THESIS

ON

THE APPLICATION OF ANTI-DUMPING AND COUNTERVAILING MEASURES IN AUSTRALIA

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ABSTRACT

The application of anti-dumping and countervailing measures has always been controversial, particularly, as they do not address the issue of the level of local value added in the production process. Are these measures simply industry assistance measures under another guise, or are they to protect the 'fair trade' framework to further the opportunity for free trade? All the indications are that these measures reflect the former option. However, the global political climate as represented through the *GATT* and now the *WTO Agreements* is to tolerate the imposition of both anti-dumping and countervailing measures provided they are applied according to the provisions of the *Agreements.* It is becoming increasingly more difficult for any nation state to abolish the right of their 'guest' industries to obtain anti-dumping or countervailing relief, given the economic power of multinational industries operating within their boundaries. The practical issue is for each nation state to use these measures in a way which is of least detriment to their economy.

Gruen in 1986 reviewed the application of the then *Customs Tariff (Anti-Dumping) Act 1975,* and found that there needed to be a tightening-up of the injury test applied to anti-dumping cases. It is recommended that Gruen's tougher injury standards be implemented forthwith. He also recommended a continuing role for the Industry Commission as the appeal body for a review of the facts, and for there to be a continuing assessment of the effects of the measures imposed. The government, however, created an Anti-Dumping Authority attached to the then Department of Industry Technology and Commerce (DITAC), whose member and officers came from that department. The principal function of this body was to review the preliminary decisions of Customs, and to recommend the imposition of duties or acceptance of an undertaking to the Minister. There was no provision for an independent review of facts. One of the results of the increased complexity of the existing process and consequently the law, is a large increase in litigation before the Federal Court. There is a need to simplify the administrative structure and the provisions of the domestic law. The latter should be accomplished by the incorporation of the provisions of the *WTO Agreements* directly into domestic law.

The espoused policy objectives of the government have not been met. The application of anti-dumping and countervailing measures favour import competing industries, and are against countries from which imports are growing. Korea and China have been singled out, with these countries showing the highest incidence of import weighted of anti-dumping measures. They also happen to be countries with which Australia has a trade surplus, a policy factor which is neglected by the administering authorities. There is a need to redress this imbalance. Predation identified by the government as a reason for taking anti-dumping action, has been shown not to be a reason for the application of anti-dumping duties in Australia.

As a small country, Australia should take advantage of the use of the *WTO* dispute settlement process in settling anti-dumping and countervailing disputes. Consultations should commence at the earliest possible stage in inquiries, with the view to the settlement of the dispute by trade negotiation so that the outcome can be beneficial to both parties. This may, for example, allow for the specialisation in production between the two Members. *WTO* dispute settlement is seen as a positive approach to dispute settlement, whereas the use of the domestic courts tends to elevate the dispute between the parties. The Department of Foreign Affairs and Trade needs to take a leadership role in settling all anti-dumping and countervailing actions through the *WTO* dispute settlement process, with a view to a positive outcome for both Members.

Placing an anti-dumping import tax on intermediate products entering Australia is counter-productive, as it increases the cost of inputs to downstream users. Temporary relief should be given by way of production subsidy, if the matter cannot be resolved through *WTO* trade consultations.

SECTION 1 - Terms of Reference

1.1 Introduction

This thesis is a study of the effectiveness of anti-dumping and countervailing measures in Australia.[1] Anti-dumping measures are imposed on dumped imports which have been found to be injuring an industry in Australia. Dumped imports are those goods sold by an exporter below the price prevailing in the domestic market of the country of export.[2,3] The injury to the industry in Australia caused by the dumped imports is said to be eliminated by the application of the anti-dumping measure, either in the form of an import duty or an undertaking by the exporter to raise the export price of the imported product. Likewise, countervailing measures are imposed on subsidised imports found to be injuring an industry in Australia. Countervailing measures are similar to anti-dumping duties in their application.

These measures are founded on the application of international public trade laws, notably Article VI of the *General Agreement on Tariffs and Trade 1947 (GATT),* relating to 'unfair' trading practices. The principle question which this study proposes to address is:

Has the application of these economic laws been 'fair' and 'wealth creating'?

However, the question of what is 'fair' trade and that of 'unfair' trade is by no means clear.[4] The elimination of 'unfair' trade is thought to be synonymous with achieving the

[1]That is, the thesis looks at one side of dumping with Australia as the recipient of the dumped exports of another country, not Australia as the originator of the dumped exports. The reason for this emphasis, is that although Australia may dump many of its exports, there have been very few actions taken against Australia. This may be an indicator of Australia's general lack of competitiveness in contested export markets. On the other hand, Australia is one of the most frequent users of anti-dumping measures which is remarkable given its very narrow domestic industrial base.
[2]Sometimes it is said that the export prices are below the cost to manufacture the goods in the country of export for the goods to be dumped, however, this is a special case.
[3]Viner (1966) p 3 in pioneering this field of study, refers to dumping as simply price discrimination between national markets. Viner's proposal is wider as it covers cases of the reversal of the example of price discrimination, and discrimination between export markets where there are only meagre sales on the exporter's domestic market.
[4]Article II.2(b) of the *GATT 1947* specifically excludes the application of any anti-dumping or countervailing duty applied consistently with the provisions of Article VI from the terms governing the schedules of concessions in Article II, in particular, those relating to clause 1(a) requiring no less

target of the much quoted 'level playing field'.[5] This commonly means the removal of all trade distortions, and in the case of dumping and subsidisation a situation where there are no injurious effects on trading partners from such activities.

Anti-dumping and countervailing measures are safeguard actions covering a more limited set of circumstances than the use of the 'escape clause' of Article XIX of the *GATT,* as this does not require either dumping or subsidisation to be proven before it can be invoked. However, the question of 'fairness' needs to look at both the process and whether there are any differential effects on countries of export for imported goods, as a basic tenet of Article 1 of the *GATT* is a general application of the most favoured nation principle.

As to the question of the 'wealth creating' effects of the measures, it is necessary to consider whether there is any public benefit from their application. This may be in the form of increased industry viability, or the connection of the measures with some other indices of economic well-being expected to result from such measures.

To adequately address these questions, it is necessary to adopt a multi-disciplinary approach. As Davidson (1993) succinctly points out:

> "..., when dealing with the regulation of international trade and investment, one cannot separate out political and economic issues from the legal ones. International economic law does not develop in a vacuum, but is predicated on and reflects the underlying economic and political considerations. In order to develop rules to regulate international economic activity and to provide for the smooth flow of trade and investment, it is first necessary to have an understanding of the international economic activity and the role played by the governments involved."[6]

Accordingly, the analysis includes a consideration of the public policy of these trade regulatory measures from an historical, economic and legal perspective.

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favourable treatment to other contracting parties. That is, anti-dumping and countervailing duties can be applied in a discriminatory manner.

[5]Jackson (1989) p 218.

[6]Davidson (1993) p 194.

1.2 Aims

Firstly, to establish the public policy goals for this type of trade regulation. That is, what is meant by the concept of 'fairness' and what are the relevant indications of wealth creation. Secondly, to determine whether the application of the regulatory process has achieved the desired goals. This involves an examination of the application of the anti-dumping and countervailing measures by the administering authority and their review domestically through the court system, and internationally through the *General Agreements on Tariffs and Trade (GATT)* dispute settlement process. Thirdly, are there better ways of regulating trade which may improve the outcome from a public policy perspective. Are there any constraints which need to be removed or modified in order to achieve a better outcome?

1.3 Methods

To establish the public policy goals there is a need to look at the historical development of anti-dumping and countervailing law and its relation to the other trade regulatory laws. This is followed by a survey of the economic concepts behind these laws. Through this process the trade irritants which may provoke retaliation should become evident and provide a better understanding of the outcomes expected from trade retaliation. Consequently the question of how these concepts have been incorporated into the international public and domestic trade laws is addressed. From this analysis a clearer understanding of the purpose of these laws is deduced.

When looking at the effectiveness in achieving the public policy goals, the operation of the elements of public law in Australia is assessed against the legal principles implicit in the policy goals as agreed between Members of the World Trade Organisation. The major emphasis is on the substantive law, although there is some consideration of the administration of the measures. The analysis then turns to the place of Australia within the international economy, and provides a useful starting point for an assessment of the economic and trade impact of related public policy programs. Then the focus shifts to an evaluation of the incidence of the retaliatory measures and whether there are identifiable economic factors driving their application. If so, what effect do these factors have on

economic and trade policy outcomes? Is the effect beneficial in terms of public policy expectations?

Improvements are suggested in the legal and economic adjustment process to meet the public policy criteria. There is some discussion of the appropriateness of the criteria given the findings of the research. This leads to the question in a political context of how it would be possible to make improvements to this trade retaliatory process.

1.4 Results

For the anti-dumping and countervailing duty laws to be applied in a manner consistent with the public interest, the laws should be both fair and wealth creating. There are two important elements to test in this proposition, firstly the way in which these laws are applied by Australia to imports from trading partners, and secondly how the laws apply between industries in Australia.

One measure of fairness between countries can be judged by whether the measures apply evenly between countries on a trade weighted basis. One would expect that this would be so, given that Australia is required as a general rule as a Member of the *World Trade Organisation* not to discriminate in its application of duties and taxes on imported goods as between source. If there appears to be discrimination in the application of anti-dumping and countervailing measures, which is an allowable exception under the *World Trade Organisation Agreement 1994*[7] to the general rule, then are there any other factors which may help explain such an apparent bias. Do the measures, for example, inversely relate to Australia's export market opportunities, are they directed at those markets where there is an opportunity for trade expansion, or are they applied against sources of rapid import growth? These are important questions from a trade policy perspective, as the frequent use of retaliatory measures by Australia against its trading partners can be a source of considerable friction, and likely to provoke trade retaliation by its partners. On a more formal note, it would be expected that Australia's actions comply with its obligations under public international law. After all, Australia as a Member of the *World Trade Organisation* is required to give effect to its obligations.

[7]The *World Trade Organisation Agreement 1994* incorporates both the *GATT 1947* and the *GATT 1994*.

Wealth creation effects cannot be tested directly. However, there are a number measures which should provide some assurance of a positive outcome. The approach adopted was to see whether anti-dumping and countervailing duties apply evenly between industry groups weighted by turnover. There may be reasons for differences in the application of the measures between industry groups, and such a situation may have an outcome which may, or may not, distort resource utilisation. As these measures are supposedly applied so as to not provide substitute assistance to import competing industries, it is also useful to see whether the outcome is as expected. The measures are also said to be directed at the trade predatory behaviour of certain exporters. Again this is a relevant test of the neutrality of the measures. Another test of the wealth creation potential of the imposition of these duties, is to see whether the industries receiving relief do better than those which receive no such relief. This is measured by comparing the relative indices of manufacturing performance of those industries receiving relief, against the average result for manufacturing industry. If anti-dumping and countervailing relief has no positive outcome, of either maintaining the relative performance or resulting in an improvement in the first instance, it is unlikely that any more generalised model would be supportive of the application of these duties from a wealth creation perspective.

Although the results may not be entirely in accord with the above performance tests, it would be expected that the measures would meet at least some of the implied performance standards for the law to reflect the public policy intent.

1.5 Summary

The thesis is attempting to determine whether the application of the Australian law relating to anti-dumping and countervailing duties has been in the public interest. The analysis of the historical development and evolution of the policy of applying such measures, and the discovery of the economic drivers for such trade relief with the identification of the public interest criteria are important components in this thesis . The underlying factors leading to the application of the law are examined, and the resulting effects within Australia evaluated. The purpose of the analysis is to give some guidance as to any changes needed to the relevant laws, in order to reflect better the public interest criteria.

SECTION 2 - Historical Development of the Law

2.1 Introduction

To determine the factors which may be influencing the development and application of the Australian laws relating to unfair trading practices, it is useful to consider their development from an historical perspective. By looking at the pattern of events in this area of public international trade law, since the federation of the Australian states in 1900, it should be possible to discern any factors likely to have influenced the development of public policy in this area.

Viner (1923) defines dumping as price-discrimination between national markets.[8] Viner (1923) cites Gregory (1921) in pointing out that the term at one time or another has been used to cover four types of practices:

- Sale at prices below foreign market prices.
- Sale at prices with which [foreign ?] competitors cannot cope.
- Sale at prices abroad which are lower than current home prices.
- Sale at prices unremunerative to the sellers.[9]

As can be seen Viner's definition relates to Gregory's example three, which is a deliberate narrowing of the circumstances defining dumping. Viner (1923) argues that is necessary to use the narrower concept of price-discrimination, as it is exceedingly difficult in practice to distinguish the other forms which are commonly referred to.[10] As will be seen later in this analysis of dumping measures, all four types of practices identified by Gregory (1921) have a place in the internationally accepted definition of dumping.

An interpretative methodology is used to give a coherent account of what really happened. In the later part of this analysis a more explanatory mode is used.[11] Much of the evidence

[8]Viner (1923) p 3.
[9]Gregory (1921) pp 177 ff.
[10]Viner (1923) p 4.
[11]Stanford p 112 provides a detailed description of these approaches to historical research.

comes from parliamentary debates, various official reviews of industry policy, and reports specifically on the application of anti-dumping measures. Comments by academics and practitioners are interspersed.

2.2 An Historical Context

Irvine in his 1919 analysis of the development of dumping practices, claims that dumping has an English origin. He says it arose out of the trade crises, over stocked markets, and low prices which prevailed in 1783 and 1815. At that time British exporters were seen attacking the United States market with manufactured goods. The *United States Tariff Act of 1916* was subsequently passed, which Viner (1923) maintains was the first distinctly protectionist tariff in the United States.[12] The result was a stimulus to protection of the then infant American industries. Similar thrusts were made by Britain into the Continental market, where the British manufacturers sold large quantities of cotton yarn at a loss. It is said that Adam Smith reported a case where manufacturers paid an export bounty to dispose of a surplus in their home market in an attempt to drive up the price.[13]

In the later half of the nineteenth century the tables turned, as Great Britain was losing its monopoly power over manufactures. The now highly efficient American iron and steel industry began to dump goods into the British and highly protected German markets. Allegations were also made about the dumping practices of the great German cartels.[14] According to Irvine, the principal features of the German export organisation were the use of private export bounties, concerted action to dispose of domestic surpluses, special freight concessions for exports, and subsidies for shipping.[15] It was against this background that anti-dumping laws were developed at the beginning of this century.

The issue of dumping was at the forefront of the economic protectionism debate in Canada and in Australia around Federation. Canada could be regarded as the most provocative advocate of anti-dumping protection. Finger cites the aggressive dumping of steel rails into Canada from the United States as the catalyst for the implementation of the Canadian anti-dumping provisions[16]. He is of the view that anti-dumping measures were regarded

[12]Viner (1923) p 43.
[13]Irvine (1919) p 25.
[14]Viner (1923) Chapter IV.
[15]Irvine (1919) p 27.
[16]Finger (1992) p 123 refers to Eastbrook & Aitkin (1988) pp 438.

as the preferred measure of protection as they could be employed in a discriminatory manner between industries. This contrasts with tariff measures which would be more difficult to maintain within one industry due to the log-rolling dynamics of tariff setting[17].

Typical of the sentiment of the day is the statement by the Canadian Minister of Finance when introducing the proposed legislation in 1904, saying that:

> "We find today that the high tariff countries have adopted that method of trade which has now come to be known as slaughtering, or perhaps the word more frequently used is dumping; that is to say, that the trust or combine, having obtained command and control of its own market and finding that it will have a surplus of goods, sets out to obtain command of a neighbouring market, and for the purpose of obtaining control of a neighbouring market will put aside all reasonable considerations with regard to the cost or fair price of the goods; the only principle recognised is that the goods must be sold and the market obtained.... This dumping, then, is an evil, and we must propose to deal with it."[18]

On the passage of the Canadian anti-dumping law, US Steel raised its prices in Canada by the amount required as did other manufacturers. The question is who came out ahead; the exporters or the Canadian consumers?

2.3 *Australian Industries Preservation Act 1906*

Following the enactment of the Canadian legislation, the Australian Parliament considered the enactment of anti-dumping measures. In the Governor-General's speech introducing the government's legislative program for 1906, mention was made of the need to give immediate attention to a Bill for the preservation of Australian industry, and the repression of monopolies. Lyne (1906), the then Minister of Trade and Customs, in the second reading speech on the Australian Industries Preservation Bill reinforced the need for legislation aimed at preventing monopolisation.[19] Styles (1906) speaking in the Australian Senate supporting the proposed bill referred to the speech of Fielding, the Canadian Minister of

[17]Finger (1992) p 123 refers to the Schattschneider study of 1935.
[18]Finger (1992) p 124 refers to the quote in the US Tariff Commission 1919 p 21.
[19]Parliamentary Debates (1906) p 243.

Finance, a strong advocate of anti-dumping measures.[20] The main target of attack by the Australian politicians was the dumping activities of United States manufacturers and, in particular, the International Harvester Company.

The *Australian Industries Preservation Act No 9 of 1906* came into force in that year. Part III of that *Act* introduced the first measures against predatory dumping in Australia. Although dumping was prohibited, before the dumping could become actionable, the Comptroller-General of Customs was required to determine whether the importer was "acting with intent to destroy or injure" an Australian industry. Before taking any action, the Comptroller-General had to establish before a Justice of the High Court that there was such an intent to destroy an Australian industry. It soon became apparent, that there were substantial difficulties in proving the intent necessary to invoke these measures.[21] According to Greene (1921), the then Minister for Trade and Customs, in practice this proved almost impossible.[22] There was no anti-dumping action ever taken under the *Australian Industries Preservation Act 1906.*

2.4 *Customs Tariff (Industries Preservation) Act 1921*

In 1921 the *Customs Tariff (Industries Preservation) Act* was introduced to establish "broader procedures for improving penalty duties on imports deemed to have been sold at prices lower than in their suppliers' home markets".[23] This followed an inquiry by the then recently established Tariff Board on the methods of protection against dumping. The legislation required an act of dumping and detriment to an Australian industry to be established before any duty could be imposed.[24] The provisions were similar to those contained in the Canadian and United States legislation of the time.[25] By 1921 anti-dumping laws were in place in the United States, France, Great Britain, and most of the countries of the British Commonwealth.

The Australian *Act* of 1921 according to Greene (1921) was modelled on the Canadian legislation of 1904-7. Its introduction marks the split of anti-dumping procedures from those

[20]Parliamentary Debates (1906) p 151.
[21]Cooper (1984) p 230.
[22]Parliamentary Debates (1921) p 9731.
[23]Banks (1990) p 4.
[24]Cooper (1984) p 231.
[25]Banks (1990) p 4.

of anti-trust law in Australia.[26] The anti-dumping provisions of the new law, as well as containing the more general second limb test of detriment to an Australian industry, were greatly expanded as to what constituted dumping. The main changes to the normal value provisions can be summarised as follows:

> a normal fair market value provision, where the dumping duty was ascertained as the difference between the fair market price in the country of export and the export price.
>
> a provision for ascertaining a reasonable selling price where sales were at a loss. In this case the cost of production plus 20 percent plus FOB charges were used to establish a reasonable price.
>
> a provision for goods on consignment, specifying that one of the first two methods would be applied. To compare the reasonable price of the consignment with its wholesale selling price in Australia, freight, insurance, landing and other charges, the Customs tariff payable and 20 percent on the aggregate of all items were added.
>
> a provision for the charging of dumping duty where the freight was found to be subsidised.
>
> to combat competitive devaluation, there were provisions for countering exchange rate dumping caused by variations from the fixed rates regime. This last provision was directed at Germany and other European countries which were devaluing their currencies at the time.[27]

Another significant change to the legislation was the removal of the need to seek the agreement of the High Court before action could be taken. The question of investigating and reporting on the need for anti-dumping measures became the responsibility of the newly established Tariff Board. This independent administrative body would report to the Minister who was the decision maker for the purpose of imposing duties.[28]

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[26]Anti-trust law continued to operate under the *Australian Industries Preservation Act 1906* until its repeal and replacement by the *Restrictive Trade Practices Act 1965*.
[27]Parliamentary Debates (1921) p 9726
[28]Parliamentary Debates (1921) p 14097 second reading by Millen ED in the Senate.

The Brigden report of 1929 on the application of the Australian tariff, recommended to the Federal government that the anti-dumping provisions of the *Customs Tariff (Industries Preservation) Act 1921* should remain in force. This was based on the need to counter what was termed sporadic dumping.[29] The report also recommended that subsidisation of the affected industry was a more appropriate measure than the imposition of a tariff on the dumped goods. This was said to reduce the downstream effects of these temporary measures, and help maintain the competitiveness of the users of intermediate inputs in subsequent manufacturing[30]. Applications were to be dealt with as a matter of special urgency, and the situation monitored closely to assess the need for continuing with the measures. The report, however, recommended that the provisions for exchange rate dumping be withdrawn, as the post-war situation had stabilised.[31]

The report saw 'dumping' as the selling of goods in distant or minor markets at a lower prices than in the home or chief markets. On the prevalence of dumping, there was a view that it be recognised as a natural development and as an important element of international trade. It was suggested that due to Australia's importance in trade relative to its population, Australia was a natural dumping ground. The only mention of any evidence of dumping activity in the report is that of surplus product dumped into the Australian after the first world war.

Although the debate about dumping may have been maturing in its analysis, it was the level of tariff protection which was driving the protection debate between the two world wars. Brigden illustrates the level of duties on typical manufactures applying in major trading countries in 1925.[32] They ranged from 35-40% in the United States to under 10% in the United Kingdom. Australia's tariffs were between 30-35% of the value which was at the higher end of the range for the major trading countries. It is therefore not surprising with such high tariff walls, the incidence of dumping into Australia would be expected to be low. On the other hand these high tariff barriers encouraged the use of unilateral and reciprocal tariff preferences. These became the dominant avenue for trade discrimination.

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[29]Brigden (1929) p 127.
[30]Brigden (1929) p 128.
[31]Brigden (1929) p 129.
[32]Brigden (1929) p 155.

The major source of competition for the Australian manufacturing industries was the United Kingdom manufacturers. A difficulty facing Australian manufacturing industry was a non-reciprocal preferential margin of 25% applicable to United Kingdom goods.[33] Given the high general rates of the tariff this appeared to be an acceptable level of preference. The United Kingdom it was argued could not reciprocate as to do so would mean imposing a general tariff on raw materials and foodstuffs, in effect making United Kingdom exports less competitive.[34]

By 1925 the rules for granting British preference had been tightened to only allow preference where the final process of manufacture had been in the United Kingdom and the goods had been shipped directly to Australia, and one of the following conditions applied:

> to be wholly manufactured in the United Kingdom;
>
> to contain at least 75% of United Kingdom labour and/or materials in their factory works cost; or
>
> where of a kind not manufactured in Australia, to contain at least 25% of United Kingdom labour and/or materials in the factory works cost.

In contrast to the unilateral approach to the United Kingdom trade, Australia had entered into reciprocal tariff agreements with Canada and New Zealand. There was also a limited unilateral agreement with Papua New Guinea.

When reviewing the history of tariff protection in Australia, Jackson (1975) referred to a passage in the *Brigden Report* of 1929 concluding that:

> 'The evidence available does not support the contention that Australia could have maintained its present population at a higher standard of living under free trade.[35]

[33]Brigden (1929) p 174 & p 212 contain details of the Customs duty collected and an estimate of duty forgone as a result of the preferential rates applying to United Kingdom exports.
[34]Brigden (1929) p 208.
[35]Jackson (1975) p 26.

As will be seen later these highly protectionist sentiments were to disappear from public policy.

At this time Australia's trade was mainly with Britain, where rural and mineral produce was exported in exchange for imports of manufactures. The Australian government greatly increased the level of tariff protection between the depression years of 1929 to 1932, and devalued the Australian pound in 1931. In this context of increased protectionism, in an effort to facilitate trade between the British Commonwealth countries, a system of Commonwealth trade preference was established under the *Ottawa Agreements of 1932*. This comprised bilateral trading agreements with Britain and the other Commonwealth countries, and resulted in a subsequent reduction in preferential rates of duty. However, the average of the general tariff rates still remained at about 50% of the pre-depression level.

With Britain abandoning its free trade policy, Australia through negotiation under the *Ottawa Agreement* was able to gain better market access for about half of its exports. However, Article 11 of the agreement required the Tariff Board to review duties on British goods, and there could be no increase in duty in excess of that recommended by the Board. This international treaty had the effect of transferring the power to set tariff limits to an independent executive body, and to that extent the Australian Parliament renounced its powers over tariff making.[36]

Between 1938-39 and 1945-46 covering the World War II period, the value of manufacturing in Australia increased by 75%. This was coincident with direct government intervention. After the war trade was inhibited by international monetary factors.[37] In 1945 the government issued a White Paper on Employment which reviewed amongst other things the protection policy framework. The paper concluded that tariffs and other methods of protection were legitimate devices for building up industries appropriate to the economy. There was a proviso for maintaining the highest possible level of efficiency.[38]

The most significant event affecting the application of public international trade law was the conclusion of the *General Agreement on Tariffs and Trade* in 1947. This agreement

[36]Glezer (1982).
[37]Glezer (1982).
[38]White Paper on Employment (1945).

was approved by the Australian Parliament with the passage of the *International Trade Organisations Act No 73 of 1948*. The objective of the agreement was recognition by the parties that:

> "their relations in the field of trade and economic endeavour should be conducted with the view to raising standards of living, ensuring full employment and a large and steady growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods."[39]

This was to be achieved by adherence to a set of rules which can be summarised as:

> The according of most favoured nation treatment to all other parties to the agreement. There are few exceptions to this clause, one being the maintenance of the absolute amount of a preference existing at the time of the agreement coming into effect.[40]
>
> National treatment be extended to imported goods, to eliminate differences in internal taxation and regulation.
>
> General elimination of quantitative restrictions; except where there is a need to stabilise national agricultural markets, safeguard the balance of payments, impose emergency safeguard measures, or there is a need for assistance to further economic development.
>
> The reduction in the levels of Customs duties through negotiations and exchange of concessions between contracting parties.
>
> The principle of reciprocity which pervades the agreement, as a means of obtaining agreement on a mutually advantageous basis.[41]

The *GATT* also introduced rules relating to the application of measures by an importing nation to counter the adverse effects of the dumping and subsidisation of exported goods.

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[39] *GATT* Preamble (1947).
[40] Ryan (1984) p 280.
[41] Long (1987) pp 8-11.

In doing so there was an implicit short-term sacrifice of overall economic welfare in favour of maintaining a system of fair competition.[42]

In March 1952 general import restrictions were introduced as a temporary measure to deal with balance of payments difficulties. This was allowable under the *GATT* Article XII exception. With the relaxation of these restrictions during the late 1950's the number of demands for tariff protection increased. Import licensing was abolished for almost 90 % of imports from 1960.[43]

In 1957 an amendment was made to the *Customs Tariff (Industries Preservation) Act 1921* to allow the Australian government to impose dumping and countervailing duties on dumped or subsidised goods causing injury to imports from another supplying country. This was consistent with *GATT* Article VI, and referred to as a third country provision. This legislative amendment coincided with the replacement of the *Ottawa Agreement* by a Trade Agreement between the United Kingdom and Australia. The purpose given for the amendment was to introduce complementary provisions to those enacted earlier in the year in the United Kingdom Parliament. The justification was based firstly on possible injury to United Kingdom exports to Australia, and secondly on the injury caused to Australian exports to the United Kingdom from subsidised imports into that market. Although essentially a reciprocal agreement with the United Kingdom, it was suggested that the provisions would allow Australia to negotiate corresponding protection for Australian produce in other overseas markets.[44]

The Tariff Board in its Annual Report of 1958-59 indicated that there were definitional problems with the application of the existing anti-dumping legislation[45]. The Board discussed the lack of any qualification of the degree of detriment necessary for an affirmative finding. They referred to international discussion suggesting that the resulting damage from dumping should be real rather than notional. The next definitional problem concerned transfer prices between affiliated companies and their impact on cost of production calculations. The Board noted that other countries had provisions in their domestic legislation to deal with this contingency. The last problem related to the calculation of the cost of production for manufactures from a state-controlled economy. The Board was of the opinion that the current provisions gave rise to a

[42]MITI (1992) p 205.
[43]Lloyd (1973) p 11.
[44]Second Reading Speech House of Representatives Hansard 4 December 1957 pp 2828-2829.
[45]Some of these difficulties had been mentioned in the Tariff Board Annual Report of 1952-53.

purely arbitrary result. It was suggested that a 'reasonable price' for goods produced in these countries may be determined on criteria such as, the export price to third countries, the fair market value in the domestic market of another country, or on the basis of local prices of comparable goods. The Board recommended that the government consider amending the legislation to overcome these difficulties.[46]

2.5 *Customs Tariff (Dumping and Subsidies) Act 1961*

Amending legislation was introduced to repeal the *Customs Tariff (Industries Preservation) Act 1921* and replace it with the *Customs Tariff (Dumping and Subsidies) Act 1961*. Apart from its general purpose of providing protection for Australian industry against various forms of unfair trading practices, the provisions incorporated the means for dealing with dumping and subsidies as agreed in the *GATT*. This was accomplished by incorporation and modification of the major provisions of the repealed Act.

The new Act addressed the definitional problems identified by the Tariff Board. The new Act did not incorporate the *GATT* term 'material injury'. Rather it simply used the term 'injury' as a substitute for detriment. The Minister when introducing the *Tariff Proposal* indicated that the term 'injury' should not be read as including a reference to insubstantial injury.[47] The use of the term 'injury' instead of 'material injury' was said to be a drafting issue. At the same time the concept of injury was extended to include the hindering of the establishment of an Australian industry. To determine normal values for goods produced in non-market economies, the new provisions allowed the decision maker to take into account the price of goods sold for export to a third country and the fair market value of like goods produced in a third country where the costs of production are similar to those in the country of export. Concern was expressed by the Parliamentary opposition as to the competence of the provisions in dealing with transfer pricing.[48] Apart from some minor drafting changes, the only omission from the previous *Act* were provisions which related to currency depreciation.

In the 40 year period during the operation of the *Customs Tariff (Industries Preservation) Act 1921*, there had been 60 occasions when duties had been placed on dumped goods.

[46]Tariff Board Report 1958-59 p 13.
[47]Tariff Proposal House of Representatives Hansard 4 December 1957 p 1219.
[48]Second Reading Debate House of Representatives Hansard 3 May 1961 p 1429.

However, there were only nine commodities subject to dumping duty as at May 1961.[49] With the abolition of quantitative restrictions on most goods, dumping was beginning to surface as a real issue in industry protection in the early 1960's.[50] There were on average 74 dumping complaints received annually for the period May 1961 to August 1964. In each of these years about 7 complaints were considered of sufficient merit to warrant referral to the Tariff Board for inquiry and report. This pattern appeared to have continued with similar rates of referral in the years 1968 to 1971. In each of those years approximately 6 commodities were recommended to the Minister for the application of dumping duties. The number of commodities subject to formal anti-dumping duty as at 1 July 1971 had climbed to 46.[51]

In 1963 the Prime Minister had appointed a *Committee of Economic Inquiry* with wide terms of reference. One of these was to consider the effect of Customs tariffs and other forms, direct or indirect, protection on the disposition of resources and on broad economic objectives. The Committee's report of May 1965, colloquially known as the *Vernon Report* after its Chairman, found no grounds for believing that the total disadvantages of the policy of protection followed by Australia had exceeded the benefits. This conclusion was made within the context of the Government's economic policy framework of a high rate of economic and population growth with full employment, increasing productivity, rising standards of living, external viability, and stability of costs and prices.[52]

In the 25 years proceeding the report Australia's trade had changed in direction for both exports and imports. There was a shift away from the United Kingdom towards Japan, and by 1963-64 both these destinations for Australian exports were of approximately equal value. Japan as an export market was growing whereas the United Kingdom was declining.[53]. As a source of imports the United Kingdom was also declining being replaced by growth in imports from continental Europe, Japan and North America.[54]. The Committee discovered that there had been little change in the average rate of duty of around 30% on imports bearing protective rates. It was interesting that dutiable imports as a percentage of all imports had declined from 40% in 1938-39 to 19% in 1962-63.[55] This was reflected in a reduction in the average duty on all imports from

[49]Second Reading Speech House of Representatives Hansard 3 May 1961 p 1422.
[50]Second Reading Debate House of Representatives Hansard 26 May 1981 p 2577.
[51]Lloyd (1973) p 58.
[52]Vernon (1966) preface to report.
[53]Vernon (1966) p 311.
[54]Vernon (1966) p 315.
[55]Vernon (1966) p 352.

28% to 10% for the same period. The movement in the source of imports occurred when the British preferential margin was still about 12.5 percentage points below the estimated average MFN rate of 35%.[56] It would therefore appear that the change in trading pattern was a reflection of a profound change in Australia's global economic position.

The Committee was favourably disposed towards the application of anti-dumping measures. The rationale for their support was that anti-dumping legislation supplemented the normal tariff-making process. In the absence of effective anti-dumping legislation there would be pressure for prohibitive or nearly prohibitive ordinary tariffs. The Committee suggested that the scope for strengthening the existing law be reviewed.

A number of recommendations were made by the Committee to improve the application of the *Customs Tariff (Dumping and Subsidies) Act (1961)*. These were:

> where there was a lack of co-operation from the overseas supplier being investigated for dumping, the import documents and published price data should be used to establish whether there is any dumping margin, it was suggested that in these circumstances the onus of proof that dumping does not exist might be laid more directly on the importer;
>
> the provisions of the Canadian legislation aimed at combating sales dumping by associated companies, who artificially inflate the export price, be incorporated into the Act. The Committee was of the view that a failure to examine final selling prices within Australia was a serious loophole in the current Act, as sales dumping only became evident in the sales chain between the importer and user in Australia;
>
> the power to impose dumping duty retrospectively to a date earlier than the taking of cash securities. It was also suggested that cash securities could be imposed retrospectively when the case was transferred to the Tariff Board.[57]

The Committee regarded both short-term protection and anti-dumping as important instruments of tariff policy. These were to be distinguished from the longer term role of

[56]Vernon (1966) p 352.
[57]Vernon (1966) p 400 &401.

the Board of promoting a rational tariff structure more conducive to economic and efficient growth.[58] The Committee did not recommend on the question of the frequency of injury reviews of exiting dumping applications. They did, however, cite the dumping notice on nylon-hosiery as being in operation for a period of 10 years.

Following the tabling of the *Vernon Report*, the government amended the *Customs Tariff (Dumping and Subsidies) Act (1961)*. The amendments were said to be designed to counter the new forms of dumping, sales and package dumping.[59] This was an anti-avoidance provision containing the rules for determining the export price in related party transactions. Additional amendments were made to exempt goods where the collection of duty would be contrary to an international agreement, or where goods were admitted duty free under a Customs by-law as Australian goods were not reasonably available. The Vernon recommendation that there should be retrospective securities was not included.

Of particular interest was a comment by Cairns, the then opposition spokesman, in the 1965 debate on the amendment.[60] He suggested that there had been excessive application of anti-dumping measures on imports from China and some of the communist countries in Europe.[61] It was as though Cairns was echoing the concerns of the 1961 group of experts on *GATT* Article VI who:

> "...agreed that it was essential that countries should avoid the immoderate use of anti-dumping and countervailing duties, since this would reduce the value of the efforts that had been made since the war to remove barriers to trade. These duties were regarded as exceptional and temporary measures to deal with specific cases of injurious dumping and subsidisation."[62]

An additional part of the protection mechanism was the Special Advisory Authority. The Authority operated between 1962 and 1974.[63] It was required to report on emergency

[58]Vernon (1966) p 403.
[59]Second Reading Speech House of Representatives Hansard 16 September 1965 p 976.
[60]Cairns JF was an economic historian of a left leaning and then Minister for Trade in the Labor Party Whitlam government 1972 to 1975.
[61]Second Reading Debate House of Representatives Hansard 8 December 1965 p 3771.
[62]Industry Commission (1986) *Draft Report on the Chemicals & Plastics Industries* quotes the *GATT* Anti-Dumping and Countervailing Duties: Report of Group of Experts (1961) p 5.
[63]In 1965 the Australian government unilaterally implemented a preferential tariff scheme for developing countries. This was contrary to the provisions of Article 1 of the *GATT*, which prohibits discriminatory

protection within 30 days of receiving a request, with which it invariably agreed. The request was then referred to the Tariff Board for advice on the long term tariff rate. The Temporary Assistance Authority, which effectively replaced the Special Advisory Authority, was created under the *Industries Assistance Commission Act 1973*. The Commission replaced the Tariff Board and began its operations from 1 January 1974. Its policy criteria were contained in its legislation. The Commission was to have regard in its consideration of requests for assistance to improving of efficiency, facilitating adjustment, recognising the interests of consumers and consuming industries, integration with national policy, compatibility of trade and protection policies, and providing scope for public scrutiny.[64] At the same time the Textiles Authority was established to provide a special channel for temporary assistance for that industry. Most of the assistance to the textile, clothing, footwear and automotive industry was by way of quantitative restrictions. These industries were generally not users of the anti-dumping provisions as they were already highly protected by import licensing and tariff quotas.[65]

The United Kingdom's accession to the EEC in 1973 terminated, by an exchange of notes, the *United Kingdom Australia Trade Agreement*. With the consequent abolition of British Tariff Preferences, there was a further acceleration in the direction of trade away from the United Kingdom to new markets. Australia had already entered into an agreement on commerce with Japan in 1957, which was amended by protocol in 1963 to prohibit any trade discrimination previously allowable under *GATT* Article XXXV.[66] A treaty of cooperation and friendship was concluded with Japan in 1976. Australia during the 1960's had also entered into trade agreements conferring MFN treatment to trade with centrally planned non *GATT* parties and *ASEAN* member states.[67]

In keeping with a new emphasis on openness, the Government announced in July 1973 that all tariffs were to be reduced by 25% across the board. This was equivalent to an exchange rate revaluation of 6%. It was followed by an increase in imports of 46%.

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treatment between parties to the agreement. Australia sort and after arguing its case for the need to treat developing nations on a more favourable basis in trade than the more powerful developed countries, obtained a limited waiver of the application of Article 1 in 1971. In the *GATT* session in 1980, a generalised system of preferences for developing nations was adopted, then becoming settled policy. *See* Ryan (1984) pp 285-287.

[64]Rattigan (1986) p 187.

[65]Glezer (1982) pp 64-65.

[66]*GATT* 1947 Article XXXV provides for the non-application of the most favoured nation clause in Article II where the two contracting parties had not entered into tariff negotiations with each other and do not consent to the application of the clause.

[67]Ryan (1984) pp 297-298.

However, the 25% decrease in tariff rates appeared to have had little effect on import volume. The main cause of the import surge appeared to be related to a major appreciation of the Australian dollar between July 1970 and June 1974.[68]

2.6 *Customs Tariff (Anti-Dumping) Act 1975*

The *GATT* Kennedy Round negotiations were in progress between 1964 and 1967. They resulted in a general lowering of tariff barriers, and the conclusion of a number of agreements or *GATT Codes* of conduct. One of these was the *Anti-Dumping Code* interpreting the application of Article VI of the *General Agreement*. The text was issued in 1967. The *Code* came into force in 1968 and Australia became a signatory to it in 1975.

To give effect to the *Code* the Australian Parliament enacted the *Customs Tariff (Anti-Dumping) Act 1975*, repealing the *Customs Tariff (Dumping and Subsidies) Act (1961)*. It was interesting to note that the Minister when introducing the legislation asserted that the opportunity had been taken to strengthen the government's powers to protect Australian industry against the practices of dumping and subsidisation of exported goods, while also maintaining that there were no substantial differences between the provisions of the *Code* and the existing legislation. There was no mention of the *Code* and the new legislation now required that dumping be the 'principal' cause of injury before action could be taken.

The new legislation introduced a change to the administration of the inquiry process. It no longer required the Industries Assistance Commission to inquire and report on each complaint, leaving the administering Department to inquire and recommend to the Minister directly. This was said to improve the timeliness of the measures. The Industries Assistance Commission became a review body for appeal against the Minister's decision.[69]

Kelly in the debate on the proposed legislation made reference to an article in the 'Financial Review", questioning whether anti-dumping measures were in any way effective. The article takes a hypothetical case where the exporter is a member of a cartel and the Australian importer enters into negotiations for the purchase of a product for sale

[68]Industries Assistance Commission Annual Report 1973-74 p 127.
[69]Second Reading Debate House of Representatives Hansard 23 April 1975 p 2077.

in a restricted Australian market. The exporter suggests that the importer may have difficulties with dumping if he tries to bargain the price too low. It is suggested that the importer should accept the cartelised price rather than pay dumping duty to the government. The effect of this scenario is to simply assist the maintenance of the cartels operating in both countries, with the Australian consumer paying a higher price than that available on the open market.[70] This obviously presents a policy dilemma for any government.

The Tokyo Round of *GATT* trade negotiations was concluded in 1979. This Round produced, among other things, a revision of the *Anti-dumping Code* and a new *Code on Subsidies and Countervailing Duties*.[71] Australia announced its decision to join the revised *Anti-Dumping Code* on 25 June 1980.[72] Australia showed some hesitancy on accession to the *GATT Subsidies and Countervailing Code*. However, the *Customs Tariff (Anti-Dumping) Act 1975* was amended in 1981 to conform with the provisions of the *Codes*. The amendments included a power to accept exporter undertakings to raise export prices to non-injurious levels, retrospective applications of anti-dumping duties where undertakings were breached, revised criteria for use where a Government substantially influenced the price, and for the security period under the *Customs Act 1901* to extend to 4 months.

Under considerable pressure from the United States, Australia decided to join the *Subsidies and Countervailing Duties Code* in April 1982. To ensure that the threat of imposing measures against Australia contained an appropriate injury test, the Australian Parliament passed legislation allowing the taking of reciprocal countervailing duty measures to offset what was considered unreasonable conduct by another country.[73]Australia acceded to the new *Code* on 21 September 1982 and to the revised *Anti-Dumping Code* on 21 October 1982.[74]

Anti-dumping measures began to accelerate from 1979 through to 1985 as illustrated in the graph below:

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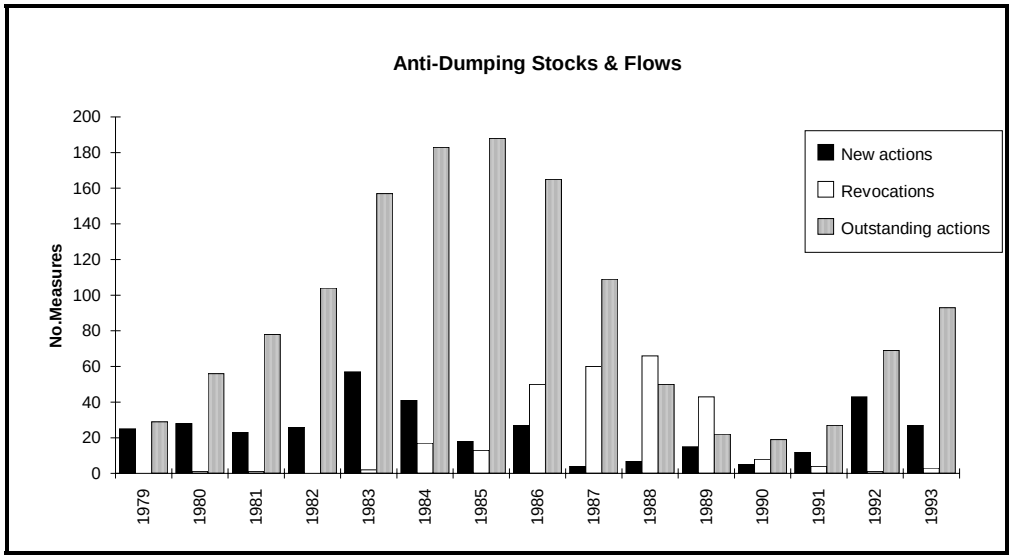
[70]Second Reading Debate House of Representatives Hansard 23 April 1975 p 2082.
[71]*GATT* Agreement on Implementation of Article VI and the Agreement on the Implementation of Article XVI.
[72]Second Reading Speech House of Representatives Hansard 6 May 1981 p 2040.
[73]Second Reading Speech House of Representatives Hansard 22 April 1982 p 1820.
[74]Second Reading Speech House of Representatives Hansard 8 December 1982 p 3112.



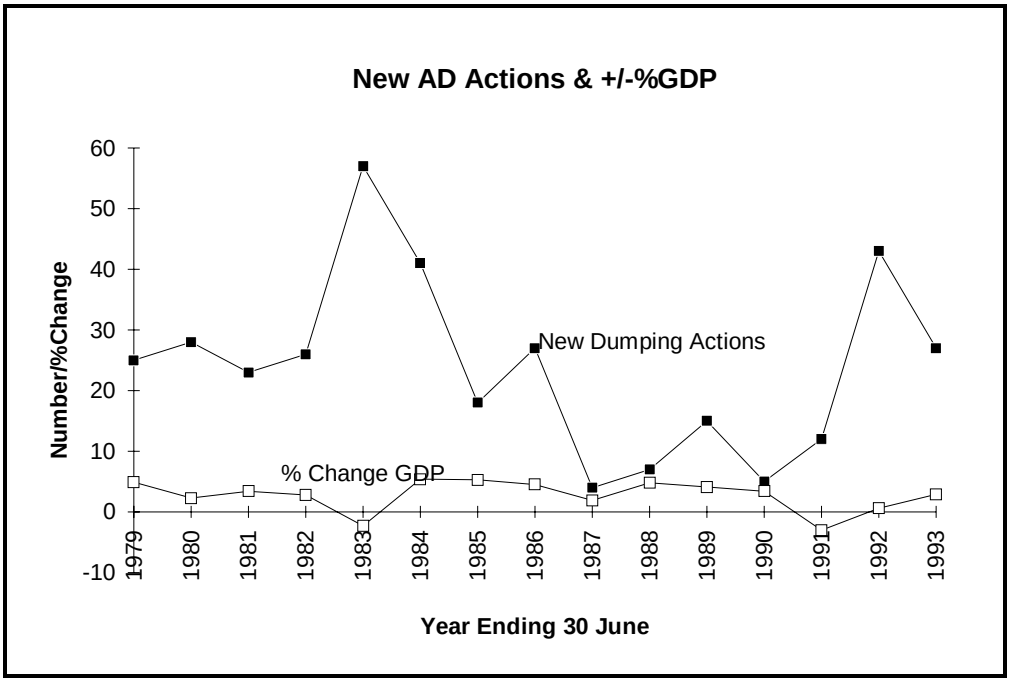
Source: Banks (1990) and Industry Commission Annual Reports

The number of outstanding actions where duty was being imposed reached its peak in 1985. This was the result of the number of new actions increasing to its peak in 1983, with virtually no actions being revoked. The peak in new actions was coincident with a period of negative growth in gross national product in 1983. The then Minister for Industry and Commerce was of the view that:

> "The world wide economic recession has led to a dramatic increase in the number of dumping and countervailing complaints in Australia."[75]

However, the test of a linear relationship between new dumping actions and change in gross domestic product is at best weak for the period 1979 to 1986 and virtually non-existent for the period 1979 to 1993. One possible explanation for the coincidence of events in 1983 was that, according to Brown, during the later part of 1982 the administering department was conducting seminars trying to encourage industries to make dumping complaints.[76]

[75]Second Reading Speech House of Representatives Hansard 8 December 1982 p 3113.
[76]Second Reading Debate House of Representatives Hansard 9 December 1982 p 3311.



Source: Australian Customs Service and ABS Cat No 5206.0

The Industry Commission (1995) still asserts that there is "..the tendency for anti-dumping initiations to vary inversely with manufacturing company profitability. The relationship is complicated by the stock of actions already in place and by the changes made to the anti-dumping system at various times".[77] This statement is not particularly meaningful. The question of the protective effect is surely related to the number of actions in place, and this is simply a policy driven result depending on the manner in which the materiality qualification is applied to injury determinations by the administering authorities.

