	N/A	N/A
NFF	Yes	Yes	Yes	No	No	N/A
<b>Importers</b>						
FBIA	No	No	No Comment	No	No Comment	No Comment
<b>Others</b>						
NIAADTF	N/A	Yes	Yes	No	No	No
ACC	Yes	No	Yes	No	No	No Comment
DFAT	No	No	Yes	No	No	Yes
ACTU	N/A	Yes	Yes	No	N/A	N/A
SBFT	Yes	Yes	Yes	N/A	N/A	N/A
ACS	Yes	No	No	Yes	Yes	No Comment
<b>Senate Committee</b>	Yes	No	Yes	No	No	No
<b>Government response</b>	Yes	No	Yes	No	No	No
<b>Legislation</b>	Yes	No	No	Yes	No	No

<sup>a</sup> See Appendix for explanation of vested interest groups' abbreviations.

<sup>b</sup> The interest group acknowledged this term of reference but declined to comment.

<sup>c</sup> The interest group did not acknowledge this term of reference.

**Sources:** Senate Standing Committee (1991a and b), and Senate (1991)

is currently supporting clarification of this issue in the Uruguay Round. The changes endorsed by the Government on this issue, therefore, may be seen as a positive move for agricultural producers but should not be taken as the final amendment just yet.

The application of the sunset clause was another issue addressed by the Inquiry. The intended purpose of the sunset clause was to warn industries that any anti-dumping action was an act of emergency protection against dumping and was not to be used as a continuing source of non-tariff protection (Gruen 1986). However, the point was made by producer groups that complete re-testing of a countervailing or dumping duty at the end of the sunset period might stop producers receiving protection from persistent dumping/subsidisation practices. Complete re-testing of a countervailing or dumping duty is not required by the GATT. The Committee therefore recommended that Australia's legislation be amended to extend the sunset period from three to five years and, more importantly, that reviews of each case be permitted before the automatic termination of an anti-dumping or countervailing case. The Government agreed with both of these recommendations and made the necessary legislative changes in the Customs Legislation (Tariff Concessions and Anti-Dumping) Act 1992.

A further term of reference addressed by the Inquiry concerned the issue of whether Australia's interpretation of GATT Codes is consistent with the approach taken by other GATT signatories. It was argued by many groups that Australia had taken a much stricter interpretation of GATT Codes than other countries, possibly in an attempt to persuade trading giants like the US and the European Community (EC) to curb their 'unfair' trading practices. So far, this strategy has been ineffectual. In fact, even the much touted Uruguay Round of negotiations continues to have little chance of conciliation between the major trading nations on the issue of 'unfair' trading practices

and the collapse of these negotiations appears to be more than likely. While at one point it appeared that the EC would reduce its subsidies and export restitutions, it now appears certain that France will veto any agreement between other members of the EC on trade liberalisation. Together with the hard-line trade policy of the Clinton administration, this effectively rules out the possibility of trade negotiations between the US and the EC.

The Committee recommended that some legislative and administrative changes be made to the anti-dumping system in an attempt to remove any inconsistencies in Australia's interpretation of the GATT. These changes included amendments to Sections 269TB and 269TC of the Customs Act, the provision of a detailed sample questionnaire for applicants, and the requirement that applicants provide only reasonably available information (Senate Standing Committee 1991b, p.66-7). While it may be the case that Australia takes a stricter interpretation of GATT rules than other signatories, there is little the Government can do to increase the homogeneity of international trade legislation. In order to remove more than just the superficial differences addressed by the Senate Committee, perhaps the GATT should impose stricter conditions on the application of dumping duties. The recommendations made by the Senate Committee to amend sections 269TB and 269TC of the Customs Act involved ensuring that an applicant's request was a request to initiate an investigation and that the Customs Service be required to substantiate the claim that there was dumping, injury and a causal link between the two. In response, the Government stated that the role of the Customs was as an investigator rather than as a prosecutor. The onus of proof must therefore remain with the applicant. On the question of the provision of a more detailed questionnaire for applicants, the Government noted that the Customs questionnaire had already been updated. In addition, the Government stated that applicants were already only required to provide information that was rea-



sonably available to them. As a result, no legislative changes were made on these recommendations.