The increased activity in this area of government intervention in the economy was becoming a key area of debate. In April 1983 the then Minister for Industry and Commerce announced a wide ranging departmental review of the *Customs Tariff (Anti-dumping) Act 1975*. A discussion green paper was published by the department in June 1983 seeking public comment on the administration of these measures. The department's view of the need for anti-dumping measures appeared to be based on the Vernon proposition that dumping was a way around the general industry protective measures. It

[77]Industry Commission (1995) p 151.

was seen as a safeguard against the erosion by unfair trading of the general assistance measures applying to Australian industry.[78]

The types of issues discussed in the departmental green paper were by no means novel. It discussed such matters as the exclusion of sales at a loss from normal value calculations (now referred to as the 'ordinary course of trade requirement), sales dumping, provisional actions, country hopping, material injury to an Australian industry, onus of proof, acceptance of undertakings, retrospective action, freight subsidisation, the use of dumped inputs in manufacture, tenders, and credit terms.[79]

The government introduced a number of amendments to the *Customs Tariff (Anti-Dumping) Act* in 1983 to incorporate some of the findings from the discussion paper:

> a similar definition of 'related persons' as contained in the valuation provisions of the Customs Act,
>
> a power to determine that sale at a loss over an extended period of time were not in the 'ordinary course of trade' and that the price of the remaining profitable sales in reasonable quantities could be considered for establishing normal value,
>
> an amount of duty no greater than sufficient to remove injury be applied,
>
> a widening of the powers of investigation of sales dumping practices,
>
> a provision for a meeting with industry to determine a non-injurious undertaking price,
>
> the need for information to be submitted by statutory declaration, and
>
> the restriction of Industry Commission Reviews to the facts rather than taking account of the industry policy guidelines.[80]

[78]Department of Industry and Commerce (1983) p 2.
[79]Department of Industry and Commerce (1983) pp 6-37.
[80]Second Reading Speech House of Representatives Hansard 7 December 1983 pp 3392-3395.

These changes came into effect in 1984 with the general endorsement of both major political parties and the Australian industry.[81]

While a lot of time was being devoted to the standard rhetoric on dumping, the effect of the widening of administrative review through the *Administrative Decisions (Judicial Review) Act 1977* was beginning to be felt. As a result of an interim injunction being obtained in the Federal Court , granted on the basis of the Department's procedures being contrary to Australia's international obligations, the government decided to exclude by amendment the provision linking the *Anti-Dumping Act* with the *GATT Codes*.[82] The government argued that issues concerning Australia's adherence to its obligations under international agreements relating to anti-dumping and countervailing duty action were more appropriately considered within the context of the dispute settlement provisions of the particular agreements rather than in the Australian courts.[83]

To ensure that there would be no repeat action to challenge the ability of the administration to take securities they were exempted by regulation from the application of the *Administrative Decisions (Judicial Review) Act 1977*. A challenge either had to be on substantive grounds or under common law.[84]

Towards the end of 1985 there was a sense of a high level of dissatisfaction with the application of anti-dumping measures in terms of their high frequency and long length of application. There was also a crisis caused by their application to fertilisers which were seen as an essential input into agriculture. The government was in a position where it was charging dumping duty on imports, while subsidising the consumption of fertiliser by farmers. The Industries Assistance Commission had also issued a draft report on the chemicals and plastics industries proposing that anti-dumping duties should only be taken where it would be in the 'public interest'. This was where the economy wide implications including the effects on other industries and consumers as well as on producers had been taken into account.[85]

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[81]Second Reading Debate House of Representatives Hansard 1 March 1984 p 275.
[82]Alex Harvey v Gerard Roofing Tiles (1981) unreported.
[83]Second Reading Speech House of Representatives Hansard 8 December 1982 p 3113. With regard to future developments in the application of international law in Australia reference should be made to Kirby (1995) and Winterton (1995).
[84]*Administrative Decisions (Judicial Review) Act 1977* Schedule 1.
[85]Industries Assistance Commission *Report on the Chemical and Plastics Industries* (1986) v.2 p 244.

These circumstances led to the appointment of Gruen in February 1986 to review the *Customs Tariff (Anti-Dumping) Act 1975* and its administration, and to consider the merits of including a national interest provision. The review was of a short two months duration. Its approach to anti-dumping administration was that of emergency protection provision to industry from a narrowly defined set of unfair trading practices. The report was adamant that the protection should be short-term only. It was the opinion of Gruen that:

> "Australia should aim in the general direction of making less use of anti-dumping action if it wants to emulate ... highly adaptable outward-looking economic structures."[86]

There were essentially four strands of thought which flowed from the report:

> that constructed normal values were to be used as a last resort, and that the provision excluding domestic sales at a loss from normal value assessments be repealed;
>
> that the relief should equate with the internal competition test of fairness, and should not be set at a standard to include full cost and a reasonable profit for an industry;
>
> where there is extensive use of anti-dumping measures by an industry, the Industries Assistance Commission should examine the circumstances justifying such longer-term insulation from world trends; and
>
> the introduction of a specific national interest provision was likely to produce more uncertainty and complexity in the application of the provisions.[87]

Other recommendations of significance were that :

> mere price suppression could not be accepted as material injury unless it resulted in dramatic profit decline or loss situation or real threat thereof;

[86]Gruen (1986) summary p (iii) refers to Austria, Finland, Norway, Sweden and Switzerland
[87]Gruen summary pp.(iv) & (v).

> all normal values and non injurious free on board values should be freely available;
>
> the Australian Bureau of Statistics should regularly review the need for confidentiality of specific import items and the Australian Customs Service should be able to disclose the source of imports without disclosing the quantities or value; and
>
> the Australian Customs Service should monitor the effectiveness and impact on imports of anti-dumping and countervailing actions and should report publicly on these matters. Some of this reporting function could be best carried out in conjunction with the Industries Assistance Commission.[88,89]

The Government's response to the report was made on 30 October 1986, where it had decided to:

> establish an anti-dumping tribunal;
>
> not include a national interest clause in the *Act*;
>
> continue to prohibit normal values being based on sales at a loss as its repeal would put Australia's legislative provisions out of step with other countries that use *GATT* anti-dumping mechanisms to counter unfair trading practices; and
>
> introduce a three year sunset clause but with no restrictions on renewal based on fresh application and no mandatory referral to the Industries Assistance Commission.[90]

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[88]This last point has been largely ignored and is addressed later in this thesis.
[89]A similar approach to anti-dumping relief was advocated by Porter ME (1990). Porter considered that dumping remedies were too often used to "blunt price competition and protect inefficient firms". Like Gruen, Porter indicated that "Dumping penalties should only be instituted as a result of sustained selling at below variable cost." He saw the aim of trade policy as opening markets and eliminating unfair trade practices, not to protect domestic competitors. See Porter (1990) p 669.
[90]Button Press Release Minister for Industry, Technology and Commerce 30 October 1986.

Parallel with the development in the policy arena was a review by the Administrative Law Council of Customs and Excise legislation. In their 1987 report to the Attorney-General the Council examined anti dumping and countervailing decisions.[91]

The Council had the benefit of the Gruen findings. It was mainly concerned with the question of the relevant appeal body to determine the merits of the decision to impose duty. The Council's view was that the Administrative Appeals Tribunal was the best equipped body to provide the correct or preferable decision based on all the circumstances of each case. In the interest of certainty and in keeping with the overwhelming tenor of Administrative Appeal Tribunal jurisdictions, it concluded that the Tribunal should have its usual power to make decisions binding on a party to the review.

A number of other recommendations were made by the Council which excluded a review of the merits on:

> decisions on preliminary findings and security;
>
> acceptance of exporter undertakings;[92]
>
> retaliation to duties imposed by a foreign country on goods exported from Australia;[93]and
>
> decisions on third country anti dumping and countervailing requests.[94]

2.7 *Anti-Dumping Authority Act 1988*

The government introduced a package of amending legislation into the Parliament in April 1988 to give effect to its decisions on the Gruen report. A two tier system of administration was implemented with the Customs authority taking cases to a preliminary finding stage, and an Anti-Dumping Authority reviewing the preliminary finding and where appropriate taking the case to a final finding with a report to the Minister as decision maker. The Anti-Dumping

[91]Administrative Review Council (1987) Report No 28 p 1.
[92]Administrative Review Council (1987) Report No 28 p 20.
[93]Administrative Review Council (1987) Report No 28 p 20 and p 22.
[94]Administrative Review Council (1987) Report No 28 p 17.

Authority was seen as independently operating at arms-length to Customs and the policy department, and being staffed by commercial and economic experts. A direction of the government to the Authority was that:

> "anti-dumping duties are not to used as a substitute means of providing assistance to import competing industry in Australia, nor to shield industry from the need to adjust to changing economic conditions...
>
> ...Assessment of material injury and causal link must be rigorous and anti-dumping measures should not be used as a de facto form of protection: they have to be seen as a set of measures to discourage unacceptable short-term threats to knock out an industry in the importing country in order to increase long-term market share."

One of the more interesting provisions was that allowing the Minister to make directions to the Authority

> "...to assist in its interpretation of the legislation where considered necessary."

The government also expected the Authority to weigh the prices and costs which are to be taken into account when assessing normal values, and unless there were strong reasons to the contrary, to assume a zero profit.

While not introducing a new national interest provision, the Minister would take into account national interest criteria in exercising his discretion in considering the reports of the Anti-Dumping Authority. An example, was where the imports complained of come from countries where Australia has a large trade surplus. A statutory definition of 'like goods' incorporating the *Code* provisions was included in the domestic legislation, and its complementary effect on the definition of an Australian industry.[95]

These changes to the anti-dumping mechanism were referred to in the governments' May 1988 industry statement.[96] The government stressed the need for fair trade, at a time of accelerated tariff reductions for a broad range of import competing industries. The

[95]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2313.
[96]Button May 1988 Industry Statement p 12 where the government introduced a phased reduction in tariffs to be completed by 1 July 1992 where the maximum tariff rates were generally either 15 or 10 per cent.

notable exceptions from the general reductions were the textile, clothing and footwear industries and the automotive industry.

Further technical legislative amendments were introduced in 1989 to migrate the assessment provisions into the *Customs Act 1901*, while leaving the taxing provisions in the *Customs Tariff (Anti-Dumping) Act 1975* as required by section 55 of the *Commonwealth of Australia Constitution Act 1900*.[97] The inclusion of profit in a constructed normal value was precluded where there were sales at a loss for an extended period of time.[98]

In 1990 attention was given to the implementation of the 1988 initiative under Article 4 of the *Protocol to the Australian New Zealand Closer Economic Relations Trade Agreement on the Acceleration of the Free Trade in Goods*, to abolish the application of anti-dumping measures between the two member states by 1 July 1990.[99] The concept involved the replacement anti-dumping laws with the application of mutually recognised competition laws. The *Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990* put this into effect, along with consequential changes to the *Evidence Act 1905*[100] and the *Federal Court of Australia Act 1976*.[101] These amendments diffused much of the constant irritation to trade between Australia and New Zealand.[102]

The new section 46A of the *Trade Practices Act 1974* prohibits a corporation which has a substantial degree of market power in Australia from taking advantage of that power in any Australian market for the purpose of eliminating or substantially damaging a competitor, or of preventing the entry of a person into a market, or of deterring or preventing a person from engaging in competitive conduct in that market. New Zealand introduced similar provisions into the existing *New Zealand Commerce Act 1986*.

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[97]Amended by the *Customs Tariff (Anti-dumping) Amendment Act 1989* and the *Customs Legislation (Anti-dumping) Act 1989* following the Full High Court Decision in *Air Caledonie International v Commonwealth* (1988) CLR 462; 82 ALR 385.
[98]Second Reading Speech House of Representatives Hansard 5 October 1989 pp 1610-1612.
[99]Section 269TAA(1) of the *Customs Act 1901* as amended by section 20(1) of the *Trade Practices (Misuse of Trans-Tasman Market Power) No 70 1990* specifically excludes the application of anti-dumping measures to goods of New Zealand origin.
[100]*Act No 70 1990* inserted Part VA relating to evidence of certain New Zealand matters into the *Evidence Act 1905.*
[101]*Act No 70 1990* inserted Part IIIA on Trans-Tasman Market proceedings into the *Federal Court of Australia Act 1976.*
[102]Second Reading Speech House of Representatives Hansard 9 May 1990 pp 167-170 - the amendments also harmonised the origin provisions.

The amendments to the *Evidence Act 1905* allowed the Federal Court of Australia and correspondingly the High Court of New Zealand to issue subpoenas in each territory and for the Courts to have the power to enforce compliance in their territory. This with the mutual recognition of evidence provisions was designed to allow anti-competition action to proceed with as little impediments as possible.

Australia in 1991 decided to adopt a wider definition of industry where the processing industry was actually integrated with agricultural producers.[103] This followed similar provisions in the United States legislation, designed to protect primary producers who are essentially price takers. It was intended that the Australian legislative provisions would assist primary producers who formed part of the processed agricultural product industry, where there was a close relationship between the movement in the prices of raw agricultural goods and processed goods, or where the raw agricultural goods constituted a significant proportion of the production cost of the processed agricultural goods.[104]

In 1991 following the government's industry statement the time for processing complaints was reduced.[105] Again in May 1992 provisions were introduced to further reduce the time for conducting inquiries. Australia had now become the fastest processor of complaints in the world. Prima facie assessment were to be completed in 25 days, with a further 100 days (120 days for complex cases) being allowed to reach a preliminary finding. A further 120 days was then allowed for the Anti-Dumping Authority to reach a final finding. The sunset clause on the application of duties was extended to 5 years, with a review prior to a further extension if the requirements for relief were still present or likely to be present on revocation.[106]

The Government also introduced measures in 1992 to collect an interim duty based upon the dumping margin or subsidy established during the inquiry period. The amount of interim duty payable is reviewable on a six monthly basis, and duty is refunded where the

[103]*Building a Competitive Australia* 12 March 1992 pp 3.11 & 5.18 - It was also decided to freeze the existing preferential tariff treatment given to Singapore, Taiwan, Hong Kong and the Republic of Korea at their existing rates from 1 July 1992 until they were aligned with the general tariff rate phasing process p 3.12.
[104]Second Reading Speech, House of Representatives Hansard 9 May 1991 p 3438
[105]In the March 1991 Economic Statement the maximum tariff were to be phased down to 5 percent by 1 July 1996, and bounties were to be lowered in line with reductions in tariffs. Some adjustments were made to sectoral plans.
[106]Second Reading Speech House of Representatives Hansard 7 May 1992 pp 2665-2668.

total interim duty paid for the six monthly period exceeds the actual duty liability. The measures also allowed for a twelve month review of interim duty payable on future shipments. A lesser amount of interim duty is payable where that is sufficient to remove the injury to the Australian industry[107]. This method of collection of dumping duties is similar to those maintaining in the United States and the European community.

Even though the policy measures may have been well in intention, by the mid-1990's Australia's outstanding anti-dumping and countervailing measures were not far behind the peak of the mid-1980's. This has been the result of the imposition of duties following the investigation of a number of fresh complaints in the early-1990's. In fact, the Industry Commission (1993) noted this resurgence in activity "...with Australia reporting more initiations of anti-dumping investigations than any other signatory to the *GATT Anti-Dumping Agreement [1979]"*.[108] The 1991-92 recession and the tariff reductions during the period may provide a reasonable explanation. However, as Feaver and Wilson (1995) point out "...many of the larger industrialised countries experienced simultaneous declines in economic activity, given the small size of the Australian economy in proportion, the implication of irregularity remains."[109] Feaver and Wilson (1995) dismiss bias on the part of the administering authorities, however, their explanation of an increased propensity for complaints in Australia does not identify any underlying reasons.

2.8 Uruguay Round Amendments

The next substantive additions to the law came with the adoption of the Uruguay Round amendments to the *Codes* following the Marrakesh Ministerial meeting in April 1994. The trade ministers agreed to give high priority to completing legislative processes to enable entry into force of the *World Trade Organisation Agreement 1994* from the target date of 1 January 1995 or as soon as possible thereafter. The proposed amendments were introduced into the Australian parliament on 12 October 1994 and later passed with effect from 1 January 1995.[110]

[107]Second Reading Speech, House of Representatives Hansard p 2581 of 4 November 1992.
[108]Industry Commission (1993) p 367.
[109]Feaver and Wilson (1995) pp 208-209.
[110]Second Reading Speech, House of Representatives Hansard of 12 October 1994 p 21.

The amendments to Australia's anti-dumping law included the following provisions:-

- the use of weighted average export prices and normal values for dumping margin assessments;

- de minimus dumping margins and subsidy amounts are not actionable where these are less than 2% of the export price or 1% ad valorem of the value, respectively;

- the termination of investigations where it is found that the volumes of dumping or subsidised goods are negligible ie. less than 3% of the total Australian import volume from one source or where sources are accumulated 7%;

- an investigation must be supported by at least 50% of the producers of like product expressing interest, and supporting producers must not account for less than 25% of total production of like goods produced by the domestic industry;

- the determination of company specific duty rates and the application of provisional securities where there are new entrants from a country where duties already apply;

- dumping duty securities may now be held for up to 9 months, with securities for countervailing actions still confined to 4 months duration;[111]

- countervailable subsidies were defined to be specific to an enterprise(s) or an industry, and non excludable;[112]

- preferential treatment for developing countries in countervailing cases.[113]

There are a number of procedural elements introduced as a consequence of the *World Trade Organisation Agreement 1994* which is consistent with the move to greater

[111]Article 7.4 of the *Anti-Dumping Code 1994* limits the application of dumping duty to a period of no longer than 4 months. However, exporters may request an extension of the period of up to 6 months. Where the investigating authorities examine whether a lower duty than the margin of dumping would be sufficient to remove injury, the corresponding periods are 6 and 9 months respectively.
[112]The *Subsidies Code 1994* makes a clear distinction between prohibited, actionable and non-actionable subsidies. Both the prohibited and actionable subsidies are subject to possible retaliation by an importing member. Non-actionable subsidies possess some social justification, and are not subject to retaliation.
[113]Second Reading Speech, House of Representatives Hansard of 18 October 1994 pp.2189-2190.

transparency in the rules governing anti-dumping and countervailing actions. This is in accord with the need for close monitoring of these non-tariff measures.

It is apparent, however, that the Australian Government does not see anti-dumping and countervailing action as a non tariff barrier or affecting the levels of tariffs generally. This is illustrated in the following statement made by the Government minister when introducing the need for amendments to domestic law, that:-

> "these countries (ie. the newly industrialised economies) are moving towards more open regimes replacing non-tariff barriers with tariff only regimes and, at the same time reducing the levels of protection provided through tariffs. These countries are looking increasingly at introducing anti-dumping laws".[114]

If it is argued that the anti-dumping laws do not fall into either the non-tariff or tariff categories, one may ask whether they are being characterised by the Australian Government as laws relating to competition? However this argument is not easily sustainable as the content of the anti-dumping and countervailing laws differs significantly to that contained in the internal competition laws. For example the concept of material injury used in anti-dumping law is far wider in its application than the test of lessening competition which forms the basis of actions under internal competition laws.

2.9 Summary

From the consideration of the early development of anti-dumping laws, it is apparent that the motive for their introduction was simply protectionism. The emotive pleas for fair trade were just expressions of the protectionist approach of powerful industry interests. It would be useful to know whether the same rationale was in vogue today as a defence for this form of trade restriction, as it was a century ago?

Australia certainly mimicked the laws of its then major trading partners, with the introduction of the *Industries Preservation Acts*. The 1921 legislation introduced the concept of "detriment to an Australian industry", the forerunner of the material injury

[114] Second Reading Speech, House of Representatives Hansard of 18 October 1994 pp.2189-2190.

test. This was a critical step, as it differentiated the anti-dumping criteria from those applying to Australia's anti-trust law. As a consequence it became easier to obtain a remedy for price discrimination against an external competitor through the anti-dumping law than against a competitor under the antitrust law.

Up to the 1950's, anti-dumping relief was of not much practical significance, as Australia had high tariff walls with a non-reciprocal preference arrangement with the United Kingdom. This situation continued until the end of the Second World War. The United Kingdom was the major source of manufactured products and the origin and preference rules gave a decided advantage to United Kingdom manufactures over other sources. The high level of United Kingdom investment and trade appears to have reduced the need for retaliatory anti-dumping measures.

With the development and acceptance of *GATT* by the major trading nations there was a gradual reduction in the tariff rate and a movement in Australia's trade away from the United Kingdom/Australia axis. In line with *GATT*'s prohibition of quantitative import restrictions, Australia abandoned quantitative import restrictions on most goods in the early 1960's. This move gave rise to an increase in the number of dumping complaints lodged by Australian industry, and an increase in the rate of anti-dumping duty measures. The Vernon Committee in its 1965 report saw anti-dumping legislation as supplementary to the normal tariff process. The Committee called for tougher anti-dumping measures, resulting in the government introducing a number of anti-avoidance measures. However, there were signs that there had been an excessive application of these measures against countries in the then Communist Block.

With continuing external pressure on Australia through the Kennedy, Tokyo, and Uruguay Rounds of the multilateral trade negotiations under the *GATT*, Australia's external tariffs were to fall to low levels. By the end of June 1996 the general rate will be down to 5 per cent ad valorem.[115] However, the growth of the anti-dumping and countervailing measures has been a contradiction in this trend towards a low non-discriminatory tariff regime. The evidence of the increase in these measures was shown in the graph on 'Anti-dumping Stocks and Flows'. Clearly there is some element of policy substitution taking place.

[115]With the exception of the textile, clothing and footwear industries and the automotive industry which all have special sector arrangements.

It is highly unlikely that the world has recently become full of dumpers of basic commodities.

The most disturbing aspect of the increase in the application of anti-dumping measures is its rationalisation by industry policy makers. The politicians and their bureaucratic advisers see the increase in the incidence of dumping measures as a reflection of economic hard times. From the application of a simple linear regression of the number of dumping actions as the dependent variable and the change in gross domestic product as the independent variable, it was demonstrated that there was no such relationship. Furthermore, the temporary drop in the number of new anti-dumping actions in 1987 and 1988 coincided with the governments temporary embrace of the *Gruen Report*, which advocated that a much tougher test should apply to qualify for relief. This temporary drop was reversed within two years. Such events clearly show that anti-dumping activity is policy driven, rather than responding to changing market signals.

The current situation is that there are an historically large number of anti-dumping and countervailing measures in place. There is a complex set of procedures now administered by two separate bodies which deal with each application for relief. There are more complex rules which reflect the developments of the international *Codes* covering the administration of anti-dumping and countervailing measures. Administrative time frames have been reduced so that preliminary measures may be introduced within 125 days from lodgement of a complaint, with a further 120 days to a final finding. This makes Australia the quickest in the world at determining the merits of dumping complaints. The measures will generally last for 5 years before review. This has had the effect of allowing the chemical, miscellaneous manufacturing and the processed food industries to discriminate and block competition in the Australian market from their strongest competitors, through the use of the anti-dumping system. The situation does not appear to have changed from the time anti-dumping measures were being advocated at the beginning of the century. Does this apparent protectionist basis of today's anti-dumping law stand up to further empirical testing?

SECTION 3 - An Economic Framework

3.1 Introduction

In view of the influence of economic theory in the industry protection debate, it is useful to review these theoretical approaches to economic analysis. The purpose of the review is to build a theoretical basis for isolating factors affecting the incidence of dumping and countervailing measures, and for testing the effectiveness of their application.

The contributions of economists cover a wide range of divergent views. Not all of these are canvassed, as the preconditions for imposing anti-dumping and countervailing measures are essentially market based having no application in command based economies.

Samuelson (1970) in an introductory discussion on the theory and practice of economics commented that:

> "All analysis involves abstraction. It is always necessary to idealise, to omit detail, to set-up simple analytical tools by which the facts can be related, and to set-up the right questions before consulting available evidence."[116]

As the purpose of the review of the economic literature is limited to the question of the possible motives for trade retaliation and effectiveness of measures, the selection of the literature is made accordingly.

3.2 The Economic Theory Context

3.2.1 The Study of Trade Regulation

The study of anti-dumping and countervailing (anti-subsidy) measures is about the regulation of international trade. These measures are directed at what are considered internationally as unfair trading practices. They target dumped or subsidised exports, which are in direct competition with the production of an importing country.

[116]Samuelson et al (1970) p 7.

Viner (1923) one of the earlier contributors who put the study of dumping on an intellectual footing, centred the debate around the concept of price discrimination between national markets.[117] Kindleburger(1968) in his classic text on international economics picks-up the Viner thesis, and refers to dumping as the charging of different prices in different markets.[118] This reflects the general thesis that dumping is simply a form of international price discrimination.[119] Kindleberger further maintains that it takes place where demand abroad is more elastic than demand at home, and results from monopolistic elements in the home market.[120]

Viner (1923), by way of example, classified dumping according to motive and continuity in the following way:

> Sporadic - to dispose of casual overstock; unintentional.
>
> Short-run or intermittent - to maintain connections in a market in which prices are on remaining considerations unacceptable; to develop trade connections and buyers' goodwill in a new market; to eliminate competition in the market dumped on; to forestall the development of competition in the market dumped on; to retaliate against dumping in the reverse direction.
>
> Long-run or continuous - to maintain full production from existing plant facilities without cutting domestic prices; to obtain the economies of larger-scale production without cutting domestic prices; on purely mercantalistic grounds.[121]

Many of the debates about dumping today turn around these questions of motive and continuity. Dumping to some extent was looked upon as a form of private subsidisation by cartels with the market power to do it.[122]

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[117]Viner (1923) p 3.
[118]Kindleberger (1968) p 155.
[119]There are a number of economic texts which support this view eg. Viner (1923), Caves (1993) p 247 and Lloyd (1973) p 60.
[120]Also see Krugman & Brander (1983) for a discussion of this definition.
[121]Viner (1923) p 23.
[122]Viner (1923) Chapter IV refers to the debates about the dumping of the large German cartels in the nineteenth century.

Subsidisation is said to occur, however, where the government supports production either directly through the budget or indirectly by concessional arrangements. Some typical examples of subsidies are the transfer to producers of funds by way of grants; loans; equity infusions; loan guarantees; fiscal incentives; provision of goods and services; and income or price support arrangements.[123]

Where either of these practices cause injury to an industry in an importing country, anti-dumping or countervailing measures are commonly imposed under the relevant domestic law of the importing country.

A significant area of international trade law covers unfair trading practices between nation states. This is mainly concerned with Articles VI and XVI of the *GATT* and related provisions.[124] Australia's domestic law on anti-dumping and countervailing measures is framed to be consistent with these *GATT* provisions. According to Horlick (1989) the application of anti-dumping and/or countervailing remedies is now the first choice for industries seeking protection.[125] This raises serious questions concerning the application of this international public law. These relate to its impact on trading relations, and whether there is any measurable benefit to the importing country from the imposition of retaliatory import duties.

However, regardless of the arguments concerning the nexus between the freeing of trade and the goal of economic efficiency, which is the focus of this section on the economic framework, many practitioners would assert that the purpose behind the anti-dumping law is to ensure that there is 'fair trade' or as some may call it a 'level playing field'.[126] Apart from the obvious protectionist motive, this cry for 'fair trade' indicates that there is a belief, by some, in the need for government intervention to rectify systematic market failure. This question of the need for equitable relief through anti-dumping actions is further discussed when dealing with the public policy issues.

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[123]Article 1 of the *GATT Agreement on Subsidies and Countervailing Measures 1994* provides a definition of a subsidy.
[124]There are also a number of regional and bilateral trading agreements, such as, the *EEC, NAFTA, & CER Agreements* which have fair trading clauses.
[125]Horlick (1989) expresses this view as practicing United States trade lawyer. See also Jackson (1989) p 218.
[126]Low (1993) p 28.

3.2.2 Economic Context

It is worth recalling that the regulation of commerce is not just a recent phenomenon. Adam Smith contributed to the debate about the regulation of commerce in "The Wealth of Nations" suggesting that a hands off approach was the most effective way of achieving economic prosperity. Remarking on the introduction of new laws regulating commerce, Smith was of the view that:

> "The interest of dealers ... in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public. ... The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it."[127]

Although the sinister motivation attributed by Smith to the group of individuals we now refer to as businessmen seems particularly scathing, it is profit seeking behaviour which is a fundamental axiom of competitive market economics. However, it is important that policy makers are aware of the self interest of the various political pressure groups in formulating their regulatory rules. It is the question of whether the regulation by Australian authorities of dumped or subsidised trade has been in the public interest which is the topic of this thesis.

Following "The Wealth of Nations" was David Ricardo's noted contribution to market economics in his "Principles of Political Economy". Here he demonstrated through the theory of comparative advantage, there were economic gains to be made from specialisation and exchange of products through trade. This Ricardian model is still the corner stone of liberal trade theory, although many of its restrictive assumptions have been questioned or changed in later analyses.[128]

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[127]Adam Smith (1776) p 278 referred to by Barber (1967) p 23.
[128]Clement (1967) p 4 - the Heckscher-Ohlin model is one variant. Also see Bifani (1989).

3.2.3 The Classical Approach

The analysis referred to so far has been based on what can be referred to as the Liberal classical approach to economics.[129] This is only one perspective, but the dominant perspective in the economic debate on industry protection. It is often referred to as the economic rationalist approach.

Following classical tradition set by Smith and Ricardo, Keynes in his work on "The General Theory of Employment, Interest and Money" continued to express concern over the use of industry protective measures saying that:

> "If there is one thing that Protection cannot do, it is to cure Unemployment ... There are some arguments for Protection, based upon its securing possible but improbable advantages, to which there is no simple answer. But the claim to cure Unemployment involves the Protectionist fallacy in its grossest and crudest form."[130]

According to Bhagwati (1994), Keynes had formerly renounced the doctrine of free trade, and only later put forward the thesis of domestic reflation being the answer to full employment.[131] This is illustrative of the degree of conjecture among economists during the period of the massive unemployment of the 1930's.

The ultimate view of Keynes can be said to be consistent with the Ricardian and Heckscher-Ohlin free trade models. Like all economic models they are based on a number of restrictive assumptions. The assumptions of the Ricardian model include: labour as the only resource input used in production; cost of producing additional goods is constant; and goods are produced in a perfectly competitive market[132]; and, according to Clement the underlying Ricardian assumption, that the production functions are different in each country.[133] The Heckscher-Ohlin model is one variant of the Ricardian model. It makes the assumptions that each product has a unique production function. Different factor

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[129]Frieden (1991) p 17.
[130]Keynes (1964) reprint p 334 in "The General Theory of Employment, Interest and Money" refers to his earlier work in "The Nation and the Athenaeum" 1923.
[131]Bhagwati (1994) p 234.
[132]Coughlin (1988) pp 19-21.
[133]Clement (1967) p 4.

endowments in each country provide the rationale for trade resulting in a Pareto optimum with factor price equalisation.[134]

The Heckscher-Ohlin model predicts that the products exported by a country with relatively high endowments of capital will be relatively capital intensive. That is, each country will specialise in the production of the products which use its most abundant factor. The application of the theory to trading situations has not by any means led to its validation. Leontief (1954) found that, in an application of the model to United States exports, these were more labour intensive than imports from less capital intensive countries.[135] This tended to undermine the confidence in the Heckscher-Ohlin approach.

It is not only in the empirical context where the classical models have been challenged. The work of Robinson (1931)[136] on the theoretical analysis of competition and that of Stopler-Samuelson (1941)[137] on factor reversals have been difficult challenges for the classical theory to meet. However, as Bhagwati (1994) notes:

> "..., the approach to the FPE (Factor Price Equalisation) theorem was not that it defined reality; rather it was that the theorem provided the researcher with the necessary clues as to why it did not."[138]

It is with this approach in mind that the contributions by classical theorists should be considered.

Caves (1993) a key proponent of the liberal classical approach, points out that it is of no advantage to a small economy, without any way of influencing the world price of a product, to impose import tariffs on products.[139] To do so would have the perverse effect of making the imported product dearer in the importing country, and diverting resources to the manufacture of that product in the importing country and away from producing those products in which it has a competitive advantage. This small country scenario

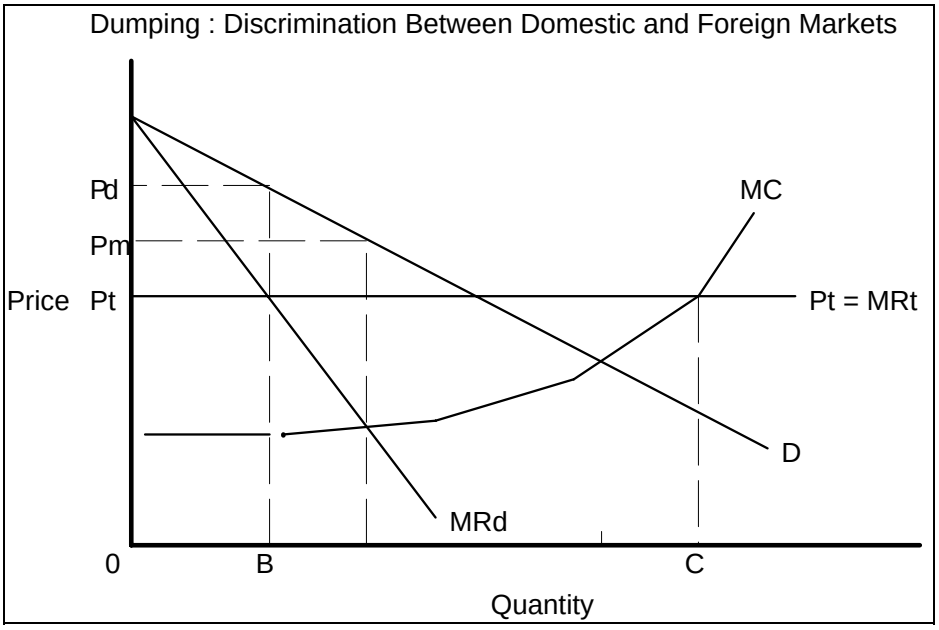
[134]Clement (1967) p 87 gives a comprehensive explanation of the Heckscher-Ohlin model and its empirical applications.
[135]Leontief (1954) pp 3-32 a Nobel Laureate.
[136]Robinson (1931) took a more socially oriented approach to economic analysis than a simple market driven theoretical one.
[137]Stopler-Samuelson (1941).
[138]Bhagwati (1994) p 241.
[139]Caves (1993) p 204.

describes the liberal economic view of Australia's position within the world trading scene.

Turning the focus to policy considerations relating to the countering of dumping practices Caves (1993) exposition of the micro-economic effects of dumping within an imperfectly competitive framework is of particular interest.[140] He asserts that the behaviour of an exporting industry with a monopoly in its domestic market is to improve profitability, through increasing export sales at the world parity price while increasing the price of a reduced volume of domestic sales. It follows that if the increased export sales are at lower prices than prevailing in the importer's market, consumers in the importing country can benefit in the short-term from the consumption of lower priced dumped products.[141]

The following diagram illustrates the generally accepted view of the price discrimination argument, where there is a monopolist in the domestic market of the exporting country who also has the capacity to export.[142] The monopolist faces the demand curve **D** at home and the world price **Pt**. If the monopolist can charge different prices at home and abroad then **Pd** becomes the domestic price and **Pt** is the price at which it trades abroad. Sales to the domestic market are **OB** and sales for export are **BC.** The equilibrium on the export market is attained when the marginal cost of the monopolists product **MC** equals the price abroad **Pt** which is fixed by the infinitely elastic foreign demand and equals the marginal revenue **MRt**. This is at quantity **OC**. However it pays the monopolist to exploit the home market advantage and divert up to quantity **OB** into domestic consumption, as this is the point where the marginal revenue attainable from the domestic market becomes equal to that on the export market.

[140]Caves (1993) pp 247-249.
[141]Lloyd (1973) p 60 indicates that economists have for a long time considered that the gain by the consumers' is more than enough to compensate the producers in the importing country for the losses of income suffered through dumping. Lloyd (1973) refers to the studies of Viner (1923) and Baldwin (1970) pp 141-142.
[142]Caves (1993) p 248 - **Pm** is the monopolists price where there is no trade, which is determined by the equilibrium point where the domestic marginal revenue is equal to the marginal cost.



A similar situation may arise from the subsidisation of production by an exporting country. Where the effect of subsidisation is to make the products of the exporter competitive or more competitive than the products produced in a non-subsidising country, the subsidy may displace production of the non-subsidising countries. That is, the subsidised products may be cheaper to buy in an importing country through the effect of the subsidy on production costs in the exporting country. Where there is perfect factor substitution, it would be self-evident that the imposition of protective measures aimed at restricting the importation of cheaper subsidised products would be detrimental to the immediate welfare of the importing or recipient country.[143] Surely it would be beneficial for the importing country to receive what is effectively a free gift from the subsidising country, and for the importing country to concentrate on producing those products where it still has comparative advantage. However, there may be other policy reasons not directly related to income maximisation which motivate importing countries to impose countervailing duties on the importation of subsidised products.[144]

[143]Francois et al (1991) p 95 make this point in terms of maximisation of national income and consumption.
[144]Bhagwati (1988) p 35 sees the need for observance of the rules of fair trade as important for the continuation of free trade.

The conditions for such partial equilibrium are well known, and include the lack of good substitutes for the product of that industry, limited retaliation by other industries and significant barriers to entry into the monopolist's market. Given that these conditions are quite restrictive, the conclusions reached from these theoretical analyses should be considered with some caution[145]. However, partial equilibrium analysis is a useful tool with which the costs and benefits of the economic strategies of the participants can be considered. Questions which can be addressed in such analyses are, for example, whether the value of any benefits accruing to producers and costs to consumers in the exporting country are from the importing country's perspective simply in reversal. Or, whether as a result of taking advantage of the low prices of the dumped imports the outcome for the importing country of lower consumer prices and negative benefits to local producers, leads to a better long-term outcome than if retaliatory measures were imposed by the importing country.

The almost unqualified rejection of industry protective measures by the liberal economic theorists, however, presents a major obstacle in the critical discussion of the application anti-dumping and subsidy safeguard measures. It contrasts with the continued acceptance of protective measures as legitimate policy instruments within the public international legal framework. An illustration of such acceptance, is the condemnation by the *GATT* of the dumping or subsidisation of exports causing material injury to an importing country's domestic industry.[146] In certain circumstances the *GATT* permits an importing country to offset or prevent the injury caused by dumping or subsidisation by the application of countervailing duties.[147]

To simply discount the *GATT* safeguards as crude industry protection and having no economic basis would be rather foolhardy, as the above analysis is not only selective in its airing of the views of classical economists, it does not look at alternative models of economic behaviour.

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[145]Leftwich (1966) pp 91-92 describes the micro economic restrictions relating to pure monopoly, and Baumol (1961) Chapter 15 the general equilibrium considerations.
[146]Article VI.1 of the *GATT* 1947.
[147]Article VI.2 of the *GATT* 1947 states that"...a contracting party may levy on any dumped product an anti-dumping duty not greater than the margin of dumping in respect of such product."

3.2.4 Further refinements to the Classical approach

It is important therefore to review some of the more recent contributions to international trade and competition theory to see whether the traditional international economic theories are still sustainable, and if there are any new theoretical frameworks which should be considered. Some further economic variables relevant to the outcome of trade relations may become evident from the examination of this literature.

Yoffie (1993) supports the usefulness of the factor endowment theories in explaining trade in raw material and the location of labour-intensive activities such as electronics assembly in low wage countries. However, it was shown from empirical industry studies by a group at the Harvard Business School that:

> "The assumptions underlying the Heckscher-Ohlin framework and its subsequent derivatives did not generalise well to the reality of a multi-product, multi-country world with multiple factors of production. And contrary to the restrictive assumptions made by the theory, imperfect competition existed in many markets, available technology differed, economies of scale and scope existed, and some factors of production were at least partially mobile between countries."[148]

Linder (1961) suggested that exports of manufactures are an outgrowth of home production and market characteristics, and that trade was likely to increase as countries attained similar industrial structures and levels of per capita income. This should stimulate intra-industry trade between mature economies as a product of innovation, production differentiation, increasing returns to scale and imperfect competition.[149]

The growth of intra-industry trade, now accounting for over 60% of trade in the top 11 OECD countries, is visible evidence of significant changes in trading patterns.[150] It may be argued that the high intra-industry trade figures are simply a matter of the level of aggregation of the industry, and that the factor endowment model still applies within the industry. An example of such a Neo-Heckscher-Ohlin model is that of Falvey (1988).[151] This model differs in two ways from the Heckscher-Ohlin model. Firstly, an industry is defined by the products produced from

[148]Yoffie (1993) p 5.
[149]Linder (1961) pp 87-109.
[150]Yoffie (1993) p x.
[151]Falvey (1981) pp 495-511.

its specialised type of capital factor. Secondly, countries specialise in the production of a differentiated product within this range of products. The resultant differentiated products within the industry can be distinguished by their capital to labour ratios.

Sodersten and Reed (1994) reviewed the results of empirical studies on intra-industry trade and classified these into three categories.[152] The first focus was on country specific factors. Not surprisingly the level of development, market size, and existence of a common border were generally found to have a positive influence on intra-industry trade, whereas the distance between trading partners tended to be inhibitory. The second focus was on the influence of industry specific factors. They observed that product differentiation was clearly a significant factor whereas the influence of scale economies, market structure, technological factors and foreign direct investment was unclear. Thirdly, in their review of policy specific and institution specific influences they found that the effect of trade barriers was inconclusive, although the only reported study of non-tariff barriers found these to be an impediment to intra-industry trade.[153] The integration effect of the membership of a customs union was found to encourage intra-industry trade.[154]

The evidence of the effects of intra-industry trade appear inconclusive. All we know is that it is an important element of trade. Whether it creates more harmonious relations between trading nations is not clear. For instance, does intra-industry trade create a greater strain on the economic adjustment mechanism than the equivalent growth in inter-industry trade? Surprisingly, intra-industry trade appears to be unrelated to factors associated with market concentration, technology and foreign direct investment, other likely characteristics influencing the level of retaliatory measures between trading nations. Therefore intra-industry trade cannot be identified as a candidate which may influence the level of retaliation between countries.

Turning to a consideration of economic adjustment following changes in trading patterns, there are some useful adjustment policy lessens to learn from the Japanese post war experience. Sekiguchi and Horiuchi (1988) reviewed the literature on the results of trade adjustment assistance applying to post war Japanese industry. They drew on the work of Haberler who was said to attribute the slowness in inter-industry resource transfer coincident with rising imports, to constraints in factor mobility and inflexible factor prices. They suggest that where there is market failure either through irrational expectations or a

[152]Sodersten and Reed (1994) pp 173-185.
[153]Toh (1982) pp 281-300.
[154]Loerscher and Wolter (1980) pp 281-293, Havrylyshyn & Civan (1983), Balassa (1986) pp 220-233.

difference in the social and private discount rate, a first best solution to encourage resource mobility is indirect government intervention. They suggest that this should be by way of information dissemination or technical training.

Experience shows that first best principles are not necessarily applicable in the real world. They suggest that a second best policy will require direct government intervention. The two options they identified were:

- to intervene in the process of price formation in product markets; and
- discriminatory use of productive factors among sectors.

They claim that if intervention bolsters up the contracting sector it will be better for unemployment, however, it will delay the adjustment process. On the other hand, if the measures are directed at an expanding sector there will be much greater dislocation, but the adjustment process is hastened. However, where capital is very mobile but wages are very rigid, this will lead to a worsening of the employment position in the contracting industry and may call for a policy of slow down in capital mobility as a second best policy.[155]

If anti-dumping and countervailing actions were characterised as second best solutions, their main impact would be expected to be the slowing down of the movement of capital. This it is suggested would be a result of their direct influence on product prices in the recipient capital intensive manufacturing industries. It is questionable whether one can determine whether the recipient industries have a long-term contractionary or expansionary outlook. It is therefore difficult to make a rational policy choice between assisting the affected industry or investing in an alternative industry with alleged growth impetus. The justification of short-term measures must therefore rest on the reduction of the dislocational aspects of resource deployment.

Anti-dumping and countervailing measure are discriminatory, and are similar in many ways to voluntary export restraints. Both measures tend to restrict competition in a controlled way on the home market of the importing country, and are very much favoured by oligopolistic producers. That is, effective competition from an external source is eliminated.

[155]Sekiguchi and Horiuchi (1988) p 369-372.

Because of their discriminatory effect, however, they tend to create considerable external trade friction. Sekiguchi and Horiuchi argue that the preferred method of temporary protection would be through invoking non-discriminatory quantitative restrictions consistent with *GATT* Article XIX intervention, rather than through a discriminatory anti-dumping tariff.[156]

3.2.5 Michael Porter's - four country specific factors

Moving away from the rigours of neo-classical economic analysis, Porter (1990) advocated a qualitative approach to dealing with international trade issues. This approach was very popular among Western businessmen and politicians in the early 1990's.

Porter (1990) in a study of the comparative advantage of nations addressed the question of "... the way the firm's proximate "environment" shapes its competitive success over time. Or, even more broadly, why some organisations prosper and others fail".[157] The approach adopted was a qualitative analysis of determinants identified in over 100 historical case studies of internationally competitive firms.[158] He maintained that there were four broad determinants of competitive advantage. These were:

> "1. Factors conditions. The nations position in factors of production such as skilled labour or infrastructure, necessary to compete in a given industry.
>
> 2. Demand conditions. The nature of home demand for the product or its service.
>
> 3. Related and supporting industries. The presence or absence in the nation of supplier industries and related industries that are internationally competitive.
>
> 4. Firms strategy, structure and rivalry. The conditions in the nation governing how companies are created, organised and managed, and the nature of domestic rivalry."[159]

[156]Sekiguichi and Horiuchi (1988) p 389.
[157]Porter (1990) p 29.
[158]Porter (1990) p 30.
[159]Porter (1990) p 71.

For example, Porter sees the nation state in which an international firm has its home base as a factor which can influence a firms strategic focus and hence its success.[160] The determinants are seen as being part of an interactive system referred to as the national "diamond".[161]

According to Porter the system can be influenced by two autonomous factors, chance and government intervention.[162] Porter maintains that government can have either a positive or negative effect on national advantage.[163] Government's role is seen as a pusher and challenger, in transmitting and amplifying the forces of the "diamond" determinants as well as upgrading them.[164] Porter is of the view that:

> "The most powerful levers available to government for influencing national competitive advantage are slow acting ones such as creating advanced factors, encouraging domestic rivalry, shaping national priorities, and influencing demand sophistication."[165]

Porter sums up his approach to trade policy as to concentrate on pursuing open market access in all foreign nations, and not on protection of domestic competitors.[166] The message which flows from the consideration of the Porter thesis, is that an inward focusing economy is more likely to resort to trade retaliation than one which is in active pursuit of his four broad determinants of competitive advantage.

3.2.6 Strategic Trade Theory

An exception to the Caves (1993) small country paradigm may arise where a tariff applies to traded products of an industry in imperfect global competition.[167] This approach is best illustrated by reference to an international duopoly three country model, where an interventionist trade policy is employed by one of the countries. Spencer and Brander (1983) illustrate this by reference to a reaction curve model, where there are two

[160]Porter (1990) p 577.
[161]Porter (1990) p 72.
[162]Porter (1990) p 127.
[163]Porter (1990) p 617.
[164]Porter (1990) p 681.
[165]Porter (1990) p 682.
[166]Porter (1990) p 670.
[167]Robinson (1969) discusses the normative theory of imperfect competition.

firms of equivalent size.[168] In a normal competitive equilibrium model with duopoly in the global market, a 'Cournat' equilibrium will be reached where there is equal sharing of the global market and the price of the product above that which would normally be determined in a competitive situation. However, it can be shown that where one country intervenes either by way of tariff or subsidy, it is possible for the intervening country to gain an increase in its share of the world market. Within the normal limiting assumptions of international trade models, it would be expected that an increase in home market profitability would follow at the expense of foreign market job loss. This equilibrium is referred to as the 'Stackelberg' equilibrium. Although beneficial to the interventionist, the result overall may still be sub-optimal to the competitive solution.

The sub-optimal solution in an environment where entry is restrictive is re-affirmed by Krugman and Brander (1983). From their analytical model they demonstrate the cause of reciprocal dumping by the oligopolist such that:

> "The effective marginal cost of delivering an exported unit is higher than for a unit of domestic sales, because of transport costs, but this is consistent with the higher marginal revenue. Thus, perceived marginal revenue can equal marginal cost in both markets at positive output levels. This is true for firms in both countries, which thus gives rise to two-way trade. Moreover, each firm has a smaller mark-up over cost in its export market than at home: The fob price for exports is below the domestic price, and therefore there is reciprocal dumping."

Itoh et al (1988) present a variant of a Spencer and Brander (1983) analysis, which assumes increasing returns to scale and intervention by means of subsidisation of the fixed costs of the domestic firm. They show that in a monopolistic market, the identity of the country to which the resulting monopoly returns accrue is of critical importance in determining the international distribution of income. That is, from a national economic welfare standpoint, where economic returns can accrue to a foreign country and the social costs of protecting the domestic firm are small, then the subsidisation of the domestic firm is justifiable.[169]

[168]Spencer and Brander (1983).
[169]Itoh et al (1988) p 246.

The 'Stackelberg' equilibrium implies that an application of a tariff by the interventionist leads to a transfer of a greater share of the duopoly profits to the intervening country. Whether the same result would be achieved where there was a gross imbalance in the size of the firms is a moot point. The underlying assumption of this model is that protection of the home market may allow domestic enterprises to build up production levels considerably higher than those of foreign rivals and/or to introduce new production technologies more quickly. The literature suggests that the chances of success will be higher where the domestic market is large. This should maximise scale advantages and place domestic industry in an international competitive position.[170] How costly would it be for a smaller country to preserve its position by the threat of trade retaliation? In practice it is likely that the cost of retaliation would exceed the benefit. With little theoretical support for small country retaliation, the inclusion of a measure of market concentration as a relevant variable, small country retaliation would be futile.[171]

Boltuck and Litan (1991) describe the Spencer and Brander imperfect competitive equilibrium theory as emphasising the importance of "learning by doing" in the development of new products in industries which are capital intensive.[172] The learning process allows firms to lower their operating costs as they expand production. This is put forward in support of home market protection in the formative stages of the industry, as it is said to allow the firms to generate sufficient funds to exploit other markets. Firms without this protection it is argued could be driven out of business and unable to return as they would have been by-passed by later technology. This is a variant of the infant industry argument, and if it were a scenario worth considering in the context of the application of safeguard measures, the profile of industries seeking anti-dumping and countervailing protection would be expected to be slanted towards new high technology industries.

The model ignores the possible distributive effects of the infant industry protection. It is unlikely that any barrier protective measure would be of benefit to the unskilled

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[170]Industries Assistance Commission Report 1988-89 p 80 makes reference to the work of Brander and Spencer.

[171]The 'Herfindahl' index is a commonly used measure of industry concentration which takes account of both the economic entities in the industry and their market share. It is defined as "the sum of the squared market shares of all firms" in the industry. For example, two firms with equal market shares:

$$(.5)(.5) + (.5)(.5) = .5$$

[172]Boltuck and Litan (1991) p 10 make reference to the work of Krugman 1986, and Brander and Spencer 1983 and 1985.

workforce, as the effect would be to displace the unskilled with a fewer number of more highly skilled and paid workers.[173] However, the adverse effect of barrier protective measures through the effect on higher input costs on downstream users, where the traded good is used as a raw material for further processing or for incorporation into manufactured products, can be reduced through the choice of subsidies rather than tariffs as an instrument of retaliation.

There are some conceptual hurdles for strategic trade theory. Krugman (1987) cites the work of Eaton and Grossman (1983), who look at the usefulness of export subsidies in stimulating export industries. Firstly, they argue that the affect of export subsidies is simply to increase price competition, and exporters' profits are likely to be less than the subsidy amount. Secondly, another difficulty alluded to by Krugman is that it is not possible to subsidise everything, and referring to Dixit and Grossman (1984) who found that selective subsidisation raises the input cost of other domestic industries resulting in these becoming less competitive. The need to be selective is also likely to give rise to short term bottlenecks in specialised resource availability. Thirdly, Dixit (1986) shows that where there are two or more subsidised producers it is likely that a subsidy will lead to over-production. Fourthly, if the market is contestable, then the above normal profits will attract new entrants and drive any excess rent down (Baumol, Panzar and Willig)(1982). Dixit (1984) forms the view that there is little if any rent to redistribute using the strategic policies inherent in the Brander and Spencer analysis.[174]

Internal micro-economic policies are just one part of trade policy. Balance of payment movements can be of some concern to industry where there appears to be no foreseeable linkage with currency movements. For example, the rise in the value of the Japanese Yen in the 1980's linked with the ballooning trade surplus, has led to a number of industry advocates raising questions of unfair trade. In a press article on United States and Japanese trade relations, Prestowitz (1994) was quoted as saying that:

> "both sides might be better off resurrecting earlier talks aimed at the root causes of their trade disputes. These include excessive regulation, inadequate consumer spending and insufficient antitrust enforcement against industrial cartels in Japan".[175]

[173]Bhagwati (1994) p 243 refers to a number of empirical studies on this point.
[174]Industries Assistance Commission Annual Report 1988-89 pp 79-86 gives a summary of this approach.
[175]US News & World Report 19/4/94.

Many of these arguments are simply convenient, as Krugman shows in his analysis of the international adjustment process focussing on the years 1985-90. The analysis covered the years where the balance of trade between the United States and Japan seemed to be getting out of hand. The arguments for strategic intervention ignore the working of monetary and exchange rate adjustments in the medium term to redress imbalance in the trading account. As evidence of the confidence in the trade account adjustment process, there were ample investors willing to finance the United States deficit while the adjustment process was working its way through[176]. Whitman (1987) endorses the need for macro-economic policy adjustment rather than resort to tinkering with micro-economic adjustments.[177]

The traditionalists argue that a combination of laissez-faire micro economic policy with the active use of monetary policy to manage the macro economy, will then allow governments to focus their micro-economic policies on allocative efficiency.[178] Frieden in commenting on the application of micro economic policies also sees problems with the interventionist approach, even where there are market imperfections such as monopoly and spill overs. He sees domestic consumers as the major group disadvantaged by trade restrictions, while acknowledging that there may be some benefits from offsetting monopoly power overseas or in certain cases encouraging the use of domestic monopoly power.[179]

It could be argued that it is beneficial to open these markets to external competition as a measure to counter the market power of concentrated industries in home markets. An illustration of a competition policy decision, applying external competition as an instrument for improving domestic competition, is in the decision of the European Commission to allow a significant merger within the stainless steel pipe and tube industry.[180] It is global competitiveness that is the only durable guarantor of profitability for firms and job security for workers (Whitman(1987)).[181]

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[176]Krugman (1991) p 49.
[177]Whitman (1987) p 238.
[178]Krugman (1991) p 47.
[179]Frieden (1991) p 32.
[180]BRUSSELS, April 22 (Reuter) As at 22 April 1994 the matter is the subject of an appeal to the Court of First Instance.
[181]Whitman(1987) p 236.

An argument against relying on external competition in controlling market power in the context of competition from dumped products, is that of predatory dumping. This is a strategy which is said to be employed by foreign firms with the objective of driving the price of the product down in the importing country to a level sufficient to close local production. At that stage the exporter raises prices to obtain monopoly rents in the importing market.[182]

There have been considerable doubts raised as to the viability of this predatory strategy, as it relies upon the continuation of significant barriers to entry in the target market.[183] The obvious weakness in the strategy is competition from other external firms, undercutting the predatory exporter's newly established rent seeking price. Another is that the financial markets have considerable depth, and would generally allow an efficient producer to trade through the predatory period. The predatory thesis also assumes that the costs of recommencing production once the price rose would be prohibitive. This last point is unlikely where the producer is efficient. However, the most telling point against the predation argument, is that the anti-dumping law is not based upon any test of predation, but simply of material injury.[184]

Ordover et al (1983) suggest that it would be more useful to consider price discriminating laws within the framework of domestic competition law.[185] The market share requirements should take account of the overseas producer's resources. A similar concept has now been enacted in the laws relating to the regulation of trade between Australia and New Zealand.[186] However, the recently concluded *North American Free Trade Agreement 1992* has by contrast continued the anti-dumping and countervailing provisions of the respective domestic laws. The only significant modification is the formation of a bilateral dispute settlement process.[187] According to Sinclair (1993) a body of rulings of these panels is being built up on United States trade law.[188] Although this has a harmonising effect, it is only achieved through dispute and retaliatory action between the *North American Free Trade Agreement 1992* members. It indicates that the United States government is still keen to use trade retaliatory safeguard measures, rather than trade diplomacy to solve trade disputes.

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[182]Ordover et al (1983) p 324 discusses requirements for predation.
[183]Ordover et al (1983) p 329 looks at the monopolisation on exit of domestic producer.
[184]Boltuck and Litan (1991) p 10 say there is no provision in US legislation. The same is true for all other jurisdictions which are consistent with *GATT*.
[185]Ordover et al (1983) p 327.
[186]Section 46A *Australian Trade Practices (Misuse of Trans-Tasman Powers) Act 1990*.
[187]Grinspan (1993) p 106.
[188]Sinclair (1993) p 228.

However, a recent event in the United States may put a new perspective on dealing with international cartels, the purpose behind the initial thrust into the area of anti-dumping retaliation. The United States Justice Department sought legislative authority during 1994 to move against as many as 20 international cartels which are outside the reach of the United States antitrust laws.[189] The United States Congress subsequently enacted the *International Antitrust Enforcement Assistance Act 1994*, which allows the United States competition authorities to conclude international agreements providing for the exchange of confidential information.[190] The agreements may allow for United States authorities to provide information about anti-competitive practices originating in the United States, which are not illegal under United States law but may lead to conviction in the other country party to the agreement.[191]

3.2.7 Information and Organisational Size

Simon questioned one of the fundamental axioms of the classical theory, that of utility maximising behaviour by individuals. Instead he postulated that an individual only searched for as long as his level of aspiration could be satisfied from the choices available. He coined the term 'satisficing' to describe this behaviour. The non-maximising behaviour is the result of human limitations in processing information, and the inherent information uncertainties on which they are based.[192]

To deal with such problems, two economic theoretical approaches developed. The first introduced transactions costs into the decision framework, and the second dealt with agency problems associated with the development of organisations.[193] The economic arguments look at decisions made under conditions of uncertainty. It is suggested that these costs determine the size of the organisational unit.

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[189]New York Times reported in Australian Financial Review 16 June 1994 p 15.
[190]*EC COM 95* 359 p 7.
[191]The *Agreement between the European Communities and the Government of the United States of 23 September 1991* (OJ L95 of 27 April 1995 as corrected by OJ 134 of 20 June 95) preceded the 1994 Act is not as expansive in its information sharing provisions.
[192]Simon (1978) in Zahka p 65.
[193]Williamson (1985) and Jensen & Meckling (1976).

Transaction cost economics deals with the governance of contractual relations among economic organisations. Kester (1991) suggests that the problem is to devise a system of governing business relations which optimally balances the economies and hazards of transacting in the market, with those administrative costs of controlling the same activities within the firm.[194]

Scapens (1984) sees the outcome of the research in information economics as highlighting the contextual basis of decision making. The appropriate measurement techniques can only be determined by reference to the specific costs and benefits of the information for that decision.[195] The adoption of elaborate models to reduce uncertainty in decision making although theoretically optimal may in practice prove too costly.

The agency literature is concerned with the contractual relationships between people with interest in a firm. That is between shareholder and management, or between management and staff. The problem is that both parties have to reach agreement on the sharing of rewards in an uncertain environment. The uncertain environment is accentuated by information asymmetry, where each party knows more about the activities they deal with than the other party. This situation can create a moral hazard where one party misrepresents their actions, or to adverse selection where there is under-performance but is unable to be evaluated.[196]

Temin (1991) in discussing the emergence of institutions to facilitate decision making in the presence of incomplete information, illustrates how both the cost of information and opportunities for abuse in the absence of information, mould institutional forms. The Marshall example of where a contract is set between the landlord (principal) and the tenant (agent) for equal sharing of the harvest at the end of one season, is seen as inferior from a resource utilisation view point to that of a pure rental system. Under the sharing system the variable resource will only be used in the production of the product up to the point where the marginal product is equal to the inverse of the tenant's proportional fixed share. That is, a lower production level is achieved than where the marginal gains equal marginal costs. The issue of under achievement leads to the development of corporate ownership and incentive structures which try to capture the benefits or guard against any

[194]Kester (1991) p xvi.
[195]Scapens (1984) p 119.
[196]Scapens (1984) p 172.

potential losses from corporate coordination, horizontal and vertical integration of firms and imperfect markets for the firms' inputs, outputs and value.

One of the arguments in favour of public intervention concerns situations where a firm's production activities generate knowledge and technical know-how which benefits other firms.[197] That is, where there is divergence between private and social returns to a particular activity. These are termed technological externalities.

A relevant illustration of this incomplete appropriability of knowledge, is the outcome of research and development activities which cannot be kept entirely hidden from other firms. Patent or copyright protection is only useful for a limited range of innovations. Krugman (1987) argues that these externalities are quite important where linkage externalities resulting from economies of scale in multi-stage production are added to pure technological externalities.[198] However, for public intervention to be appropriable these externalities must be country specific. They must also generate broad spillovers to the rest of the economy which are country specific. Otherwise the externalities are reflected in lower world prices and insignificant international gain.

The difficulties with incomplete appropriability of the results of research and development need to be weighed against the advantages of such investments.[199] Bifani (1989) cites the results of a survey by Business Week in 1989 which revealed a correlation between research and development and corporate profit margin of over 99.5%. Bifani concludes that technological innovation has a crucial role as a instrument of a competitive rivalry, with long term maximisation of benefits and market control leading to internalisation of the process of accumulating knowledge and generating new technology.

Estimates of the leakage rate for new technology indicate that new knowledge was in the hands of competitors within about a year, and in some cases, even a lesser time.[200]

In order to improve the capture of the rents from technological innovation, transnational corporations are likely to prefer transferring technology to a subsidiary. Therefore, the use of trade secrets rather than the patent or copyright processes becomes the mechanism for

[197]Industries Assistance Commission Annual Report 1988-89, p 82.
[198]Krugman (1989) p 231.
[199]Bifani (1989) p 156.
[200]Bifani (1989) p 156 reference to Mansfield (1977) work on technological diffusion.

appropriation of technical knowledge. The transfer of innovations appears to be much shorter between two subsidiaries of transnational corporations, rather than through licensing or joint ventures.[201]

The importance of the appropriability of the rents from technological innovations is reflected in the negotiating position of the United States in the Uruguay Round. Here the United States threatened unilateral retaliation through the use of the special Section 301 provisions of the *Omnibus Trade and Competitiveness Act 1988*, against countries which would not conform to the United States requirements on intellectual property rights.[202]

Inclusion of technological innovations is a factor for consideration in the trade environment, leading to the conclusion that where there is a possibility of internalisation of knowledge this is likely to be the course taken by large corporations. To capture the rents from such innovation it is likely that these corporations will seek other forms of industry protection rather than the traditional patent and copyright protection.

Itoh et al (1988 a) recognises this tendency towards the formation of oligopolistic protective mechanisms to appropriate the benefits of research and development. They suggest a way to overcome this tendency to appropriability of rents, is to focus interventions and subsidies on basic research rather than in process innovation.[203]

Individual risk is also seen as constraint on investment in research and development. Itoh et al (1988a) assert that the society should subsidise firms where there is a greater risk to individual firms than to society, where there are net social benefits of a successful research and development outcome.[204] They also suggest that subsidisation of research and development may be socially beneficial where there are economies of scale in an industry to increase output and to encourage the learning process. The increased economies to scale are likely to result in increased output and international competitiveness. This later point concerning economies of scale and a learning by doing with the associated large set up costs appeared to be important considerations in Japanese industry policy.[205] Itoh et al (1988 b) contend that the classical Ricardian or Heckscher-

[201]Bifani (1989) p 162 cites a study by Mansfield, Roma & Wagner (1979).
[202]Bifani (1989) p 164.
[203]Itoh (1988a) p 236.
[204]Itoh (1988a) p 237.
[205]Itoh (1988a) p 274.

Ohlin trade theory assumptions of taking industry structure and technology as given is inappropriate to the analysis of the structure of trade and economic welfare.[206] They mention that it is desirable to have an industry structure centred around industry in which productivity can be readily increased, have foreseeable future demand and have a high technology base.[207]

However, the path to success through subsidising the set up costs of increasing return to scale industries is not so clear. Arther (1994) focuses on some unique features of technology industries. He claims that although there is a need for an effective national policy of pooled research and development, aggressive international marketing is crucial in the early stages of development to get ahead. Technological products or services have a tendency to reach local rather than global maxima. The increasing returns from technological development tend to lock in the application which can be developed ahead of the rest, whereas the technology which improves at a slower rate may be a better longer term choice. As Itoh et al (1988 b) conclude it is the first-mover through increasing returns to scale who can acquire a comparative advantage which creates a barrier to subsequent entry by would be competitors.[208]

Before turning to the question of the impact of institutions on the protection process, the need for corporations to reduce their exposure to financial and exchange rate risks requires mention. With the development of the capital asset pricing model firms are faced with decisions to diversify initially through investment in the domestic economy and then with a move into international transactions in the international economy. Yoffie (1993) sees the diversification covering changing country conditions and the exploitation of firm specific advantages.[209]

Much of the discussions imply that size can be a significant factor in corporation growth and lead to diversification in this widest sense into international markets through foreign equity ownership. It would therefore be reasonable to look at whether the degree of foreign equity ownership within an industry is significant in reducing the degree of national retaliation within the industry.

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[206]Itoh (1988b) p 258.
[207]Itoh (1988b) p 275.
[208]Itoh (1988b) p 267.
[209]Yoffie (1993) p 10.

3.2.8 The Institutional Setting

The work of Buchanan and others emphasises an institutional approach to economic issues. In his 1986 Nobel prize lecture Buchanan discusses the effect of different institutional settings on the behaviour of individuals. In his view there is no political counterpart to Adam Smith's invisible hand operating through a market structure.[210] The value maximisation concept cannot be extended from the market to politics.

In reviewing Buchanan's lecture, Zahka (1992) homes in on the thesis that:

> "In the market, individuals exchange apples for oranges: in politics, individuals exchange agreed-on shares in contributions toward the costs of that which is commonly desired, from the services of the local fire station to that of the judge."[211]

The difference between this approach and orthodox normative economics is that the constitution of policy rather than policy itself becomes the relevant object for reform.

One of the difficulties presented by the theories based on public choice is that individuals may indulge in directly unproductive profit seeking behaviour where the nexus between the agreed shares and that which is commonly desired is weak. As Bhagwarti (1994) elegantly puts it, these resource using but zero-output-producing activities can result from lobbying for policy change to redistribute income towards oneself as with tariffs or to share in the rents or revenues from existing policies.[212]

One of the approaches to dealing with the problems posed by the institutional setting is that of governance. The governance phenomenon is best conceptualised at the level of industries or industrial sectors. Each industry is viewed as a matrix of interdependent social exchange relationship or transactions, that must occur among organisations, either individually or collectively in order to develop, produce, and market goods or services.[213]

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[210]Buchanan Nobel prize address 1986 p 336.
[211]Zahka (1992) reviewed the contributions of economists who have been awarded the Nobel prize.
[212]Bhagwati (1994) p 238.
[213]Campbell et al (1991) p 6.

Campbell et al (1991) defined the six governance mechanisms as the market with classical contracting, obligational contracting, hierarchy administrative command, monitoring by tacit agreement or mutual understandings, promotional networking by means of explicitly stated agreements and association through formally organised membership agreements.[214] They see state agencies as having additional hierarchical controls and coercive powers which may deliberately facilitate or inhibit production and exchange.[215]

The application of governance mechanisms is best illustrated by industry example. An interesting example of the application of governance analysis is given by Scherrer (1991) in the disintegration of the United States steel industry. The conclusion of this industry study identified three factors which were primarily responsible for the demise. Firstly, the vast amount of immovable capital required to maximise the economies of scale in the integrated mills, leading to the continued employment of old production technology. Secondly, the strength of the steel workers in the integrated mills, delivering high wages for those workers and opportunities for the non-unionised mini-mills to undermine the previous oligopolistic arrangements. Thirdly, the lack of any cohesive national steel policy. In other words the lack of an effective micro-economic adjustment program contributed to the collapse of the integrated mills.

In the automobile industry, the market for labour was one of oligopolistic supply with the union covering the three major producers and their suppliers' workforce. There was minimal association between the automobile producers. An obligations network developed between manufacturers and their dealers who operated under an exclusive franchise system. This allowed a significant degree of non-market control over independent dealers. The industry benefited greatly from state intervention through low fuel and automobile taxes, development of toll-free super highways and federal support for urbanisation. The negative effects on the industry were from federal product safety, emission and fuel consumption standards, and anti-trust proceedings impeding joint research efforts and limiting the degree of vertical integration.

Scherrer (1991) attributes the transformation of governance in the United States automobile industry to:

[214]Campbell et al (1991) p 29.
[215]Campbell et al (1991) pp 31-32.

market pressure from foreign producers forcing the unions to participate in a transformation process;

technological innovations driven by the need to reduce labour costs and improve quality while responding to an increasing volatility in consumer tastes;

the level of labour mobilisation producing barriers to change as in the extent of outsourcing arrangements achievable;

limited government involvement in facilitating change to more accommodating labour laws and in the loosening of anti-trust policies to allow the development of permissible networks; and

the inertia created by the existing hierarchical command strategy.

The recommendation for future development was for greater state intervention to promote a less hierarchical and more cooperative form of governance in the United States automobile industry.

The above industry studies are of mature manufacturing industries, which are more akin to the type of industry protection structure in Australia than the other industries selected by Lindberg and Campbell (1991). The important conclusion coming from these studies is the need for a strategy in these industries which will reduce the tendency towards organised production hierarchies, and institutionalisation of arms length relationships between firms and finance.

In a separate study by the Massachusetts Institute of Technology Commission on Industrial Productivity the negative traits as identified by Lindburg and Campbell (1991), were seen as giving rise to narrow planning horizons and an inability to develop an effective collective infrastructure for technological development. The Commission was also of the view that there was a systematic neglect of human resources which arose from the ideological preferences and organisational strategies of firms favouring power imbalances between business and labour leading to uncooperative relationships between organisations. The view of Lindberg and Campbell (1991) is that the state is a significant

player in the transition of governance regimes, as they can provide strong incentives or coercive pressure to overcome the inevitable Prisoners' Dilemma constraints.[216]

However, these findings of Lindburg and Campbell (1991) are by no means universally applicable. In an as yet unpublished paper, Horuichi (1994) analyses the effectiveness of institutional monitoring in Japanese corporate government. The analysis focuses on the surge in convertible bonds issued by leading Japanese corporations since the mid 1980s. It shows that although there was corporate monitoring by main banks of approximately half the corporations there was no perceived difference in the profit performance to those corporations which were not monitored. The preliminary research tends to question the conventional view that "institutional monitoring" has been effective in Japanese corporate governance.

Although there is no definitive position established in the literature regarding the impact of governance mechanisms, it is apparent that the state's rule-making powers have an important influence on corporate behaviour. There are significant doubts about the imputation that the states influence on the development of these governance mechanisms will necessarily be beneficial. Economic policy is made by politicians who are participants in a legislative process. There is a tendency by politicians and bureaucrats to earn political income through tapping into rent seeking behaviour of groups. If Buchanan's (1991) predictions based on rent seeking behaviour are reliable, it would be expected that there would be considerable investment to secure access to the scarcity rents implicit in the availability of anti-dumping and countervailing measures.[217]

Public choice theory would indicate that there are significant rents appropriated by consultants and bureaucracy from the application of anti-dumping and countervailing measures. This is in addition to the rents from the price effect of the duties.

3.2.9 Harvard Models

[216]Lindburg & Campbell (1991) pp 392-395.
[217]Buchanan (1991) p 39.

It is useful to finally consider the findings of a three year project conducted by the Harvard Business School into understanding the changing pattern of world trade and global competition during the 1970s and 1980s. The outcome of this survey provides some empirical basis for the focus of the discussion in this chapter.[218]

The survey suggests policy outcomes which have some significance to interventionist policy. First, there was little effect on international structure of trade or competition from government intervention in relatively fragmented industries. Relative costs are not under the control of any government, however, it is possible for governments to create a superior environment over the long-run. Secondly, it was found that where there were global oligopolies, firms invested in competitor's markets, regardless of profitability of such investment. This is linked with a need to apply risk averse hedging strategies which are consistent with "follow-the-leader" foreign investment and the observed formation of alliances.

As Yoffie (1993) concludes:

> "As more firms compete head on head in multiple international markets, more firms (or groups and networks of firms) will gravitate towards similar production locations, trade patterns, and technical and managerial capabilities."

It was also found that the first mover advantage could not be overcome in some industries, a finding consistent with that of Arther (1994). Perhaps the most interesting finding in the context of trade retaliation was that many of the strongest competitors had home markets which were relatively uncontested by global competitors. This allowed these firms to maintain cash flows needed to support a global network and strategy.[219]

Thirdly, it was found that government intervention in heavily regulated oligopolistic industries through the application of dumping duties can increase the investment of foreign firms in the home market to take advantage of the protected environment. Unilateral reductions in protective measures, where there are globally oligopolistic industries, were seen as promoting increased efficiency but there may be a downside in relation to the transition costs in terms of lost market share and frustrated investment

[218]Yoffie (1993).
[219]Yoffie (1993) p 442, Feinberg (1982).

abroad. The studies also conclude that infant industry protection appears to have resulted in export expansion, and that trade managed by strong government institutions can have significant benefit.

Finally, it was found that political barriers could slow down the rate of change driven by comparative advantage. The classical example given was the influence of the textile agreement on the pace of change in the textile industries of the developed countries.

In contrast with Yoffie's approach, Reich (1993) takes a political economic approach.[220] He analyses the economic environment in terms of the types of production and the factors involved in that production, in particular, employment. Industrial success comes from catering for the special needs of customers in niche product markets.[221] He notes that a feature of these products is that they combine both goods and services. For example, the major cost of components for pharmaceutical's are research and development, chemical trials, patent applications and regulatory clearances, drug detailing and distribution.[222] He links the development of these growth products with the availability of special labour needs, identifying the symbolic analyst group as having the necessary analytical and research skills to contribute to the development of special niche products.[223]

This theory aligns different labour groups with two polar opposite economic directions. The two lower paid groups are associated with the carrying out routine procedures or providing in-person services. These group are advocates of protective nationalism. The more highly paid and mobile symbolic analysts, on the other hand, prefer the more open laissez-faire approach to economic management. Reich maintains that neither of these approaches are useful for nation states as they inflict hardship on the weaker groups, leading to severe income distortions.[224] Within the context of a highly internationally mobile elite labour and capital combinations, he favours an interventionist positive sum negotiating approach to national policy development.[225] Although arrived at from differing starting points, this conclusion about

[220]Reich (1993) is a political economist at Harvard's John F Kennedy School of Government, and Minister for Labor in the Clinton Administration.
[221]Reich (1993) pp 82-83 These niche product markets are serviced by monopsonistic suppliers who can appropriate some economic rent.
[222]Reich (1993) pp 85-86.
[223]Reich (1993) p 221.
[224]Reich (1993) p 311.
[225]Reich (1993) pp 312-313.

how to develop high valued niche products in an economy is remarkably similar to that of Yoffie.

3.3 Summary

A number of factors would appear from the literature to be relevant to the incidence of anti-dumping and countervailing actions. These are:

from the classical approach, changes in comparative advantage may require adjustment by the less efficient producers;

the opportunity for monopolising the market (either from a global, bilateral or domestic perspective) runs across all the literature, although the outcome from intervention in these circumstances differs according to the theoretical approach;

the extent of intra-industry trade could be seen as a measure of level of cooperation within the industry. However, this is only supported by anecdotal evidence and may not affect the level of adjustment and its socially disruptive consequences;

the influence of foreign investment in markets may reduce the competitive risk. This avoidance strategy may be necessary where barriers to trade prevent access and the ability of firms to exploit their competitive edge. If firms cannot succeed in foreign penetration due to entry barriers is it likely they will retaliate in their home market? The threat of a fall in home market share may be potential inducement for retaliation in these circumstances;

there are political factors which slow trade adjustment and can be seen in the agreements to limit textile trade from non market and less developed countries. However, these processes create the potential for significant rents to be appropriated to consultants and bureaucrats. A low skilled non-adaptive labour force is likely to elevate protective nationalistic tensions; and

there is a lag in the price effect of exchange rate change which can give rise to anxiety in the trade adjustment process.

Clearly the classical approach is that the gains from trade creation are greater than the cost of adjustment. However, anti-dumping and countervailing measures as safeguard mechanisms have been specifically written into the *GATT* and are antagonistic to trade creation. Therefore public policy is involved in achieving a satisfactory outcome for the political stakeholders, which must rest somewhere in between the free trade and the largely interventionist approaches to trade.

Another clash with the classical freely competitive model for welfare maximisation, is the realisation that actors in international trade are more likely to be contracting in a non-competitive environment. If so, the rules for free trade may be inappropriate for business between multinational enterprises with influence over trading outcomes. This raises the question of the relevance of competition rules generally.

The problems of information availability and complex decision making in the trade environment, may preclude the application of a general theoretical approach to analysis in favour of an empirical assessment of industry sector achievements. These achievements could be assessed against the success factors commonly accepted in business. Although this partial analytical approach is not prescriptive of the general welfare maximising solution, it may tell whether the parties directly affected achieve some benefit from anti-dumping and countervailing measures as a policy outcome. At least some group must benefit, otherwise there is no public benefit to be obtained from the policy application.

SECTION 4 - Public Policy Considerations

4.1 Introduction

The debate on the public policy concerning the application of anti-dumping and countervailing measures is dominated by the influence of international economic, political and legal relations. In the previous Section the economic factors influencing international retaliation were discussed. It is now appropriate to address the political and legal influences on the question of trade retaliation. By analysing these political and legal views, with an understanding of the operant economic factors, the rationale and objectives of government policy in the area of anti-dumping and countervailing retaliation may be determined.

Although today the early contributors to classical economic thought seem somewhat remote, their argument for reducing trade regulation is reflected in the development of like minded international institutions. The dominant institution in the field of public international law relating to trade has been the *General Agreement on Tariffs and Trade (GATT)*.[226] This agreement was originally signed in 1947. This has been followed by successive rounds of multilateral trade negotiations, the Uruguay Round being the most recently completed culminating in the *World Trade Organisation Agreement 1994*[227], the *GATT 1994* and associated *GATT Codes*[228].

Such agreements are always in the process of change and evolution. Drysdale (1988) discusses trade regimes as objects of policy, owing their existence to the collective action of trading partners through which gainful non-threatening behaviour is built.[229] He concludes that:

> "The framework of agreements and understandings for international economic exchange is neither permanent nor immutable. It is the product of economic and

[226]The principal architects of *GATT* were the United States and Great Britain, and it came into operation in 1947 with the two related agreements pertaining to the World Bank and the International Monetary Fund.
[227]*Marrakesh Agreement establishing the World Trade Organisation 15 April 1994* entering into force on 1 January 1995 Australian Treaty Series 1995 No 8.
[228]*Agreement on the Implementation of Article VI of GATT 1994* and *Agreement on Subsidies and Countervailing Measures 1994*- Australian Treaty Series 1995 No 8 Annex 1A
[229]Drysdale (1988) p 229

> political circumstance and history and the artefact of social or political, as well as economic, interests and action. Changing circumstances reshape the coalition of interests in the international economy, and new conditions both encourage and require different forms and new focuses for policy coordination and economic association. The concern of international commercial diplomacy, in this context, is with the trade regime itself as an object of policy."[230]

Over the post war period a number of regional frameworks have developed which have ranged from fully fledged customs unions like the European Economic Community to free trading areas such as the *North American Free Trade Area 1992* and the *Australia New Zealand Closer Economic Relations Agreement 1983*[231]. Even more recently there has been the move to develop the *Asia Pacific Economic Cooperation Group* promoting trade liberalization within the Asia Pacific region. These are said to be consistent with *GATT* Article XXIV and represent a response to changing circumstances reshaping the coalition of interests in the international economy. However, the Europeans were slow in the process of eliminating trade restrictions between community members as required by Article XXIV of the *GATT*. There were vigorous debates as to the legitimacy of the European position of the non-violation of the *GATT* by the *Treaty of Rome*.[232] The matter has never stood a legal test with its resolution being by way of a gradual reduction of external tariffs during the Dillon and Kennedy Rounds of *GATT* negotiations.[233]

To put the position of the influence of international law into context, Joyner (1995) expresses the following pragmatic view of its application by the policy making elites of influential nation states, that:

> "International law furnishes the rules of the international foreign policy game. It provides the formal, institutional means for communicating to foreign-policy makers the perceived consensus on how the international system should operate.

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[230]Drysdale (1988) p 230

[231]*Australia New Zealand Closer Economic Relations Agreement and Exchange of Letters 1 January 1983* - Australian Treaty Series 1983 No 2.

[232]*Treaty establishing the European Economic Community* March 25, 1957 198 UNTS 11.

[233]Hudec (1990) pp 211-212 explains that it was not practical to have the EEC renegotiate the *Treaty of Rome* to conform with the *GATT* provisions, as the EEC was by its size as influential as the remaining *GATT* members. Hudec quotes the *GATT* working party on the *Treaty of Rome* as saying that "...it would be fruitful if attention could be directed to specific practical problems, leaving aside for the time being questions of law and debates about the compatibility of the Rome Treaty with Article XXIV of the General Agreement."

> The availability of international law contributes to the shaping of expectations. Knowing and following the law reduces uncertainty in foreign policy options and enhances predicability in international affairs. These are essential functions of international communication and serve every state's interest."[234]

Participation in international treaties is driven simply by the interests of nations to do so. The Australian Department of Foreign Affairs and Trade (1994), one of Joyner's policy making elites, states the case for the adoption of treaties as:

> "Nation states (particularly states with a relative small population such as Australia) benefit from a world where interaction between countries takes place within a framework based on fair, agreed and transparent rules."[235]

It is important to realise that the application of international law is subject to an element of choice by a nation state.[236] As Joyner (1995) comments "International courts function largely though state consent - when, where and under those circumstances to which governments agree."[237] To encourage the observance of international law the United Nations adopted the commonly held rules of international law. The three principal sources of the rules for international law were incorporated in Article 38 of the *Statute of the International Court of Justice 1944*, and enunciated as follows:

> "International conventions, whether general or particular, establishing rules expressly recognised by the contesting States; international custom, as evidence of general practice accepted as law; general principles of law recognised by civilised nations; ...judicial decisions and the teachings of the most highly qualified publicists of the various nations, as a subsidiary means for the determination of the rules of law."[238]

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[234]Joyner (1995) p 17 - The paper surveys the contribution of both the idealist and realist approaches, coming to the conclusion that the political dynamic rests with a policy making elites for whom the use and obedience to the rules of international law has practical and persuasive utility.
[235]Australian Department of Foreign Affairs and Trade (1994).
[236]Australian Dept. of Foreign Affairs and Trade (1994) express the view that: "But, ultimately, formal sovereignty is retained, since the power to enter into such agreements remains with the government and the government retains the right to remove itself from treaty obligations if it judges on balance the treaty no longer serves Australia's national and international interests.
[237]Joyner (1995) p 16.
[238]Article 92 of the *Charter of the United Nations 1944*

In the recently concluded Uruguay Round *Dispute Settlement Understanding 1994,* reference was made to "...customary rules of interpretation of public international law" in addition to the plain meaning and the drafting history of the texts.[239] These rules are seen as having an important influence on the outcome of trade disputes. It is within the boundaries of these rules where the processes of trade negotiations are concluded.

4.2 The *GATT* and Regional Frameworks

4.2.1 *GATT*

It can be said that one of the fundamental motives for involvement of the nation states within the *GATT* is one of national interest. The *GATT* in its preamble makes this quite clear that the contracting nations agree to "...the objectives of full employment and growth in real incomes and demand, and the mutually advantageous reduction of tariffs and other barriers to trade through negotiation".[240] Given that these objectives have recently been re-endorsed by the parties to the *GATT* in the Uruguay Round protocol, the concept of national interest in trading relationships would appear to be an underlying assumption.[241]

The *GATT* is discussed in terms of providing a conduit for trade liberalisation, through obtaining agreement on the limits within which nation states may regulate trade. It does not attempt to regulate private activities limiting or distorting trade.[242] The *GATT* merely provides a forum where liberalisation can be achieved by reciprocal agreements between nation states, which may result in some winners and some losers within their national economies. This reciprocal outcome helps to establish a counterweight between producer interests in each economy, and hence reduce the political pressure of those opposing change[243]. The *GATT* can be viewed as a negotiating forum in which national economic

[239]Hird (1995) paragraph 8 debates whether these rules of customary law have meaning when the "...rulings of the Dispute Settlement Body cannot add or diminish the rights and obligations provided in the covered agreements". On the other hand, it could be argued that the explicit recognition of the application of customary rules of interpretation of public international law, as enunciated by the International Court of Justice, is simply a recognition of normal practice.
[240]*GATT* October 30, 1947 IV BISD 1 (55 UNTS 94; BGB1 1951 II; Annex Vol I, II, III).
[241]Article 1 of *GATT 1994* (ATS 1995 No 8) incorporates the provisions of *GATT 1947.*
[242]Roessler (1987) p 79.
[243]Roessler (1987) p 83.

interests can be defended against sectional interests within their own and other countries.[244]

The view of the *GATT* as primarily representing a trade negotiating forum is strongly held among the trade diplomatic community. Stern (1992) supports this view saying that it is a forum in which countries "attempt to agree to rules governing their trade policies as well as reductions in trade barriers."[245] Teese (1993) although also seeing *GATT* as a negotiating forum points out "there is no mention of unilateral reductions, or even of freer trade, much less free trade." in the *GATT* objectives.[246] Whether or not it is seen simply as a trade negotiation forum, each member state must develop a policy direction to achieve a satisfactory outcome.

It would appear from many of the reports on the framework of the negotiations, Australia adopted a liberal economic free trade small country scenario advocated by Caves (1993) as its framework.[247] Australia was an active participation in the "Cairns Group" of nations, who pushed for a greater opening up of trade through the reduction of barriers to entry for traded goods, particularly for agricultural products.[248] Whether this small country free trade focus was consistent with Australia's commercial policy is debatable. Apart from the mixture of economic viewpoints on the effectiveness of a totally absorbing free trade policy, the political realisation of consensus on such a policy is not foreseeable.[249]

Boltuck and Litan (1991) take the principal objective of the *GATT* as to further the interests of consumers[250], presumably through the link with the *GATT* preamble.[251] The comments are made in the context of contrasting the *GATT* objectives with the United States anti-dumping law. Boltuck and Litan (1991) when discussing the United States anti-dumping law draw attention by way of contrast to "...an important objective of US

[244]Waincymer J (1995) also endorses the concept of the *GATT* being used as a shield by governments against vested interested groups attempting to capture the political process to the detriment of the general welfare of the population of a nation state.
[245]Stern (1992) p 29.
[246]Teese (1993) p 46.
[247]Caves (1993) p 199.
[248]Keating (1992) One Nation statement.
[249]Waincymer (1995) p 300 is also of the view that it is unlikely that there would ever be consensus on the free trade basis for *GATT* negotiation.
[250]Boltuck and Litan (1991) p 18.
[251]Reproduced in ATS 1995 No 8 p 447.

anti dumping law (is) to protect producers from unfair pricing practices,...".[252] However, even in liberal international economic theory there is concern with the goal of general welfare maximisation and the dichotomy between social and private return on investment over time, as well as the question of distribution between groups within the society.[253] The position of Boltuck and Litan (1991) appears to take a narrow focus which is not necessarily consistent with the relevant *GATT* objective of a "...growth in real incomes and demand,...". Their comment appears to ignore the interdependence between consumption and production in the economic equation.

It is the recognition of the balance between the drive towards an inward highly protective approach to negotiations and the laissez-faire extremes, which Reich (1993) sees as the policy issue. That is, Reich (1993) appears to be supportive of the *GATT* framework as a means of achieving mutually agreeable solutions consistent with the position expressed in the preamble.[254]

However, there are some serious questions raised by Low (1993) on whether the *GATT* can provide a satisfactory framework for resolving many of the differences between the member states. He comments on the strengthening protectionist attitudes emerging through the 1970's and 1980's, linked with the extension of trade negotiations into more areas of trade and trade related policy. The emphasis on reciprocity and non-discrimination has changed from that reliant upon a rules based system to one of managed trade with the focus on market share and equal access.[255] **That is, the notion of equal access rather than equal opportunity is becoming the norm of trade negotiations.**[256]

In liberal economic terms such an outcome could be seen as nullifying the trade creation effects of the non-discriminatory lowering of trade barriers implicit in the *GATT* most favoured nation clause Article I. The prognosis for trade creation is seen as poor by Finger (1990) who concludes that institutions do effect outcomes and the *GATT* was likely to retard trade expansion as:

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[252]Boltuck and Litan (1991) p 18.
[253]Caves (1993) p 5.
[254]Reich (1993) pp 311-313.
[255]Low (1993) pp 29-30.
[256]The continual demands by the US for access to the Japanese auto market is the most obvious example.

> "The *GATT* was built on a mercantilistic sense of economic welfare and a mercantilist sense that domestic producers had a higher claim than foreign producers to the domestic market. The trade negotiations process did not attack this claim -- it gave producers in each country an opportunity to increase its value through mutually beneficial exchanges with producers in other countries."[257]

Where the pressures from the more concentrated import competing producers are able to capture the political process, their interests are reflected in the trade negotiation process which in Finger's words:

> "Eventually expanded the trade remedies into a policy making institution that now eclipses the trade negotiations."[258]

As the *GATT* is the core legal/political framework for international trade such a view is not encouraging. The issue of fairness becomes the one of whether the status quo in market access is maintained to the detriment of new entrants in the international trade in goods and services.

4.2.2 *NAFTA*

Davidson (1993) in discussing the *North American Free Trade Agreement 1992* as a possible framework for other *GATT* Article XXIV free trade agreements, refers to the broad scope of its provisions.[259] He points out that the agreement covers policy issues outside the *GATT* requirements for a free trade area, such as, government procurement, services, investment, temporary entry for business persons, financial services, dispute settlement and special procedures for anti-dumping and countervailing duties. The *North American Free Trade Agreement 1992* is of serious interest from a trade policy viewpoint for Australia, however, whether the internal anti-dumping mechanism are a way towards a free trade area as exist between Australia and New Zealand is debatable.

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[257]Finger (1990) p 21.
[258]Finger (1990) pp 15, 17 & 21.
[259]On the basis of the *Canada-US Free Trade Agreement*, which entered into force on 1 January 1989, the governments of the United States, Canada and Mexico completed negotiations on 12 August 1992 on a proposed North American Free Trade Agreement which was finally concluded on 17 December 1992.

Under the *North American Free Trade Agreement 1992*, Canada, Mexico and the United States retain the right to apply their anti-dumping and countervailing legislation to goods imported from other member states. There is provision for private interests to request bilateral panels to review cases where they wish to contest an administrative decision to impose an anti-dumping or countervailing duty in a member country.[260] The panel process substitutes for domestic judicial review in the country imposing the measure. The panel will decide according to the domestic law of the importing country. Where a panel finds an error in the application of the domestic law, it can send the decision back to the administering authority in the importing country for correction. However, where the panel remands a matter to domestic agencies, those agencies must take action "not inconsistent with the decision of the panel." Subsequent action by Commerce or the Commission is subject to further review by the panel,[261] or by extraordinary challenge committee pursuant to Article 1904.13 of the *North American Free Trade Agreement 1992*.[262] The decisions of the bilateral panels are binding under *North American Free Trade Agreement 1992*.[263]

Langhammer (1992) sees the *North American Free Trade Agreement 1992* as a product of frustration with the lack of progress with the Uruguay round of multilateral trade negotiations at that time. Whether the formation of another free trading block will have any long-term effect on the *GATT* and the concept of a rules based system stimulating trade through a the provision of a non-discriminatory trading environment is impossible to comment upon at this time. However, an observation by Lee (1993) in discussing the provisions of the *North American Free Trade Agreement 1992* is worth consideration:

> "One thing was immediately apparent to both critics and proponents of the pact: it does not represent classic free trade. Rather, the 2000-page document orchestrates imports and exports with remarkable attention to detail, and it has as much to do with investment as with trade."[264]

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[260]Article 1904 of the *North American Free Trade Agreement 1992.*
[261]There is an exception to the exclusive binational panel review if the agency determination or the completed binational review is challenged solely on the basis of a Constitutional issue; such an action is reviewed by a three-judge panel of the Court of International Trade. USC 1516a(g)(4)(B) and (C).
[262]US International Trade Commission Investigation No 332-344 - *The Economic Effects of Anti-dumping and Countervailing Duty Orders and Suspension Agreements* - June 1995 p 2-15.
[263]*NAFTA* - A guide to Customs procedures pp 41 & 42.
[264]Lee (1993) p 70.

The issue is squarely whether the application of the rules of the agreement is more likely to encourage managed trade rather than free trade in the Ricardian sense.

4.2.3 *CER*

The *Australia New Zealand Closer Economic Relations Agreement 1983*[265] followed the *New Zealand Australia Free Trade Agreement* which was the centre piece of regional trading arrangements during the 1960s and 1970s. Free trade area market in goods under the *CER Agreement 1983* was achieved in July 1990. A *Protocol on Services* was concluded between the two countries in 1988.[266] However, given the close relationship between each of the countries where there is an unrestricted movement of people with entitlement to the social services of either country, the protocol is not likely to add to the already high level of trade in services.[267]

Movement from the very narrow boundaries of the *New Zealand Australia Free Trade Agreement* to the complete elimination of tariffs including anti-dumping duties between the two countries was a gradual process spanning the decade of the 80s. Negotiations between the two governments commenced following the issue of a joint communique by the two Prime Ministers.[268] The practical difficulties were that New Zealand was a higher tariff country, but across a more limited range of manufactured goods, than Australia. The narrower protected manufacturing base in New Zealand, meant that many of the Australian intermediate manufactured goods would be indirectly exposed to greater competition. These intermediate products could be imported free of duty into New Zealand, and incorporated and exported as part of a duty free final product to Australia.[269] Intermediate goods was seen as a make or break issue by the NZMF/CAI NAFTA Working Party for the movement to greater trade liberalisation between Australia and New Zealand.[270]

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[265]Australian Treaty Series 1983 No 2.
[266]Australian Treaty Series 1988 No 20.
[267]Burnett (1994) p 257.
[268]*Australia-New Zealand Economic Relations: Australian and New Zealand Prime Ministers' Communique* (20-21 March 1980) Australian Parliamentary Debates House of Representatives 25 March 1980 pp 1129-1131.
[269]Burnett & Burnett (1981) p 7.
[270]A Joint Statement from the New Zealand Manufacturers' Federation (NZMF) and the Confederation of Australian Industry (CAI) Working Party 31 May 1980.

Trade liberalisation even between two nations with a history of close economic, social and political relations is a slow process. The major achievements of the *CER Agreement 1983* have been the elimination of internal tariffs and anti-dumping measures. Intermediate goods and questions of origin are still the major source of trade friction under the current *CER Agreement 1983*.[271] These considerations will only be eliminated with the movement to a fully fledged customs union with common external tariffs. This would seem to be the next logical step in economic relations between Australia and New Zealand. Although the possibility of complete political integration has at times been raised,[272] this is not a necessary condition for free trade as section 92 of the *Commonwealth of Australia Constitution Act 1900* requires that trade between the Australian States shall be absolutely free and Article III of the *GATT* requires that national treatment is to apply on internal taxation and regulation.

The *CER Agreement 1983* can be distinguished from the *North American Free Trade Agreement 1992* in three important ways. Firstly, anti-dumping duties no longer apply to trade between Australia and New Zealand. Instead, the trade in goods within the free trade area is subject to the two countries internal competition laws with mutual enforcement provisions.[273] Secondly, there are more advantageous area origin rules and a provision for remedying intermediate goods problems.[274] Thirdly, the movement of labour and capital is unrestrained.[275] The *CER Agreement 1983* is more liberal than the North- American agreement, and therefore significantly harder to integrate into other trading arrangements.