One of the most important issues raised in the course of the Senate Inquiry was the need for the development of a clearer methodology in estimating material injury. The Committee recommended that the Customs Service, in conjunction with the Australian Bureau of Agricultural and Resource Economics, develop new computer-based models which incorporate some of the economic variables unique to each industry. However, the Government stated that the complexity of computer modeling and the vast array of industries subjected to dumping made the Senate Committee's recommendation on this issue impractical. Instead, the Government encouraged industries to develop their own economic databases, similar to the approach taken by the Australian dairy industry. It seems, therefore, that neither the Senate Committee nor the Government has effectively solved the pivotal problem of how to quantify material injury. The Government chose to "provide the Authority with guidance on the circumstances in which injury may be found to be 'material' and when it may not" (Senate 1991, p.4286). However, what is really needed by dumping complainants is a more, concrete, quantifiable method of determining material injury. For example, material injury could be said to have occurred if the value of the dumped goods exceeds a threshold of, say, 10 per cent of the value of the total domestic market. The benefit of an injury threshold is that it provides for consistency of results, something which is lacking in the present system.

In addition to the legislative amendments made following the Senate Inquiry, there were a number of other legislative changes made to the anti-dumping system in 1992. These included reducing the time taken to establish whether a *prima facie* case exists from 35 to 25 days, permitting Customs to use suppressed or aggregated data in order to determine

whether a *prima facie* case exists, allowing an applicant to withdraw the application before a preliminary finding has been made and allowing for better analysis of cases where both dumping and subsidisation has occurred (Australian Customs Service 1992). All of these changes were introduced in the Customs Legislation (Tariff Concessions and Anti-Dumping) Act 1992. Changes were also introduced in the Customs Tariff (Anti-Dumping) Amendment Act (No. 2), which was passed through Parliament in late 1992 and came into force in January 1993. For instance, importers of goods found to be dumped were now liable to pay 'interim duties' on subsequent shipments before the final finding was handed down by the Anti-Dumping Authority. The interim duty is based on the difference between the normal value and the export price of the good. If the invoice price of a dumped good increases after the publication of a dumping duty notice, the new system may lead to over-collection of dumping duties (Steele 1992). While the excess duty can be recouped by the importer, the additional administrative cost for the importer acts as a deterrent to the importation of goods below cost.

#### 4. Discussion

Despite the apparent broad cross section of submissions, the absence of consumer groups from the Inquiry causes concern because in the short run, consumer and other opposing groups may actually benefit from all types of dumping. In the long run, it is only predatory behaviour which has the effect of making consumers worse off. However, the current anti-dumping Act does not permit the consideration of consumer interests or other opposing interests in a way that would affect the outcome of the public policy process in a particular area. Yet, intervention on behalf of opposing interests can serve to help policy reform by exposing hidden policy conflicts. The purpose of intervention should be to re-

move the smoke-screen that hides the true nature and effect of anti-dumping policy: to expose the narrow fixation of existing proceedings on the interests of import-competing producers, to present estimates of the cost of intervention, and to raise public awareness of conflicts between anti-dumping policy and the objectives of other government policies.

To achieve this objective, it is necessary for these opposing interests to concentrate their effort on cases of strategic importance: that is, cases concerning goods that are important enough to attract the attention of large numbers of consumers; cases that lend themselves to demonstrating particularly blatant conflicts between anti-dumping policy and objectives in other areas such as competition policy; or cases that might establish a precedent in the interpretation of existing anti-dumping legislation. The effect on public opinion would be stronger if consumer representatives played a formally recognised role in the proceedings. The Inquiry appears to have missed this excellent opportunity and as such may have acted against the public interest.

While it is internationally accepted that anti-dumping laws are necessary in a world of continually changing comparative advantages, there are a number of apparent problems with the application of anti-dumping laws. For instance, can anti-dumping rules deal effectively with injurious predatory dumping? Can anti-dumping rules be used to harass and stall foreign competition? Can the public policy process address the issue of dumping effectively? Can the GATT contain the escalation of costly dumping and anti-dumping practices?

On the question of predatory dumping, Baumol (1982) argues that predation is not a feasible strategy in contestable markets. The predator, even if successful in driving out existing firms, will not be able to recoup its losses during the period of predation because it will be faced with another group of entrants. But

the conditions necessary for markets to be contestable are unlikely to be operative in agricultural trade. Furthermore, the contestability theory ignores strategic behaviour and responses. An incumbent may drive out an entrant by means of some predatory strategy in order to provide a signal to other prospective entrants, or even established firms, of its intention to maintain its market position, usually one of leadership. Successful predation will also provide a signal to the capital markets to reassess the risks for potential entrants into this market. Thus, as a defensive strategy, Australia's anti-dumping policy should be designed to deal with predatory dumping. This is both in the producers' and consumers' interests. The prospect of anti-dumping complaints, the cost of disputing them and the uncertainty of the outcomes can deter foreign firms from pursuing an aggressive, competitive strategy aimed at gaining market share in the domestic market. The process of investigation creates an important barrier to the firms interested in developing a presence in an export market.