A developing initiative in this area was the August 1995 Ministerial meeting between the *Asian Free Trade Association (AFTA)* and *CER* members.[276] *AFTA* is scheduled to

[271]Other sticking points have been in the trade in services, particularly, the application of the bilateral *Memorandum of Understanding on Aviation 1992* which was directed at the phased opening up of flights between the two countries to destinations other than international airports.
[272]Burnett & Burnett (1981) pp 4 & 5.
[273]*Trade Practices (Misuse of Trans-Tasman Market Power) Act No 70 1990.*
[274]Article 401 of the *NAFTA Agreement 1992* provides detailed rules for origin which are generally more restrictive than those applying under the *CER Agreement 1983.* The *CER* provides that once the allowable expenditure on the production in the area of an intermediate good has reached 50% of total expenditure, the total cost of the intermediate good is allowable as part of the 50% area content of the final good produced in the area - s 153D(6) of the *Customs Act 1901* inserted by *Act No 8 of 1994* and effective from 1 April 1994.
[275]Burnett (1994) pp 256-257.
[276]Dywer M reports of the proposed meeting in the Australian Financial Review 30 August 1995 p 5.

become a regional free trade area by 2003. The question is how these two trade areas will
be able to initiate trade creation policies between them? McMullan (1995), the Australian Trade Minister, reported that as a result of the meeting there was no expectation that the two free trade areas would merge in the short-term. However, McMullan saw room for more formal relations between *AFTA* and *CER* to resolve some of the common trading issues between the free trade areas.[277]

4.2.4 *APEC*

Although *APEC* is seen as a recent institutional development, according to Crough and Wheelwright (1982) it has its origins in the development of a Pacific Basin or Pacific Rim Strategy by the United States and Japan in the early 1980s.[278] They maintain that an important organisation promoting the idea was the Pacific Basin Economic Council, which had been formed in 1967 by corporate executives from the United States, Japan, Australia, Canada, and New Zealand. Its purpose was to "...improve business environments, strengthen the business enterprise system, generate new business opportunities, create new business relationships, and increase trade and investment within the Pacific Basin."[279] However, it was not until nearly ten years later that *APEC* was formalised at a governmental level.

The Australian government's interest in the development of *APEC* arose out of the realisation that Australia needed to be more fully integrated with the Asia-Pacific region, where the world's fastest growing and most economically dynamic states were now located. Australia's ten largest export markets are in the Asia-Pacific region. Other indicators of the growing relationship within the region are in the areas of investment, immigration, tourism and education.

An important step in the development of *APEC* was the *Bogor Declaration* of the leaders of the countries participating in *APEC*.[280] The leaders of the 18 Asian-Pacific nations

[277]Press Statement by Senator McMullan, Australian Minister for Trade, 1 September 1995.
[278]Crough & Wheelwright (1982) p 58.
[279]Crough & Wheelwright (1982) pp 63-64.
[280]The first meeting of *APEC* was held in Canberra in 1989. This was followed by meetings in Singapore, Seoul, Bangkok, Seattle and Bogor. At Seattle a Pacific Business Forum, an Eminent Persons Group, an APEC Education Program, and APEC Business Volunteer Program were established. The common goal was to sustain growth and momentum in the region though trade liberalisation, facilitation and investment improvement.

made a commitment to dismantle all policy based obstacles to trade and investment among the *APEC* economies over the next 25 years.[281]

One should not overemphasise the impact of *APEC* as it is a system of mutual cooperation, not a rules based system as the *GATT*/*WTO*. It is not a *GATT* Article XXIV free trade area which could be said to characterise those of the *European Union*, *NAFTA* or *CER*. The members of *APEC* are not to be bound by inward looking common rules as the *APEC* leaders reiterated at Bogor in 1994:

> "We wish to emphasise our strong opposition to the creation of an inward-looking trading bloc that would divert from the pursuit of global free trade."[282]

Taylor (1995) addresses the process of harmonisation of the laws affecting trade within the *APEC Group*. She refers to the Arndt (1995) thesis, where the driving force for harmonisation of laws is the reduction of transaction costs. Taylor (1995) rejects the view that divergent national laws can be and sometimes are used as invisible barriers to trade; arguing that the law reflects the underlying values of the society in which it develops.[283] To put the Arndt (1995) proposition more simply, the transactions cost approach is a way of identifying those aspects of the national business laws which if harmonised may give rise to benefits to the *APEC Group*. The adoption of such a positive approach, although reflective of international needs, has its own national costs in the trade-offs agreed between nation states in reaching some degree of consensus harmonisation.

Elek (1995) proposes that one of the trade liberalisation strategies which may be adopted would be harmonisation of competition policies between members of *APEC*. This is seen as providing a framework for the removal of the capacity to invoke anti-dumping measures between members who have harmonised their competition policies.[284] The proposal is based on an extension of the harmonisation arrangements under the *CER Agreement* between Australia and New Zealand. In his statement on the *"Policy Priorities for the Australian Department of Foreign Affairs and Trade"*, the head of the department Costello (1995) gave some support to this direction, commenting that:

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[281]The *Bogor Declaration* committed APEC members to implement free trade policies by the year 2010 for developed nations and 2020 for developing nations, with an important exception that those nations that "... are not ready to participate may join at a later date."
[282]*Bogor Declaration 15 November 1994.*
[283]Taylor (1995) p 10.
[284]Elek (1995) p 10.

> "A second regional dimension to our (the department's) work for better removing business impediments and improving market access will be discussions on linkages between *AFTA* and *CER* (that is the *ASEAN* Free Trade Area and the *Closer Economic Relations Agreement* with New Zealand)."[285]

A localised extension of this sort may be achievable in the longer term, however, whether a more generalised extension is achievable would have to be in some doubt, given the demonstrated need for the continuation of anti-dumping measures under *NAFTA Treaty 1992*. That is, until the three players in the *NAFTA* can reach the position that anti-dumping safeguards are not needed as a safeguard in trade between themselves, it is unlikely that there would be agreement to abolish anti-dumping protection for goods traded between the members of the *APEC Group.*

There are other aspects which would make the practical application of a harmonised system of competition law in the *APEC* environment somewhat remote. Firstly, the inability of the more establish trade negotiation forum of the *GATT* to incorporate competition law into the multilateral agreements. The *International Trade Organisation Draft Charter* included a chapter on anti-competitive practices. This was omitted in the *GATT*, and it is thought that the Contracting Parties saw it as inappropriate to try to use the *GATT* too fully to control such practices.[286] Secondly, the success of the *Organisation for Economic Cooperation and Development (OECD)* in achieving harmonisation of competition laws has been limited. Thirdly, the often quoted differences in the application of competition laws within the major jurisdictions of the United States, the European Community and Japan.

However, there are also strong similarities between provisions of competition laws. Taylor (1995) suggests the lack of congruence between Japanese and United States laws controlling resale price maintenance as an impedement to trade harmonisation. She chooses, however, an unfortunate example in using the decision on appeal to the Tokyo High Court in *Shiseido Tokyo Hanbai KK v Fijiki Honten.*[287] There is little doubt that the

[285]Costello (1995) p 138.
[286]Jackson (1989) p 44.
[287]*Shiseido Tokyo Hanbai KK v Fijiki Honten* (1994) No 554 NBL p 11. The supplier (Shiseido) withdrew supply of cosmetics to a retailer who had refused to abide by the terms of the agreement to only make retail counter sales. The defence under the Japanese *Anti-monopoly Law* was that "Improper use (without necessary counselling) can result in skin allergies and the like." (see Taylor (1995) p 23). A similar price maintenance case under the United States *Trade Practices Law* had been decided in favour of the withholding of supply by the United States Federal Court of Appeal, where the resale of a beauty product

case of withholding supply would also have been decided in favour of Shiseido, if the same situation had been assessed under the United States *Sherman Act 1890* [288] or the Australian *Trade Practices Act 1974*[289], dismissing the allegations of resale price maintenance. That is, under Japanese, United States and Australian antitrust law, the act of withholding supply is lawful provided the reason is unrelated to the maintenance of price. Clearly there exists a certain degree of harmony in the resale price maintenance laws among some *APEC* members. This seems to demonstrate that international harmonisation can also work through the application of accepted legal principles, rather than through the pursuit of a legal interventionist role as outlined by Joyner (1995).[290]

Although the regional emphasis appears to be on multilateral or plurilateral negotiations, the influence of bilateral agreements such as the *CER Agreement 1973* should not be ignored. An example of a study of the potential for bilateral relations within the region is that of Son and Wilson (1995) on the recent structure and future prospects of Australia-Korea trade. They show that there is a complementary trading relationship between the two countries being evidenced by the high degree of inter-industry trade of the *Heckscher-Ohlin-Samuelson* type. Although there are avenues for intra-industry trade, the major focus of trade is in those commodities where Australia and Korea have a comparative advantage.[291] It is argued that a bilateral approach similar to the *CER* may be a fruitful avenue for further development of trade between Australia and Korea, as the removal of import restrictions and, in the case of Australia, the reduction of emphasis on anti-dumping protection should have a trade creating effect.[292]

Guiguo Wang (1995) regards the outcome of the Bogor meeting as reinforcing the trend of international cooperation, that is, the parallel existence of globalisation and

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was restricted to beauticians as the products were dangerous in the hands of customers - Tripoli Co Inc v Wella Corp 42 F 2nd 932 (1970).

[288]US Code 1988 Title 15.

[289]Section 4A of the Australian *Trade Practices Act 1974* introduced by the *Trade Practices Amendment Act No 81 1977* makes it clear that the purpose or reason for the action has to be part of a contractual relationship (however described) and it was a substantial purpose. That is, the purpose must be substantially related to resale price maintenance for the withdrawal of supply to be unlawful.

[290]Joyner (1995).

[291]Son and Wilson (1995) pp 88 and 90 found that: Australia has a clear relative comparative advantage in cereals, ferrous metals and scrap, coal, and non-ferrous metals; and, Korea has a relative comparative advantage in rubber goods, textiles, iron and steel, telecommunications equipment, electrical machinery, clothing and miscellaneous manufactures.

[292]Son and Wilson (1995) p 93.

regionalisation.[293] However, the Chinese President Jiang Zemin was more reserved in his views on the aspirations of the *APEC* group suggesting that the underlying principles should be:

- mutual respect and resolving differences through consultation;
- progressive and steady progress for establishing a framework for cooperation;
- mutual opening to each other of their domestic markets, and non-exclusiveness;
- comprehensive cooperation and mutual benefit; and
- narrowing the gap of economic development and achieving common prosperity.[294]

The question of Malaysia's support of *APEC* continues, with President Mahathir in May 1995 still indecisive on his attendance at the then forthcoming Osaka leaders meeting. At the same time Mahathir was reported as supporting the possibilty of Australia's inclusion in the East Asian Economic Caucus, which he had opposed only two years earlier.[295] This support was against the background of the rising Japanese Yen and the threat of trade sanctions by the United States for lack of access into the Japanese market. This apparently strengthened Malaysia's resolve to the formation of a South East/North East Asian Free Trade Area.

Apart from the overt political influences in the growth of *APEC*, there are some serious questions as to what is meant by the Bogor declaration of global free trade. As Burchill (1995) notes, there was little said about the removal of non-tariff barriers and such devices as 'voluntary restraint agreements'. There was also no mention of the impact of subsidies on agriculture by the United States and the European Community which have had such an adverse impact on Australia's prosperity.[296] Furthermore there is the question of whether *APEC* will become a closed Customs Union or whether each country is liberalising on a most favoured nation basis.[297] There would seem to be little

[293]Guiguo Wang (1995) p 6.
[294]Guiguo Wang (1995) p 23 cites the South China Morning Post, 16 November 1994 for the record of the Chinese President's Statement.
[295]Sheridan - The Australian 15 May 1995 p 1.
[296]Burchill(1995) p 119.
[297]Vines (1995) p 47 - McMullan, the Australian Trade Minister did not see Australia choosing such a clear path between these alternatives. In a Press Statement on 27 June 1995 he expressed Australia's "...distinct preference for a MFN approach." and latter saying that "...if at the end of the day our preferred position is

encouragement from the United States on the adoption of the unilateral open regionalism approach.

At the trade talks between Australia and Japan in August 1995, it was reported that the Japanese Trade Minister firmly rejected the liberalisation of agriculture and other sensitive products under any future *APEC* understanding. It was suggested that an attempt to include sensitive commodities in the free trade objective would put the *APEC* forum in jeopardy.[298] From Australia's position as a major commodity producer and trader, the continuation of restrictions on entry for agricultural products under an APEC umbrella would not be an attractive outcome. It is unlikely that Australia would kerb its ability to levy anti-dumping and countervailing measures within such an environment.

The outcome of the Osaka meeting was mixed. Resolutions were in favour of setting targets to be achieved by the Manilla meeting in late 1996. The Economist reporting on the Osaka meeting summarised the outcome as comprising of "...too many 'grand' commitments made, and deferred to the distant future."[299] In an even more disparaging remark, it was said that: "*APEC* may content itself with smaller gestures, such as the harmonisation of customs forms."[300] This last comment sees *APEC* as a de facto regional group of the *World Customs Organisation*, which is similar to the early developments in the *European Community* where the *Customs Cooperation Council* played a considerable role in the harmonisation of Customs rules and procedures. Evans (1995), the Australian Foreign Minister prior to the Osaka meeting, saw the *APEC* developments as having a much broader influence. He compared *APEC* with the *European Community* saying that:

> "..., I don't think that it is likely that *APEC* will ever really be as totally or strictly integrated an economic community as the *EC* - now *EU* - has been, with a very high measure of harmonisation and integration of trade policy, and even macro-economic policy."[301]

More specifically the outcome of Osaka was that agreement was reached to progress with the committees on Customs procedures, technical standards and confirmation and

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not acceptable, and some alternative proposition came forward which is in Australia's interest and the regional interest and it does not undermine the multilateral trading system, we would not rule it out."

[298]Canberra Times and Australian newspapers 26 August 1995.

[299]The Economist - London - 11 November 1995 p 20.

[300]The Economist - London - 11 November 1995 p 94.

[301]Evans (1995).

certification procedures. The *Bogor Declaration* free trade targets were endorsed, but were seen as voluntary targets rather than by way of formal agreement. There were pledges to accelerate the tariff reductions targets of the *Uruguay Round* by two years, and agreement on the need to push for a new round of multi-lateral trade talks at the first *World Trade Organisation* meeting in December 1996. Fifteen areas were identified for action over the next few years concerned with intellectual property rights and competition policy. Action plans will be drawn-up for consideration at the Manilla meeting and for implementation beginning on 1 January 1997. The creation of an APEC Business Advisory Council was approved, to take over the role of the former Eminent Persons Group in advising APEC leaders.[302] Areas to be discussed at Manilla include: the environment; farm trade; labour relations; the inter-relation between economic growth and energy; and the establishment of a voluntary consultative mediation facility. It was reported, however, that there was an agreement not to include anti-dumping measures within the ambit of the negotiations.[303] Singapore's Prime Minister also confirmed that his understanding of free trade was not zero tariffs.[304]

However, slow progress with the *APEC* process makes it even more imperative that Australia concentrate on its trade relations. Anti-dumping measures must be seen in this context, as they are a perpetual trade irritant.

4.3 Public Policy Desires

4.3.1 Public Benefit Criteria

Clearly the public benefit criteria are a reflection of public policy in Australia. According to the *Asprey Report* in 1975 a public benefit test will need to fulfil the basic characteristics of equity, efficiency, simplicity and economic stability.[305] Looked at from a slightly wider context, the *Jackson Report (1975)* considered that these measures should be consistent with the industry policy objectives of:

[302]Financial Review p 4 20 November 1995.
[303]Hartcher p 14 - Financial Review 16 November 1995.
[304]Dywer p 14 - Financial Review 22 November 1995.
[305]These criteria , together with the possible objective of economic growth, were discussed as terms of reference in Asprey (1975) p 12, a report commissioned by the Australian government to review the domestic taxation system.

> "...improving the working of the economy; improving the quality of work life; encouraging social cohesion; increasing the involvement of Australians; and, building a capability to adapt to future change."[306]

These are national expectations as enunciated in reports to the government on taxation and Australian manufacturing industry, respectively. Their is nothing unusual about these expectations of government policy intervention, and they have been reiterated in various forms in subsequent reports.

However, some see the proposed focus on cooperation among powerful economic groups as a retrograde step for Australia's development. Walker (1976) commented upon the *Jackson Report* in the following terms:

> "The Committee's report proposes, in effect, that governments, established manufacturers, and established unions should come together to work out ways of immobilising as many resources as possible in a declining, uneconomic, 19th century industries of the secondary sector, thereby stunting the growth of all other sectors, especially the growing information based 21st century of the quaternary [transport, commerce, communication, finance, administration] and quinary sectors [health care, arts, research, recreation] - the latter being the only fields in which the bulk of Australia's expensive and expensively educated labour force has any long term hope of being efficiently employed."

The *Jackson Report* formed the foundation of the subsequent Labor governments' Wages and Incomes Accords, where a social contract was entered into between the Australian peak union body and the government. An alternative view on the collaborative nature of the Accord is given by Castles and Stewart (1991) who hold that:

> "The success of the Accord in underpinning employment growth and in formally tying wages growth (at least to some degree) to improvements in productivity again demonstrated both the political and economic benefits of negotiated change through interest group trade-offs."

[306]These criteria were contained in a report chaired by Jackson (1975) p 6. The report addressed the development of Australian manufacturing industry and these criteria formed part of the terms of reference.

Different views about the policy implementation of the *Jackson Report* are reflected in the differing perceptions of the two major political parties in Australia. The Australian Labor Party is aligned with the union movement, whereas the Liberal/Country Party alliance is not. The former is in favour of a centralised enterprise based wage bargaining process, and the later would prefer that wage outcomes be negotiated at the enterprise level with minimum government intervention. Otherwise the political differences on industry policy questions is minimal.

If public choice theory, as outlined by Brennan (1995), was used to define the meaning of public interest, the outcome from the parliamentary democracy model in Australia would be reflected in the policies of the major political parties. The bipartisan support among the two major political parties in Australia for the recommendations of a recent Hilmer (1993) report into *National Competition Policy* in Australia, is an illustration of convergence on competition policy by the major political parties. The terms of reference of the inquiry were interpreted to exclude international trade policy notwithstanding its similar effects in terms of competition on the domestic market. Even so the terms of reference give some useful guide as to the government's thinking on the issue of competition generally:

> "(a) No participant in the market should be able to engage in anti-competitive conduct against the public interest;
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> (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership;
>
> (c) Conduct with an anti-competitive potential said to be in the national interest should be assessed by an appropriate transparent assessment process, with the provision for review, to demonstrate the nature and incidence of the public costs and benefits claimed;
>
> (d) Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms:
>
> > (i) to develop an open , integrated domestic market for goods and services by removing unnecessary barriers to trade and competition; and

> (ii) in recognition of the increasingly national operation of markets [as opposed to the competing interests by the States and Territories in Australia], to reduce complexity and administrative duplication."[307]

There is no attempt in these terms of reference to define the concept of national interest, nor is there a recognition of the significant influence of international markets on national competition policy. However, a public interest criteria are contained in the authorisation provisions of the Australian *Trade Practices Act 1974* s 90(9A) relating to the authorisation of mergers and exclusive dealings. The merger provisions qualify the public interest condition of s90 (9) of the *Trade Practices Act 1974* allowing authorisation of a merger under s 88(9) of the *Act* where the Trade Practices Commission:

> "...is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public..."[308]

An important point to consider is that the reliance on the public interest test usually occurs as a last resort, where a proposed merger is likely to substantially lessen competition in the Australian market. The *Trade Practices Act 1974* lists nine factors which must be taken into account by the Trade Practices Commission in authorising a merger.[309]

If the Commission considers that a merger will have the effect of lessening competition then it may look at the specific public benefit criteria. In the Draft Merger Guidelines the Commission says "Although the Commission is not required by the test to undertake a quantitative balancing of the likely public benefit of a merger against the likely public detriment arising from a substantial lessening of competition, the Commission will nevertheless consider the relative size and timing of the two when making its determination."[310] Public benefit criteria contained in s 90(9A) of the *Trade Practices Act 1974*, provide that:

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[307]Hilmer (1993) pp xviii-xix.
[308]Amended by Act No 222 of 1992.
[309]Section 50(3) of the *Trade Practices Act 1974* - (a) the actual and potential level of import competition in the market; (b) the height of the barriers to entry to the market; (c) the level of concentration in the market; (d) the degree of countervailing power in the market; (e) the likelihood that the acquisition would result in the acquirer being able to significantly and substantially increase prices or profit margins; (f) the extent to which substitutes are available in the market or are likely to be available in the market; (g) the dynamic characteristics of the market, including growth, innovation and product differentiation; and (i) the nature and extent of vertical integration in the market.
[310]Trade Practices Commission (1992) p 5.15.

"In determining what amounts to a benefit to the public for the purposes of subsection (9):

(a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):

(i) a significant increase in the real value of exports;

(ii) a significant substitution of domestic products for imported goods; and

(b) without limiting the matters that may be taken into account, the Commission must take into account all relevant matters that relate to the international competitiveness of any Australian industry."[311]

The Explanatory Memorandum accompanying the *Trade Practices Legislation Amendment Bill 1992* enacting the 1993 provisions can give some guidance to their interpretation. The memorandum stated that:

"63. ...the word "significant" should be interpreted in the absolute sense, and is intended to mean increases which, when viewed in isolation, are not insignificant or ephemeral. ...

62. ...If the total level of consumption of an Australian product rises at the expense of consumption of foreign-produced goods, and this change is attributable to the merger, the merger may have said to have produced a substitution of domestic products for imported goods. ...

62. ...Changes in international competitiveness ... could include such matters as changes in the quality of inputs, improvements in technology, or better work practices. ...be "relevant" ...indicates that they should be attributable to the merger..."

Some further guidance as to the possible intention of the public interest provisions may be obtained from a consideration of the Trade Practices Tribunal decisions leading up to

[311]Inserted by *Act No 222 of 1992.*

the 1992 amendments. In *Re QCMA*[312] the Tribunal mentions that they see one of the principal elements of public benefit as the achievement of the economic goals of efficiency and progress. They conceived that it would be possible for all the benefit to be internalised in benefits to the employees of the corporations involved in the takeover.[313] On the question of causation the Tribunal was of the view that they were concerned with commercial or economic likelihood rather than formal proof of the alleged effects.[314] In discussing the phase "in all the circumstances" the Tribunal stated that: "we must balance the likely benefits and detriments flowing from the acquisition."[315] An interesting comment by the Tribunal was the rebuttal of the net benefit proposition, by saying that even where there has been a net gain and transfer of the wealth to the merging firms this may simply reflect the capitalisation of some portion of future "monopoly profits" which the acquiring firm may expect from the acquisition or enhancement of market power.[316]

This was followed by *Re Rural Traders Co-op (Western Australia) Ltd* in 1979, where the Trade Practices Tribunal declared the general principles relating to the determination of the public benefit. The Tribunal said:

> "In the context of trade practices legislation, the encouragement of competition and competitive behaviour within the relevant markets and the achievement of the economic goals of efficiency and progress will commonly be paramount."[317]

This does not appear to progress the concept of public benefit any further. However, Fells (1994), Chairman of the Trade Practices Commission, expanded on the question of what constitutes the public interest as outlined in the *Draft Merger Guidelines* issued in November 1992. After pointing out that there were a wide range of matters which may constitute a public benefit, Fells indicated that:

> "...the Commission will give particular consideration to public benefits in the form of increased efficiency, which will benefit the public through lower unit costs and prices. These may include, for example:

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[312](1976) 25 FLR 169.
[313](1976) 25 FLR 169 at 182-183.
[314](1976) 25 FLR 169 at 183.
[315](1976) 25 FLR 169 at 184.
[316](1976) 25 FLR 169 at 186-187. This is a rebuttal of the necessary welfare enhancing view of mergers as advocated in the extreme by the Chicago School referred to by Gupta (1995) pp 19-20.
[317](1979) 37 FLR 244 at 261-263.

- the achievement of economies of scale or scope in production, distribution and/or marketing;

- industrial rationalisation, adjusting capacity to demand and/or reducing costs; or

- investment in more efficient plant or equipment or distribution facilities.

As well as the immediate benefits to efficiency, the Commission considers the dynamic benefits that may accrue to the public from mergers, through exploration research and development, innovation and the introduction of new technology.

Following amendments introduced in 1992 with the change in the merger test, the act now also requires that in determining what amounts to a benefit to the public the Commission must have regard to any export enhancing or import substitution effects of the merger, as well as to any enhancement in the international competitiveness of Australian industry."[318]

One might be excused from saying that the Fells (1994) statement involves a considerable reading up of the public benefit provisions of the *Trade Practices Act 1974*. However, the major difficulty is that it is a statement of policy, which is so imprecise as to make any decision purely arbitrary. For example, the question of what constitutes Australian industry is not considered. Does it mean employing Australian factors in adding value to production, or does it simply mean rewarding offshore capital through the creation of a conducive environment for import substitution?

Although by no means answering many of the questions raised from the examination of the mergers provisions of the *Trade Practices Act 1974*, the authorisation determination of December 1993 in relation to *CSR Limited, Mackay Sugar Cooperative Limited, ED & F Man Australia Pty Ltd and Newco* is an example of the application of the application of the merger authorisation provisions. The Trade Practices Commission refused to authorise the merger on the grounds that there was no discernible public benefit. It was

[318]Fells (1994) paragraph 3.7.

deemed that the additional exports of refined sugar were not sufficient to outweigh the magnitude of the likely anti-competitive effects of the proposed Newco joint venture.[319]

National interest is referred to in the *Foreign Acquisitions and Takeovers Act 1975* where there is no attempt at defining the term within the legislative provisions. The economic criteria outlined in the second reading speeches are multitudinous. For example, the Minister assisting the Treasurer, the Hon Francis Stewart, in the second reading speech in 1975, said:

> "The criteria have not been incorporated into the Bill; this is because the criteria must be flexible in their interpretation and application as it has been found that it would be impracticable, consistent with the need for such flexibility, to express the criteria with the precision required by legislative form."[320]

Again an open ended policy approach is observed to the application of a law relating to trade or rather investment regulation. However, the passage of the amending *Statute Law Revision Act 1981,* inserted a new section 15AB into the *Acts Interpretation Act 1901*, now allowing courts to place some weight on the second reading speech of the Minister and other extrinsic materials for the ascertaining of the meaning of provisions of an enactment.[321] Whether the criteria as enunciated would be useful in this regard is questionable.

As illustrated by the approach of the Trade Practices Commission and inherent in the *Hilmer Report*, there is a tendency to look at these public benefit criteria in a simple nationalistic way. This is hardly surprising given the national borders which define the economic argument. Reich (1993) questions this approach when addressing the question of 'Who is "Us"?'. He suggests that:

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[319]Trade Practice Commission Authorisation Determination 8 December 1993 pp 67-68. The Commissions in this case appear to have taken note of the comments of the dissenting opinion of Commissioner Pengilley in the authorisation decision on the merger between *BHP Limited and John Lysaght (Australia) Pty Ltd* of 19 October 1979, where Pengilley was of the opinion that the merger had to lead to an increase in the net benefit to the Australian economy. It was insufficient for there to be an equal or equivocal outcome for a merger to be approved.
[320]Second Reading Speech, House of Representatives (1975) Volume 95 p 2677.
[321]Latimer (1992) pp 31-32.

> "..., a nations role is to improve its citizens' standard of living by enhancing the value of what they contribute to the world economy. The concern over national "competitiveness" is often misplaced. It is not what we own that counts; its what we do."[322]

This outcome is based on the observation that there is a high degree of interdependence between economic players.[323] According to Reich, more than half the value of United States exports and imports comprise transfers of goods and related services within global corporations.[324] Reich therefore maintains that the national origin of products is irrelevant and the question to be asked is:

> "For any given product, which nations workers have gained what sort of experience, equipping them to do what in the future."[325]

With a strategy of human resource development, positive sum games can be pursued by nation states. Reich suggests that this could be encouraged by adherence to an effective international Code covering the relation between industry support and investment. This would assist in the regulation of national behaviour towards a goal of reducing zero-sum behaviour and encouraging cooperation in the development of global technologies.[326]

This relationship between conditions in the home market and the incentive of exporters to produce near to their markets to reduce the impact of transport costs, may mean that there has been a move from the reciprocal dumping model of Krugman (1983) to a model of two-way direct foreign investment.[327] Even though there is a presumption in the economic modelling which tends to accept that a benefit to business profits is in the national interest, the welfare distribution effects of policy shifts are important. Burchill (1995) draws attention to Australian opinion polls during 1993 and 1994 which have shown that:

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[322]Reich (1993) p 301.
[323]Reich (1993) p 308.
[324]Reich (1993) p 114.
[325]Reich (1993) p 118.
[326]Reich (1993) pp 312-313.
[327]Krugman (1983) final paragraph.

> "...the overwhelming majority of Australians have been consistently opposed to free trade for some time."[328]

Part of the reservation of the public to the opening up of the Australian economy is that the internationalisation strategy commencing in the 1980's has produced major regional impacts. For example, Southcorp has concentrated its super-wineries at the Nuriootpa winery in the Barossa Valley in South Australia, closing those in the Hunter Valley and Maclaren Vale to achieve the efficiencies necessary for successful competition in the export market. Steel fabrication was closed at Whyalla and Newcastle, textile and clothing mills were closed in Central and Northern Victoria and inner city locations in Melbourne and Sydney, food processing being located in more concentrated and larger automated factories in Sydney's Western Suburbs, and the closure of motor vehicle manufacturing in New South Wales, Queensland and Western Australia.[329]

It is not only the general Australian populous which appears to be frustrated by the increase in concentration in industry investment, but also business by the extent of changes in the level of external debt within the economy. Carnegie, one of Australia's leading industrialists, is cited by Crough and Wheelwright (1982) as arguing in relation to the increasing external borrowing that it would be tolerable:

> "...if they were being used to build businesses which would at some future date enable us to offset the interest cost and repayments. Unfortunately, this is not the case. Part of the capital inflow is speculative; part of it is aimed at taking over existing businesses; and a substantial part is absorbed by the non-trading sector."[330]

The question being addressed here is not the cutting off of foreign capital inflow, but the use of appropriate macro-economic measures to ensure that there is a long-term and sustainable external balance. This is still a major policy issue for Australia some thirteen years later.

Industrial success was said by Keating (1994), the Prime Minister of Australia, in the *"Working Nation"* statement to depend on policy integration:

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[328]Burchill (1995) p 121.
[329]O'Neill & Fagan (1995) pp 58-59.
[330]Crough & Wheelwright (1982) p 155.

- from policies in education, training and science, which lie at the heart of our long term ability to compete

- to domestic measures designed to build a competitive environment and sustain firms competitiveness, and

- to promote policies that promote exports and open markets.[331]

There was a great deal said in the statement about the need to develop export markets, following closely on the AMC/McKinsey report on emerging Australian exporters.

In a speech to business representatives Prescott (1995), the managing director of Australia's largest company BHP, urged that the 'export test' be applied to every policy and action by governments and business.[332] It was suggested that it was important to turn government and business connections into competitive advantages. Apart from the need for more government investment in public infrastructure, a culture of innovation and continuous improvement are key motivational factors for achieving a competitive advantage.[333] Although the motivational factors do not form part of the liberal economic theories, an unfettered export test could be seen as consistent with this approach.[334]

It would be hard to argue against the export test as the ultimate trade efficiency test for efficient markets, although there are policy considerations other than efficiency which governments need to consider in the economic context. This approach also accords with one of the public interest criteria in the merger provisions of the *Trade Practices Act 1974* mentioned above. However, there are two underlying assumptions of liberal trade theory which create difficulties for the application of the export test. Firstly, there is a presumption that the industries are price competitive. Secondly, non-discriminatory trade rules apply which allow exports access to foreign markets based on their quality and price. The presence of these market conditions is denied by the strategic trade theorists,

[331]Keating (1994) p 52.
[332]This is not dissimilar to the purposive view expressed by Crawford (1980) p 176 in discussing the future of Australian and New Zealand trade relations.
[333]Australian Financial Review 23 August 1995 pp 1 & 4.
[334]Assuming their are no additional incentives to export which may distort resource allocation.

and there is some market survey evidence indicating that these two conditions do not exist in some industries.[335]

If the liberal market conditions are not present, then this leads to two possible outcomes for the export test. On the one hand, the distortions in price and access may not reflect the comparative advantage of the industry in a country, and therefore the test becomes a poor indicator of latent worth. On the other hand it can be argued that small nations need to accept that their actions cannot alter the imperfect market conditions, and the best opportunities available are reflected in the export test. As the propensity to export test makes the assumption that markets are contestable, its use as a test of relative competitiveness must be qualified. An optimal outcome cannot be relied upon.

4.3.2 Consistency of Purpose

There are a number of examples of self-defeating policy applications in the area of international trade law, and in particular anti-dumping law. A sample of these applications is worthy of some consideration.

Reich (1993) illustrates the perverse nature of anti-dumping measures in the *Hyster* case. As a result of the United States company Hyster winning an anti-dumping case against its Japanese competitors, the Japanese competitors opened manufacturing plants in the United States in direct competition with Hyster. Hyster accused the Japanese of circumvention of the measures, as they were importing many of the components for assembly. However, Hyster was found to have even a higher foreign component in their trucks, leaving only the frame as the United States produced component. The United States Commerce Department was put into the position of defining a United States fork lift truck as one with a frame made in the United States.[336] The effect was simply to protect frame manufacture, a small part of the value of production of the trucks. This cost would be passed onto the users of these trucks, and place them in a less competitive position in their product markets.

[335]Yoffie (1993) found that over 60 per cent of trade was conducted within industries. Clear examples of global industry concentration can be found in the automobile industry, steel and the basic chemical industries.
[336]Reich (1993) p 115.

A similar situation was commented upon by the Industry Commission (1993), in its annual report for 1992-93 to the Australian Parliament on its major industry review and advisory functions. The Commission addressed the impost on downstream users of anti-dumping measures. The Commission was critical of the Anti-dumping Authority's *Report on Sodium Cyanide* and considered that:

> "Costs imposed by an anti-dumping action are particularly onerous if the goods are inputs into other production processes. This point is illustrated by the recent Anti-Dumping Authority inquiry into imports of sodium cyanide from the USA and India. A submission by the gold producing industry, a major exporter, claimed that the imposition of anti-dumping duties on imports of sodium cyanide:
>
> > would significantly increase the cost of extracting gold and that gold miners might reduce employment and exploration as a result (Anti-Dumping Authority 1993, see p.39).
>
> Although the Anti-Dumping Authority recognised the potential for injury to the gold mining sector, it is not required to take into account the effects of anti-dumping action on the wider community. It found, according to its procedures, that dumping of sodium cyanide was causing and threatening injury to the local chemical industry and hence anti-dumping action was warranted."[337]

The narrow focus of anti-dumping law tends to yield unintended effects in its application, such as, the adverse cost flow-on effects to user industries in the importing country. These are apart from the anti-competitive effects such actions have on rival firms.

The possibilities of using anti-dumping actions to further anti-competitive behaviour are discussed by Messerlin (1995). The first is the inflation of the domestic price on the achievement of effective relief from the competitive import source. The second is the adverse impact on the foreign competitor through the effect the action may have on plant value through reduced volume through-put leading to high unit costs. This makes the foreign firm a prime takeover target for the domestic complainant. The third is that rivals

[337]The Anti-Dumping Authority now advises the industry Minister on the application of anti-dumping and countervailing measures. The forerunner of the Industry Commission, the Industries Assistance Commission, previously acted as an administrative review body in cases where there was an appeal against a final finding imposing anti-dumping duties.

quite often have both domestic and foreign production. There is no such thing as a local industry with the contest for market access being disputed through the application of anti-dumping rules. This leads to the conclusion that competition and anti-dumping rules may be in conflict in many cases.

The Australian Anti-Dumping Authority in its inquiry into the revocation of dumping duties on *Sodium Cyanide*[338] is illustrative of a similar situation. Until 1988 all sodium cyanide was imported mainly from the United Kingdom or the United States. The market dynamics changed with the entrance of AGR as a local producer in Western Australia, with ICI and Minproc following. With the help of anti-dumping duties, domestic production stood at just under 90% of the Australian market in 1993-94.

After succeeding in having secured dumping duty levies against almost all possible sources, ICI requested revocation against the United Kingdom as:

> "...the exclusive agreement with ICI precluded any possibilty that sodium cyanide would be imported and sold in Australia in a way as to cause material injury to ICI's local operation, and hence material injury to the Australian industry."[339]

This was followed by the announcement by Minproc that:

> "Minproc Chemical Company has signed a five year marketing agreement with Du Pont, the worlds leading producer of sodium cyanide. Du Pont will now market the entire output of the Gladstone chemical plant to Du Pont and Minproc customers. Production at the Gladstone plant has now been greatly increased bringing with it a significant reduction in unit production costs."[340]

Minproc had an active application before the Federal Court claiming that the dumping margins against Du Pont were too low. Following the completion of the marketing agreements, both Minproc and ICI Australia withdrew their applications for review by the Federal Court.

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[338]Anti-Dumping Authority Report No 138 on *Revocation inquiry: sodium cyanide from the United Kingdom, Italy, Japan, and the Republic of Korea* - September 1994.
[339]ICI Australia Ltd - 23.5.94 application for revocation of a dumping notice p 4.
[340]Attachment 5 to the Anti-Dumping Authority Report No 138 *Revocation inquiry: sodium cyanide from the United Kingdom, Italy, Japan and the Republic of Korea* - September 1994 p 5.

This sequence of events illustrates the classic case of the use of anti-dumping measures to preserve monopoly rents. Local production was first established by a major multinational chemical company, when threatened by the initiation of local production by an independent Western Australian producer. Seeing the opportunity for regional production another producer followed. However, there was a concerted effort to drive down the price led by a large foreign producer Du Pont, with a large import share of the market to lose. The Anti-Dumping Authority obliged the two eastern state producers by placing anti-dumping duties on imports from nearly all known sources. When restrictive marketing agreements had been arranged between the two major exporters and their affiliated institutions in Australia, all anti-dumping actions were withdrawn. The prices regained their previous levels, when the market was controlled by the exporters from the United Kingdom and the United States.[341] Excess rents to the foreign owned local producers is the likely outcome, with some being syphoned off by the opportunistic behaviour of a local corporation. Clearly there is a case for a close watch on prices and on any collusive practices which may lessen competition further. However, the Anti-Dumping Authority does not have regard to these matters in its report, apart from revoking the then redundant dumping notices.

The *1979 GATT Codes* narrowed the economic effects to those impacting on a specific domestic industry. Although other factors are mentioned in the *GATT Codes* which may give rise to injury such as:

> "...imports not sold at dumping (or subsidised) prices, contraction in demand or changes in consumption, trade restrictive practices of and competition between foreign and domestic producers, developments and technology and export performance and productivity of the domestic industry."[342],

[341]Anti-Dumping Authority Report No 138 *Revocation inquiry: sodium cyanide from the United Kingdom, Italy, Japan and the Republic of Korea* - September 1994 p 18 - states that selling prices were stable, local industry at full capacity, and the industry was profitable and expected to remain so in the future.
[342]*1979 Codes* - Article 3.4 footnote 6 and Article 6.4 footnote 20 respectively. The subsequent 1994 *Codes* incorporate these provisions into the text, but otherwise they are not changed, see - Articles 3.5 and 15.5, respectively.

these are simply by way of exclusion. The maintenance of unrestricted competition has not been seen as a serious question for consideration in the application of anti-dumping law.

It appears on balance that the international public law relating to anti-dumping focuses very much upon the maintenance of undumped and non-injurious fair competition for a domestic industry producing like goods to those subject to the dumping allegation. Is Australia's domestic legislation restricted to this narrow industry based public interest criteria?

4.3.3 Legal Developments in Australia

In the mid eighties, following the application of anti-dumping duties to imported fertilisers, there was considerable debate in Australia on the application of the so called national interest criteria. Legal advice received by the government, indicated that a simple finding of dumping causing material injury to Australian industry may not be sufficient grounds for the imposition of anti-dumping duties. It was argued that the imposition of anti-dumping measures was permitted within the restrictions of the *Anti-Dumping Code 1979*, but was not mandatory. Therefore it was open to the decision maker to not impose dumping measures, where there was satisfaction that the measures should not be imposed in the national interest.

The suggested national interest criteria included in the legal advice were numerous and included: interests of consumers; cost of inputs into further production; broad general economic considerations including resource allocated effects; effect on bilateral and multilateral trade negotiations; foreign policy considerations; relations between anti-dumping and competition policy; and developing or unexpected international trade practices. The adoption of these criteria would have significantly extended the policy considerations needing to be taken into account by the administering authority.

In its *Draft Report on the Chemicals and Plastics Industries* the Industries Assistance Commission proposed that:

> "...anti-dumping action be taken...only where this action would be in the public interest (ie. only after the economy-wide implications, including the effects on

> other industries and consumers as well as producers, have been taken into account;..."[343]

The Commission had concluded that anti-dumping actions had encouraged the intermediate chemicals industries at the expense of downstream plastic and chemical products industries. The adoption of a wider approach to the evaluation of anti-dumping applications from the chemical industry was seen as being in the public interest.

There is nothing unusual in the political setting in considering a wide variety of issues which affect peoples' welfare. However the question remains open as to how far could such criteria be extended in the application of the domestic law. Gruen (1986) in his *Review of the Customs Tariff (Anti-Dumping) Act 1975* commissioned by Button, the then Minister for Industry, Technology & Commerce, did not favour a national interest provision, as it would lead to increased uncertainty in the application of the law and complexity in administration. The Ministerial press release of 30 October 1986 announcing acceptance of Gruen's findings , agreed that there should be no 'national interest' provision written into the legislation.

The public policy matters to which the Minister should have regard to have not been further clarified since that date.[344] However, with the introduction of a new review body called the Anti-dumping Authority, the *Anti-dumping Authority Act 1988* ss. 10, 11 and 12 place certain obligations on the Authority in advising the Minister in relation to anti-dumping findings. In particular, the Authority shall have regard to Government policy in relation to anti-dumping matters,and Australia's obligation under *GATT,* such that the powers are not to be used to assist import competing industries or to protect industries from the need to adjust to changing economic conditions. It is further required that the Authority in making its recommendations to the Minister, or determinations at a preliminary stage, would have regard to the same considerations as the Minister would be required to have in determining the matter.

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[343]Industries Assistance Commission Report on the *Chemicals and Plastics Industries* May 1986 p 244.
[344]Ambiguities of this nature are not unusual in Australian trade laws. Coper (1983) in his book *Freedom of Interstate Trade under the Australian Constitution* p 275 makes such observations on reviewing the outcome of *Uebergang v Australian Wheat Board* (1980) 145 CLR 266. The failure of a majority of the High Court to decide the case could be expressed in Coper's view in the following circularity: "...the validity of the scheme does depend on the facts, but what those facts are depends upon what the *law* is - that is to say, what facts are relevant depends upon *what it is which has to be proved* - and we can't tell you that because we can't agree on it."

The Minister may also give the Authority written directions in relation to the carrying out or giving effect to its powers and duties.

It is this latter point where the Ministerial power has been questioned. In *ICI Australia Operations v Fraser* the Full Federal Court dealt with the application of s 12 of the *Anti-dumping Authority Act 1988*, which allows the Minister to give directions to the Authority. The court said that:

> "The Ministerial direction cannot, and does not purport to, modify the Minister's power arising under s 269TG of the *Customs Act 1901*. The preconditions, the exercise of the power are to be found in s 269TG, not in the ministerial direction."[345]

These preconditions are effectively identical to those found within the *GATT Anti-Dumping Code 1979* and as amended by the *Marrakesh Agreement 1994*. It would appear that the Federal Court has placed a limitation on the criteria to which the Minister may refer in the exercise his discretion in imposing anti-dumping duties. That is, the Minister cannot write the rules.

One must therefore ask, how far does the Minister's power or discretion extend beyond those matters which are specified in the directly relevant domestic legislation. There is no doubt that the Anti-Dumping Authority in advising the Minister should have regard to Commonwealth government policy in relation to anti-dumping matters; and Australia's obligations under the *GATT*; as far as they relate to not using the imposition of duties under the Anti-Dumping Act to assist import competing industries in Australia or to protect industries in Australia from the need to adjust to changing economic conditions.[346] This statement indicates that the application of dumping duties:

- are not to place an industry in a better position than it was prior to the impact of the injurious dumping; and
- the impact of any change caused by factors other than dumping is to be excluded from the remedial measures.[347]

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[345] *ICI Australia Operations v Fraser* (1992) 34 FCR 564 at 577.
[346] s 10 of the *Anti-Dumping Authority Act 1988.*
[347] Black CJ, Neaves and von Doussa JJ in their joint judgement in *ICI Operations Australia v Fraser* (1992) 34 FCR 564 at pp 570 & 571 consider the relationship required between dumping and material

To satisfy the provisions of section 10 of the *Anti-Dumping Authority Act 1988* it is sufficient, for example, for the administering authority in reaching its finding to have had regard to such matters as price competition from non-dumped competitive imports.[348] There is certainly no indication of a more expansive view of the use of section 10 to reflect national interest considerations such as the effect of the measures on consumers.[349] Hill J in *Hyster Australia* is firmly of the view that:

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injury to an Australian industry to be a close one. "The material injury against which the Act provides relief is the material injury attributable to the dumping and no other cause."

[348]*Minister for Small Business, Construction and Customs, Anti-Dumping Authority, Comptroller-General of Customs v La Doria Di Diodata Ferraiolli SPA* No G428 of 1993 (Unreported Fed No 24/94) Full Federal Court, Black CJ, Lockhart and Whitlam JJ on appeal from Lee J at 14.

[349]Lee J in *Merman Pty Ltd v Comptroller-General of Customs No. WAG 65 of 1988 (unreported)* at 11-14 gives the following useful summary of the history of the relation between the *Codes* and municipal legislation in Australia saying that: "In 1975 the Customs Tariff (Anti-Dumping) Act 1975 ("the Anti-Dumping Act") replaced the Customs Tariff (Dumping and Subsidies) Act 1961. The Act did not incorporate or refer to the Anti-Dumping Code but s.14 of the Act did specify as follows:

> "The Minister shall not cause a notice to be published under any provision of this Act unless he is satisfied that the publication of the notice is not inconsistent with the obligations of Australia under any international agreement relating to tariffs or trade."

In the second reading speech of the Minister for Customs and Excise in support of the Bill to enact the Anti-Dumping Act, it was stated that the Act was designed to give effect to Australia's decision to become a signatory to the Anti-Dumping Code. (Second reading speech of the Minister for Customs and Excise, House of Representatives Hansard 6 March 1975 at p 1188 - reiterated in the second reading speech of the Minister Assisting the Minister for Industry and Commerce, House of Representatives Hansard 7 December 1983 at p 3392 .) In 1979 the Anti-Dumping Code was wholly revised by a further Agreement on Implementation of Art.VI of GATT ("the 1979 Implementation Agreement"). Australia acceded to that Agreement on 21 September 1982 and pursuant to Art.16.4 of the 1979 Implementation Agreement it came into force on 21 October 1982 as far as Australia was concerned. Clause 16.6 of the revised Anti-Dumping Code provided as follows in respect of national legislation of contracting parties-

> "(a) Each government accepting or acceding to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Party in question.
>
> (b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations."

Art.16.6 of the Anti-Dumping Code placed an obligation on each party acceding to the 1979 Implementation Agreement to ensure that its municipal laws and administrative procedures fell within the provisions of the Agreement by the time the 1979 Implementation Agreement came into force. In Australia's case that was 21 October 1982 . On 24 November 1982 s.14 of the Anti-Dumping Act was repealed notwithstanding the provisions of Art.16.6 of the Anti-Dumping Code. The repeal of s.14 made it clear that the Anti-Dumping Act was not dependent upon the Anti-Dumping Code although any ambiguity in construction would require that a construction be applied which had least conflict with international comity. (Zachariassen v. The Commonwealth (1917) 24 CLR 166 at 181 per Barton, Isaacs and Rich JJ; Salomon v. Commissioners of Customs and Excise (1967) 2 QB 116 at 143 per Diplock L.J.).

> "...there is nothing in the subject-matter, scope and purpose of the present legislation which requires the conclusion that the Minister is bound to take into account the national interest."[350]

However, the Courts have taken the view that the legislation should not be viewed simply as beneficial to the alleged affected industry in Australia. Moore J in *MM Cables*[351] referred to the judgement of the Full Federal Court in *ICI Australia Operations*[352] on the question of the purpose of the anti-dumping and countervailing law, where it was said that:

> "The object of the 1975 legislation is to protect Australian industry (see *Tasman Timber Ltd and Others v. Minister for Industry and Commerce and Anor*, at p 151 and *Feltex Reidrubber Ltd v. Minister for Industry and Commerce and Anor* (1983) 46 ALR 171 at 182) by providing relief from the anti-competitive effects that dumped goods may have on domestic producers, whilst at the same time ensuring that protective measures adopted by the imposition of duties do not unjustifiably impede international trade."[353]

The Federal Court therefore recognises the need to ascertain a balance between the kerbing of anti-competitive effects with the need for the continuation of trade.

In the *GATT Subsidies Code 1994*, Article 19.2 makes provision for the authorities concerned to take due account of the representations by domestic interested parties whose interests may be adversely affected by the imposition of a countervailing duty. These parties include consumers and industrial users of the imported product subject to investigation.[354] The Australian Customs Service (1994) considered that the Australian

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[350]*Hyster Australia Pty Ltd v Anti-Dumping Authority* No N G 476 of 1992 Federal Court (unreported) at 39.
[351]*Metal Manufacturers Limited t/as Mm Cables, Pacific Dunlop Limited T/As Olex Cables & Pirelli Cables Australia Limited v The Comptroller-General of Customs, The Anti-Dumping Authority & Midland Metals Overseas Pte Limited* (unreported) NG 665 of 1993.
[352]*ICI Australia Operations Pty Limited v Donald Fraser & Ors* (1992) 106 ALR 257; (1992) 34 FCR 564.
[353]*ICI Australia Operations Pty Limited v Donald Fraser & Ors* (1992) 34 FCR 564 at 570.
[354]Footnote 50 to the *Subsidies Code 1994* - consumers and industrial users are not included in the definition of 'interested parties" in section 269T(1) of the *Customs Act 1901* as amended by *Act No 150* of 1994, nor is there a provision for the inclusion of a definition and use of 'domestic interested parties.

countervailing legislation was in conformity with the provisions of the *Subsidies Code 1994*.[355] As there are no explicit provisions in the Australian countervailing law, the most likely source of such authority is application either through section 15AB of the *Acts Interpretation Act 1901* or common law.

In the federal system of government in Australia it is the executive of the Commonwealth government that has the exclusive power to negotiate treaties with other nation states. This is said to follow from the power accorded under s 61 of the *Commonwealth of Australia Constitution Act 1901*.[356] The reference to treaties in the interpretation of domestic legislation is specifically included in s 15AB(1) of the *Acts Interpretation Act 1901*. Under paragraph (i) the text of a treaty may be relevant to refer to resolve ambiguity or obscurity in the domestic legislation, where the treaty is referred to in the legislation, or where it is clear from extrinsic materials, such as parliamentary debates, that the legislation was enacted or amended in order to give effect to, or make Australian law consistent with, Australia's obligations under an international treaty. Under paragraph (ii) regard may be had to the treaty in the absence of an ambiguity or obscurity, if the ordinary meaning conveyed by the text of the legislation is manifestly absurd or unreasonable.[357]

This conventional approach appears in a number decisions of the Federal Court of Australia concerning anti-dumping and countervailing measures.[358] In *Rocklea*, a decision of the Full Federal Court on appeal, it was said with authority that:

> "Decisions of Australian courts make it clear that in considering such provisions as S 269TJ, where the meaning is not clear, the courts can have regard to the international agreements and codes to which Australia is a signatory."[359]

However, it is later said when discussing the permissible resort to the terms of those agreements for assistance in cases of ambiguity or uncertainty that:

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[355]Australian Customs Service Explanatory Paper p 33.
[356]Ryan (1984) p 28 traces the history of the development of this view that the external prerogatives are part of the executive power of the Commonwealth.
[357]Shearer (1994) p 242 - This material is drawn from the Report of the Australian Branch to the International Law Association Committee on International Law in National Courts.
[358]*Atlas Air Australia Pty Ltd v Anti-Dumping Authority* (1990) 26 FCR 456 at 469; *ICI Operations Pty Ltd v Fraser* (1992) 34 FCR 564 at 568; *Rocklea Spinning Mills Pty Ltd v Anti-Dumping Authority* (1995) 29 ALR 401 at 411.
[359]*Rocklea Spinning Mills Pty Ltd v Anti-Dumping Authority* (1995) 29 ALR 401 at 411.

> "The courts should in cases of doubt favour a construction of the Act which accords with the obligations of Australia under such international agreements, otherwise uncertainty would ensue if municipal courts gave a myriad of different constructions to the same basic concepts: see *ICI* id; *Chu Kheng Lim v Minister for Immigration and Ethnic Affairs* (1992) 176 CLR 1 at 38; 110 ALR 97."[360]

A further question arises as to the adoption of international treaties as part of the common law principles. The need to have regard to the substance of international conventions and treaties to which Australia is a signatory, even though their provisions may not have been enacted into domestic law by the Australian Parliament, was endorsed by the High Court of Australia in *Teoh*.[361] The point at issue was whether an applicant for permanent residency Teoh had a legitimate expectation that the provisions of the *United Nations Convention on the Rights of the Child* would be taken into account by the government decision maker when deciding on his deportation for importing illicit drugs. Lane (1995) sums up the *Teoh* case saying that:

> "...the court held that treaties ratified by the executive could affect Australian law, even if Parliament had passed no legislation to implement their provisions."[362]

McGuinness (1995) reported the judgement of Chief Justice Mason and Justice Deane of the High Court in *Teoh* as the:

> "...fact that the convention has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law. Where a statute or subordinate legislation is ambiguous, the courts should favour the construction
> which accords with Australia's obligations under a treaty or international convention to which Australia is a party,* at least in those cases where the legislation is enacted after, or in contemplation of, entry into, or ratification of, the relevant international instrument. That is because Parliament, prima facie, intends to give effect to Australia's obligations under international law."[363]

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[360] *Rocklea Spinning Mills Pty Ltd v Anti-Dumping Authority* (1995) 29 ALR 401 at 411.
[361] *Minister of Immigration, Local Government and Ethnic Affairs v Teoh* (1995) 128 ALR 353.
[362] Lane - The Australian 8 May 1995 p 4.
[363] McGuinness - The Age 11 April 1995 - extract form the joint judgement of Mason CJ and Deane J (1995) 128 ALR 353 at 362. * Their honours make reference to *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1 at 38.

Kirby (1995) in reviewing the application of international standards in Australian courts, considers the developments leading to the *Teoh* case. With respect to *Teoh,* Kirby draws attention to some more cautious remarks of Mason CJ and Deane J stating that:

> "Apart from influencing the construction of a statute or subordinate legislation, an international convention may play a part in the development by the courts of the common law...But the courts should act in this fashion with due circumspection when the Parliament itself has not seen fit to incorporate the provisions of a convention into our domestic law. Judicial development of the common law must not be seen as a back-door means of importing an unincorporated convention into Australian law."[364]

However, the importance of the place of international conventions in the development of the law was also recognised in the other judgements of the court, including the dissenting judgement of McHugh J.[365] McHugh J said on the relevance of the convention to Australian law that:

> Conventions entered into by the government do not form part of Australia's domestic law unless they have been incorporated by way of statute. They may, of course affect the interpretation or development of the law of Australia...In that respect, conventions are in the same position as the rules of customary international law. International conventions may also play a part in the development of the common law.[366]

This move by the High Court to embrace the growing internationalisation of law is of particular relevance to the development of international trading laws in Australia. As Kirby (1995) concludes:

> "The influence of treaty law upon Australian law is growing. The powerful influence of international standards will have an increasing impact on the development of the common law and statute law in Australia."[367]

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[364] *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 128 ALR 353 at 362.
[365] (1995) 128 ALR 353 at 382 McHugh J was not convinced that legitimate expectations had been sufficient to enliven the rules of procedural fairness in this case.
[366] (1995) 128 ALR 353 at 384.
[367] Kirby (1995) p12.

Following the High Court's ruling the Australian government decided in May 1995 to introduce legislation to require ratification of treaties/conventions by Parliament through the passage of implementing domestic legislation before they can have any legal effect within Australia. In a joint statement by the Minister for Foreign Affairs and Trade and the Attorney-General they said:

> "It is not legitimate, for the purposes of applying Australian law, to expect that the provisions of a treaty non-incorporated by domestic legislation should be applied by decision makers."[368],[369]

In September 1995 the amending legislation, in the form of the *Administrative Decisions (Effects of International Instruments) Bill 1995*, was introduced into the House of Representatives.[370] After debate the Bill was referred to the Senate for deliberation. The Minister for Justice in the second reading on the bill said that :

> "The bill has a very confined field of operation: it only prevents a legitimate expectation from arising based on the fact that Australia is bound by, or party to, a particular international instrument, or, that an enactment reproduces or refers to a particular international instrument.
>
> ..., the bill will not affect the use of international law by the courts in the interpretation of ambiguous statutory provisions; nor will it affect their use of international law as a legitimate and important influence on the development of the common law."[371]

It is difficult to see what the government is trying to achieve through these amendments, as the High Court has applied common law principles in the relevant decisions. This legislative change in process is unlikely to affect the application of international public law in Australia.

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[368]The Australian Financial Review 11 May 1995 p 10; Lavarch & Evans 10 May.
[369]In *ICI Australia Operations Pty Ltd v Fraser* (1992) 34 FCR 564 at 569-570 mention was made of the use of international agreements for the purposes of understanding the meaning of the domestic legislation, however, counsel for both parties considered that it was unnecessary and they would rely upon the language of the legislation.
[370]House of Representatives Second Reading Speech of 21 September 1995 p 1435.
[371]House of Representatives Second Reading Speech of 21 September 1995 p 1437.

The High Court decision is a reflection of the increasing influence of international pressures on nation states. As the world grows closer through trade and cultural exchange, it is natural that international rules will play a greater role in the regulation of domestic behaviour. This will undoubtedly affect the concept of the application of national sovereignty. Braithwaite (1995) makes the point that international harmonisation may lead to a change from national to citizen sovereignty. That is, the development of international forums with increased openness, access to information, and enhanced provisions for the representation of citizen groups, the collective decisions of these international groups are likely to lead to a better outcome for all.[372] Braithwaite (1995) appears to be accepting the continuation of the unequal distribution of power between the economic groups. In citing the example of collective decision making at the international level through the newly formed *International Conference on Harmonisation (ICH)*,[373] Braithwaite (1995) makes two points:

> "We lose national sovereignty, yet we gain from the way harmonisation gets drugs more quickly onto the market and with better global sharing of safety data."

and

> "Yet do we even lose national sovereignty? If one's conception of sovereignty is not national sovereignty, but the ultimate sovereignty of citizens, it is not clear that the ICH is a bad thing. In Australia, as in most national states, health administrators have been excessively secretive, giving most groups very limited inputs into their regulatory negotiation with the pharmaceutical industry. In comparison, the ICH is a model of access and transparency"[374]

In fact there is a reversal of representation in this case, with Australia as a nation state not being represented at the ICH whereas there is open access to citizen groups. To what extent this changes the relative sovereign position of national governments and its citizens is by no means clear. By giving citizen groups a direct say in the decision

[372]Braithwaite (1995) pp 10-12.
[373]This conference has been formed by the United States, European Community and Japan who are the sole representatives with exclusive voting rights. In doing so they have abandoned the WHO as a forum for drug harmonisation.
[374]Braithwaite (1995) pp 9-10.

making on international agreements does provides an extra dimension to the outcome of international agreements. In the case of the ICH the increased transparency and the facility to make submissions to the conference may not be sufficient to influence the votes of the club of three leading pharmaceutical manufacturing nations. To counter this imbalance of power the citizen groups would need unprecedented strength, as well as unrestricted access to all relevant information.

As illustrated in the Braithwaite (1995) example, national governments are notoriously secretive in their negotiations with multinational firms and in their contacts with representatives of the firms' nations of residence.[375] This is also evident in the area of trade agreements, where Australia only gives access to international trade developments to selected groups.[376] The Department of Foreign Affairs and Trade consults with the Trade Policy Advisory Council, which according to the department:

> "...enables the business community's interests in trade policy negotiations to be reflected in Government positions."[377]

The department adds that:

> "The final decision must necessarily be a balance of the competing interests and an attempt to satisfy a broader national interest."[378]

It is not clear how this later process of balancing and deriving the national interest really takes place. As the Council's external representatives are made up of producers and service providers in Australia with one union representative and an academic economist

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[375]Wallach (1993) pp 23-24 supports this restricted view of representation of interests in the international trade arena sating that:

> "Trade agreements are negotiated in secret by government representatives working closely with corporate advisers and are enforced through procedures hidden from public scrutiny. Without reforms to trade policy, the 1990s may become a decade of retrenchment, when hard-won environmental and consumer safeguards are preempted or overruled because citizens around the world are being effectively cut out of the decision making process."

[376]Phone conversations with Departmental officers, and the reply of the Minister for Trade refusing access to *GATT* related documents on confidentiality grounds confirms the secrecy surrounding trade negotiations by the Australian government. Are they protecting the citizens of Australia against themselves, or supporting some other agenda as Braithwaite infers?

[377]Department of Foreign Affairs and Trade (1994) - Australia and International Treaty Making: Who does the Commonwealth consult?

[378]Department of Foreign Affairs and Trade (1994) - Australia and International Treaty Making: Who does the Commonwealth consult?

adviser, the information channelled through the committee process is unlikely to be representative of the citizens of Australia.[379] This structure effectively cuts-off the citizen groups from any input into international treaty making on trade related matters, particularly as the deliberations are not made public.

There is no current requirement for parliamentary ratification of treaties, only a convention of the tabling of treaties prior to their ratification being observed.[380] However, the insertion of the Parliament in the ratification process would mean that the Parliament will be subject to similar albeit wider external political and moral pressures, which have influenced the acceptance of treaty obligations by the executive. The place for Parliament should be as an intervener during the negotiation if the concept of parliamentary representation is to have any significant contribution.[381]

In brief, Australia should accord citizens greater transparency in the development of treaties on international trade and encourage the active participation of its citizens individually and through community groups in international forums. This may mean promoting greater transparency within the *WTO*. There is a place for Parliament as an intervener in the trade agreement process. Much greater attention should be given to both these issues, as wider involvement by the community in Australia's participation in the development of the *Anti-Dumping Code 1994* and the *Subsidy Code 1994* could have formed a foundation for the review of the application of these measures by Australia and their relevance to Australia's relations with other nation states.

4.3.4 Legal Developments in other Jurisdictions

The Australian experience so far has been limited to the question of whether the provisions of the domestic legislation are wide enough to allow the application of national interest criteria for the purpose of not imposing an anti-dumping measure.

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[379]Foreign Affairs and Trade (1993-94) p 99 gives a brief outline of the activities of the council.
[380]In the House of Representatives Second Reading Debate of 21 September 1995 on the *Administrative Decisions (Effect of International Instruments) Bill 1995* pp 1439-1444 Ruddock opposition spokesman outlined the current parliamentary referral process and suggested that there should be wider consultation on treaties including a requirement for tabling and debate of treaties by Parliament prior to ratification and for domestic legislation to be in place prior to ratification of treaties.
[381]These issues have been also identified by The Senate Legal and Constitutional References Committee in its report "*Trick or Treaty? Commonwealth Power to Make and Implement Treaties*" of November 1995.

In the United States, the District Court has looked at the question of national interest as reflected in the width of the executive power to induce a voluntary export restraint agreement.

Lowenfeld (1983) discusses the question of "public interest" and the width of executive power by reference to litigation in the early 70's between the Consumers Union and the executive of the United States Government. The litigation involved a voluntary export restraint agreement between the Japanese and European steel exporters and the State Department. According to Lowenfeld, the Consumer Union initially alleged that:

> "...(1) an agreement in restraint of trade under section 1 of the Sherman Antitrust Act 15 USC s1 ; and (2) unlawful actions by officials of the State Department, in that they had negotiated restrictions on international commerce without going through the procedures and requirements of the Trade Expansion Act, in particular the provisions for investigation and findings by the Tariff Commission (s301) and the provisions for orderly marketing agreements (s352)."

This allegation was later modified to exclude the antitrust allegation (1) and rely solely on ultra vires actions of government officials. The District Court both in the initial hearing and appeal decided in favour of the executive having the requisite power to enter into voluntary export restraint agreements. In the first hearing of the Consumer Union Case 1973, the court said that:

> "While the legislative pattern is indeed comprehensive and the President's authority has been narrowed [by the Trade Expansion Act and the Sherman Act], these acts cannot be read as a Congressional direction to the President prohibiting him from negotiating in any manner with private foreign companies as to commercial matters."

The implication is that the United States executive can, even when a case cannot be established on its merits under domestic law, negotiate with private foreign companies limits and conditions of access into the United States market.[382] It is arguable that the executive in Australia also has the power to negotiate with foreigners,[383] however,

[382]Lowenfeld (1983) p 214.
[383]*Commonwealth of Australia Constitution Act 1900* s.61 the executive power, and according to Stephen J in *Koowarta v Bjelke Petersen; State of Queensland v The Commonwealth* (1982) 39 ALR 417 at 451 the

success in imposing similar voluntary limits and conditions on access is severely constrained by Australia's relatively weak economic bargaining power. It could be argued that this places Australia in a position where there is an increased emphasis on applying the terms of international agreements through the provisions of domestic law. That is where trade matters are concerned focussing on the importers who are the conduit in the process rather than on external parties.

As indicated above, there is no public interest provision incorporated into the Australian anti-dumping laws, apart from the ability of the Minister not to impose a duty, where it is considered that it would be contrary to the supposed free trade goals of the *GATT*.[384] Public interest is to be taken into account under both the Canadian and European Community anti-dumping laws. However, section 45 of the Canadian *Special Import Measures Act 1984*, appears to be only concerned with the level of anti-dumping measures imposed, and not on whether they should be imposed at all.[385] This follows the *Anti-Dumping Code 1979* which only allows for the taking of a measure sufficient to remove the injury to the affected domestic industry. This is similar to the Australian position.

On the other hand, Article 12 of the European Community anti-dumping regulation provides that the imposition of the definitive anti-dumping duties is contingent on it being in the interest of the Community.[386] Community interest is not defined.[387] It is unclear as to the origin of the Community interest clause in the anti-dumping regulations. Although the regulation was based on the *Anti-Dumping Code 1979*, there is no direct public interest provision contained in the *Code.* Even if it could not be argued to be a direct effect of the entering into a treaty, it may draw for its legitimacy on the Council of Ministers implied powers. As Moens and Flint (1993) explain, Article 113 of the *EEC Treaty* gives the Council of Ministers the direct power to enter into tariff agreements and trade agreements on behalf of the community without consulting the European Parliament.[388] However, if the matter is not a direct consequence of the specific treaty

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federal executive , through the Crown's representative, possesses exclusive and unfettered treaty-making power.

[384]Section 10 of the *Anti-dumping Authority Act 1988.*

[385]Industries Assistance Commission *Report on the Chemicals and Plastics Industries* May 1986 p 224.

[386]Industries Assistance Commission *Report on the Chemicals and Plastics Industries* May 1986 p 225 - Article 12(1) of *Council Regulation 2423/88.*

[387]Halsbury's Laws of England Volume 51 European Supplement p 547.

[388]Moens & Flint (1993) p 94 - Article 113 of the *EEC Treaty* specifically permits the Council to conclude treaties relating to measures to protect trade such as those to be taken in cases of dumping or subsidies.

power, there may be scope to use the wider concept of the exercise of implied power of the Council to enter into treaties with non-EEC countries provided by Article 228 of the *EEC Treaty*.[389]

In the decision on the dumping case concerning *Vinyl Acetate Monomer from Canada*, the question of Community interest was addressed by the Commission. The Commission said that:

> "...in view of the particularly severe difficulties facing the Community industry and taking into account its economic and social importance, the Commission has come to the conclusion that it is in the Community's interests that action should be taken."[390]

This would appear to be a rather one sided view of Community interest, putting the requirements of other Community producers and processors at a lower order of merit. However, in *Extramet Industries*[391] the European Court of Justice stated that competition rules should be taken into account when determining issues relating to damage caused to European Community industry by dumped imports. According to Messerlin:

> "This is the first time that the Court had expressly ruled that the outcome of anti-dumping proceedings may be affected by the anti-competitive behaviour of the industry which seeks protection."[392]

A different interpretation of the decision is given by Monti (1995) claiming that:

> "...the Court did not rely on the competition law arguments under EC Article 86, but merely on the fact that Extramet had given enough reasons for the Commission to suspect that Pechiney may have inflicted injury on itself."[393]

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[389]*re Erta:Commission v Council* [1971] ERC 263; [1971} CMLR 335 - see also *Kramer* [1976] ECR 1279.
[390]EC Regulation 512/84 Article 20.
[391]*Extramet Industries SA v EC Council* Case 358/89 ECR; [1993] 2 CMLR 619.
[392]Messerlin (1995).
[393]Monti (1995) p 109.

Perhaps this represents a turning point in the consideration of factors affecting the consumers of dumped products. However, in 1993 the Commission was quite adamant in distinguishing the application of commercial and competition policy pointing out that:

> "In its White Paper on growth, competitiveness and employment it stresses the need to protect Community industry against unfair practices in the Community by firms based in non-member countries, by tightening application of the anti-dumping rules."[394]

In August 1995 it was reported that the Commission had decided to commit to public debate a report entitled *Competition policy and the new world order: strengthening international cooperation and rules*.[395] The report sees a risk, following the reduction in tariffs as a result of the Uruguay Round, of other barriers being formed through the setting up of cartels whose members divide world markets so that each company has control of its traditional national market, and the partitioning of distribution networks of large global companies along national borders. To counter this development, the report recommends that the European Union extend current bilateral agreements with other countries plurilaterally to cover the major trading nations of the world.[396] The Commission is seeking the views of its Member States and trading partners to see whether they would agree to the use of the *WTO Agreement* as an effective vehicle for such cooperation.

The link between competition with commercial policy would now appear to be at the forefront of the European Community thinking.[397] This approach would appear to have a much greater chance of success as the United States has a number of bilateral agreements relating to antitrust cooperation and mutual legal assistance but none go as far as the

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[394]European Commission (1993) p 100.
[395]Harris (1995)This report was a collaborative effort between Professors U Immenga of Germany, F Jenny of France and E-U Petersman of Switzerland and several Commission officials in a personal capacity.
[396]Harris (1995) The plurilateral framework should contain four key elements: exchange of information; "positive comity" with competition agencies investigating each others claims falling within their jurisdiction; stronger rules against hard core cartels than against vertical restrictions; and, dispute settlement with strict deadlines.
[397]EC COM (95) p 17 the experts express the view that: "Nonetheless, the Group considers it important to bear in mind the practical experience - as in the context of European integration, *NAFTA* and the *Australian-New Zealand Closer Economic Relations Trade Agreement* - that competition rules and trade rules, their interpretation and their judicial enforcement, need to be mutually supportive."

group of experts propose.[398] Also Article 9 of the *Agreement on Trade-Related Investment Measures 1994* includes a provision requiring that the Council for the Trade in Goods shall consider by 1 January 1999, whether the Agreement should be complimented with provisions on investment policy and competition policy.[399] One of the benefits of reducing the level of market distortions in world trade, would be the elimination of the need for anti-dumping and countervailing measures, as the ability to partition market would be reduced.

It is also clear that a number of the lesser developed countries are giving serious consideration to the use of anti-dumping measures. As part of China's integration with the world economy and its continuing desire to become a member of the *WTO/GATT*, China's *Foreign Trade Law* provides for the State to intervene in a case of dumping.[400] Wang (1995) sees this as consistent with a process of regionalisation and globalisation of business laws, such as those concerned with anti-dumping, countervailing duties, intellectual property, securities and companies.[401]

4.4 Summary

Before turning to the question of the purpose of the anti-dumping and countervailing law it is useful to reflect on the question of separation of the political, economic and legal considerations. In Australia where the matter involves the consideration of a national interest or public interest criteria the courts will not intervene. Stephen J in *Murphyores*, a case concerning the exercise of the power through regulation under the *Customs Act 1901* to prohibit the export of goods, expressed the view that:

> "... When such a breadth of considerations is involved only something amounting to lack of bona fides could justify the curial intervention in decisions made in the exercise of the power to relax export prohibitions."[402]

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[398]Examples of the principal bilateral antitrust agreements are currently those between: United States - Australia; Australia - New Zealand; United States - Canada; Germany - United States; United States - European Communities.
[399]In addition, Articles VIII and IX of the *Agreement on Trade in Services 1994* contain some rules for dealing with business practices which restrict competition, as for example, do Articles 8, 39 and 40 of the *Agreement on Trade Related Aspects of Intellectual Property Rights 1994.*
[400]Wang (1995) p 19.
[401]Wang (1995) p 23.
[402]*Murphyores Inc Pty Ltd v Commonwealth* (1976) 50 ALJR 570 at 575.

This is indicative of the support for the exercise of a wide executive discretion where there is a matter of policy. A similar result can be seen in *Ansett Transport Industries*, where in the judgements of Mason J and Aickin J there was an endorsement of the relevance of government policy in the application of a discretion by the decision maker.[403]

In relation to anti-dumping and countervailing measures, the *Anti-Dumping Authority Act 1988* allows for the exercise of policy discretion. The relevant questions are, how wide is this discretion, and from a policy perspective, how should it be exercised? Section 10 of the *Anti-Dumping Authority Act 1988* states that:

> "Without limiting the matters to which the Authority may have regard in performing its functions and exercising its powers , The Authority shall, in performing its functions and exercising its powers, have regard to:
>
> (a) the Commonwealth Government's policy in relation to anti-dumping matters; and
>
> (b) Australia's obligation under the General Agreement on Tariffs and Trade:
>
> not to use the imposition of duties under the Anti-Dumping Act to assist import competing industries in Australia or to protect industries from the need to adjust to changing economic conditions."

Looking at government policy statements other than those which simply mouth the concept of the need to protect Australian industry from unfair trading practices, there is one given by the Minister on behalf of the government when introducing the 1988 amendments which is particularly relevant. This statement was alluded to earlier in when discussing the introduction of the *Anti-Dumping Authority Act 1988*. Firstly it was said that:

[403] *Ansett Transport Industries Pty Ltd v The Commonwealth* (1977) 139 CLR 54 at 83 Mason J said that "...it is to be expected that he will have regard to any relevant government policy, nevertheless deciding for himself whether the existence of the policy is decisive of the application." and Aickin at 115-116 stated that "Government policy ... must in every case be a matter for his serious consideration ... In many matters of policy, it might indeed be the duty of the Secretary to act in accordance with the policy of the government of the day."

> "anti-dumping duties are not to be used as a substitute means of providing assistance to import competing industry in Australia, nor to shield industry from the need to adjust to changing economic conditions..."[404]

Although this may be seen as simply reiterating section 10 of the *Anti-Dumping Authority Act 1988*, the words "...not to be used as a **substitute** means of providing assistance..." presumably mean that the assistance provided is to be that to offset injurious dumping.[405] Therefore it would be expected that industries would be no worse-off and no better of as a result of anti-dumping or countervailing actions than they were before the injurious dumping or subsidisation occurred.[406] This is further reinforced by a second statement that the:

> "...Assessment of material injury and causal link must be rigorous and anti-dumping measures should not be used as a de facto form of protection: they have to be seen as a set of measures to discourage unacceptable short-term threats to knock out an industry in the importing country in order to increase long-term market share."[407]

However, here the government is asserting that the purpose of the application of anti-dumping measures is to combat predatory dumping.[408] If this is so, then it would be expected for there to be considerable policy input in anti-dumping decisions, as the *Anti-dumping Codes 1979* or as amended in 1994 and the enabling Australian legislation, do not contain any provisions which restrict its application to cases of predation.

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[404]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2311.

[405]Wilcox J in *Atlas Air v Anti-Dumping Authority* (1990) 26 FCR 456 at 469 comments on the construction of section 10 of the *Anti-Dumping Authority Act 1988* in the following way:

> "There is an obvious construction problem about the first element of this obligation. The whole purpose of dumping and countervailing duties is to assist import competing industries in Australia, by preventing them from being exposed to unfair competition. Perhaps the word 'assist' has to read as referring to a situation where the Australian industry is put in a better position than if dumping or overseas assistance had never occurred, as distinct from a position where duties merely neutralise unfair competition."

[406]This is a difficult proposition since it gives no value to the safety net it creates. That is, if the periods of below average performance are eliminated by the applications of the countervailing measures, the overall performance of the industry must be affected. Therefore there will be an assistance effect of the measures even though they may be primarily directed at the question of fairness however described.

[407]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2311.

[408]Ordover et al (1983) p 324 discusses requirements for predation, also refer to Section 3 for definition.

Thirdly, while not introducing a new national interest provision, the Minister would take into account national interest criteria in exercising his discretion in considering the reports of the Anti-Dumping Authority.[409] Having moved from not providing assistance to a more restrictive requirement of predatory dumping, additional trade related factors may also be required to be taken into account. The Minister cites as adding "...complexity to considering dumping in the context of national interest is that many of the imports complained of come from countries where Australia has a large trade surplus."[410] Is there a further restriction on the application of anti-dumping measures relating to the extent of trade surplus with the exporting country? If so, and the policy considerations are cumulative, and you are a corporation exporting from a surplus country, it would appear that Australian policy may permit predation in the Australian market.

The national interest requirements are not clear.[411] From an examination of related industry, taxation, competition and foreign ownership policy, although more is said on the issue of public interest or national interest, the resulting policy objectives are quite mixed. However, it is clear that improved export performance is a key issue, as is the requirement for improved efficiency with lower unit costs. There are many factors identified which may assist industry in achieving these outcomes, such as, investment in the education of the workforce, industry support infrastructure, improved economies of scale or scope of marketing, production and distribution goods and services. The question of whether this is best done by market or by state intervention or a combination is not clear. To some extent this depends on whether there are contestable markets for traded goods, as market failure may justify state intervention.

What is clear is the lack of a prescriptive answer in the *WTO/GATT*. The Minister encourages the use of the *Anti-dumping Code 1979* and the *Subsidies Code 1979* in the second reading of the *Anti-Dumping Authority Bill 1988.* The Minister is interventionist saying that:

[409]It is not clear how the Minister is to achieve a balance of views as advice is from the Anti-Dumping Authority, after hearing evidence from directly interested parties, and possibly where there are trade concerns through the parties associated with the Trade Policy Advisory Group whose membership consists of industry and union representatives. This bias towards industry input is unlikely to give a balanced view of national interest.

[410]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2312.

[411]The same could be said for the term 'merchantable goods', but at least the courts have developed common law understanding and are accountable in a public forum for its application. The lack of clarity in what is meant by the 'public interest' has a more disturbing result as the executive has virtual unlimited power to apply ill defined policy objectives in the name of 'public interest'.

> "Effective anti-dumping and countervailing arrangements are necessary to protect Australian industry from clearly unfair trading practices. This is in accordance with Australia's rights and obligations as a signatory to the General Agreement on Tariffs and Trade (GATT) anti-dumping code and the code on subsidies and countervailing duties."[412]

The Minister then turns for support to the economies of the major foreign investors in industry in Australia, saying that:

> "Other signatories to the codes such as Canada, the European Economic Community (EEC) and the United States of America employ similar practices."[413]

The Minister in seeking support for the provision of a cost constructed normal value in the *Customs Tariff (Anti-Dumping) Act 1975*, states that:

> "The Government considers that the repeal of this section would put Australia out of step with other countries that use GATT anti-dumping mechanisms to counter unfair trading practices. Canada, the EEC and the United States all have and use sections equivalent to section 5(9) in their legislation."[414]

As the government considers that the behaviour of other *GATT* members as an important influence on the development of its policy, regard should be had to the application of anti-dumping and countervailing measures by other countries. Is Australia in step or out of step with the other *GATT* members? Has Australia given any consideration in the application of anti-dumping measures to the effect on the competitiveness of industry in Australia as has the European Community? Have the benefits exceeded the costs to the community as is required by the Trade Practices Commission public benefit test?[415]

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[412]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2310.
[413]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2310.
[414]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2312.
[415]One of the difficulties is that the government does not see a place for third party views. In the second reading speech the Minister indicated in discussion of the decision not to include a national interest provision that: "The range of issues which could be regarded as relevant in each case could no doubt be broadened and the way would be open for parties with indirect interests to claim the right to present views to the Authority and have them taken into account by the Minister in making his decision. Proceedings would become unnecessarily complex and protracted." - Second Reading Speech House of Representatives Hansard 28 April 1988 p 2312. National interest would in practice appear to be restricted to a consideration of the views of the directly effected parties, foreign governments and those of the government.

Having regard to Australia's international commitments, has Australia applied anti-dumping and countervailing measures in a non-discriminatory manner? If there has been discrimination, is it such that it may be in accord with the trade policy directions of the government? Finally, has the application of these measures been resource neutral and equitable between industry groups?

SECTION 5 - How These Safeguard Measures Apply

5.1 Introduction

It was within the *GATT* negotiating framework where the *GATT Codes* relating to anti-dumping and countervailing measures were developed. The *Codes* provide specific and limited safeguards for the domestic industries of member states. This section looks at the development, content and application of these international public laws in an Australian and comparative context. The question of injury is then examined, as it is the prime motivation for industry seeking safeguard measures. This is followed by an examination of the two prior causal conditions of dumping and subsidisation required to apply a duty to off-set injury, and the difficulties associated with their assessment. The application of the public law will conclude with a discussion of the remedies available to industry.

Are these anti-dumping and countervailing laws applied consistently against the benchmark of the *GATT* and its implementing *Codes?* Are there any improvements which could be made to enhance consistency in application, and to reduce any adverse consequences resulting from these laws?

5.2 International Legal and Administrative Context

5.2.1 Development of the *Codes*

Article VI of the *General Agreement on Tariffs and Trade (GATT)* provides for an exception to the application of the most favoured nation clause. It allows for a nation state to apply retaliatory measures against the trade of another nation state, where there is found to be material injury to an industry in the importing state caused by the exportation of goods at dumped or subsidised prices (Bael (1990)).[416] These measures are in the form of import duties or in some situations by a voluntary export restraint agreement with the exporter or exporting nation on the conduct of future trade. It is with the issue of injury and the way the Australian government approaches this issue, which is the primary focus of this analysis. The other pre-conditions for the application of anti-dumping and countervailing measures, dumping and subsidisation, are also discussed in some detail.

[416] Bael (1990) p 29.

The words of Article VI.6(a) are framed in the negative. It is said that "No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product ... unless the effect of the dumping or subsidisation ... is such as to cause or threaten material injury to an established domestic industry, or is such as to materially retard the establishment of a domestic industry.".

Australia as a signatory to the *GATT* is required to observe these agreed rules on international trade in its trading transactions with other parties to the agreement. There is no general provision in Australia's domestic anti-dumping and countervailing legislation which requires the administering authority to have regard to the provisions of the *GATT* and its related *Anti-dumping Code* and *Subsidy Code*. Australian domestic legislation requires the administering authorities, when taking any retaliatory measures, to have regard to Australia's obligations under the *GATT* only to the extent that duties are not to be imposed which assist import competing industries or to protect industries from the need to adjust to changing economic conditions. However, as discussed at length in Section 4 international agreements may be used as extrinsic material for the purposes of clarification or incorporated as part of the common law.

Lowenfeld (1983) comments that:

> "... the framers of the *GATT* were concerned to avoid dumping and to avoid protectionism in the guise of anti-dumping duties. Their solution was to authorise anti-dumping duties only if the practice of the foreign producers "causes or threatens material injury to an established industry" in the importing state."[417]

To further clarify the *GATT* rules the major trading parties entered into specific agreements on the interpretation of provisions of *GATT* Articles VI, XVI and XXIII as they relate to anti-dumping and countervailing (anti-subsidy) measures. The provisions contained in the current *Codes* resulted from the recently concluded *GATT* Uruguay round, and consequential changes to Australian domestic legislation were introduced and passed by the Parliament in time for the legislation to come into effect on 1 January 1995. These *Codes* arose out of the need to develop some further discipline on the interpretation of the *GATT* provisions, as there is always a background view that the

[417]Lowenfeld (1993) p 37.

major users of anti-dumping and countervailing measures are actively seeking to extend the scope of the *GATT* provisions to one of a significant non-tariff barrier.

5.2.2 Influence of the Uruguay Round on Administrative Practices

There were a number of changes to both the *Codes* being put forward in the Uruguay round of the MTN, some of which were as follows:

- a public interest test should be introduced;
- strengthen the standing requirements for initiation;
- require the provision of an economic rationale as well as factual findings, and an explanation as to why an exporter's pricing decisions are found not to be in accord with "customary business practice" and commercial considerations that otherwise might be properly taken into account;
- prohibit affirmative injury findings in instances where it can be shown that dumped imports are priced to meet competitive market prices set out by domestic or foreign producers not subject to investigation;
- allow an exporting country to challenge in *GATT* frivolous initiations.[418]

Some of these propositions challenge the substance of any proceedings to apply the provisions of Article VI of the *GATT*. They illustrate that the rationale for anti-dumping and countervailing measures is still a serious matter of conjecture and dispute. They simply contemplate the rationale for the need for such a safeguard mechanism in the *GATT*. The outcome of the *Uruguay Round* was that there was little change to the anti-dumping provisions, and the introduction of a three tiered approach to a subsidy definition.

The changes or clarifications made to the *Anti-Dumping Code* and *Subsidies Code* with the 1994 amendments have been summarised earlier in Section 2 in the discussion of the introduction of the amending domestic legislation. However, it is worth looking at a selection of the comments made by contributors in the field on some of the critical aspects of the changes. Vermulst and Waer (1995) for example, point out that Article 2.2.2 of the *Anti-Dumping Code 1994* allowing the use of other exporter's or producer's data with respect to the determination of selling, general and administrative expenses and profit, is an exception to the principle laid down in Article

[418]Lysewycz (1990).

2.2.1.1 providing that costs should normally be calculated on the basis of the records kept by the producer under investigation.[419] They also see the *Anti-Dumping Code 1994* as providing a safe-harbour for exporters or producers to cost recovery within one year.[420] The introduction of a provision which allows specific hedging of exchange rates to be used for normal value determination, adds certainty to this area of the law.[421] The introduction of sampling techniques in dumping investigations is an example of a practical approach to administering the law, and the suggestion that verification reports be supplied to interested parties[422] should improve the veracity of the outcomes as well as enhancing the natural justice considerations, albeit with reports in confidential and non-confidential forms.[423]

Palmeter (1995) stresses the importance of the weighted-average to weighted-average and the transaction-to-transaction comparisons of Article 2.4.2 of the *Anti-Dumping Code 1994*, while raising concern that the allowing of an exception to this rule for so-called 'targeted dumping' where the export transaction may be compared with the average normal value. The argument in favour of the exception would appear weak, for as Palmeter (1995) explains the pattern of variation in prices may simply represent segmentation in the market. There is no rational explanation as to why domestic producers should be able to vary their prices among different purchasers, whereas exporters are not.[424] Article 2.1 of the *Anti-Dumping Code 1994* makes it explicit that sales below total cost are not "in the ordinary course of trade", and Article 2.1.1 states that these may be disregarded in determining normal value where they are made "within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time."

The major change emanating from the Uruguay Round was to the area of consultation and dispute settlement. This aspect is dealt with in considerable detail in Section 5.6.7 of this thesis. Palmeter (1995) looks at the implementation in the United States context, and concludes that the process for compliance with adverse panel decisions is available but likely to be slow.[425] Questions surround the extent to which panel findings are

[419]Vermulst and Waer (1995) p 55 - they see the use of data from other exporter's or producer's as a last resort provision.
[420]Vermulst and Waer (1995) p 58.
[421]Vermulst and Waer (1995) p 61.
[422]Vermulst and Waer (1995) p 64-65.
[423]Vermulst and Waer (1995) p 72.
[424]Palmeter (1995) p 44.
[425]Palmeter (1995) p 74.

circumscribed. Palmeter (1995) is critical of the provisions of Article 17.6(ii) which provide that when the *Anti-Dumping Code 1994* permits more than one possible interpretation, "the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those possible interpretations." However, this is simply a question of distinguishing between law and policy. It is in the *GATT/WTO* Council and its committees where the matters of policy are debated, not in the appellate body of the Council. Such a distinction is also evident in the Australian administrative law.[426]

5.2.3 Incorporation into Domestic Legislation

Anti-dumping and/or countervailing measures can be imposed by an importing country on imports of a product of another country to protect the production of the product in the importing country from unfair competition. The unfair competition arises from either price discrimination between export and home country sales by the exporter, known as dumping, or through the subsidisation by the government of the exporting country.

Australia has a policy of applying anti-dumping and/or countervailing measures where imports which are either dumped or subsidised are found to be materially injuring production in Australia. The administration of these measures by Australia is consistent with international commitments under VI and XVI of the *General Agreement on Tariffs and Trade* (*GATT*) and related *GATT Codes* on anti-dumping and countervailing measures.

The relevant legislation in applying these measures is the *Customs Tariff (Anti-Dumping) Act 1975*, the *Customs Act 1901* and the *Anti-Dumping Authority Act 1988* as amended and associated regulations.[427] The Australian Customs Service (ACS) and the Anti-Dumping Authority are the current Australian authorities.[428] Procedural aspects are now

[426]Douglas and Jones (1993) p 614.
[427]Dumping duties are taxes imposed under section 8 of the *Customs Tariff (Anti-Dumping) Act 1975.* Section 8(4) establishes the dumping duty payable as equal to the difference between the normal value and the export price of the goods. The export price is assessed under section 269 TAB of the *Customs Act 1901,* whereas the normal value is assessed under section 269 TAC of the *Customs Act 1901.* The equivalent provisions of the respective Acts applicable to countervailing duties are section 10, sections 10(4) and section 269TJ.
[428]The *Anti-Dumping Authority Act 1988* was introduced in that year with a date of effect of 1 September 1988. The historical background on the reasons for the introduction of this body into the administrative process is contained in Section 2 above.

contained in both the *Customs Act 1901*[429] and the *Anti-Dumping Authority Act 1988*, with reliance placed on the provisions of the *GATT Codes* where there is a need for clarification.[430]

"The *Customs Tariff (Anti-Dumping) Act 1975* of course is an exercise of the legislative powers of the Commonwealth under the *Commonwealth of Australia Constitution Act 1900*; in particular, the trade and commerce power in sub-section 51(i), as is the *Customs Act 1901* which is incorporated in and read as one with the former Act pursuant to section 6 of that Act."[431] However, the power to imposed customs duties is by way of the taxation power in section 51(ii) of the *Commonwealth of Australia Constitution Act 1900*.[432] In the *Attorney-General of New South Wales*[433] Isaacs J commented that:

> "The duty is on imports. *McCulloch' Commercial Dictionary* defines Customs as: "Customs are duties charged upon commodities on their being imported into or exported from a country." Importation is an event or occaasion which renders the property liable to taxation ..."[434]

This view of a customs duty being a tax on goods was approved by all members of the High Court in *Lovelock*[435], where Gibbs J indicated in his judgement that a common sense and normal approach had been taken by the Court:

> "It is clear that a tax imposed upon the importation of goods into Australia is a duty of Customs within the ordinary meaning of that expression and within the meaning it bears in the constitutional provisions."[436]

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[429]*Customs Tariff (Anti-Dumping) Amendment Act 1989* and *Customs Legislation (Anti-Dumping) Act 1989.* These amendments followed the unanimous decision of the High Court in *Air Caledonie International v Commonwealth* (1988) CLR 462; 82 ALR 385.
[430]Section 15 AB of the *Acts Interpretation Act 1901* and the common law.
[431]Lee J in *Merman Pty Ltd v Comptroller-General of Customs; The Honourable Minister for Science, Customs and Small Business; Swan Portland Cement Limited and Cockburn Cement Limited* No. WAG 65 of 1988 (unreported) p 14.
[432]*Vacuum Oil Co Pty Ltd v Queensland* (1934) 51 CLR 108, 125 per Dixon J: "The power of the Commonwealth Parliament to impose duties of customs ... is conferred by Section 51(ii) as part of the power to make laws with respect to taxation". In *Elliott v The Commonwealth* (1936) 54 CLR 657, 668 per Latham CJ: "Laws of taxation, including laws with respect to customs duties, fall under section 52(ii) ...".
[433]*Attorney-General of New South Wales v Collector of Customs for New South Wales* (1908) 5 CLR 818.
[434]*Attorney-General of New South Wales v Collector of Customs for New South Wales* (1908) 5 CLR 818 at 845.
[435]*Carmody v FC Lovelock Pty Ltd* (1970) 123 CLR 1.
[436]*Carmody v FC Lovelock Pty Ltd* (1970) 123 CLR 1 at 26.

> "The test to be applied is whether the tax is imposed on the importation of goods into Australia."[437]

It was argued by the applicant in *Nott Bros*[438] that anti-dumping duties are different from the normal duties of customs within the *Customs Act 1901*[439]. This was so despite the *Customs Act 1901* being incorporated and read as one with the taxing provisions of the *Industry Preservation Act 1906*. The applicant also argued that legislation dealt with more than one subject of taxation, therefore infringing the second limb of section 55 of the *Commonwealth of Australia Constitution Act 1900.* Isaacs J rejected this proposition holding that:

> "In the result, so long as a Customs law deals only with Customs duties, it matters not on what subjects or on what conditions those duties are imposed. Novelty is no objection; for stagnation is not the ruling principle of government."[440]

The decision that anti-dumping duty was a duty of Customs was affirmed by the Full High Court in *Lovelock*[441], where it was correctly conceded on the basis of *Nott Bros*[442] that if the duty had only applied to goods imported after the date of publication of the relevant notice, the duty would have been a "duty of Customs".[443] It is therefore clear that an anti-dumping duty is a duty of Customs and is a section 51(ii) tax, which can be levied on goods which are imported or exported from Australia.[444]

As anti-dumping duty is a tax it must not infringe either the first or second limb of section 55 of the *Commonwealth of Australia Constitution Act 1900.*[445] As a result of the

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[437]*Carmody v FC Lovelock Pty Ltd* (1970) 123 CLR 1 at 27.
[438]*Nott Bros & Co Ltd v Barkley* (1925) 36 CLR 20.
[439]*Sargood Bros v The Commonwealth* (1910) 11 CLR 258; 19 ALR 483 (*HC*) Griffith CJ and Higgins J in discussing the distinction between a tax assessment Act and an Act imposing a duty said that: "The *Customs Act 1901* is not a taxing Act and does not make any goods liable for duty."
[440]*Nott Bros & Co Ltd v Barkley* (1925) 36 CLR 20 at 26.
[441]*Carmody v FC Lovelock Pty Ltd* (1970) 123 CLR 1.
[442]*Nott Bros & Co Ltd v Barkley* (1925) 36 CLR 20.
[443]*Carmody v FC Lovelock Pty Ltd* (1970) 123 CLR 1 at 26 per Gibbs J.
[444]*Swan Portland Cement & Anor v The Comptroller-General of Customs & Ors* (1989) 18 ALD 700, Wilcox J stated that: "A customs duty is a tax and, in imposing a tax, the Commonwealth may not discriminate between States or parts of States: see Constitution ss 51(2), 88, 90 and 99."
[445]Section 55 of the *Commonwealth of Australia Constitution Act 1900* states that:

unanimous Full High Court decision in *Air Caledonie International*[446], it was held that amending legislation which inserts a provision imposing a tax into a law dealing with matters other than taxation, section 55 has the effect of invalidating the amending legislation. Following this decison any provisions in the anti-dumping and countervailing law which were considered to be of an assessment nature were shifted from the *Customs Tariff (Anti-Dumping) Act 1975* to the *Customs Act 1901*.[447] The purpose was to avoid any possible litigation on the basis of section 55 of the *Commonwealth of Australia Constitution Act 1900*.