Speeding up the process of anti-dumping investigations would both reduce the period of uncertainty for firms subject to complaints and assist domestic firms legitimately injured by dumping with the more rapid imposition of duties or other remedies. To a certain extent, this issue has been addressed by the recent decision to reduce the time taken to determine whether a prima facie case exists from 35 to 25 days. However, there is a trade-off between speed and due process. The desires for both speed and due process are in many ways mutually inconsistent and must be treated as such.

With regard to the effectiveness of the public policy process, consider the process by which the recent anti-dumping legislative changes were made. As indicated earlier, following the initiation of the Senate Committee Inquiry into anti-dumping legislation in November 1990, interested parties were invited to present written submissions to the Inquiry. Ten public hearings were also conducted around Austra-

lia between March and May 1991 in which verbal presentations were made to the Inquiry. Due to public interest and concern expressed throughout the Inquiry, the Senate Committee sought an extension on the tabling of the final report until June 21, 1991. Following the tabling of this report, the Government made a formal response to each of the Committee's recommendations on December 5, 1991. While the Government agreed with most of the recommendations, few legislative changes were announced. The Government was able to water down the Senate Committee's recommendations for a number of reasons. Firstly, the Senate Committee did not appear to be familiar with all the components of the legislation which resulted in some fairly spurious recommendations. For instance, the Senate Committee recommended that the Government conduct a review of the application of confidentiality provisions to import statistics. However, as the Government correctly pointed out, there are no legislative impediments to this. Secondly, some of the recommendations were so vague that the Government was able to dodge the underlying issues through the introduction of minor administrative changes such as the creation of the Business Liaison Unit within the Customs Service. This Unit is supposed to help process the dumping applications in as short a time as possible and advise applicants on the completeness of data in their applications. Its ability to achieve this, however, is questionable. Some legislative changes were finally introduced in mid-1992. Considering that these changes were minor and that the process took 18 months to complete and was prohibitively expensive, the process can be considered to be rather ineffectual.

While some anomalies have been corrected, the question of consistency of Australia's interpretation with that of other GATT signatories cannot be completely resolved because the international standards set out in the GATT are rather vague. The GATT lacks the power of law and enforcement. As a result, individual

state legislation of GATT guidelines has resulted in substantial difference in legal interpretations (Nam 1987). There is a tendency particularly in the US to deal with international economic conflicts through litigation. The legal detail relied upon for US decisions has a tendency to mask protection behind a guise of remedying 'unfair' trading practices. In the EC, "Community surveillance", which is intended to provide the information needed for deciding whether to introduce safeguard measures against imports from free market economies, can be invoked whenever the Community interests so require. Canada has used GATT rules not only to protect the interests of Canadian producers from "unfair" trade practices but also to change international trade flows (Finger and Nogues 1987). Trade law in Canada reflects agreements undertaken at various rounds of the GATT and also reflects the litigious attitudes prevailing in the US.

Accordingly, if the GATT cannot produce any significant changes in the US and EC anti-dumping laws, among others, then Australia should amend its law to incorporate the laxer overseas standards, including the right for relatively minor producers to lodge a complaint. This change would serve two purposes. It would offer Australian agricultural producers, as well as consumers, greater protection against dumping aimed at pre-empting or dominating rapidly growing markets or at using the Australian market for more efficient capacity management. Additionally, the Australian anti-dumping system might become a greater irritant to overseas firms and could be used as a stronger bargaining lever to negotiate serious changes in the anti-dumping laws internationally.

## 5. Conclusion

In view of the ambiguity and impotence of the GATT and the escalation of aggressive trade policies, Australia may have to undertake a

radical public policy shift pertaining to anti-dumping legislation. The analysis suggests that Australian anti-dumping measures should be aimed at preventing predatory behaviour by foreign producers because this behaviour is the most damaging to both domestic firms and consumers.