Other sections of the *Commonwealth of Australia Constitution Act 1900* which have relevance to the imposition of customs duties are: section 88 providing for uniform duties of customs; section 90 confirming that the power to levy customs duties is exclusive to the Commonwealth; and section 99 providing that the Commonwealth will not discriminate in the regulation of trade, commerce or revenue between the States.

The impact of the judicial arm of the Commonwealth has had a substantial impact on the development of Australia's anti-dumping and countervailing laws. The process of review has also been aided by the developments in public international law, where Australia as one of its *GATT* commitments is required to provide for the actions of the administering authorities to be subject to administrative review. The administrative review bodies in the first instance are currently the Federal Court on matters of law and the Ombudsman on proper administration. In addition, the Administrative Appeals Tribunal has jurisdiction in relation to the rate of duty which should apply.

To better understand where these administrative review bodies fit within the structure of the courts in Australia, it is necessary to briefly discuss the derivation of their power within the Federal system. The section 75 of the *Commonwealth of Australia Constitution Act 1900* provides that the High Court has original jurisdiction in all matters

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> "Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.
>
> Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only."

[446]*Air Caledonie International v Commonwealth* (1988) CLR 462; 82 ALR 385.
[447]Amended by the *Customs Tariff (Anti-dumping) Amendment Act 1989* and the *Customs Legislation (Anti-dumping) Act 1989.*

"In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party" and "In which a writ of mandamus or prohibition or injunction is sought against an officer of the Commonwealth". In exercising this common law power of administrative review, the High Court is not able to examine the merits of the administrative decision in question. The court is limited to reviewing whether the decision maker has exercised power fairly and according to law.

The High Court has a wide general jurisdiction with its primary duty being that of the interpretation of the *Commonwealth of Australia Constitution Act 1900*, with administrative review being only one of its functions. In its appellate jurisdiction the Court's activities include the hearing of appeals from its own original jurisdiction, from the other federal courts and the State courts in both civil and criminal matters of significance. An appeal to the High Court may only be taken with special leave of the High Court, which in practice is quite limited. The High Court is the final court of appeal with appeals to the Privy Council having been abolished by section 11 of the *Australia Act 1986* and complementary United Kingdom and Australian State legislation.

To lighten the workload of the High Court, the *Federal Court of Australia Act 1977* created a new Federal Court of Australia which came into operation on 1 February 1977. The Federal Court's jurisdiction is broadly that of interpretation of Commonwealth statutes.[448] The introduction of the *Administrative Decisions (Judicial Review)Act 1977* has improved the administrative review process, and the formation of the Federal Court guarantees access to judicial review.[449] The Federal Court also provides an appellate jurisdiction, relating to decisions by a single judge, from the Supreme Courts of the Territories, and those of the State courts where they are exercising federal jurisdiction, such as the interpretation of certain Commonwealth statutes.[450]

In order to overcome some of the difficult jurisdictional problems created by the Federal system, the Commonwealth and State governments have enacted parallel cross-vesting legislation in the *Jurisdiction of Courts (Cross-vesting) Act 1987*. This allows for the State and Northern Territory Supreme Courts, and the Federal and Family Courts to be

[448]Section 19(1) of the *Federal Court of Australia Act 1976* gives the court original jurisdiction as is vested in it by other laws of the Parliament, and section 19(2) confers original jurisdiction vested in it to hear and determine appeals from decisions of persons, authorities or tribunals other than courts.
[449]Vermeesch RB & Lindgren KE (1995) p 75.
[450]Section 24(1) of the *Federal Court of Australia Act 1976* (other than a Full Court of a Supreme Court of a State).

vested with the general civil jurisdiction of the other courts.[451] The discussion in this Section of the judicial review of anti-dumping and countervailing measures will be limited administrative review by the Federal Court and the High Court of Australia, as these courts have both original and appellate jurisdiction in these matters.[452]

At this point it is necessary to draw attention to the limitations placed on administrative review by the High Court in *Bond*.[453] This judgement was followed in *MM Cables*,[454] the principal issue being the improper exercise of a power by the decision maker, the taking into account of irrelevant considerations and the failure to take account of relevant considerations, in the determination of normal value based on evidence supplied by the exporter, where Moore J quoted from the judgement of Mason CJ in *Bond* in the following passage:

> "However, in several decisions it has been suggested that findings of fact which are unreasonable or arbitrary may be reviewed under s. 5 (1) (e) and (2) (a) and (b): see *Singh v. Minister for Immigration and Ethnic Affairs; Independent F.M. Radio Pty. Ltd. v. Australian Broadcasting Tribunal; Minister for Immigration, Local Government and Ethnic Affairs v. Pashmforoosh*. In the last-mentioned case, Davies, Burchett and Lee JJ said:
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> > 'Thus, decisions may be set aside because, being insufficiently supported by reason, they appear to be an improper exercise of the power conferred

[451] *Bankinvest AG v Seabrook* (1988) 90 ALR 407 at 408: The purpose of the scheme, as stated in the preamble to the Acts, is to eliminate the "inconvenience and expense [that had] occasionally been caused to litigants by jurisdictional limitations in Federal, State and Territory courts". Its introduction was "a significant move towards providing throughout our nation the services of an integrated courts system transcending the boundaries, both geographic and jurisdictional, that have in the past obstructed the courts in meeting the requirements of the Australian public."

[452] Section 5(1) of the *Administrative Decisions (Judicial Review) Act 1977* provides for the application for review by "...a person aggrieved by a decision to which this Act applies...". Section 3(1) provides an interpretation of a 'decision to which this Act applies' excluding any of the classes of decisions set out in Schedule 1. As this Schedule does not list the *Custom Tariff (Anti-Dumping) Act 1975* under which anti-dumping and countervailing duty are collected, decisions to impose anti-dumping and countervailing duties fall within the jurisdiction of the *Administrative Decisions (Judicial Review) Act 1977*. The Federal Court of Australia vested with jurisdiction to hear and determine applications made to the Court under section 5 of the *Administrative Decisions (Judicial Review) Act 1977* by section 8 of the *Act.*

[453] *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321.

[454] *Metal Manufacturers Limited t/as Mm Cables, Pacific Dunlop Limited T/As Olex Cables & Pirelli Cables Australia Limited v The Comptroller-General of Customs, The Anti-Dumping Authority & Midland Metals Overseas Pte Limited* (unreported) NG 665 of 1993.

> or arbitrary or because there was no evidence or other material sufficient to justify the making of the decision or the decision was so unreasonable that no reasonable person could have so exercised the power. The making of, or failure to make, a particular finding of fact in the course of the reasoning process may equally be attacked on any such ground. The taking into account of a fact found unreasonably or the failure to take into account a fact that a reasonable decision-maker would have found and taken into account provides a ground of review under ss.5(1)(e) and 5(2)(a) and (b) of the A.D.(J.R.) Act.'
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> This statement is unobjectionable to the extent that a finding of fact constitutes a 'decision' such that it can be reviewed for unreasonableness and on other appropriate grounds. But if the finding does not constitute a 'decision', it is beyond review independently of such a 'decision'. In accordance with what I have already said, a finding of fact will then be reviewable on the ground that there is no probative evidence to support it and an inference will be reviewable on the ground that it was not reasonably open on the facts, which amounts to the same thing."[455]

Moore J also referred to the observations of Gummow J in *Bienke*[456] who also considered the extent of the Courts ability to resolve questions of fact saying that:

> "In *Broadbridge v Stammers* (1987) 16 F.C.R. 296 at 301, the Full Court, when considering a challenge to decision making involving evaluation of factual matters, relied upon the following passage from the speech of Lord Brightman in *Puhlhofer v Hillingdon London Borough Council* [1986] A.C. 484 at 518-
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> > 'Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the

[455] *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 359.
[456] *Bienke v Minister for Primary Industries and Energy* (1994) 125 ALR 151 at 165.

> decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely.'"

The interest of the High Court in circumscribing the extent to which the judicial arm of the government should become involved with factual issues constitutes an important development in the administrative law. It is clear that the Federal Court in *MM Cables*, dismissing the application for the review of the administrative decision, was retreating from its earlier interventionist position in *Wattmaster Alco*[457] and *GTE (Australia)*[458]. The result is the passing of greater responsibility back to the executive of the government for the resolution of factual issues.

In *Du Pont*[459] Henry J dismissed an application for review of a preliminary finding on the basis that it was still the subject of another review by another administrative authority, namely the Anti-Dumping Authority.[460] In his reasons, Henry J said that the preliminary finding was not conclusive; it was only one step in a complex administrative process; that there were steps to be taken which are set down by Parliament in both the *Customs Act 1901* and the *Anti-Dumping Authority Act 1988*; the issues are not questions of pure law, but at best a mixture of law and fact; and Du Pont is not likely to suffer any great deal of hardship if the inquiry were to be completed by the Anti-Dumping Authority.[461] An example of the need to fully exploit the administrative process, rather than turning to the court while the factual issues had not been resolved.

Another development regarding the jurisdiction of the court to intervene has been the amendment of the provisions relating to the discretion exercisable by the administering authorities, in the case of the Australian Customs Service, to initiate an inquiry following an application for dumping relief. In *Swan Portland Cement and Cockburn Cement*[462], the Full Federal Court on appeal against the rejection of a complaint by the Australian Customs Service under section 269TC(1) of the *Customs Act 1901*, found that:

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[457] *Wattmaster Alco Pty Ltd v Button* (1985) 8 FCR 471.
[458] *GTE (Australia) Pty Ltd v John Joseph Brown* (1986) 14 FCR 309.
[459] *Du Pont (Australia) Limited and Du Pont De Nemours and Co v Comptroller-General of Customs; Peter Kitler; Anti-Dumping Authority and Minproc Holdings Limited* (unreported) No NG 64 of 1993.
[460] Section 10(2)(b)(ii) of the *Administrative Decisions (Judicial Review) Act 1977*.
[461] Reference was made by his Honour to the decision of the Full Federal Court in *Swan Portland Cement Limited v Comptroller- General of Customs* (1989) 85 FCR 523; *Midland Metals Overseas Limited v Comptroller-General of Customs* (1989) 85 ALR 318; *A E Bishop and Associates Pty Limited v TPC* (1989) ATPR 4-985.
[462] *Swan Portland Cement and Cockburn Cement v The Comptroller-General of customs; The Minister for Science, Customs and Small Business and John Melville Thompson* (1989) 25 FCR 523.

> "..., in rejecting matter set out in the application as constituting reasonable grounds, on the basis that they were refuted by other documented assertions in the possession of the ACS, the Comptroller went outside the scope of the function which s 269TC(1) requires him to perform. In rejecting the application, he took into account matters which were irrelevant to the exercise of that function."[463]

The position of the court was to treat an application for relief in a similar way to a preliminary hearing as to whether there was a case to answer on the basis of the application of an applicant. This was unacceptable to the government introducing legislation to allow greater discretion at the initiation stage, allowing consideration of any other information that the Comptroller considers relevant.[464] This was followed by new screening procedures within Customs implementing the new provisions allowing greater discretion at the initiation stage.[465]

Changing the focus to the complexity of the current system and the secondary impact that dumping relief measures have on the level of protection applying to the traded goods sector of the economy, it is now relevant to analyse the effectiveness of the executive in the administration of the system.

5.2.4 Administration

5.2.4.1 The Process

It is useful to consider briefly the post-1988 administrative responsibilities of the Australian Customs Service and the Anti-Dumping Authority. The former is responsible for cases up to the preliminary finding stage[466] and when positive refers the case to the Authority for final determination.[467] The Authority on application reviews negative

[463]*Swan Portland Cement and Cockburn Cement v The Comptroller-General of customs; The Minister for Science, Customs and Small Business and John Melville Thompson* (1989) 25 FCR 523 at para 25.
[464]Section 269TC(1) of the *Customs Act 1901* amended by No 89 of 1992, section 13, effective 10 July 1992.
[465]Industry Commission (1994) p 283.
[466]Part XV Division 3 of the *Customs Act 1901*.
[467]Section 269TD(2) of the *Customs Act 1901* and section 7 of the *Anti-Dumping Authority Act 1988*.

preliminary findings of the Customs.[468] It may also initiate an inquiry of its own.[469] All decisions[470] of either the Customs or the Minister on recommendation of the Authority[471] are subject to administrative review by the Federal Court of Australia in the first instance under the *Administrative Decisions (Judicial Review) Act 1977*.

Although the functions of the Authority extend to recommending the revocation of anti-dumping and countervailing duties, this power is not used resulting in the large number of duties notices in force.[472] Applications may also be received by the Authority requesting the revocation of a notice,[473] or may receive a request by an industry covered by a duty notice that it be extended beyond the 5 year sunset limit for its application.[474]

The applicant is required to submit the complaint on an approved form which contains an extensive framework of questions relating to the complaint and the alleged injury.[475] The failure to supply the information will result in rejection of the application.[476] When a case is initiated, the Australian Customs Service during the reaching of a preliminary finding will verify the evidence presented by the applicant.

Both importers and exporters are invited to complete questionnaires. Although there is no mandatory requirement, it is in their interests to supply the information in defence of their position.

The Australian Customs Service has the power to inspect the books of local manufacturers and importers and to demand answers to questions in relation to the goods under inquiry.[477] Formal requests for information under the provisions of the *Customs*

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[468]Section 269TF(1) of the *Customs Act 1901* and section 8 of the *Anti-Dumping Authority Act 1988*.
[469]Section 9(2) of the *Anti-Dumping Act 1988.*
[470]Other than a decision to impose provisional measures, which is excluded from the jurisdiction of the A*dministrative Decisions (Judicial review) Act 1977* by Schedule 1 para (e) of that Act. Although relating to a valuation matter, in *Gill v Watson, Woodward and The Comptroller-General of Customs* NG 146 of 1995 (unreported), Davies J at 5 held that the revocation of a previous decision on value and the making of a new one where matters leading up to the making of a calculation of a duty and were thereby excluded from the application of the Act by Schedule 1 para (e).
[471]Sections 7, 8 and 9 of the *Anti-Dumping Authority Act 1988.*
[472]Section 9 of the *Anti-Dumping Authority Act 1988* and section 269J of the *Customs Act 1901*.
[473]Section 7(4)A of the *Customs Act 1901*.
[474]Section 8A of the *Anti-Dumping Authority Act 1988.*
[475]Section 269TB of the *Customs Act 1901*.
[476]Section 269TC(3) of the *Customs Act 1901*.
[477]Section 214B of the *Customs Act 1901*.

Act 1901 are infrequent, as importers and manufacturers normally allow access by Customs to relevant commercial information.

The Authority has access to all import data and also to the information supplied by the domestic industry in its application, any information supplied and reports by Customs on the activities of the exporter, and information supplied by the importer relating to the sales of the imported goods.[478] The Authority also has the power to take evidence on oath or affirmation.[479]

5.2.4.2 The Administrative Objectives

The general objective is for the process for investigating complaints to give a sufficient level of relief to offset any material injury to the Australian industry caused by the importation of dumped or subsidised product. It is necessary that the process be applied in such a manner to take account of the impact of any relief measures. The process should also be compatible with the requirements of the law with particular regard to the natural justice requirements.

In practical terms, as Gruen (1986) had suggested in his report to the government reviewing the application of anti-dumping measures, the existence of a speedy and readily available anti-dumping system has been an important element of Government policy and features in the government's Accord' with the Australian Council of Trade Unions. However, he also suggested, among other things, that the system should be more rigorous and objective in its application.

Following the report by Gruen (1986), PA Management Consultants (1987) conducted a management review of the system. They had identified the underlying problems as lack of consistency and timeliness in work processing. The key factors which needed to be addressed in the anti-dumping system were:

- the time frame for resolution of complaints

[478]Section 16 of the *Customs Administration Act 1985* allows the Chief Executive Officer of Customs to release information to the principal officer of an agency.
[479]For a detailed explanation of the administrative responsibilities of the Australian Customs Service and the Anti-Dumping Authority, reference should be made to the Anti-Dumping Authority Annual Reports. For a general overview of the administration of anti-dumping and countervailing actions in Australia see Feaver and Wilson (1995) pp 211-220.

- investigational and analytical objectivity
- consistency of results

In addition to these key factors, the cost effectiveness of service delivery was also seen as a key issue.

5.2.4.3 The Organisation

The structure has two separate statutory bodies, one being responsible for the preliminary stage of each investigation. The Authority is the senior party in hierarchy, but has no direct control over the activities of Customs.

This is a substantial structural drawback, since the responsibility for dumping inquiries will be split between two separate statutory authorities. Such a structure is inherently unstable, since both authorities have separate functions and responsibilities, and is not conducive of consistency of results.

One may be tempted to argue in defence of such a structure, that what really matters is the end result (ie. the decision on the imposition of the final duty). However, a decision by Customs to impose provisional measures at the preliminary stage, can have a significant influence on trade and on protection to the complainant industry. It would therefore be reasonable to conclude, that consistency in results was a relevant consideration in analysing the impact of the organisational structure. The structure would not be expected to enhance consistency in decision making.

From the attributes of excellence that Peters and Westerman (1982) isolated in their field research on successful corporate strategies, a simple system with few administrative levels and a lean top structure staff level seems to work best. The current structure would create the opposite effect, and in their terms would not be consistent with the attributes of an effective organisation.

Also according to Peters and Westerman (1982) the creation of hierarchical structures reduces autonomy and entrepreneur-ship, which would in turn be expected to inhibit leadership development and reduce innovation in the organisation.

The environment in which the administrating authority is placed is one of considerable complexity. The parties with which the authority will have continual communication include manufacturers, importers, exporters, consumers, other government departments at the state and federal level, politicians and foreign governments both directly and through the various international trade forums. In instances where a decision of the administering authority is subject to administrative review there is considerable communication with the relevant review body.

By having two bodies involved in the processing of dumping complaints, there is a doubling of contact with the external parties, and also the additional communication between the two administering bodies. There is a considerable potential for an increased quantity of noise being generated within the system. This is not conducive to analytical and investigational objectivity, and would be more likely to increase the incidence of inconsistencies through informational overload.

The insertion of an additional level in the decision making process creates difficulties in communication. This is in contrast to the adoption of a flatter structure, which would be expected to result in better communication by lessening the number of steps through which a message would need to be conveyed through the system. That is, the lengthening of the chain of information flow leads to an increased probability of distortion of communication.

5.2.4.4 Administrative Control

There is a requirement for a high level of professional skill in the assessment of dumping issues. This is necessary for analytical rigour in relation to the analysis of the facts which are before Customs and the Authority. Customs has the investigatory function and finds the facts. There are in this arrangement substantial information boundaries facing the Authority, regardless of the degree of cooperation afforded to it by Customs. It is unlikely to assist investigational or analytical objectivity, since there is considerable interdependence in the application of these skills.

An area where there is clearly a gain to be made by having a separate Authority is in the developing of guidelines by the Authority. These guidelines could result in a significant improvement in consistency of approach to dumping matters. However, the Authority only has the power to make recommendations to the Minister, and cannot be therefore

seen to be acting outside the political context. To be able to develop meaningful guidelines, the Authority would need to be able to be authoritative in its own right, rather than mouthing the instructions from its momentary political masters. In contrast, both the United States[480] and the European Communities[481] have more autonomous systems, which avoid direct political involvement in decision making.[482] It would be difficult to conclude that the system assists in the development of more meaningful guidelines.

The picture at the operational level of duty collection has shown itself to be in some confusion. Industry sources reveal that Customs failed to collect countervailing duty on canned tomatoes, a particularly sensitive commodity for the horticultural sector. There were a lot of excuses given by Customs for their failure to collect the duties. Whether the Anti-Dumping Authority was aware of the inaction of Customs is not clear, however, they should have known. At the same time the Authority was advising the Minister that duties on imports of canned tomatoes from Italy should not be revoked as "It was satisfied that imports from Italy were likely to increase significantly if the duties were removed, that these imports would be subsidised and, in all probability, dumped and that the subsidisation would be likely to cause material injury to the Australian industry. The authority therefore recommended that the duties on imports from Italy not be revoked. The minister accepted the Authorities recommendations."[483] This demonstrates a complete breakdown in administrative control.

5.2.4.5 Performance Feedback Systems.

The performance feedback is inherent in the nature of the Authority's review role. Customs should be able to gauge with considerable certainty where the Authority considered its information or analyses inadequate. This feedback takes place as part of the final finding stage, where the Authority decides to ask for further investigations to be made before final finding, where a decision of Customs to terminate an inquiry is set aside or affirmed by the Authority and in the Authority's annual report to Parliament.

[480]Palmeter (1995) pp 41-42 gives a concise summary of the United States administration.
[481]Vermulst (1987) Chapter 3.
[482]Sui-Yu Wu p 32 says that although Taiwan has not acceded to the *GATT Codes*, its legislation is in general conformity with the *Codes*. With the enactment of the *Foreign Trade Act* which was promulgated in February 1993, the administrative structure is similar to that of the United States model. The Taiwan Ministry of Finance is responsible for the investigation of dumping and enforcing findings, with the International Trade Commission investigating the claims of injury.
[483]Anti-Dumping Authority Annual Report 1994-95 p 21 discussed Anti-Dumping Authority Report No 137 Revocation of countervailing duties on canned tomatoes from Italy - September 1994.

In looking at the Authorities review role, it is relevant to ascertain whether the feedback from the Authority to Customs as the initiating and investigatory body has improved when compared with that under the prior review structure of the Federal Court and the then Industries Assistance Commission. With respect to the Federal Court the same situation is maintained. As regards questions of fact in final findings these were reviewable on application by an adversely affected party, but now are only reviewable under the limited administrative jurisdiction of the Federal Court.

In 1993 a review of the Australian Customs Service noted that:

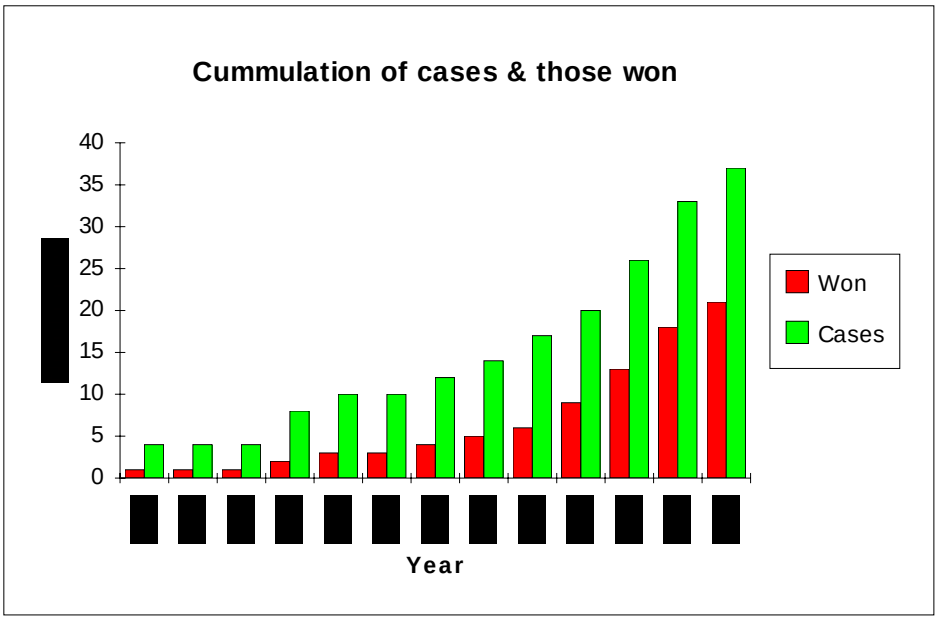
> "Under the present arrangements, Customs must first complete its role for part of which the ADA has review responsibility. The matter subsequently passes to the ADA for what may be seen as reprocessing. The Committee believes these arrangements should not continues as the benefits to the Australian community considered at inception have not materialised."[484]

5.2.4.6 Some Objective Measures

When considering a test for the investigational and analytical objectivity of final decisions, the ratio of cases won by the administering authorities on review by the Federal Court against the number of applications for review decided was considered a viable option. As well as being a reasonably simple test to apply, it is a prima facie reflection of the quality of contested decisions.

The following graph illustrates that the success of the administrating authorities in defending decisions on review by the Federal Court has improved over time. Clearly there has been a learning curve on the part of the authorities and the Federal Court in the review of administrative action.

[484]Conroy (1993) p 165.



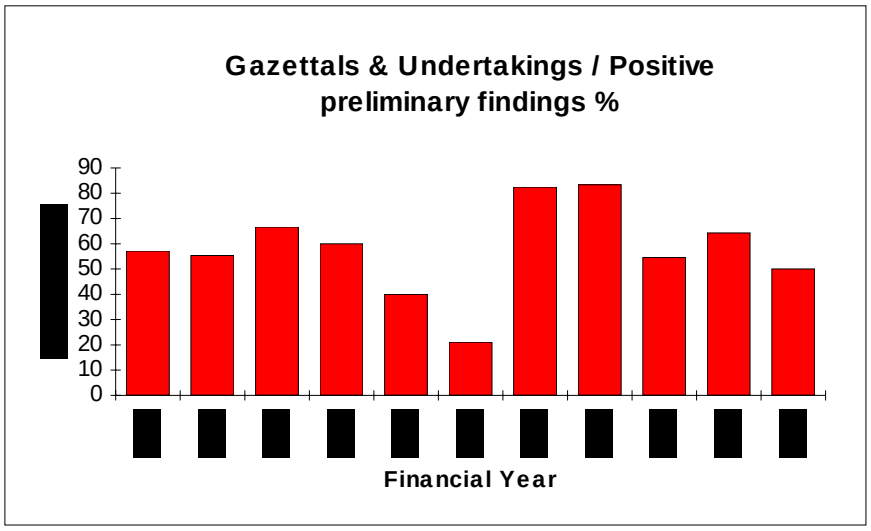
Source: CCH Customs Law & Practice - Spreadsheet: append/caselost.xls

However, this increased success could be due to a more conservative approach to the normal value assessment, given that the facts are difficult to fully ascertain. Another possibility is that more cases are being settled outside the court, of which there is no public record. It could also be a reflection of the decision of the Federal Court to extract itself out of the factual and policy issues. An actual improvement of the administrative process could be expected, as the number and level of staff allocated to the administration of these measures increased significantly over the relevant period.

Can any improvement be discerned in the findings of the authorities. The decision at the preliminary finding stage can have a significant effect on trade, and therefore is critical in any evaluation of the anti-dumping and countervailing measures. Therefore it is vital that there is a reasonable degree of consistency between the preliminary and final findings. The ratio of positive final findings to positive preliminary findings should give an indication of consistency over time.

The following graph illustrates that either there is a greater propensity by the Anti-Dumping Authority to move from a preliminary finding to duty imposition, or the Australian Customs Service is being tougher in its preliminary finding decisions. There are two pieces of information which support the former view. Firstly, the Anti-Dumping

Authority has reversed 5 negative preliminary findings of the Australian Customs Service in 1990-91, with 13 occurrences in 1991-92. These reversals would significantly increase the rate of positive final to positive preliminary findings for those years. Secondly, there have been a small number of undertakings accepted by Customs at the preliminary finding stage which have not been subjected to review.



Source: Submission to the OECD and Customs - Spreadsheet: append/OECD3 & append/fin_prelim.xls

Although the measures of timeliness, quality and consistency of decisions are important measures of effectiveness, the question has to be asked, were there any effects on efficiency? This can only be answered from an analysis of the application of resources by the administrative authorities.

The unit costs of the administering authorities in processing dumping and subsidy applications are best analysed in the aggregate. The cost of administering the application of anti-dumping and countervailing measures for 1992-93 is estimated at $12 million, which is a reasonable benchmark period. This comprises the direct expenditure of $6 million plus an adjusted overhead of 100% in line with the Department of Finance costing guidelines.[485] This is the best measurement period as the cost of overseas posts was subsequently hidden in the secretariat function of Australian Customs. There has

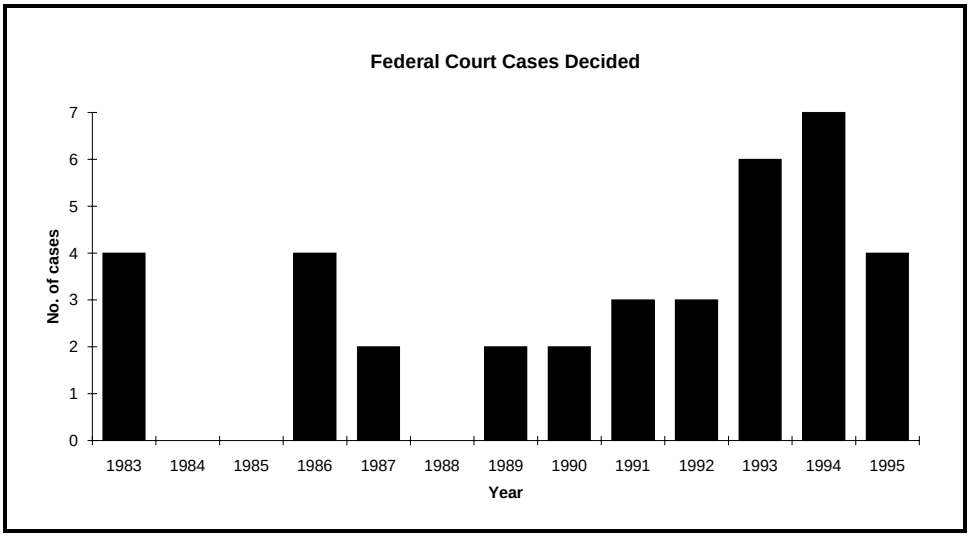
[485]The Department of Finance Guide to Cost Allocation indicates that a factor of 156% should be applied to the salaries component to account for overheads. As direct administrative expenditure was able to be obtained, the Department of Finance uplift was adjusted back to 100% of salary and administrative expenses, as an approximation of indirect overhead expenses.

been on average 60 cases initiated each year over an 11 year period from 1982-83 to 1992-93. The average cost of each initiation was therefore $200,000. Put another way, the average cost to the government of a positive final anti-dumping or countervailing finding was approximately $480,000, as there were on average 25 positive findings each year. Private costs would double that figure for local producer, importer and exporter costs. So each positive finding would have a local cost of $1,000,000, assuming an equal amount of domestic resources devoted, making the annual domestic cost of operating the system about $25 million per annum. The government expenditure amounts to a subsidy of about $12 million per year to industry, of which about $5 million goes to supporting complaints by ICI Australia Ltd. This analysis excludes the cost to the exporters in the overseas countries subject to inquiry.

To determine whether the critical success factors have been improved as a result of the change in the administration, it is useful to apply some tests:

The first relates to the time frame for resolution of complaints. There is little doubt this has improved in terms of the final findings as these are determined by statute and have been reducing. It is not so certain that the time for the application of decisions is reduced, as those cases going to Federal Court on appeal are not governed by statutory time frames. Therefore in order to answer this question it is necessary to examine the frequency of Federal Court appeals and the time taken to make a decision. If the product of these factors has increased for Authority decisions, when adjusted for the number of final findings, then clearly the situation has deteriorated, or if the converse has improved.

The following graph illustrates that since the establishment of the Anti-Dumping Authority in 1988, there has been a marked increase in the number of applications for review decided by the Federal Court. The time delays are lengthy and add to the uncertainty in the market and inhibition of trade. This is a most undesirable outcome of the post-1988 administrative arrangements, and was predictable given the increased complexity in the administrative process.



Source: CCH Customs Law & Practice - Spreadsheet: append/caselost.xls

When the frequency of cases being decided by the Federal Court is considered against the reduced number of positive final findings post-1988, the increase in the level of disputation is even greater concern. In the first 11 years of administrative appeal under the *Administrative Decisions (Judicial Review) Act 1987* 10 disputes reached the Federal Court for decision. In the 7 years post-1988 there have been 27 disputes reaching the Federal Court for decision, when the frequency of reviewable administrative decisions has halved. The possible reasons for this increase in the frequency of disputes could be explained by a reduction in the quality of the administrative decisions, or an expectation by applicants that the Federal Court will intervene as it tended to do so prior to *Bond*.[486]

Looking at what others say about the administration of anti-dumping and countervailing measures, the finding of Feaver and Wilson (1995) is interesting, who maintain that:

> "Contrary to some expectations, evidence has been provided...that the ACS and the ADA tend to conservatively exercise their discretionary powers under Australian law. There is evidence that neither the ACS nor the ADA applies the law in a manner such that the applicants are favoured unduly. Therefore the apparent willingness of Australian firms to initiate anti-dumping and

[486] *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321.

> countervailing actions cannot be explained by a perception that administrative policy is bias in favour of domestic interests."[487]

This type of statement is difficult to support, for as will be shown in Section 6, the administration of the legislation does produce biased outcomes. Furthermore, it is argued that the nature of the rules and the process involved in the following of those rules, although interesting, is not at the core of measuring the effectiveness of this policy instrument.

5.2.4.7 Possible Organisational Improvements

The administrative environment of the system does not look good. On the positive side there is:

- some infusion of professional skills
- the removal of two bodies of review (ie. Industries Assistance Commission & the Administrative Appeals Tribunal)
- specialist body reviewing Customs preliminary findings.

On the negative side there is:

- complicated hierarchical structure
- difficult coordination between separate statutory bodies
- no meaningful improvement in standards
- a reduction in effective feedback to project teams
- high marginal cost and increased uncertainty
- blurring of responsibility between bodies

In summary, the post-1988 administrative strategy and organisation does not improve Australia's anti-dumping and countervailing administration.

There is a deficiency in the organisational structure. That is, having two administrative bodies, Customs and the Authority, dealing with essentially the same thing. Therefore, to overcome the problems inherent in the structure, the organisational structure needs to be re-designed.

[487]Feaver and Wilson (1995) p 236.

It would be a relatively simple matter to integrate Customs and Authority staffing. By having all the staff under one body, it would be possible to overcome many of the problems identified in the existing system. An independent body could review all appeals.

With an enrichment in the professional skill base, to fully utilise these skills an organisational structure compatible with matrix departmentalisation would be appropriate. Such a structure could comprise the Authority with a member acting as the chief executive, with a management team comprising project group managers, a policy adviser and a services manager. Lateral lines of communication should also be established. Each project group manager would be responsible for a number of cases being handled by project teams involving a project officer(s), and where needed, there would be specialist support from economists, accountants and lawyers.

5.2.5 Summary

As pointed out previously, the provisions of the *Anti-Dumping Code* and the *Subsidies Code* are not incorporated directly into the Australian anti-dumping law. Through the various *GATT* multinational negotiating rounds, the major users are always seen to be pushing for greater scope in the use of anti-dumping duties as a non-tariff barrier. However, although it could be argued that the major users were successful in their aim in the *Uruguay Round*, the introduction of much more effective review and enforcement provisions in the panel and appellate body, has the compensating effect of making Members more accountable for their actions in imposing duties.

The Australian law implementing the *Codes*, although elaborately complicated, contains provisions which are reasonably consistent with those of the *Codes.* Australian anti-dumping and countervailing laws are implemented and applied in accordance with both section 51(i) and 51(ii) of the *Commonwealth of Australia Constitution Act 1900*,, which give the Parliament power to make laws relating to trade and commerce, and more specifically the imposition of customs duties.

The High Court has jurisdiction under section 75 of the *Commonwealth of Australia Constitution Act 1900*, and following the creation of the Federal Court of Australia an opportunity has been created for the review of administrative actions by way of application to the Federal Court under the *Administrative Decisions(Judicial Review) Act 1988.*

Administrative appeals are heard in the first instance by a single judge of that court, and on appeal by the Full Federal Court. However, the Federal Court as an avenue for administrative review is restricted to matters concerning the substantive application of the law, rather than a review of the facts or policy. The Federal Court appears to be taking a less interventionist approach, stressing the importance of the need to follow the administrative process to resolve factual issues.

There is acceptance that the application of anti-dumping and countervailing duties should be speedy and readily available to affected industries. Gruen (1986) wanted a more rigorous and objective approach to the application of these laws. Consistency and cost effectiveness were also seen as important objectives. The complexity of the current administration, with two bodies involved in advising on the application of duties, has made the process cumbersome with breakdowns in communication occurring within the system. The administrative skill base is still very light, with very few personnel trained to a professional level.

It could be claimed that the Anti-Dumping Authority has reached the point where it is more successful in defending its decisions. However, as the number of decisions by the Authority in dispute at the Federal Court is three times more than under the unitary Customs regime, the level of dissatisfaction with anti-dumping and countervailing decisions appears to have grown. This cannot be explained by the number of decision made, as the Authority has made about half the number of decisions of Customs in an equivalent period before its introduction. The result could partly be explained by the larger proportion of positive final findings to positive preliminary findings made by the Authority when compared with the previous Customs administration. However, the more likely explanation rest with the cumbersome administrative structure, leading to increased uncertainty generated by the heavily bureaucratic organisational structure.

There is a need to fuse the organisational structure, and inject a review mechanism which is outside the day to day influence of a political Minister. In this way the objectivity of the administering authority can be improved, and with it more certainty in the process and outcomes.

5.3 Injury

5.3.1 The Legal Framework

The driving force towards the utilisation of anti-dumping and countervailing measures by manufacturers is increased competitiveness from imports in their domestic market.[488] As it is the injury resulting from this increased competitiveness of imports which is the motivating factor for dumping and subsidy complaints, it is logical, although not usual, to deal first with this aspect of the law.

The elements required to be established in any injury determination are contained in the both the *Anti-dumping Code* and the *Subsidies Code*.[489] The particular provisions are almost identical in each of the *Codes* and relate to the determination of injury,[490] the definition of industry,[491] the initiation and subsequent investigation,[492] special considerations for actions against developing countries,[493] and in the case of the *Subsidies Code* to adverse effects and serious prejudice from subsidisation,[494] These provisions have their parallel in domestic law,[495] which has been subjected to the scrutiny of the *GATT* committees on compliance. The Australian government holds that the domestic legislation conforms with the provisions of both the *Codes*.

5.3.2 The Concept of Injury

To understand what is meant by the term injury, it best to look at its legal development from both the historical and current perspective. The current perspective can be seen in the injury provisions adopted by the growing number of economies entering into

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[488]Finger and Murray (1990) p 20 are of the view that: "patterns of petitions and of results suggest strongly that injury to US producers beset by import competition is what anti-dumping and countervailing laws are about."

[489]The provisions cited will be those of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*, as these are now the relevant working documents. Where it is necessary, reference will be made to the previous versions of the *Codes* and to the *GATT 1994*, incorporating the *GATT 1947* and associated legal instruments.

[490]Article 3 and Article 15 of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*, respectively.

[491]Article 4 and Article 16 of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*, respectively.

[492]Article 5 and Article 11 of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*, respectively.

[493]Article 15 and Article 27 of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*, respectively.

[494]Articles 5 and 6 of the *Subsidies Code 1994, respectively*.

[495]Sections 269T(1), 269T(4), 269T(4A), 269T(4B), 269TAAB, 269TAE, 269TDA, 269TG(1),(2),(4), 269TH(1)&(2), 269TG(1),(2)&(3A) of the *Customs Act 1901*.

agreements fostering free trade areas and customs unions. The historical viewpoint can be ascertained from the notions embodied in the *GATT* itself.

A common feature of the current trade blocs, is the abolition or phasing down of the application of retaliatory anti-dumping and countervailing measures. They are generally replaced by reliance upon the domestic competition laws, which are harmonised between the nations within a maturing trading block. For example, New Zealand goods are excluded from the application of dumping duties under s.8(1) of the *Customs Tariff (Anti-Dumping) Act 1975*.[496] This implements the outcome of negotiations under the *Australia New Zealand Closer Economic Relations and Trade Agreement 1983,* where both countries agreed to use complementary Trade Practices legislation to prohibit the misuse of market power[497] by a corporation with a substantial degree of market power in the Trans Tasman market, rather than resorting to anti-dumping relief between the two countries.[498]

The reach of these legislative provisions concerning the misuse of market power was considered by the High Court of Australia in *Queensland Wire Industries*,[499] where it was said in relation to a phrase 'take advantage', which is a requirement of the parallel section 46(1) of the Australian *Trade Practices Act 1974*, that:

> "Pincus J suggested that the phrase 'take advantage' requires the defendant to be doing something 'reprehensible'. His Honour also used the phases "[competition] deserving of criticism' and 'predatory or unfair', apparently as equivalents for

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[496]Inserted by section 22 of Act No 70 of 1990.

[497]Section 46A(2) of the *Trade Practices Act 1974* provides that:

> "A corporation that has a substantial degree of market power in a trans-Tasman market must not take advantage of that power for the purposes of:
> (a) eliminating or substantially damaging a competitor of the corporation, or of a body corporate that is related to the corporation, in an impact in the market; or
> (b) preventing the entry of a person into an impact market; or
> (c) deterring or preventing a person from engaging in competitive conduct in an impact market."

By the term 'impact market' section 46A(1) defines it as "...a market in Australia that is not a market exclusively for services."

[498]*Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990* was enacted to implement Australia's obligations under Article 4 of the 1988 Protocol to the *Australia New Zealand Closer Economic Relations Trade Agreement 1983.* This had the effect of eliminating the use of anti-dumping measures by either of the two parties to the agreement from 1 July 1990. Anti-dumping measures were replaced by the application of the section 46A of the *Trade Practices Act 1974* of Australia, and sections 36A, 98H and 99A of the *Commerce Act 1986* of New Zealand. Section 46B of the *Trade Practices Act 1974* ensures that there is no immunity from the jurisdiction of these New Zealand laws in Australia.

[499]*Queensland Wire Industries Pty Ltd v BHP* (1989) ATPR 40-925.

> 'reprehensible'. It is unclear what the phrases are supposed to mean, but they suggest the notion of a hostile intent. For our part we have difficulty in seeing why an additional, unexpressed and ill-defined standard should be implanted in the section. The phrase 'take advantage' in s 46(1) does not require a hostile intent inquiry - nowhere is such standard specified."[500]

It can therefore be said that section 46 of the *Trade Practices Act 1974* does not require predation as a condition precedent to its application in Australia. It is also relevant that the *Anti-Dumping Code* does not require a finding of predation for anti-dumping duties to be imposed. Application of anti-dumping duties under the section 8 of the Australian *Customs Tariff (Anti-Dumping) Act 1975* are therefore not contingent on a finding of predation. The question raised is, has there been any effective change in the law regulating dumping within the free trade area as a result of the change from anti-dumping to a law on the misuse of market powers?

To test this proposition it is useful to look at the incidence of anti-dumping measures against New Zealand by Australia prior to 1988, and the subsequent number of findings of misuse of market power under section 46A of the *Trade Practices Act 1974* by a New Zealand company. There have in fact been no findings relating to the misuse of market power under section 46A of the *Trade Practices Act 1974.* As the frequency of Australian actions against New Zealand had been quite high, the solution to this apparent reversal would appear to lie with the difference between the interpretation of a misuse in market power and the concept of material injury. As indicated in *Queensland Wire Industries*,[501] predation is even a more severe, although ill-defined concept, than the simple use of market power. That is, the tests in order of reducing severity of proof are predation, the misuse of market power and then material injury. On this simple test alone it would appear that material injury has a different dimension as far as its application to trade is concerned than a test of monopolisation. As material injury does not require monopolisation, it cannot contain as a condition precedent to its application any of the elements of predation.

As domestic competition laws usually contain a clause prohibiting the abuse of market power and price discrimination where this behaviour lessens competition in the domestic

[500](1989) ATPR 40-925 at 50,010; confirmed in *Eastern Express Pty Ltd v General Newspapers Pty Ltd* (1991) 30 FCR 385; 103 ALR 41; ATPR 41-128 at 52,894..
[501]*Queensland Wire Industries Pty Ltd v BHP* (1989) ATPR 40-925.

market, these abuses of market power are still an actionable cause within the block.[502] That is, these injurious practices are not condoned either when originating from within the trade block or when coming from outside. Although the tests may differ and the remedies also, the general thrust of the domestic competition laws are quite similar to those relating to anti-dumping and countervailing measures. The debate as to the legitimacy of these measures is one of degree, rather than one of purpose.

Why then do nation states effect a change away from imposing *GATT* safeguard provisions to reliance upon domestic competition law? One reason is the constant irritation caused by each of the block members taking action against the other in a forum outside the jurisdiction of the nation states could be very disruptive to the creation of closer trading relations. Instead the facility to take independent legal action against injurious unfair competition within the legal framework of the trading block, not only gives a less contentious remedy but also one achievable within a common legal and economic jurisdiction. It is obvious by moving out of the gaze of the public international legal arena, some of the potential political difficulties amongst the members of the trading block are removed.[503]

Given that injurious unfair competition and the resulting price discrimination continues to be actionable even when there is economic integration, this would run counter to the rationale being based solely upon the need for an international trade safeguard mechanism. Rather we need to go back to the principles of market competition in a general equilibrium economic model, upon which the theories of international trade are based. One of the principles is that there is competition in the market place, with no barriers to entry and the market fully informed. This assumption precludes the presence of non-competitive behaviour, and in particular, the presence of monopolistic behaviour which results in injurious price discrimination behaviour. In other words it is the ability to partition the market, and trade at different prices in both the internal and the international markets which may result in long-run injury to an industry. This situation can only occur where the demand curve facing the exporter is more inelastic in its home market than in its export market.[504]

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[502]Sections 46 and 49 of the *Trade Practices Act 1974*; Article 86 of the *EEC Treaty* prohibits the abuse of a dominant position.
[503]*NAFTA*, although preserving the right of the members to take anti-dumping and countervailing measures against each other, has instituted a special appellate body to adjudicate between the member states on dumping and subsidy issues.
[504]Caves (1993) p 247.

Looked at in this way it is hardly surprising that the *GATT* outlawed such behaviour, since it was directly antagonistic to the concept of the most favoured nation treatment accorded by the principle provisions of the *GATT*. A reduction of distorting barriers to trade should produce overall gains to the participating trading economies.[505]

Although the reasoning above would lead to the inference that somehow the correction of long-term international price discrimination would be beneficial, there is little evidence by way of normative economic theory or by positive empirical research to support countervailing actions. For example, Viner (1923) could only identify a possible waste of resources where dumping was intermittent or short-term, due to the domestic industry having to go in and out of production.[506] Even this is a dubious proposition, for it ignores the depth of the financial market, which can provide a buffer against the transient effects of these dumpers. However, Viner (1923) distinguishes the effects of short-term dumping from the 'orthodox' free-trade thesis, with the later resting on:

> "...long-run considerations and on assumptions which posit the indefinite continuance of existing competitive conditions, although these assumptions are often not made sufficiently explicit."[507]

Viner (1923) concludes that:

> "There is a sound case, therefore, for the restriction of imports of dumped commodities, not because such imports are cheap in price, nor because their prices are lower than those prevailing in their home markets, but because dumping prices are presumptive evidence of abnormal and temporary cheapness. There is even a stronger theoretical case for the restriction of imports sold at less than their cost of production, whether or not this is lower than their price in the home market, than for the restriction of dumped imports."[508]

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[505]Article II.2(b) of the *GATT 1947* excludes any anti-dumping or countervailing duty applied consistently with Article VI from the schedule of bindings.
[506]Viner (1923) p 140-141 - quotes William Smart (1904) pp 149-51 as to the disruption experienced by manufacturers putting workers on short-time, the waste of fixed plant and organisational skills.
[507]Viner (1923) p 145.
[508]Viner (1923) p 147; Monti (1995) p 111 also reaches the same answer as to Viner's conclusion.

As noted earlier in Section 3, Bhagwati (1988) also sees the need for observance of rules of fair trade as important for the continuation of free trade.[509]

A common argument in support of anti-dumping actions, and also one put by Viner (1923) as a theoretical although of questionable effect, is the "predatory pricing" thesis.[510] This thesis maintains that an exporter may reduce prices for a period to force the closure of the domestic industry in the importing country. This is followed by the raising of prices to realise the monopoly rents achievable in the market. The difficulty with this proposition is that it ignores imports from other sources below the monopolists price and the recommencement of local production. The speed of reaction will of course depend on the degree of product differentiation, scale economies and on technology transfer. Another important variable is that the sources of competitive supply may not be available where the industries are highly concentrated at a global level.[511]

These economic analyses do not ignore the benefit to the consumers in the importing country of the price reductions which can flow from the importation of dumped goods. However, the effect on the consumers is not a part of the injury analysis adopted by in the *Codes*, with the exception of the impact of internal trade restrictive practices. Gruen (1986) in his review of the Australian legislation, drew attention to the refusal of the authorities to take such effects into account and the call for the insertion of a national interest provision. Gruen's conclusion, however, was that a national interest provision not be written into the legislation due to its complexity, a proposition which was later endorsed by the Government.[512]

5.3.3 Adverse Effects of Subsidies

[509]Bhagwati (1988) p 35.
[510]Viner (1923) p 133.
[511]Hindley (1991) p 30 says that: "If predatory pricing is the rationale for anti-dumping action, however, GATT authorisation of anti-dumping action should be limited to the particularly highly-concentrated industrial structures in which predatory pricing is conceivable."
[512]Gruen (1986) p v in not recommending a national interest clause did so taking account of:"...the practicality of such a provision and its likely addition to uncertainty, to all-round lobbying to influence individual decisions, to administrative complexity and to the costs of investigation to all parties,...".

Adverse effects of subsidies need special mention when discussing injury, as injury to the domestic industry of the importing Member is just one of the adverse effects of subsidisation . However, injury is the predominant issue and is treated accordingly. As these effects either effect third country access into the Australian market or Australian access into the market of the subsidising Member or a third market, they are dealt with separately. Only those circumstances where the goods are finally destined for the Australian market are they actionable under the *Customs Tariff (Anti-Dumping) Act 1975.* Other cases need to be dealt with through dispute settlement processes under the *GATT.*

Article 5 of the *Subsidies Code 1994* bars the use of subsidies by a Member where they have adverse effects on another Member. This is a significant elevation of the provisions under Article 8.3 of the *Subsidies Code 1979*, which called upon signatories to avoid the use of subsidies which cause these adverse effects. Furthermore, there is a new provision in Article 6 of the new *Code* deeming a number of practices as being seriously prejudicial.[513] Looking at the logic of the provisions, Article 5 lists as an adverse effect of a subsidy on another Member: injury to a domestic industry; nullification or impairment of benefits under *GATT 1994*, in particular Article II of *GATT 1994*; and serious prejudicial behaviour. Article 6.1 deems as seriously prejudicial: ad valorem subsidisation exceeding 5 per cent; subsidies to cover operating losses;[514] and direct forgiveness of debt. Article 6.3 cites various circumstances where serious prejudice may arise: displacement or impeding imports of others into the subsidising market; displacing or impeding exports of another Member into the market of a third country; significant price undercutting, price suppression, price depression or lost sales in the same market; and an increase in the world share of the subsidising Member in a particular primary product or commodity as compared to the average share it had during the previous period of three years and this follows a consistent trend over a period when the subsidies have been granted. Article 6.7 qualifies the circumstances where serious prejudice may arise by excluding a number of exogenous events outside the control of the Members, and self-defeating actions by the allegedly adversely affected party.

Although the serious prejudice provisions are of relevance to Australia in its export trade it is only the third country provisions which have any significance for Australia's

[513]Subsidies maintained on agricultural products as provided by Article 13 of the *Agreement on Agriculture 1994* are exempted from this provision.
[514]Except for those one-time measures to provide time for the development of long-term solutions and to avoid acute social problems.

domestic legislative framework.[515] In particular, a serious prejudice provision associated with access to the Australian market by a third country is particularly important for New Zealand under the *CER Agreement 1983.*[516]

5.3.4 Domestic Industry

It is important to ask the question as to what is the subject of the injury. The *GATT Codes* talk about injury to a "domestic industry".[517] This is defined as the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products. There are certain exceptions which refer to related importers and exporters, and to where a producer supplies almost all of a regional market. There are provisions for the treatment of countries who have reached a level of integration of their market and industry for the industry to be brought within the general definition. There are practical aspects concerned with the measurement of the production, costs and revenues and the profitability of an industry. These are factors which need to be considered in determining the narrowest range of products which include the like product.

The Australian domestic legislation does not directly incorporate the *Code* provisions as does the European Community law.[518] Section 269T(4) of the *Customs Act 1901* defines an Australian industry as the producer of like goods within Australia. The goods, however, must have at least one substantial process of manufacture carried out in Australia[519] and to have at least 25% value added in their manufacture for the goods to be taken to have been produced in Australia.[520] Like goods are defined in section 269T(1) of the *Customs Act 1901* as being identical in all respects or having characteristics closely resembling those of the (imported) goods under consideration (in the complaint lodged by the domestic producer). The *Customs Act 1901* for practical purposes follows the *Code* definitions of like goods. However, the requirement on local content follows the

[515]These are reflected in section 269TAE(2) of the *Customs Act 1901*.
[516]New Zealand has a much narrower industrial base than Australia. Therefore the effect of dumping into Australia from another Member country of goods which are normally sourced from New Zealand under the free trade area agreement, would be greater than if the reverse situation applied.
[517]Article 4 and Article 16 of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*, respectively.
[518]The *Anti-Dumping Code 1994* was adopted by the European Council in the new *Anti-Dumping Regulation 3283/94 of 22 December 1994*; OJL L 349/1 (1994). According to Vermulst and Waer (1995) p 53: "The similarity between the texts, however, is not surprising since the EC has historically stayed close to the language of the Codes and the new Agreement, in many instances, has codified EC practice.
[519]Section 269T(3) of the *Customs Act 1901*.
[520]Section 269T(2) of the *Customs Act 1901*.

European Community and the Untied States practices. A comparison of these practices is made in the context of the origin requirements dealing with anti-circumvention in Section 5.

Given the obligation in section 10 of the *Anti-Dumping Authority Act 1988* that the authority have regard to Australia's obligations under *GATT* in a limited policy sense, the question arises as to whether the provisions of the *Codes* should be read with the *Customs Act 1901*. This would appear unlikely, since the only obligation under the *Codes* is for the domestic legislation to be in conformity with those of the *Codes*.[521]

However, section 15A of the *Acts Interpretation Act 1901* provides for reference to extrinsic material, where there is a need to clarify any ambiguity in the application of legislative provisions. Lee J. in *Merman,*[522] commented that:

> "...it cannot be argued that pursuant to s 15A of the *Acts Interpretation Act 1901* the *Anti-Dumping Act* is to be read and construed only to the extent that it is consistent with the *1979 Implementation Agreemen*t (cf. *Commonwealth v. State of Tasmania* (1983)158 CLR1 at p131-132 per Mason J.).
>
> There has been no incorporation of the *Anti-Dumping Code* into municipal law and any indirect implementation of the provisions of the *Anti-Dumping Code* that may have been effected by s.14 of that *Act* was removed when that section was repealed one month after Australia's accession to the *1979 Implementation Agreement* containing the *Anti-Dumping Code*."[523]

This judicial observation stresses some limitation in the use of the *Codes,* as there has been a positive action to restrict their use.[524] The influence of the *Codes* on the interpretation of the municipal law has been discussed in some detail when dealing with

[521]Article 18.4 and Article 32.5 of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*, respectively.
[522]*Merman Pty Ltd v Comptroller-General of Customs No. WAG 65 of 1988 (unreported).*

[523]*Merman Pty Ltd v Comptroller-General of Customs No. WAG 65 of 1988 (unreported)* at 15.

[524]Lee J in *Merman* p 13 drew attention to the point that: "On 24 November 1982 s.14 of the Anti-Dumping Act was repealed notwithstanding the provisions of Art.16.6 of the Anti-Dumping Code. The repeal of s.14 made it clear that the Anti-Dumping Act was not dependent upon the Anti-Dumping Code...".

the legal developments in Australia in Section 4.3.3, which also takes into account the provisions of the subsequently enacted *Anti-Dumping Authority Act 1988*.

5.3.5 Like Goods

The interpretation given to the enacted *Code* words "characteristics closely resembling those of the product under consideration" can have significant implications for the application of these safeguard measures. For example, a narrow construction placed on the term "like goods" could make the injury easier to substantiate without dilution from other less affected products.[525] It will, on the other hand, reduce the effect of any measures imposed by confining the countervailing duty to a narrow range of goods. Steele (1990) asserts without qualification that "the interests of the Australian industry are best served by having a broad-based inquiry embracing "like goods" in the widest sense; whereas the importing interests frequently argue for a narrow and more confined inquiry."[526] In fact, the very reverse argument was made by the importer applicant in *Tredex Australia*.[527]

Given the significant effect that the interpretation of the term "like goods" can have on the outcome of an inquiry, it would be reasonable to expect that the term has some well defined meaning in its application. It is in this context the following discussion attempts to ascertain whether there is any well established meaning of like goods for the purpose of industry definition.

There are situations where there may be grounds for looking at a wider construction of the goods. For example, in an Anti-Dumping Authority case concerning diagnostic reagent strips where the reagent strips were only sold with the meter used to read the strips, the price of the diagnostic testing package, including both the meter and the strips, was relevant for injury purposes.[528] This approach is consistent with Article 3.5 of the *Anti-Dumping Code 1979*, which applied to situations where the production of the like product has no separate identity in terms [of such criterion as the production process, the

[525]Vermulst (1990) p 453.
[526]Steele (1990) pp 263 - 264.
[527]*Tredex Australia Pty Limited v John Norman Button* (No. ACT G28 of 1986 and ACT G81 of 1987) unreported at 40-47.
[528]Anti-Dumping Authority No. 28 *Diagnostic Reagent Strips (for the Measurement of Blood Glucose in Whole Blood) from the United Kingdom and the United States of America* November 1990.

producers' realisations, profits].[529] However, prior to this finding by the Anti-Dumping Authority, the previous review body the Industries Assistance Commission in its report on *Certain Fluorescent Lamps* had taken a narrow view of like product.[530] Does likeness therefore relate to physical characteristics or similar use (substitutability)?

This debate about the application of the like product concept is further confused by the attitudes taken by the main users of the *Codes*. Australia and the European Communities are said to put most emphasis on physical likeness, whereas Canada and the United States mention uses and functional similarities as factors.[531] In fact it is debatable whether Australia has any clarity of approach in this concept of like product, since the Anti-Dumping Authority has shown considerable ambivalence on this issue.

The Anti-Dumping Authority in its Annual Report 1988-89 refers to some of the complexities which arise in its inquiries. One of these was that of "like goods". The Anti-Dumping Authority explains that:

> "The industry injured by dumping must, for anti-dumping action to be taken, be the Australian industry producing like goods.
>
> Section 4 of the Customs Tariff (Anti Dumping) Act [which is now incorporated into the Customs Act 1901] defines like goods 'as goods that are identical in all respects to ... or ... have characteristics closely resembling those of the goods [being dumped].
>
> The definition leaves some ambivalence's. Does 'characteristics' refer to the production of the goods or to their use in the market? How alike is 'closely resembling'? It is difficult to answer these questions in the broad, but - thankfully - usually easier to answer them in specific cases."[532]

That is, although the interpretation of like goods can have a significant impact on the outcome of an injury inquiry, the definition in the words of the Anti-Dumping Authority

[529]Article 3.6 of the *Anti-dumping Code 1994* contains a similar provision.
[530]Industries Assistance Commission Report No 383 on *Certain Fluorescent Lamps (Tubes) from the Federal Republic of Germany and Canada (Anti Dumping).*
[531]Vermulst (1990) p 453.
[532]Anti-Dumping Authority Annual Report 1988-89 p 12.

is "ambivalent". This must create considerable uncertainty in the advice provided by the Anti-Dumping Authority on the application of this safeguard measure as it relates to different situations.

The first time that this issue was reviewed by the Federal Court was in Tredex (supra) where Neaves J referred to the definition of "like goods" and, in particular, to the term "characteristics closely resembling" is incorporated in the definitions in section 269T(1) of the *Customs Act 1901*. Neaves J said that

> "To deny the relevance of the matters which were taken into account by the Minister in reaching his conclusion, particularly the comparative weight (grams per square metre) of the papers under consideration and the end uses for which the various papers were suitable, would be to adopt too restrictive a view of what is encompassed within the reference in paragraph 2 of Article 2 of the *GATT Anti-Dumping Code* to the characteristics of the goods being compared".[533]

Later in his judgement when considering the question of the relevant Australian industry, Neaves J was of the view:

> "that the Minister treated as the relevant Australian industry the industry in Australia manufacturing uncoated woodfree printing and writing papers. While it is true that, in some of the documentation, the operations of APPM in producing papers of that kind were referred to as being synonymous with that industry, that can hardly be regarded as surprising in the light ... that APPM was" the major and predominant local manufacturer of fine printing and writing papers in general, and uncoated woodfree printing and writing papers [ie. like goods to those imported] in particular.""[534]

Neaves J also expressed an opinion that:

> " ... the statutory provisions, read in the light of the *GATT* Anti-Dumping *Code* ..., postulates a certain flexibility of approach to the question and certainly did not

[533] *Tredex Australia Pty Limited v John Norman Button* (No. ACT G28 of 1986 ACT G81 of 1987) unreported at 36.
[534] *Tredex Australia Pty Limited v John Norman Button* (No. ACT G28 of 1986 ACT G81 of 1987) unreported at 41.

> oblige the Minister to adopt any particular view as to the relevant Australian industry to the exclusion of other views reasonably open to him on the available material."[535]

In a later judgement Lockhart J in *Marine Power* [536] referred to the definition of "like goods" in section 269T(1) commenting that:

> "this expression should not be interpreted in a narrow or restrictive fashion and is not limited to the "same goods": see Beseller and Williams, Anti-Dumping and Anti-Subsidy Law (1986) at paragraph 4.4.1. It means "goods of the same general category"."[537]

Lockhart J also makes the point that: "the existence of an Australian industry is not a jurisdictional fact essential to the exercise by the Comptroller of the powers conferred upon him by s 269TC" of the *Customs Act 1901*.[538] At an initiation stage the Comptroller-General of Customs only has the power to reject an application if not satisfied having regard to the matters contained in the application and any other relevant information that there appear to be reasonable grounds for a dumping duty of a countervailing duty notice to be published.

There is a question of whether the Australian industry includes all the firms manufacturing the relevant goods at the time of the injury assessment, where there are significant disparities between the performance of the firms in the industry. This question has been addressed in relation to the United States by the United States International Trade Commission. This is particularly pertinent when there is a wide variation in the performance between firms within an industry. An illustration of such a situation is given by de Ravel d'Escalpon (1995) in his discussion of the Cer*tain Hot-Rolled Lead and Bismuth Carbon Steel Products from Brazil, France, Germany, and the United Kingdom.*[539] The petitioners were poor performing integrated producers, with one going out of business prior to the International Trade Commission's final

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[535]*Tredex Australia Pty Limited v John Norman Button* (No. ACT G28 of 1986 ACT G81 of 1987) unreported at 43.
[536]*Marine Power Australia Pty Ltd and Anon v Comptroller-General of Customs and Ors* (1989) 89 ALR 561.
[537](1989) 89 ALR 561 at 573.
[538](1989) 89 ALR 561 at 271-272.
[539]No. 701-TA-314_701-TA-317 (Final) USITC Pub. 2611 (Mar. 1993)

determination. The remainder of the industry was made up of better performing mini-mills. The International Trade Commission rejected that the industry should be split into the integrated and mini-mills, and also that the performance figures of the firm leaving the industry should be removed from the injury assessment.

Quite clearly the International Trade Commission considers that the 'industry as a whole' should be assessed for an injury determination, which while consistent with Article 4.1 of the *Anti-Dumping Code 1994*, does not entertain resorting to the narrower view of those with a collective output of products which constitute a major proportion of the total domestic production of those products. The outcome of this policy is to reduce the likelihood of a positive injury finding, where a significant feature of the industry is a wide dispersion in performance.

Returning to the method of assessing 'like goods' employed by the Anti-Dumping Authority, the Authority was of the view in its report on *Trifluralin from South Africa*,[540] that different grades of a chemical used as a herbicide were not like goods for the purposes of an inquiry. It was argued that they constituted different phases of the production process. Technical trifluralin was the unusable pure form, trifluralin in an organic solvent another, and formulated trifluralin was the emulsified water soluble form used as sold as a herbicide for application. This narrow view of like goods in the context of jurisdictional relevance would not appear to accord with the view of Lockhart J that: "It means "goods of the same general category"." as referred to above.[541]

5.3.6 Close Processed Agricultural Goods

Recent amendments to the *Customs Act 1901* have extended the application of like goods, and hence the Australian industry, to include the suppliers of raw materials (primary producers) as part of the industry producing the processed product. This followed a number of complaints from primary producers about their exclusion from the Australian industry, when there was injurious dumping or subsidisation of downstream products eg. orange growers not being included in the frozen orange juice concentrate industry where this latter product was the subject of a complaint. In these cases it is possible for the processor not to be injured, whereas the producer of the primary product which is subject

[540]Anti-Dumping Authority Report No 139 *Trifluralin from South Africa* September 1994.
[541](1989) 89 ALR 561 at 573.

to the processing may be injured.[542] The amending legislation introduced the concept of "close processed agricultural goods",[543] which is now incorporated into the definition of like goods for the purpose of enlarging the scope of the industry to include primary producers in the injury assessment.

This development is consistent with legislative provisions in both Canada and the United States. However, both these countries provisions have been the subject of *GATT* dispute panels. The first dispute concerned an amendment by § 612(a)(1) of the United States *Trade Act* which provided for the domestic producers of grapes, the principal raw agricultural product in wine, to be included in the wine and grape industry as like products. The second dispute concerned the inclusion of cattle producers in the manufacturing beef industry, as the production of cattle was not a like product to manufacturing beef. The *GATT* dispute panels found against the definition of "domestic industry" in the United States legislation and against the Canadian interpretation of producer. The United States subsequently, by its *Trade Act of 1988* extended the industry to that producing processed agricultural products of a generic kind. Neither of the reports of the dispute panels have been adopted by the Committee on Subsidies and Countervailing Measures, and are unlikely to be adopted.[544] The provisions introduced by the United States *Trade Act of 1988* amendment are still in force. Australia has been a supporter of both Canada and the United States on this issue and is itself subject to the deliberations of the *Code* Committee on its legislative changes which became effective from 26 June 1991.

Since that date the Anti-Dumping Authority has reported on two complaints concerning close processed agricultural products. One report related to *Glace Cherries* from France and Italy[545] and the other to *Canned Tomatoes* from Italy, Spain, Thailand and the Peoples Republic of China.[546] In each of these reports the injury to the upstream

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[542]Australian Senate (1991): Standing Committee on Industry, Science and Technology - *Inquiry into Australia's Anti-Dumping and Countervailing Legislation* p 9.
[543]s 269T(4A) of the *Customs Act 1901*.
[544]These cases were considered under the *Anti-Dumping Code 1979*, where the practice is to require consensus for adoption of panel findings. This made the panel review process ineffectual in dumping and subsidy cases. This is further discussed in Section 5.6 dealing with remedies.
[545]Anti-Dumping Authority Report No 64 *Glace Cherries from France and Italy* March 1992.
[546]Anti-Dumping Authority Report No 68 *Canned Tomatoes from Italy, Spain, Thailand and the Peoples Republic of China* April 1992.

producers was a significant element in the injury finding. An adverse panel finding has not been made against Australia with respect to either of these measures.[547]

5.3.7 A Major Proportion of the Total Domestic Production

This criteria for the definition of industry comes into consideration where all of the domestic producers either do not support the complaint or where only some are feeling the effects of the alleged injury. It was only a requirement under the *Anti-Dumping Code 1979* and *Subsidies Code 1979* and not incorporated into the municipal law of Australia. Therefore the requirement was extrinsic to the provisions of the *Customs Act 1901*, but nonetheless relevant in certain cases.

Perhaps due to the relatively small Australian industrial base the application of the major proportion criterion was not a frequently encountered issue. The general rule, however, adopted by Australian authorities was that more than 50% of Australian producers in volume terms were sufficient to constitute an injuriously affected industry for remedial action to be taken.[548] As there had been no judicial review of this point, it is possible that less than 50% of volume may have sufficed.[549]

It is now clear with a clarification of the definition of 'domestic industry' following the Uruguay Round, that less than 50% of total production does suffice. The *Customs Act 1901*[550] was amended to incorporate the new provisions of the *Anti-Dumping Code 1994*[551] and the *Subsidies Code 1994*,[552] which contain the two criteria for acceptance of complaints. The support of 50% of the total production of domestic producers expressing an interest in the complaint is required, and the producers in support of the complaint must account for more than 25% of the total domestic production. Therefore provided that 50% of the domestic production (producers) express an interest in the application, it would be possible for a compliant to be initiated on behalf of those producers representing 25% of the domestic production. However, the lower the degree of industry

[547]These two reports are discussed in detail later in this thesis *Glace Cherries* No 64 March 1992 at Section 5.6.7 on Dispute Settlement and *Canned Tomatoes* No 68 April 1992 at Section 5.5.3 on Actionable Subsidies.
[548]Australian Customs Service Report on the Dumping of Frozen peas from New Zealand 1987.
[549]Steele (1990) p 265.
[550]s 269TB(6) of the *Customs Act 1901* inserted by No 150 of 1994.
[551]Article 5.4 of the *Anti-Dumping Code 1994.*
[552]Article 11.4 of the *Subsidies Code 1994.*

support, the less the likelihood of success in proving material injury from dumping or subsidisation of goods.

5.3.8 Domestic Production

To qualify as an Australian industry for the purpose of anti-dumping or countervailing relief under the *Customs Act 1901*, it is necessary that at least one substantial process of manufacture of the like goods has been carried out in Australia, and that there is at least 25% of the value added in their manufacture derived in Australia.[553] This is not a *Code* requirement, rather a principle adopted by major users of the *Codes.* Lockhart J in *Marine Power Australia*[554] when discussing the words "factory overhead expenses" in section 269T(2)(b)(iii) of the *Customs Act 1901* was of the view that these:

> "are not words which have acquired meaning as legal terms. Nor are they words having a technical meaning: see Jordan CJ. in *Ex parte MacKaness and Avery Pty. Limited; Re Royce* (1943) 43 SR (NSW) 239 at 244."[555]

Although while making this comment Lockhart J was also of the view that:

> "It would however, be permissible for the Comptroller to take into account accountancy concepts in the circumstances of a particular case. The determination of the "value" of labour and materials in Australia may, for example, support reference to accountancy concepts. In other words it may be of assistance to the Comptroller in performing his statutory duty to have regard to such concepts; but he is not bound to do so."[556]

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[553]One of the preconditions for a valid application for anti-dumping or countervailing duty relief in Australia is to be an Australian industry producing like goods - s 269TB(1) of the *Customs Act 1901*. To qualify as an Australian industry in respect of those like goods the applicant needs to be a person who produces like goods in Australia - s 269T(4) of the *Customs Act 1901*. The goods have to be partly or wholly manufactured in Australia with at least one quarter of Australian factory or works cost - s 269T(2). If the goods were only partly manufactured in Australia, then at least one substantial process in the manufacture of the goods needs to be carried out in Australia - s 269T(3) of the *Customs Act 1901*. It should be noted that the concept of factory or works in s 269T(2) of the *Customs Act 1901* is undefined except for the mention of the inclusion of three general categories: the value of labour, materials and overheads.

[554]*Marine Power Australia Pty Limited And Marine Power International Pty Limited v The Comptroller-General Of Customs; Outboard Marine Australia Pty Limited And Yamaha Motor Australia Pty Limited* (1989) 89 ALR 561.

[555](1989) 89 ALR 561 at 572.

[556](1989) 89 ALR 561 at 573.

Therefore there would appear to be little merit in applying 25% value added requirement in a rigid technical sense. Undoubtedly, Lockhart J is aware of some of the limitations of management accounting information.

However, there is some debate about whether it is the total Australian production which is to be included in the Australian industry or just that part of the production which is consumed in Australia. It could be argued that to differentiate between production destined for domestic or export role unnecessarily complicates the industry question. To do so in practical terms would mean that different cost centres would need to be established, which in a continuous production process produces significant difficulties in cost measurement. A better view would be to not make any distinction for the purpose of the defining of an Australian industry, and to exclude from the injury analysis the effects of the export operations.[557]

Perhaps the more serious question is the potential trade diversionary effect of the domestic origin and industry definition rules. As already indicated, a complaint can be initiated by firms comprising 25% of the industry in terms of domestic production. Now imagine if we then apply the 25% value added rule to this domestic production. A possible result is that the complainant(s) could contribute as little as 6% of the value added to production in Australia, hardly representative of the domestic industry. If due to some unusual circumstance this complaint is successful, then the injury to the complainant is relieved, but the other 75% of whom it would be fair to say were not being injured by the dumped imports make a windfall gain. Prima facie rules of this sort are a little short on rationality, as they encourage rents to be earned in an industry, which was competitive before government intervention.

5.3.9 Other Considerations

As indicated earlier, the *Codes* contain two important exceptions to the general domestic industry definition. One allows for the exclusion of the producers who are related to exporters or importers or who are themselves the importers of the allegedly dumped

[557]Anti-Dumping Authority Report No. 24 on *Review of the Australian Customs Service Negative Preliminary Finding on Woven Polypropylene primary Carpet Backing Fabric from the Republic of Colombia and the United Kingdom* August 1990 p 24.

products.[558] The other allows for producers who sell exclusively into a section of the domestic market and where that market is not supplied to any significant degree by any other domestic producer located in another region, to be regarded as the domestic industry for the purpose of the investigation of the alleged injury.[559] Both these areas of discretion have been the subject of some deliberation but not use by the Australian administration.

In an Australian Customs Service inquiry into the dumping of *Mon-ammonium and Di-ammonium Phosphate from the United States,*[560] the Australian producers were also importers of the dumped product, and there was a substantial impact of any duty imposition on downstream wheat farmers. This was said to be done to maintain competitiveness in certain geographic regions where the domestic producers were facing direct competition from other importers of the dumped product. It was seen as a defensive strategy by the Australian industry against the dumping of the foreign exporters into the Australian market.

A similar approach was followed in the report on the dumping case of *Urea from Canada, Malaysia and the United States of America.*[561] Here the sole Australian producer could not supply the whole Australian market from domestic production. In its findings the Australian Customs Service said that:

> "It is necessary, in assessing material injury, to focus on the production of urea which constitutes the Australian industry, and to consider the effect of the dumped urea on the Australian industry's production. It is where unfair importing activities of a producer are obviously affecting the production of other producers that the ACS would consider excluding the importer producer from the industry. In this case APF (Austral Pacific Fertilisers Pty Ltd) as a sole producer cannot have affected any other producer."

Reference was made in the report on the case to international debate on the issue. In particular the March 1987 final affirmative determination of the United States

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[558]Article 4.1(i) of the *Anti-Dumping Code 1994* and Article 16.1 of the *Subsidies Code 1994.*
[559]Article 4.1(ii) of the *Anti-Dumping Code 1994* and Article 16.2 of the *Subsidies Code 1994.*
[560] Australian Customs Service Dumping Report No 114 on *Mon-ammonium and Di-ammonium Phosphate from the United States* 1985.
[561] Australian Customs Service Dumping Report No. 122 on *Urea from Canada, Malaysia and the United States of America* 1985.

International Trade Administration in the inquiry into *Frozen Concentrate Orange Juice from Brazil*[562] was cited. In this case the administration excluded firms from the domestic industry when their imports exceeded 50% of their total production.

The other exception, generally referred to as the regional industry argument, was initially embraced by the Anti-Dumping Authority in its report on *Cement Clinker from the Republic of Korea*.[563] However, this approach was overturned in the Federal Court by Wilcox J in *Swan Portland*.[564] Lockhart in reviewing a latter application also held in *Swan Portland*[565] that the expression "Australian industry" within the context of section 269TG of the *Customs Act 1901*:

> "...refers to an industry viewed throughout Australia as a whole and does not refer to a part of that industry whether the part be determined by a geographic market or other criterion."[566]

This followed the view of Wilcox J in reviewing an earlier stage of the same inquiry. Lockhart J in his judgement went on to say that there was no need to make reference to the provisions of the *Code*, as the interpretation of the term "Australian industry" is clear and unambiguous.[567]

The important point being made in both these judgements is that, if the injury in a discrete regional market became severe, then it may well constitute material injury to the Australian market as a whole.

The Senate (1991) in its report on Australia's legislation reviewed the need for a provision to be included on regional industry, as there were representations made that the Australian law was inconsistent with the *Code* provisions.[568] The Senate (1991) believed that the existing legislation and administrative practices allow Australian industry the necessary protection against such practices and do so to the maximum extent allowed

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[562]Investigation No 83/1406
[563]Anti-Dumping Authority Report No 21 on *Cement Clinker from the Republic of Korea* May 1990.
[564]*Re: Swan Portland Cement Limited and Cockburn Cement Limited and: The Minister for Science, Customs and Small Business and the Anti-Dumping Authority* (1991) 88 ALR 196.
[565]*Swan Portland Cement Ltd v Minister for Small Business and Customs* (1991) 28 FCR 135.
[566](1991) 28 FCR 135 at 144.
[567](1991) 28 FCR 135 146.
[568]Australian Senate: Standing Committee on Industry, Science and Technology - *Inquiry into Australia's Anti-Dumping and Countervailing Legislation* (1991).

under the *GATT Codes*.[569] The Senate (1991) declined to recommend a change in the Australian law as it believed that regional industry can mount a successful case under Australian legislation when circumstances are "exceptional" as set out in Article 4 of the *GATT* Anti-Dumping *Code*.[570]

This outcome from the Senate (1991) leaves one wondering whether it is the market structure circumstances which are exceptional or simply the incidence and magnitude of the injury. These propositions have no bearing on the question of industry definition. This is reinforced by Lockhart J in *Swan Portland*,[571] where he says that "an industry, using its plain meaning, is defined only by the product involved. The description 'Australia', when added to 'industry' provides the only geographic reference in s 269T6 of the *Customs Act*."[572]

It should be noted, however, that any measures imposing a countervailing duty apply to imports into the Australian market as a whole, as the *Commonwealth of Australia Constitution Act 1900* section 51(ii) forbids both discrimination in taxation between states, and section 99 forbids preference in any law or regulation of trade, commerce or revenue between states . In addition section 88 requires that there be uniform duties of Customs, and section 90 preserves their exclusivity to the Commonwealth. Therefore even if the law was changed to require only a regional industry to be considered, the application of the countervailing measures would still need to be applied to an Australia wide market.

In summary, the threshold issue of the existence of an Australian industry is a complex one. The Industry Assistance Commission, the Anti-Dumping Authority and the Federal Court have been divergent on the issue. There would appear to be considerable scope for argument by parties in an investigation on the singular question of like goods to the allegedly injuriously dumped products. It may be safely concluded that like goods will be homogenous products, with a high price cross-elasticity in demand. The Australian industry simply constitutes the domestic producers of the like goods, however, where the

[569]Australian Senate: Standing Committee on Industry, Science and Technology - *Inquiry into Australia's Anti-Dumping and Countervailing Legislation* (1991)p 59.
[570]Australian Senate: Standing Committee on Industry, Science and Technology - *Inquiry into Australia's Anti-Dumping and Countervailing Legislation* (1991)p 60.
[571]*Swan Portland Cement Limited and Cockburn Cement Limited v the Minister for Small Business and Customs and the Anti-Dumping Authority* (1991) 28 FCR 136 at 145.
[572]*Swan Portland Cement Limited and Cockburn Cement Limited v the Minister for Small Business and Customs and the Anti-Dumping Authority* (1991) 28 FCR 136 at 145.

injurious impact of the dumping is more concentrated the injury may be considered more severe.

5.3.10 Characteristics of Injury

The *Customs Act 1901*, in particular section 269TAE, incorporates the provisions of the *Codes*[573] on injury determination, although they are expressed in a different legislative form. The scheme deals firstly with the volume and price effects of the alleged injurious imports and then to what are termed the economic (or less direct) effects. The reports by the Anti-Dumping Authority follow a standard approach in dealing with these effects in turn. This is similar to the construction of the volume and price variances between goods and then looking at how these variances may be explained. It is basically an inter period comparison between before and after the alleged injury from the dumped imports.

The volume effects are identified as the absolute volume of imports of goods of that kind and any likely increase in their quantity; and the likely change in market share of the imports and of the domestic production. Once the like goods are determined and the period of alleged injury is ascertain it is a relatively simple matter to ascertain the above characteristics.

The price effects are identified as the price paid or likely to be paid by the importer, the difference between the price of the domestically produced goods and the imports sold in Australia, and the effect that the price of the imported goods has had or is likely to have on the price of the domestically produced goods.

5.3.11 Material Injury - Volume and Price Effects

With respect to the issue of the price effect it is useful to consider the manner in which this is identified. The clearest manifestation is in undercutting, where the price at which the importer sells to the same level of trade with the same terms and conditions of trade is below that of the domestic industry during the period in which the injury is alleged to have occurred.[574] The second circumstance is where there is price depression. This occurs where the domestic price reduces at the same time as the dumped imports enter

[573]Article 3 of the *Anti-Dumping Code 1994* and Article 15 of the *Subsidies Code 1994.*
[574]Anti-Dumping Authority No 40 *Sodium Cyanide from the Federal Republic of Germany, Italy, Japan, Republic of Korea, United Kingdom and the United States of America* June 1991.

the domestic market. The third type is called price suppression. This is where the imports usually sell at a price below the domestic industries cost to make and sell, and prevent the industry from raising its prices to recover its costs.[575]

Wilcox J discusses the application of a finding of price suppression in *CA Ford*.[576] He was critical of the Australian Customs Service preliminary finding and in particular, to the following reference which said:

> "The examination showed that substantial price undercutting would still be apparent if exports from Taiwan were made at undumped prices. The extent of the price undercutting at non-dumped prices was such that the uplift required to increase the non-dumped landed duty paid costs to equate with the applicant's cost to make and sell was well in excess of any dumping margins found. As such the imposition of any anti-dumping measures would not materially alter the injury being caused to the Australian industry by exports from Taiwan." [577]

This reasoning overlooks the fact that injury is a matter of degree. The fact that an Australian industry suffers some loss, and therefore some injury to its business in competing with non-dumped imports does not mean that it fails to suffer a material injury, if by reason of the dumping the loss is substantially increased. In such a case the effect of the dumping is to increase the extent of the injury. If the additional loss is material, that loss is a material injury occasioned by the dumping.

Wilcox J. is also critical in the same case of the Anti-Dumping Authority's approach in their review of the Australian Customs Service negative preliminary finding. He refers to the Authority's final finding in which it was said:

> "At the outset, given that the Authority is satisfied that only two models of castors are being dumped on the Australian market - and that these are at dumping margins of less than five percent - it would seem difficult to conclude that dumping was causing material injury to the Australian industry. Castors of these two kinds would

[575]Anti-Dumping Authority No 47 *Dioctyl Phthalate from Belgium, France, the Federal Republic of Germany, the Republic of Korea and Venezuela* October 1991.
[576]*CA Ford Pty Ltd v Comptroller-General of Customs* (Fed Ct, 8 March 1991) unreported.
[577]Australian Customs Service Preliminary Finding on *Castors from Taiwan* at paragraph 15.4.

> need to have been imported in very large quantities to have caused anything other than a minor irritation to local producers."[578]

He went on to say that:

> "It is not obvious to me how this comment may be reconciled with the Authority's finding of overall price suppression and, in particular, that over the three years from 1986-1987 to 1988-1989 the applicant's selling price increased by about 40% whereas its average costs increased by about 80%."[579]

Since the decision did not turn on the issue of material injury, the proper identification of the impact of the price suppression caused by dumping was not pursued further. However, to ignore the volume effect and through the established price suppression its effect on the profitability of the Australian industry is clearly an error of law.

5.3.12 Material Injury and Its 'Economic' Effects

Having established that there is either a volume effect and/or a price effect, it is then necessary to consider the consequential relevant economic effect. The economic effect can be reflected in the:

- actual and potential decline -
  - sales,
  - profits,
  - output,
  - market share,
  - productivity,
  - return on investments, or
  - utilisation of capacity;
- factors affecting domestic prices;
- the magnitude of the dumping margin;[580]
- actual or potential negative effects on -
  - cash flow,

[578] *CA Ford Pty Ltd v Comptroller-General of Customs* (Fed Ct, 8 March 1991) unreported at 24.
[579] *CA Ford Pty Ltd v Comptroller-General of Customs* (Fed Ct, 8 March 1991) unreported at 24.
[580] Only applies to anti-dumping measures by way of Article 3.4 of the *Anti-Dumping Code 1994*.

- inventories,
- employment,
- wages,
- growth,
- ability to raise capital,
- or investments;[581]

- and in the case of agriculture, whether there has been an increased burden on government support programmes.[582]

In considering the economic effects it is necessary to also address the question of materiality. That is, injurious dumping must be material, as amongst other things, for the injurious dumping to be actionable.[583] There have been two policy pronouncements by the Minister on this matter, following a report by the Anti-Dumping Authority in March 1989.[584]

It is useful to first consider the Anti-Dumping Authority report which preceded these announcements. The Authority suggested to the Minister, who is the decision maker for the purposes of making final findings: that injury should not be expressed in quantitative terms; that material injury would not be found where, in almost all cases unless there was a "substantial" reduction in the Australian industries profits; and interpretation of "substantial" should be along the lines of " not insubstantial, insignificant or minimal; judged greater than that which might occur in the normal course of events affecting an industry of this kind".[585]

In September 1990 the Minister accepted the Authority's advice and by a direction under section 12 of the *Anti-Dumping Authority Act 1988,* with which the authority must comply, included the following direction which said in part that:

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[581]Article 3.4 of the *Anti-Dumping Code 1994* and Article 15.4 of the *Subsidies Code 1994.*
[582]Only applies to countervailing measures by way of Article 15.4 of the *Subsidies Code 1994.*
[583]Footnote 9 to Article 3 of the *Anti-Dumping Code 1994* and footnote 45 Article 15 of the *Subsidies Code 1994* require that: "...the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry,...".
[584]Anti-Dumping Authority Report No 4 - *Inquiry into Material Injury, Profit in Normal Values and Extended Period of Time* - March 1989.
[585]Anti-Dumping Authority Report No 4 - *Inquiry into Material Injury, Profit in Normal Values and Extended Period of Time* - March 1989 p 16.

> "...material injury, or the threat thereof, will only rarely be taken as proven when the Australian industry producing like goods has not suffered, or is not threatened with, a 'material' diminution in profits or when the dumped or subsidised imports do not hold (or threaten to hold) a sufficient share of the Australian market to cause or threaten 'material' injury,...".[586]

The Minister again found it necessary to address the interpretation of 'materiality' in December 1991 by issuing a further direction to the Authority. The direction indicated that in the interpretation of 'materiality' the Authority should bear in mind:

- the economic condition of the Australian industry;
- that regional injury may in appropriate circumstances be judged to be material
- any substantial diminution in an industry's rate of growth;
- whether threat is real and not hypothetical or remote; and
- that injurious dumping can occur before goods have been exported to Australia.[587]

In March 1992 the Full Federal Court considered the question of material injury caused by dumping in *ICI Australia Operations*.[588] The Court held that section 269TG of the *Customs Act 1901* contemplates material injury which is the consequence of the goods that have been exported to Australia. The section is not concerned with detriment which the Australian industry under consideration may have suffered from causes other than dumping such as economic recession or industrial unrest. Where the relevant Australian industry has suffered detriment from a number of causes, the Minister must be satisfied that the industry has **suffered detriment because of the dumped goods sufficient to meet the statutory meaning of "material injury", and to quantitatively separate the material injury from detriment caused by other factors.**[589] The Court maintained that

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[586]Direction of 4 September 1990 from the Minister for Industry, Technology and Commerce to the Member of the Anti-dumping Authority. The need for a 'material' diminution of profit was applied in Anti-Dumping Authority Report No 133 on *Compact discs from Taiwan* of July 1994 when confirming Customs negative finding p 28. Other factors relevant to the Authorities decision were the relative low share of the Australian market held by imports from Taiwan, and the joint venture between the Taiwanese exporters and the local importers to manufacture CD's in Australia p 2.

[587]Letter of 16 December 1991 from the Minister for Industry, Technology and Commerce to the Member of the Anti-dumping Authority.

[588]*ICI Australia Operations Pty Limited v Donald Fraser & Ors* (1992) 106 ALR 257; (1992) 34 FCR 564.

[589]*ICI Australia Operations Pty Limited v Donald Fraser & Ors* (1992) 34 FCR 564 at 572.

this is a question of fact, and understood in this way, it is correct to say that section 269TG requires that the "material injury" referred to must be caused solely by the dumping the subject of the inquiry.[590]

The Federal Court also addressed the issue of the Ministerial direction as to the meaning of the term "material injury". In its judgement the Court said that:

> "The Ministerial direction binds the Anti-Dumping Authority in connection with carrying out or giving effect to its powers and duties under the Act. The content of those powers and duties, however, falls to be determined on a consideration of the language of the Act. The Ministerial direction cannot, and does not purport to, modify the Minister's power arising under s 269TG. The preconditions to the exercise of that power are to be found in s 269TG, not in the Ministerial direction. Nevertheless, the meaning accorded in the ministerial direction to the requirement that injury to an Australian industry be 'material' is one that accords with the ordinary meaning of the word "material"."[591]

Steele (1992) comments on the dilemma facing the Authority possibly being directed by the Minister contrary to the law as contained in the *Anti-Dumping Authority Act 1988*, while being bound by that legislation to follow the Minister's direction.[592] Although Steele's comment does not go as far, in view of the remarks of the Court it would appear that the practice of giving ministerial directions would be best avoided. There is the predisposition to reflect the views of the executive in these directions, rather than the Parliament. In these circumstances the directions would be clearly ultra vires.

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[590]However, Neaves J was of the view in *Vredelco Food Industries Pte Limited v Anti-Dumping Authority* ACT G 12 of 1994 (unreported) at 53 that: "Contrary to the submission of counsel for Vredelco, there is nothing in the judgment of this Court in *ICI Australia Operations Pty Ltd v Fraser* (1992) 34 FLR 564 which supports the contention advanced on behalf of *Vredelco* that the Authority and the Minister were, in the circumstances of this case, bound to inquire into the possible effects of the economic recession on the relevant Australian industry."

[591]*ICI Operations Pty Limited v Donald Fraser & Ors* (1992) 106 ALR 257 at 270.

[592]An example of the following of the 1990 Ministerial Direction was followed by the Authority on the need for there to be a "material diminution of profits" in Anti-Dumping Authority Report No 102 on *Canned Tuna* June 1993 where it was found that there was no material injury as profits had increased as did profitability.

5.3.13 Measuring Material Injury

The Authority had an obvious different approach to that required by law as expressed by the Federal Court in its judgement in *ICI Australia Operations*.[593] The Court requires that the material injury from dumping be quantified, for it is only that element of any injury to the Australian industry which can be rectified through anti-dumping or countervailing measures. Taken to the extreme this is no easy task, for it would require a level of micro- economic analysis which would be well beyond the reasonable capacity of any administrating authority given the time constraints. However, a relatively simple static model (CADIC) has been developed by Boltuck (1991), in which the effects of the dumping on the domestic industry producing like product are assessed by comparing the condition of the domestic industry in the hypothetical absence of dumping to its condition when subject to dumping.[594] The major difficulties with this model are in the estimation of the domestic and foreign supply elasticities, and where the cross-price elasticities are not equal to their estimation.[595] The model is also of a static nature. However, the micro-analytical work of the United States International Trade Commission has greatly expanded the application of this partial equilibrium to 9 product groups and case types.[596] The definition of the industry parameters in the United States market was resource intensive. The restrictive market conditions in Australia would further complicate the use of such a partial equilibrium model, and the need for a much greater intensity in the injury investigative process would be resource consuming.

Another approach to the problem is to use multi-period variance analysis, which is at the root of the construction of the injury analysis.[597] This technique although partial and subject to a number of micro-economic assumptions is understood and accepted within the business community. Such an analysis can provide a practical solution to an otherwise ambiguous and subjective task.

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[593]*ICI Australia Operations Pty Limited v Donald Fraser & Ors* (1992) 34 FCR 564.
[594]Boltuck (1991) pp 99-125.
[595]Boltuck (1991) p 125.
[596]US International Trade Commission Investigation No 332-344 - *The Economic Effects of Anti-dumping and Countervailing Duty Orders and Suspension Agreements* - June 1995 pp xiv-xvi.
[597]Kaplan and Atkinson (1989))

Turning to some examples of decisions on the economic effects of dumping, it is noted that the analysis is not without its pitfalls. A classic example of detriment to an industry from dumping occurred in the case of *Agricultural Engaging Tools from Brazil*.[598] Although the Authority found that other factors had influenced the viability of the industry, it noted :

> "...that at a time when the local industry's sales, market share, losses and profitability were deteriorating, imports from Brazil with very large dumping margins were claiming an increasing and significant share of the domestic market. During this time, too, imports from Brazil undercut the local industry's prices and price depression and suppression were evident in the local industry. The Authority also notes that employment declined considerably, as did the industry's capacity utilisation.
>
> The Authority was satisfied that dumping, in its own right, has caused material injury to the local industry."[599]

At the other end of the spectrum was the report on *Fibreglass Gun Rovings from the Peoples Republic of China*,[600] in which it was found that there had been a cessation of imports and no forward orders resulting in a negative finding. A similar finding had been made on the same product from Japan and Taiwan, where it was clearly established that the decline in profits had resulted from a decline in domestic sales at a rate much faster than any import replacement. The imports although dumped were only marginally so, and the Authority came to the conclusion that the dumping injury was not material.[601]

An example, where the Authority made a recommendation to impose anti-dumping duties where there was a decline in the market share held by the dumped imports was in its report on *Polyvinyl Chloride* from a number of counties.[602] In its reasoning:

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[598]Anti-Dumping Authority Report No 42 *Agricultural Engaging Tools from Brazil* July 1991.
[599]Anti-Dumping Authority Report No 42 on *Agricultural Engaging Tools from Brazil* July 1991 pp 21-22.
[600]Anti-Dumping Authority Report No 60 on *Fibreglass Gun Rovings from the Peoples Republic of China* February 1992.
[601]Anti-Dumping Authority Report No 56 on *Fibreglass Gun Rovings from Japan and Taiwan* January 1992.
[602]Anti-Dumping Authority Report No 52 on *Polyvinyl Chloride* December 1991 from a number of counties.

> "The Authority notes that in the presence of these dumped imports, the local industry suffered material injury which was evident in price suppression, price depression and price undercutting. The production of PVC is very capital intensive and volume throughput is a key consideration to producers. Thus, in the presence of low priced dumped imports, the local industry had to respond by trying to match those prices to protect volume. In this process, the local industry's share of the market in 1990 and 1991 was below the results recorded in 1988 and its profit performance has deteriorated."[603]

This broad period analysis seems to be consistent with the approach taken by the United States International Trade Commission. De Ravel d'Esclapon (1995) notes that the ITC looks, for example, at whether the industry has attracted new entrants or whether the number of domestic firms decreased over the last several years.[604] The point is that a snapshot in time is not an appropriate basis when trying to assess the viability of an industry.

Before leaving the measurement of the detriment there are two cases which put some doubt on the reliability of measurement process of the Authority. The first is in the *Review of the Australian Customs Service Negative Preliminary Finding on Certain Transparent Film Wound Dressings from the United States of America*,[605] where the Authority appears to give some weight to the net after tax profit as an appropriate benchmark for injury determination. Surely for the purposes of injury resulting from dumping, the effects of local income taxation would need to be eliminated. Even though this could be difficult to eliminate entirely, a more appropriate measure would be that of operating profit before tax. The second observation is in the treatment of losses from export sales in an injury analysis. In *Woven Polypropylene Primary Carpet Backing From the Republic of Colombia and the United Kingdom* the Authority commented that:

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[603]Anti-Dumping Authority No 52 on *Polyvinyl Chloride* p 29.
[604]De Ravel d'Esclapon para 9-17 footnote 66 refers to two contrasting ITC findings in *Certain Flat-Rolled Carbon Steel Products from Argentina* Inv. Nos. 701-TA-319_701-TA-332 (Final), 731-TA-573_731-TA-579 (Final), USITC Pub. 2664, at (Aug. 1993), where there were new entrants and High-Tenacity Rayon Filament Yarn form Germany, Inv. No 73A-TA-530 (Final), USITC Pub. 2525, at 8-9 (June 1992), where on of the two producers closed its plant for failure to meet pollution control standards.
[605]Anti-Dumping Authority Report No 20 on *Review of the Australian Customs Service Negative Preliminary Finding on Certain Transparent Film Wound Dressings from the United States of America* May 1990.