Clearly, anti-dumping laws create a moral hazard problem, for one should expect that when injury is rewarded (with a positive ruling in an anti-dumping complaint), the supply of injury will increase. To contain or offset this tendency and other pressures for protection, it is essential to initiate and enhance consumer as well as other opposing interests' representation on public bodies designing and enforcing anti-dumping laws such as the Anti-Dumping Authority. Regular participation of these groups in anti-dumping proceedings could build political support for genuine policy reform in the Australian trade sector.

Despite all the commotion surrounding unfair trading practices and the need for 'a level playing field', the Senate Committee Inquiry into Australia's anti-dumping legislation appears to have been a failure for a number of reasons. Firstly, it did not recognise the significance of distinguishing among the different types of dumping. Secondly, it failed to include the considerations of consumers who are the most significant group to actually benefit from dumping. Thirdly, the absence of consumer interests in the Inquiry meant that the Committee's recommendations were biased towards strong lobby groups such as the agricultural producer organisations.

Thus, like many other government reviews, this Inquiry did not yield any significant improvements in anti-dumping laws and was hijacked by the most conservative elements of the public policy process. Given the intensification of competition and high levels of subsidisation in international trade, however, there is no doubt that the question will come

up again for a further inquiry in the not too distant future.

## References

- AUSTRALIAN CUSTOMS SERVICE (1992), *Australian Customs Notice*, No. 92/122, Canberra.
- BAUMOL, W.J. (1982), "Contestable markets: An uprising in the theory of industrial structure", *American Economic Review* 72(1), 1-15.
- BOLTUCK, R.D. (1987), "An economic analysis of dumping", *Journal of World Trade Law* 21(5), 45-54.
- CUSTOMS ACT 1901, Part XVB - Special Provisions Relating to Anti-Dumping Duties, AGPS, Canberra.
- CUSTOMS LEGISLATION (TARIFF CONCESSIONS AND ANTI-DUMPING) ACT 1992, AGPS, Canberra.
- CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975, AGPS, Canberra.
- CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT ACT (No. 2) 1992, AGPS, Canberra.
- EHRENHAFT, P.D. (1979), "Multinational enterprises and antidumping law", *Harvard International Law Journal* 20(2), 277-292.
- FINGER, J.M. and J. NOGUES (1987), "International control of subsidies and countervailing duties", *The World Bank Economic Review* 1(4), 707-725.
- GATT (1979), *Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade*, Geneva.
- GRUEN, F.H. (1986), *Review of the Customs Tariff (Anti-Dumping) Act 1975*, AGPS, Canberra.

- HAWKE, R.J., P. KEATING, and J. BUTTON (1991), *Building a Competitive Australia*, 12 March 1991, AGPS, Canberra.
- NAM, CHONG-HYUN (1987), "Export-promoting subsidies, countervailing threats, and the General Agreement on Tariffs and Trade", *The World Bank Economic Review* 1(4), 727-743.
- SANDMO, A. (1971), "On the theory of the competitive firm under price uncertainty", *American Economic Review* 61(1), 65-73.
- SENATE (1991), *Daily Hansard*, 5 December 1991.
- SENATE STANDING COMMITTEE ON INDUSTRY, SCIENCE and TECHNOLOGY (1991a), *Official Hansard Report of the Inquiry into Anti-Dumping and Countervailing Legislation*, AGPS, Canberra.
- \_\_\_\_\_ (1991b), *Inquiry into Australia's Anti-dumping and Countervailing Legislation*, AGPS, Canberra.
- STEELE, K. (1992), "New dumping and countervailing duty assessment and collection system", *Freehill, Hollingdale and Page Newsletter*, 17 November 1992.

## **Appendix: Abbreviations**

ACGF	Australian Citrus Growers' Federation	FBIA	Food and Beverage Importers' Association
ADFA	Australian Dried Fruits Association	NIAADTF	National Industry Association's Anti-Dumping Task Force
UDV	United Dairyfarmers of Victoria	ACC	Australian Chamber of Commerce
WFSA	Winemakers' Federation of South Australia (Brandy Subcommittee)	DFAT	Department of Foreign Affairs and Trade
CFICA	Canned Fruits Industry Council of Australia	ACTU	Australian Council of Trade Unions
AHGC	Australian Horticultural Growers' Council	SBFT	Society for Balanced Free Trade
CDFM	Committee of Direction of Fruit Marketing	ACS	Australian Customs Service
NFF	National Farmers' Federation		