> "...when losses from its export sales were excluded profits on domestic sales still showed a decline, but the decline was less pronounced and the company remained profitable in each of the four years under review."[606]

The method used by the Authority to simply subtract the losses on export from total profit/loss to obtain the profit on domestic sales is clearly erroneous. This is not a marginal change. It ignores, for example, the effect of changes in output on the unit overhead costs, and its consequent effect on profit. You need to know the reason for the profit variations between the periods under inquiry. This is done determining the standard variance factors of sales activity, price recovery, productivity and usage standard changes as they relate to the export and domestic sales.

An interesting question of bias in the material injury test is raised by Boltuck and Litan (1991).[607] They see the application of the test as favouring the foreign supplier. This surely depends on the basis for the formulation of the material injury test, a matter which they do not address.

5.3.14 Threat of Material Injury

In contrast to the measurement of the injury which has been inflicted on the industry by dumping, is the threat of material injury. Recall the Minister's direction of December 1991, in which it was said in the absence of any legislative definition, that material injury may be found where the "threat is real and not hypothetical or remote".[608] This would appear to be a truncated interpretation of Article 3.6 of the *Anti-Dumping Code 1979* which states that:

> "A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The changes in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseeable and imminent."

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[606]Anti-Dumping Authority Report No 24 on the *Review of the Australian Customs Service Negative Preliminary Finding on Woven Polypropylene Primary Carpet Backing From the Republic of Colombia and the United Kingdom* August 1990 p 25.
[607]Boltuck and Litan (1991) p 19.
[608]Letter of 16 December 1991 from the Minister for Industry, Technology and Commerce to the Member of the Anti-dumping Authority.

There is little doubt that the circumstance of a threat of material injury calls for an even more subjective assessment than in the case of actual material injury. The *Anti-Dumping Code 1994* and the *Subsidies Code 1994* attempts to reduce this uncertainty by listing the factors which the authorities should consider in reaching a determination of a threat of material injury. The change in circumstances must be clearly foreseen and imminent. The factors listed likely to lead to a substantial increase in imports are:

- a significant rate of increase of dumped imports into the domestic market...;
- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter...;
- whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices...; and
- inventories of the product being investigated."[609]

In the dumping case of *Sodium Cyanide* from a number of sources,[610] the Authority concluded that there was dumping, no material injury but a threat of material injury from dumping. The Authorities reasoning on the question of threat is worthy of consideration. The Authority said that:

> "The Authority is aware that the price of sodium cyanide in some overseas markets has fallen and that dumping margins may now be lower.
>
> However, as noted earlier, the Authority is concerned that recent reductions in normal values in some overseas markets may reflect the fact that an anti-dumping inquiry was in progress in Australia. The Authority is therefore concerned that in the absence of anti-dumping action significant dumping margins may continue or recur.
>
> The Authority considers that imports with significant dumping margins could be expected to have a major influence on the future performance of the Australian industry.

[609] Article 3.7 of the *Anti-Dumping Code 1994* and Article 15.7 of the *Subsidies Code 1994.*
[610] Anti-Dumping Authority Report No 40 *Sodium Cyanide from the Federal Republic of Germany, Italy, Japan, Republic of Korea, United Kingdom and the United States of America* June 1991.

> This influence is most likely to be apparent in the Australian prices of sodium cyanide.
>
> If dumped imports from these sources continue to depress and suppress prices, as occurred in 1990, then it is likely that the Australian industry will record substantial losses."[611]

In this case there had been a history of these imports and their prices in the Australian market which may have made the Authority's thesis more tenable. Where this is not the case, the threat argument becomes more difficult to establish.

The Authorities findings in relation to exports from the Federal Republic of Germany in this matter were set-aside by the Federal Court and unsuccessfully appealed to the Full Court by the Anti-Dumping Authority. Lockhart J dismissed the appeal in *Degussa*[612] on the grounds (agreed by Sheppard and Olney JJ) that:

> "The relevant findings about future threat of material injury to the Australian industry are based upon sales information which was over twelve months old and did not represent the true position at the time the findings were made. The ADA thus ascertained a single normal value of the product without having regard to domestic sales available at or about the time when the judgment was formed as to the export price of like goods that may be exported in the future."[613]

Therefore it is essential if threat of injurious dumping is the basis for the application of anti-dumping duties under section 8(2) of the *Customs Tariff(Anti-Dumping) Act 1975* that the information relied upon is current.

Before leaving the question of threat of material injury, the finding of threat by the Authority in the dumping case on *Access floor panels from China*[614] is of interest. Here the Authority could not find material injury since: "The Australian market for access

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[611]Anti-Dumping Authority Report No 40 *Sodium Cyanide from the Federal Republic of Germany, Italy, Japan, Republic of Korea, United Kingdom and the United States of America* June 1991 pp 22-23.
[612]*Anti-Dumping Authority, Minister for Small Business and Customs v Degussa Ag, Degussa Australia Pty Ltd* VG 323 of 1993 (unreported).
[613]*Anti-Dumping Authority, Minister for Small Business and Customs v Degussa Ag, Degussa Australia Pty Ltd* VG 323 of 1993 (unreported) at 49.
[614]Anti-Dumping Authority Report No 147 *Access floor panels from China* July 1995.

floor panels had fallen by almost 80 per cent over five years,...,in line with a general slowing of non-residential building and construction. In particular, the market in the year to March 1995 was only half that of the previous year; and the Authority considered that the decline contributed overwhelmingly to the suppression and depression of prices and the loss of profits suffered by Tate in the year to March 1995."[615] However, the Authority concluded that there was a threat of strong competition for new building projects in a depressed market. This would appear to be stretching the margin of a factual basis for a finding of threat as required by Article 3.7 of the *Anti-Dumping Code 1994.*

Threat is also an issue when considering whether an anti-dumping or countervailing measure should be revoked.[616] Again we can refer to the *Sodium Cyanide*[617] revocation inquiry, where the Anti-Dumping Authority decided to revoke dumping duties against imports from the United Kingdom as ICI, the producer in Australia, was doing well with satisfactory profitability, a growing market share and increased capacity utilisation. In relation to imports from Italy and Japan and Korea, against whom duties were also revoked, the Authority considered the higher domestic prices in the countries of export, the history that these countries had only reached a 10 per cent share of the Australian market when dumping was at its maximum level in 1990, and the capacity for further production in those countries was low. These decisions were against the background that dumping duties had been revoked against imports from Germany,[618] and the United States and India.[619] This was a rare application of the power to revoke anti-dumping or countervailing measures within the 5 year sunset period by the Anti-Dumping Authority.[620]

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[615]Anti-Dumping Authority Annual Report 1994-95 p 32.

[616]Sections 7 and 9 of the *Anti-Dumping Authority Act 1988* provides for the review of dumping and countervailing notices with section 268TAJ(1) of the *Customs Act 1901* providing for the revocation if the Minister would no longer be authorised to publish such notices.

[617]Anti-Dumping Authority Report No 138 *Revocation Inquiry: Sodium Cyanide from the United Kingdom, Italy, Japan and the Republic of Korea* September 1994.

[618]*Anti-Dumping Authority, Minister For Small Business And Customs v Degussa Ag, Degussa Australia Pty Ltd* VG 323 of 1993 (unreported).

[619]Anti-Dumping Authority Report No 123 *Revocation Inquiry: Sodium Cyanide from the United States of America and India* March 1994.

[620]Section 8A of the *Anti-Dumping Authority Act 1988* provides for expiry of a dumping or countervailing notice after 5 years in accordance with section 269TM of the *Customs Act 1901,* if the Minister does not take steps to secure its continuation. The Minister is required by section 8A(8) of the *Anti-Dumping Authority Act 1988* to have regard to the Anti-Dumping Authority's recommendation under section 8A(7A) on the likelihood of the continuation, or re-occurrence of the material injury if the notice were revoked, and to the provisions of section 269TAJ(1) of the *Customs Act 1901* in making a decision to revoke a notice.

5.3.15 Causation

The next step is to consider the question of causation. The ss. 269TG-TK of the *Customs Act 1901* require that before a duty can be imposed or undertaking accepted under the *Customs Tariff (Anti-Dumping) Act 1975*, that the material injury or threat thereof be caused by the dumping or subsidisation of the goods that have or may be expected to be exported to Australia. The provisions also cover circumstances where there is a hindrance to the establishment of an Australian industry, and consideration of whether provisional measures were invoked. There are also provisions for retrospective measures. However, to consider these special provisions is to divert from the principal question of the requirements for establishing a causal link.

Although dealt with earlier under the discussion concerning consistency of purpose in Section 4.3.2, it is necessary to mention, in view of their potential significance in injury determination, Articles 3.5 and 15.5 of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*, respectively. These provisions require for there to be a demonstrated causal relationship between the dumped (or subsidised) imports and the injury to the domestic industry. The authorities shall examine any known factors other than the dumped (or subsidised) imports which are injuring the domestic industry. Such factors which may be relevant are:

> "...imports not sold at dumping (or subsidised) prices, contraction in demand or changes in consumption, trade restrictive practices of and competition between foreign and domestic producers, developments and technology and export performance and productivity of the domestic industry."[621]

The injury caused by these other factors must not be attributed to the dumped or subsidised goods.

Lockhart J. in *Tasman Timber*[622] said that:

[621] Articles 3 of the *Anti-Dumping Code 1994* and 15 of the *Subsidies Code 1994.*
[622] *Tasman Timber Ltd v Minister for Industry and Commerce* (1983) 67 FLR 12.

> "when the department is considering the taking of security for the protection of the revenue it must have in mind that the security to be taken is in aid of any countervailing duty that may ultimately be imposed and that, relevant to this case, a countervailing duty cannot be imposed unless the Minister is satisfied that a subsidy or other financial assistance has been paid or granted in the country of export upon the export of those goods and that by reason thereof material injury to an Australian industry would or might have been caused if the security had not been taken under s 42 ...".[623]

In *Feltex Reed Rubber* Sheppard J. held that "the same principles must apply to the taking of cash securities against dumping action."[624]

The Full Federal Court on appeal from a single judge in *Wattie Canneries* expressed the opinion that although a causal connection was required between the dumping and the material injury for the purposes of taking securities at the preliminary finding stage, this was " ... not in a final or definitive way but so as to enable the formation of a genuine opinion that the duties 'may be payable' ...".[625]

The report on the final finding by the Authority on *Vinyl Floor Sheeting from the United Kingdom*[626] illustrates the situation where no causal link was found. Even though the Authority had considered that the 3% points loss in market share in circumstances where the operations were said to be profitable, injury was said to be material. However, third country imports had increased while the dumped imports from the United Kingdom had declined as had the size of the Australian market generally. It was also said that the Australian industry was substantially profitable when the imports from the United Kingdom were at a previous peak.[627]

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[623]*Tasman Timber Ltd v Minister for Industry and Commerce* (1983) 67 FLR 12 at 27 - 29.
[624]*Feltex Reed Rubber v Minister for Industry and Commerce* (1983) 67 FLR 12 at 4.
[625]*T. Wattie Canneries Limited v Thomas Plunkett Hayes, Comptroller-General of Customs* (1987) 74 ALRC 202.
[626]Anti-Dumping Authority Report No 32 on *Vinyl Floor Sheeting from the United Kingdom* January 1991.
[627]Further illustrations of the Authority's approach to injury and causal link can be found in: Anti-Dumping Authority Report No 87 on *Chlorinated Paraffin* December 1992 where the Authority found no injury because of intense competition from third country undumped imports from the United States and dumped imports from Taiwan; Anti-Dumping Authority Report No 94 *Bovine Leather* March 1993 found that the New Zealand import market share rose from 3% to 27% and undumped imports from India and Brazil combined with a decline in demand in the footwear industry, minimised the impact of dumped imports from Argentina, Brazil, India and Thailand; Anti-Dumping Authority Report No 142 *Unsaturated*

Although this sort of analysis by the Authority looks appealing, it relies on the imputation from the general circumstances to the particular. The weakness in this approach was commented upon by the Full Federal Court in *ICI Australia Operations*.[628] As referred to earlier, when discussing the question of "materiality":

> "Where the Australian industry under consideration has suffered detriment from a number of causes, it will be necessary for the Minister to be satisfied that the industry has suffered detriment sufficient to meet the description "material injury" within the meaning of the legislation in consequence of the dumping of goods that have been exported to Australia, and to quantitatively separate that material injury from detriment caused by other factors."[629]

It should follow that when the contemporaneous injury caused by dumping is separated out, that this injury in quantitative terms is not material in the case of a negative finding. That is, a more detailed analysis by the administering authority of the causal link appears to be required by the courts in Australia.

A much improved approach to causation was utilised by the Anti-Dumping Authority in a negative finding contained in a report on *Textured Nylon Yarns from France*.[630] Not only did the Authority reject in the injury analysis the concept of differential costing between products destined for domestic consumption and for export, thus looking at the assessment of the operations of the company as a whole in its assessment of profit and profitability, the Authority looked closely at the impact of the Import Credit Scheme introduced to protect the Textiles, Clothing and Footwear industries in July 1991. It found that the switch to a lower volume supply to the Australian market and the higher volume to the export market coincided with the greater stimulus given to exports by the scheme, rather than as a result of the dumping of French higher priced and better quality

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Polyester Resins from Korea, Singapore and Taiwan December 1994; Anti-Dumping Authority Report No 110 *Welding Wire* September 1993 illustrates where a small dumping margin with only 3% of the Australian market had not caused material injury; and, Anti-Dumping Authority Report No 143 on *Plastic cutlery from Hong Kong and China* January 1995. In relation to the *Plastic Cutlery* inquiry undumped imports from Thailand and China held 60% of the Australian market, and even though the Hong Kong imports were dumped they only took 3% of the market; Authority therefore found no causation.

[628] *ICI Australia Operations Pty Limited v Donald Fraser & Ors* (1992) 34 FCR 564.

[629] *ICI Australia Operations Pty Limited v Donald Fraser & Ors* (1992) 34 FCR 564 at 572.

[630] Anti-Dumping Authority Report No 135 *Textured Nylon-Yarn from France* July 1994.

imports. The Authority also found that the major competition on the Australian market was from undumped lower priced imports from other sources.

The record in other jurisdictions shows that similar problems with the identification of causation are present. According to Boltuck and Litan (1991)[631] the United States International Trade Commission uses two approaches to test for causation. The first is the "But for" approach, that is, "but for the unfair pricing, would the performance of the competing domestic industry have been materially better?" The second is a two stage test which looks at industry trends to determine whether the industry is in poor or worsening health. If satisfied, only then would an analysis of the impact of imports be considered. Commissioners will generally subscribe to one of these approaches when considering the question of causation.

A recent United States International Trade Commission finding in the Cer*tain Flat-Rolled Carbon Steel Products from Argentina* raises some concern as to the effect of any voluntary restraint agreements on the International Trade Commission's consideration of its final findings.[632] In this case there was a voluntary export restraint, however, the International Trade Commission stated that "...their existence does not preclude a finding of material injury".[633] Of course there may be factors as to the adequacy of the voluntary restraint agreements and questions as to compliance to be considered by the Commission. There are no cases of this nature reported in the actions of the administrative bodies in Australia.[634]

5.3.16 Cumulative Injury and Country Hopping

There are cases, typically those concerned with basic organic chemicals, where the complaint is against dumped imports from many different sources. However, even though the findings may be positive against all these sources the contribution of injury from any one of these sources may not be material. It is only when the contribution from a number

[631]Boltuck and Litan (1991) p 19.
[632]De Ravel d'Esclapon (1995) para 9-16 *Certain Flat-Rolled Carbon Steel Products from Argentina,* Inv. Nos. 701-TA-319_701-TA-332 (Final), 731-TA-573_731-TA-579 (Final), USITC Pub. 2664, 18-19 (Aug. 1993).
[633]*Certain Flat-Rolled Carbon Steel Products from Argentina*, Inv. Nos. 701-TA-319_701-TA-332 (Final), 731-TA-573_731-TA-579 (Final), USITC Pub. 2664, at 19 n.57 (Aug. 1993).
[634]The only potential exception is in the case of textile clothing and footwear products which are the subject of high import tariffs and export subsidies, where there is a dumping monitoring program run by the Textile, Clothing and Footwear Authority as part of its sector program.

of these sources is aggregated that the injury caused through dumping can be said to be material. This concept of cumulation was supported in *Enichem Anic*[635] where the Federal Court held that:

> "the inquiry was an inquiry into dumping by many countries and the Minister's declaration referred to exports from several countries. In the circumstances, it would seem impracticable to do otherwise than to look at the effect overall of dumping on Australian industry. It is the sale to Australia of goods at dumped prices which causes the harm. The sales by Enimont may have amounted to less than 3% of overall sales in Australia but it is not shown that they were insignificant."[636]

This latter point made in the judgement is consistent with the accepted limits of cumulation. That is, cumulation cannot apply where the contribution of a number of sources is so minimal that even their summation will not result in a finding of material injury. An example of the latter circumstance is found in the *Polyvinyl Chloride from the Republic of Singapore, Korea, Hungary and Poland*.[637] A (cumulative) threat of material injury was found by the Authority in *Clear Float Glass from Singapore and Indonesia* as Singapore was a step in the process of exporting clear float glass to Australia originating from four other countries .[638]

As a result of the *Marrakesh Agreement 1994* a provision relating to cumulation has been included in both the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*. Article 5.8 of the *Anti-Dumping Code 1994* says that:

> "The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the

[635] *Enichem Anic SRL & Anor v the Anti-Dumping Authority* No G612 of 1991 (unreported).
[636] *Enichem Anic SRL & Anor v the Anti-Dumping Authority* No G612 of 1991 (unreported) at 51.
[637] Anti-Dumping Authority Report No 62 *Polyvinyl Chloride from the Republic of Singapore, Korea, Hungary and Poland* March 1992 p 2.
[638] Anti-Dumping Authority Report No 134 *Clear Float Glass from Singapore and Indonesia* July 1994 pp 24 & 34.

> like product in the importing Member collectively account for more than 7 per cent of the imports of the like product in the importing Member."[639]

These provisions have been incorporated into domestic legislation in a general form in section 269TAE(2C) and in specific form in 269TDA of the *Customs Act 1901*. Having more definitive criteria reduces the discretion of the administering authorities. In keeping with this control over the use of cumulation, is the extension of special criteria for less developed countries. Both the *Anti-Dumping Code 1994* and the *Subsidies Code 1994* incorporate higher thresholds for developing countries.[640]

Turning to the issue of 'country hopping', in August 1992 the Minister found it necessary to issue a policy direction to the Australian Customs Service and the Anti-Dumping Authority on the related question of country hopping. This is said to occur when subsequent to a finding of material injury caused by dumping from one source, the importer begins to source supplies from another dumped source to get around the imposition of countervailing duties. The Minister has indicated that where this happens during an inquiry the new source will be included within the inquiry at an appropriate stage. If it occurs soon after the conclusion of an inquiry the previous material injury findings with appropriate updating will be considered in reaching a finding. This will mean that in certain cases the completion of the investigation can be speeded-up effectively countering the effects of any country hopping at an early stage.[641]

Warnings about the possible use of fast-track procedures under section 9(2) of the *Anti-Dumping Authority Act 1988* are now incorporated in reports where country hopping or the expansion of imports at dumped prices from de minimus sources is likely.[642]

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[639]Article 3.3 of the *Anti-Dumping Code 1994* and Article 15.3 of the *Subsidies Code 1994* contain less specific clauses saying that:

> "...and the volume of imports from each country is not negligible and (b) the cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product."

[640]Article 27.10 of the *Subsidies Code 1994.*

[641]Letter of 24 August 1992 from the Minister for Small Business, Construction and Customs to the Member of the Anti-Dumping Authority.

[642]As illustrative of the Authority's pronouncements on such matters refer to Anti-Dumping Authority Reports Nos 27, 37, 62.

5.3.17 Summary

The central benchmark is whether the application of the injury criteria are consistent with international standards as reflected in the *Anti-Dumping Code 1994* and the *Subsidies Code 1994.* The Australian parliament has passed legislation reflecting the provisions of the revised *Codes.* There have been a number of self-imposed drafting difficulties resulting from the domestic legislative style adopted by Australia.

Australia and New Zealand have an agreement under the CER to exclude the application of anti-dumping measures on trade within the free trade area. The trans-Tasman market is now regulated by application of the misuse of market power provisions of the Australian *Trade Practices Act 1974* and the New Zealand *Commerce Act.* The High Court in *Queensland Wire Industries* [643] has rejected the notion of predation as a test applying to this form of aberrant conduct. It would therefore appear that the Australian government has de facto rejected predation as a necessary ground for retaliatory action against New Zealand imports. As the injury provisions of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994* regulating the application of retaliatory measures is devoid of any predication clause, it is inconceivable that predation is a test relevant for proving material injury.

There is little theoretical justification for the taking of measures against dumping. What there is, involves the need for the creation of a 'fair trade' environment so as to facilitate free trade.[644] Although the partitioning of the market through uncompetitive behaviour appears to be the motivating factor behind injurious dumping; such causal relationships appear to be at best a part of ex-post reasoning. It is the injury criteria which are paramount in the mind of the complaining industry. To illustrate this point indirectly it is useful to look at the various administrative policy opportunities inherent in the injury criteria.

The question of what constitutes an Australian industry depends on the notion of a producer of like goods to the dumped or subsidised imports. This is a critical question as it determines the scope of the inquiry, however, is seen as applying to "...goods of the same general category."[645] For an industry to acquire its domestic origin it need only add 25% in value in their manufacture of a product. Now following the Uruguay Round revisions to the *Codes,* complainants need only account for 25 % of total domestic

[643] *Queensland Wire Industries Pty Ltd v BHP* (1989) ATPR 40-925.
[644] The Viner (1923) p 147 and Bhagwati (1988) p 35.
[645] Lockhart J in *Marine Power* (1989) 89 ALR 561 at 573.

production. There has been a refusal to recognise regional industries, with the court asserting that the expression 'Australian industry' is clear and unambiguous. Lockhart J in *Swan Portland* said that:

> "...an industry, using its plain meaning, is defined only by the product involved."[646]

This does not preclude the situation where injury in a discrete regional market being the source of injury to the industry as a whole.

Injury is seen as a matter of degree. However, the Minister must be satisfied that the industry has **suffered detriment because of the dumped goods sufficient to meet the statutory meaning of "material injury", and to quantitatively separate the material injury from detriment caused by other factors.**[647] Even though the injury needs to be quantified, this is not able to be done precisely. There are problems with the use of micro-economic partial equilibrium approached in the specification of the domestic and foreign supply elasticities and in cross price elasticities. The management accounting approach tends to give the impression of greater accuracy, however, it is not necessarily able to reflect market conditions. The current application of this test in Australia is based on a fairly subjective assessment, as are the tests for market power and lessening competition under the *Trade Practice Act 1974.*

Although the revised *Code* provisions enhance the criteria for determining whether there is a foreseeable and imminent threat of injury from dumped imports, the court has stressed the need for the determination to be based on up to date information.[648] The *Codes* have also set limits for the adoption of the principle of injury cumulation from a number of importing sources. These provisions were to an extent a reflection of the then current practice.

Injury assessment in Australia appears in both law and practice to be consistent with the provisions of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994.* The possible exception is in the area of close processed agricultural goods, in which Australia, Canada

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[646](1991) 28 FCR 136 at 145.
[647]*ICI Operations Pty Limited v Donald Fraser & Ors* (1992) 34 FCR 564 at 572.
[648]*Anti-Dumping Authority, Minister For Small Business And Customs v Degussa Ag, Degussa Australia Pty Ltd* VG 323 of 1993 (unreported) at 49.

and the United States all have legislative provisions of doubtful consistency with either *Code*. However, the injury provisions of the *Codes* are subjective in nature, and are policy driven rather than matters which could be subject to adjudication.

5.4 Dumping

5.4.1 Background

One of the pre-conditions for the application of anti-dumping measures is that there is a finding of dumping , that is where the export price of a product is less than the price of the product sold in the domestic market of the country of export.[649] The method used in analysing the way in which the substantive elements of the anti-dumping law are applied in the assessment of normal value and export price in Australia, is to lead the discussion based on provisions of the public international law to which Australia is a party. We then look at some examples of the treatment accorded to the different principles through a discussion of the application of the relevant provisions of the Australian domestic law.

This section does not attempt to deal with all the domestic legislative provisions, rather it concentrates on those which have proved to be the most contentious. These are reflected in the decisions of the Federal Court in the exercise of its jurisdiction under the *Administrative Decisions (Judicial Review) Act 1977*. At the conclusion, the areas needing most attention either from a policy or legislative viewpoint are identified. There is no attempt to deal with the many procedural elements inherent in the administration of such a complex area, as these have been dealt with in considerable detail elsewhere.[650]

5.4.2 The Legal Framework

[649]For dumping to be actionable, it is also required to be proved that it has been or is likely to be injurious to the domestic industry in the importing country.
[650]Steele (1990), Lysewycz (1990), Griffith (1993), and Milthorp (1993).

As with all matters concerning the application of anti-dumping or countervailing measures Australia, as a signatory to the *General Agreement on Tariffs and Trade 1947* (*GATT*) and more recently its incorporation into the *World Trade Organisation (WTO) Agreement 1994*, is bound by those provisions in its trade with other nation state signatories.

Article VI.1 of the *GATT 1947* requires, as one of the pre-conditions to the activation of a remedy against injury caused by dumping, that:

> "...products of one country are introduced into the commerce of another country at less than the normal value of the products,...".

The Article then explains the meaning of less than normal value as:

> "...the price of the product exported from one country to another -
>
> (a) is less than the comparable price, in the ordinary course of trade, for like product when destined for consumption in the exporting country, or,
>
> (b) in the absence of such domestic price, is less than either
>
> (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
>
> (ii) the cost of production of the product in the country of origin plus a reasonable addition for the selling cost and profit.
>
> Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability."

The general provisions were expanded upon in the *Anti-Dumping Code 1979*, which Australia accepted on 21 September 1982 and entering into force in

Australia on 21 October 1982. The core provisions remained essentially unchanged in the *Anti-Dumping Code 1994*, which came into force on 1 January 1994 following the completion of the Uruguay Round of multilateral trade negotiations. The *Anti-Dumping Code* interprets and elaborates "...the rules for their application in order to provide greater uniformity and certainty in their implementation;...". The *Anti-Dumping Code* provisions are also of assistance when dealing with particular applications of the general provisions.

Article 2 of the *Anti-Dumping Code* deals with the determination of dumping. A product is considered as being dumped when "...the export price of the product exported from one country to another, is less than the comparable price in the ordinary course of trade, for like product when destined for consumption in the exporting country."[651]

These provisions have their parallel in the Australian domestic law, which has been subject to the scrutiny of the *GATT/WTO* committees on compliance. The Australian legislative provisions relating to the calculation of the dumping margin, may be said to be in conformity with the general *GATT/WTO* and *Anti-Dumping Code 1994* provisions.

The question arises in relation to the determination of dumping margins, as to whether the provisions of the *Anti-Dumping Code 1994* should be read with those of the *Customs Act 1901* and the *Anti-Dumping Authority Act 1988*. Given the obligation in section 10 of the *Anti-Dumping Authority Act 1988*, that the Authority have regard to Australia's obligations under *GATT* only in a limited policy sense, this would appear unlikely. The only international obligation is for the provisions of the domestic legislation to be in conformity with those of the *Anti-Dumping Code 1994*.

However, section 15A of the *Acts Interpretation Act 1901* provides for reference to extrinsic material, where there is a need to clarify any ambiguity in the application of legislative provisions. Lee J. in *Merman*[652], commented that:

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[651] Article 2.1 of the *Anti-Dumping Code 1994.*
[652] *Merman Pty Ltd v Comptroller-General of Customs* No. WAG 65 of 1988 (unreported).

> "it cannot be argued that pursuant to s 15A of the *Acts Interpretation Act 1901* the *Anti-Dumping Act* is to be read and construed only to the extent that it is consistent with the *1978 Implementation Agreement*. There has been no incorporation of the *Anti-Dumping Code* into municipal law ...".

This judicial observation is the situation as it now stands, taking into account the provisions of the subsequently enacted *Anti-Dumping Authority Act 1988*.

This position was affirmed by Hill J. in *Powerlift (Nissan)*[653], where he stated that:

> "...the applicants can gain no assistance from textual discussions of the *GATT* treaty. The present question must be determined by reference to the Australian legislation and not the treaty which provides merely the background to understanding it."[654]

However, this does not preclude consideration of the application of anti-dumping laws within the context of the *GATT/WTO* provisions, provided that they reasonably translate into domestic legislation.[655]

The Australian domestic law specifically covers the determination of the export price, normal value, due allowance and the calculation of the dumping margin. The relevant Australian legislative provisions are found principally in the *Customs Act 1901* and its regulations, and the *Customs Tariff (Anti-Dumping) Act 1975*. Other procedural provisions are found in the *Anti-Dumping Authority Act 1988*.

Discussion now focuses on the major elements required to be considered in the determination of the dumping margin.

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[653]*Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992).
[654]*Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992) p 23.
[655]Further discussion of this issue can be found in Sections 4.3.3, 4.3.5 and 5.3.4.

5.4.3 The Export Price

As mentioned above, Article VI.I of the *GATT 1947* refers to "...the price of the product exported from one country to another..." as the price with which the normal value is to be compared. Article 2 of the *Anti-Dumping Code 1994* refers to this price as the export price. The Australian legislative provisions on export price are contained in section 269TAB of the *Customs Act 1901*.

There are four methods governing the determination of the fob export price: the arm's length price between the exporter and the importer; the deductive method from the first arm's length sale in Australia less certain costs and profit; a determination based on all the circumstances of importation; and a decision based on the best information available. During the period 1988 to 1993 according to Feaver and Wilson (1995) by far the greatest number of determinations were based on the exporter's arms length selling price.[656]

5.4.3.1 The 'Ordinary case' for Establishing an Export Price

Section 269TAB(1)(a) of the *Customs Act 1901* is described by Hill J, in *Powerlift (Nissan)*[657], as the 'ordinary case' where:

> "...the export price of particular goods will be the actual arm's length price paid by the importer to the exporter, after excluding any component in that price for transportation or any other matter arising after exportation:...",[658]

and is essentially reflected in the invoice price. That is, to ascertain the free on board FOB (INCOTERMS) by reference to the purchase price less any direct costs of transportation and associated charges included in that price. Although the export price so ascertained could be expected to normally prevail, injurious

[656]Feaver and Wilson (1995) p 227 report between 1988 and 1993 that export prices were determined under the following provisions: section 269TAB(1)(a) - 159; section 269TAB(1)(b) - 11; section 269TAB(1)(c) - 22; and section 269TAB(3) - 27.
[657]*Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992).
[658]*Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992) at 45.

dumping is a departure in the *GATT/WTO* context from the normal trading pattern, and it would not be surprising if these conditions did not apply.

To better understand the limitations on the application of the 'ordinary case', it is useful to consider the conditions which attach to the 'ordinary case' under section 269TAB(1)(a) of the *Customs Act 1901*:

> Firstly, the exporter cannot be the same person as the importer, reflected in the requirement that there is a sale of the goods by the exporter to the importer either before or after exportation. This requirement excludes goods simply on consignment to a person in Australia. For example, it excludes import transactions where the goods are still the exporter's trading stock to be disposed of in Australia by a consignee acting as an agent for a consignor principal.
>
> Secondly, a special meaning of "importer" is given by section 269T(1) of the *Customs Act 1901* as being "- the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed:...". This has the effect of excluding sales on the water where there is a third party who is not the exporter of the goods, as the importer must purchase from the exporter. That is, the export price provisions place particular emphasis on the export sale as it is this sale which is compared with the normal value to ascertain the dumping margin. This can be contrasted with the valuation provisions sections 154(1) and 161 of the *Customs Act 1901*, relating to the assessment of ad valorem Customs duties, which focus on the import sales transaction.[659] Therefore, when the export transaction is not an 'ordinary case', the relevant evidential documents required by Australian law for valuation and dumping margin assessment will differ.
>
> Thirdly, there is the requirement that the parties to the export transaction deal at arm's length. This is a relatively complex provision

[659]This is contrary to the provisions Article 1 of the *Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* relating to the 'transaction value' which is defined as: "...the price actually paid or payable when sold for export to the country of importation...".

designed to eliminate situations where the export transactions between the parties do not reflect market prices.

5.4.3.2 Hidden Dumping and the calculation of the Export Price

The possibility of deviations from the 'ordinary case' was recognised in Note 1 to Paragraph 1 of Article VI of the *GATT*, appearing as an original note to the text. The Note indicates that:

> "Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by the exporter with whom the importer is associated, and is also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer."

The *Anti-Dumping Code 1994* further emphasises the difficulties which can arise in the determination of export price. In Article 2.3 of the *Anti-Dumping Code 1994* it is recognised that the export price may be unreliable not only because of an association or compensatory arrangement between the exporter and the importer, but may also involve a third party. It is suggested that the export price may be constructed from the price at which the imported products are first resold to an independent buyer, or if the goods are not sold to an independent buyer, or not resold in the condition as imported, on such a reasonable basis as the authorities may determine. Sections 269TAB(1)(b) and (c) of the *Customs Act 1901* are the relevant domestic legislative provisions covering such deviations from the 'ordinary case'. In Australian domestic law these transactions are said to be not at arm's length.

5.4.3.2.1 Not at Arm's Length Transactions

The *Customs Act 1901* at section 269TAA prescribes those transactions which are not to be treated as arm's length. It is appropriate to deal with these provisions as they relate to section 269TAB(1)(b) of the *Customs Act 1901* covering related party transactions, a situation other than the 'ordinary case'. This section also requires a sale by the exporter to an importer, thereby

excluding sales on the water to third parties. It also requires that the sale be not at arm's length, and that there is a subsequent sale of goods by the importer, in the condition in which they were imported, to a person who is not an associate of the importer. This section is therefore dealing with a situation where the only difference from the 'ordinary case' is opportunity for control by either the exporter or the importer over the other party.

The treatment of a transaction as not at arm's length goes to the question of whether the controlling relationship influences the consideration for the sale of goods between the parties to the transaction. Section 269TAA(1) of the *Customs Act 1901* specifies a number of not at arm's length circumstances, such as where there is any consideration other than the price; where the price is influenced by a relationship between the buyer and the seller or associate; or where the buyer, or an associate, receives compensation or benefit for any part of the price. However, as evidence of such circumstances is not easily found, section 269TAA(2) of the *Customs Act 1901* implies that sales at a loss by the importer in Australia are an indication of reimbursement, compensation or receipt of a benefit by the importer or associates in respect to part of the price. Section 269TAA(3) gives guidance as to the ascertaining of the importer's costs in importing and sale of the goods, and the need to consider a reasonable time for the recovery of those costs.

In Kanthal Australia[660], Wilcox J addressed the question of sales at a loss by the importer by saying that:

> "The whole point of [the then] s.4(3) is to allow an inference of payment to be drawn from a particular fact: reselling at a loss."[661]

Throughout the analysis of whether an import transaction is at arm's length, reference is made to the presence of associates of the buyer and seller who may act as a conduit for any 'hidden' consideration, compensating the buyer for any part of the price. The term associate is comprehensively defined in section

[660] *Kanthal Australia Pty Ltd v The Minister for Industry Technology and Commerce & Anor* NSW G.281 of 1987.
[661] *Kanthal Australia Pty Ltd v The Minister for Industry Technology and Commerce & Anor* NSW G.281 of 1987 at 25.

269TAA(4) to include natural, corporate and partnership relationships. Again the focus is on the potential for control or significant influence on the economic decision making of the related entity, and the sub-section is a mandatory deeming provision.

The elements contained in the not at arm's length provisions are akin to the concepts of economic 'control' and 'significant influence' as defined in Australian Accounting Standards AASB 1017 on related party disclosures. These standards are incorporated into the Australian corporations law. The accounting standards are consistent with those set out in International Accounting Standard IAS 24 "Related Party Disclosures". To obtain consistency in the law governing corporate behaviour in Australia and to gain better understanding within the international trading community of the requirements of the Australian anti-dumping law, it would be beneficial for section 269TAA(4) of the *Customs Act 1901* to be amended to accord with the related party definitions as now incorporated into the Australian Corporations law.

The Australian law is, however, inconsistent with the *Anti-Dumping Code 1994* and its predecessors, which only require unreliability to be inferred from association or compensatory arrangements between the exporter and the importer or a third party. The *United States Code* 19 USC §1677 defines related parties in a manner consistent with the *Anti-Dumping Code 1994.* Where the importer and the exporter are related, the United States law treats the two as a single entity and uses the price from the importer to the first United States buyer as the starting point for the constructed export price. According to Palmeter (1995) in these cases:

> "The transfer price was suspect, and therefore was ignored. The single entity was deemed to have a single profit, which was not deducted since the extent of the profit in the two markets is what the dumping calculation is all about - earning less profit (or even losing money) on export while earning higher profits at home."[662]

[662]Palmeter (1995) p 55.

When the application of the Australian law with respect to export price is considered in the context of its purpose, that is the elimination of artificial profit from transfers associated with the sale of goods and this has an injurious effect on the industry in the importing country, there appears to be a great deal of confusion.

The Anti-Dumping Authority in its review of Customs refusal to refund interim anti-dumping duty collected on Du Pont Australia's imports of sodium cyanide from its parent in the United States[663], the Authority reversed the decision of Customs that the transactions were not at arm's length. The relevant facts were that the export price was fixed monthly in $US which meant that the $A export price varied with fluctuations in the exchange rate. There was no forward exchange cover by the importer, which would be imprudent if they were arm's length sales. The next commercially questionable activity of Du Pont Australia was that it entered into contracts for a longer duration with its customers in Australia than with its supplier, a form of inverse hedging or extreme risk exposure. Du Pont Australia was making losses on its sales in Australia, and given the nature of its contractual arrangements was not acting as a profit centre in Australia.

Now the Authority was required to decide whether the goods were sold at a loss, as this was a factor the Minister would need to consider in making determining whether the transactions were at arm's length.[664] The Authority agreed with Customs that sales were made at a loss in Australia by Du Pont Australia. However, the Authority found that:

> "...Transactions between Du Pont and DUPA did not involve any reimbursement or compensation by Du Pont to DUPA and that these losses were small in the context of DUPA's overall business."[665]

[663]Anti-Dumping Authority Report No 144 *Review of Dumping Duty Payable on Sodium Cyanide from the United States of America* January 1995.
[664]Section 269TAA(3) of the *Customs Act 1901*.
[665]Anti-Dumping Authority Report No 114 *review of Australian Customs Service negative preliminary decision on sodium cyanide from the United States of America* January 1995.

The Authority also concluded that it was the exchange rate fluctuations which were responsible for the losses by Du Pont Australia. A recommendation by the Authority, on the basis of the lack of any fresh evidence in support of the Customs negative preliminary decision since the Authority had last reviewed Du Pont Australia's export price, was made to the Minister that the transactions between Du Pont and Du Pont Australia were at arm's length.

Given the difficulties associated with the measurement of the accounting outcomes and of the tracing of compensatory type payments in the accounting records of transactions between subsidiary and parent companies, it is difficult to conceive of how the Authority could be definitive in its findings on compensation. The question of hedging was not addressed, and as this would have been significant in reducing the risk of exchange rate losses. The effects of this omission cast some doubt on the soundness of the Authority's advice. Further the relevance of how Du Pont Australia's overall business had any thing to with determining whether the transactions were at arm's length is difficult to conceive. However, the result of this debacle only illustrates the difficulties associated with the arm's length concept, which is not included in the dumping or valuation provisions of the *GATT/WTO Agreements.* [666]

The inclusion of interim dumping duty as a deductable post-export expense was also addressed by the Anti-Dumping Authority in its review of the preliminary decision by Customs to refuse the refund of interim duty on sodium cyanide from the United States.[667] The Authority in this case referred to a hypothetical example where:

> "...if an exporter adjusts its export price after measures are imposed so that it is no longer dumping, the importer can expect to obtain a refund of the interim duty paid; and that duty should not, therefore, be treated

[666]It should be added that there was no dissatisfied party with this outcome, and therefore the only avenue to protect public interest considerations would be the Australian National Audit Office.
[667]As the provision relating to the determination of a transaction being not at arm's length is discretionary, the Authority's approach is that "all the circumstances of the case should be examined before deciding to treat interim duty as an expense associated with importing goods." - Anti-Dumping Authority Annual Report 1994-95.

> as an expense in deciding whether the goods are subsequently sold at a loss or in assessing a 'deductive' export price."[668]

Duty assessment is based upon fact and law not hypothesis, and therefore the Authority's views are not helpful in answering the question concerning the inclusion of interim duty as a cost of sales.[669] The relevant public international law contained in the *Anti-Dumping Code 1994* is quite explicit as to the non-deductibility of dumping duties when determining whether a reimbursement of dumping duties should be made when the export price has been constructed, saying that:

> "...authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties when conclusive evidence of the above is provided."[670]

The apparent confusion of the administrating authorities on this point may have come from the construction of the provisions of the *Customs Act 1901*. Although section 269TAA(3)(b) does not identify the relevant 'costs', the following section 269TAB(2)(a) which would be relevant to the assessment of a deductive export price, makes "any duty of Customs or sales tax paid or payable" a prescribed deduction. To resolve this issue and maintain consistency with the *Anti-Dumping Code 1994*, the interim anti-dumping and countervailing duties should be excluded as prescribed deductions.

However, the question is simply resolved by statutory interpretation through the use of the conventional approach of section 15AB of the *Acts Interpretation Act 1901*. In this case the *Anti-Dumping Code 1994* can be used to clarify the meaning of "costs necessarily incurred in the importation and sale of the goods" as not including the interim duty paid.

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[668]Anti-Dumping Authority Annual Report 1994-95.
[669]See ASRB 1019; AAS 2; and IAS 2 for the normal accounting treatment of duty as a cost.
[670]Article 9.3.3 of the *Anti-Dumping Code 1994.*

5.4.3.2.2 Prescribed deductions

The *Anti-Dumping Code 1994* deals with the situation where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer, stating that:

> "... allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made."[671]

The parallel domestic provisions are found in section 269TAB(2) of the *Customs Act 1901*. Looking more closely at the application of section 269TAB(1)(b) of the *Customs Act 1901*, and assuming that the preconditions for its application are fulfilled, the determination of the export price is required to be based upon the price at which the goods are sold by the importer less the deductions prescribed in section 269TAB(2). These deductions include Customs duty and sales tax payable, costs, charges or expenses arising in relation to the goods after exportation, and actual or directed rate of profit on the importer's sale in Australia. This area of the anti-dumping law relating to export on costs and importer profit is contentious, although the export price is simply based upon the first arms length process in the chain of export transactions.

There has always been some argument about the types of post-export expenses which should be excluded from the export price. Do the prescribed deductions referred to in s269TAB(2)(b) as "...any costs, charges or expenses arising in relation to the goods after exportation;...", go as far as to include the general administrative overheads incurred in the holding of inventory and the sale of the imported goods? From *Powerlift (Nissan)*[672] in the Federal Court, involving three vertically related parties in the export transactions, the answer

[671] Article 2.4 of the *Anti-Dumping Code 1994.*
[672] *Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992).

would appear to be in the affirmative. Hill J, when considering the expenses incurred by a dealer related to the importer in marketing imported goods in Australia, had no hesitation endorsing the inclusion of the interest expense incurred by a dealer in the holding of the inventory for resale as an expense arising after exportation. Although there is no definitive answer on each element of post-export expense, Hill J also found "unobjectionable" the approach of applying a ratio of total sales and general administration expense to the selling price of the imported goods to establish the relevant level of post-export expense deduction for these items.[673]

The most contentious area of the calculation is the profit which is directed to apply to the first arms length sale. This has a parallel in the determination of the non-injurious export price as required by section 269TACA of the *Customs Act 1901*. Both the export determination under section 269TAB(1)(b) through the prescribed deductions and the determination of a non-injurious export price require the administering authority to have regard to a normal profit for the importer. The use of the importer's rate of profit is unlikely to be correct, as the importer's profit from the distribution of the dumped product is obviously affected by the dumping. The Authority recognised this dilemma in the *Glace Cherries* inquiry[674], where it examined stock exchange and other data on profitability for the industry under inquiry. Provided the data is assessed over an appropriate time horizon this would be a reasonable way of approaching the problem of profit determination, as it reduces the opportunities for not at arm's length dumpers to gain from manipulation of profits during the initial stages of market entry. This contrasts with the United States approach, which takes a ratio of the costs in both countries as the way to apportion profits to sales in the United States market.[675]

5.4.3.3 Other Methods of calculating the Export Price

The Articles 2.3, 2.4 and 6.8 of the *Anti-Dumping Code 1994* provide for the determination of export price where there is either no export price or an interested party has refused access or otherwise does not provide information to the administering authority. The relevant domestic provisions are sections 269TAB(1)(c) and 269TAB(3)

[673]*Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992) at 62-63.
[674]Anti-Dumping Authority No 64 *Glace Cherries from France and Italy.*
[675]Palmeter (1995) p 55.

of the *Customs Act 1901*. Neither of these provisions of the *Customs Act 1901* contain any methodology to be applied, and have been drafted simply to deal with a residual of cases which cannot fall within the foregoing provisions.

Hill J in *Powerlift (Nissan)*[676] had to address the application of section 269TAB(3) and its related section 269TAB(4) allowing for the disregarding of the information considered to be unreliable for the purpose of determining export price. The facts of the case concerned a situation where not only was the sale between the exporter and the importer not at arm's length, but the sales by the importer were also not arm's length. The administering authority had taken the second sale in Australia by the dealer as the first arms length sale. In discussing the application of s269TAB(3) Hill J concluded that:

> "Clearly the formation of an opinion under s269TAB(3) precludes the operation of s269TAB(1). There is no particular reason why the calculation under s269TAB(3) must be made in the same way as the calculation under s269TAB(1)(b). As a matter of law, the fact that there was no arm's length sale by Powerlift might not necessitate the investigation of dealer to end-user sales in the calculation under s269TAB(3). However, clearly no error of law would be committed in so doing."[677]

In that case Hill J is warning against undue resort to complexity, particularly where there is no apparent reason to invoke an investigation of the last member of the trading chain. It should also be said that the invoking of section 269TAB(3) in alleged circumstances of insufficient or unreliable information is extraordinary in a situation where the records are available in Australia. There is a specific provision in section 214B of the *Customs Act 1901* giving officers powers to obtain such information, and failure to attend an interview and answer questions is an offence.

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[676] *Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992).
[677] *Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992) at 56.

Section 269 TAB(1)(c) of the *Customs Act 1901* was the subject of some judicial interest in *Pilkington*[678] a Full Federal Court appeal. The facts concerned the export transactions for float glass manufactured in Indonesia and China. The Indonesian manufacturer was related to a firm in Singapore which sold the float glass to an Australian importer. The Anti-Dumping Authority had taken the Indonesian manufacturer to be the exporter as exports were made directly from Indonesia to Australia. However, the question of who was the exporter of the product was not at issue in the proceedings. Lee J by way of individual comment expressed the view that:

> "An entity which carries on business as a supplier of goods to an importer and which, in the conduct of that business, contracts for a manufacturer to export the manufacturer's goods directly from the country of origin to the importer, may be the exporter of the goods for the purpose of para 269TAB(1)(a) of the Act. (See: Van Bael, Bellis, Anti-Dumping and other Trade Protection Laws of the EEC (2nd Ed.) (Oxfordshire: CCH Editions Limited, 1990) pp 83-84.) If that were the true position in this case the question whether some part of the price charged by Asahi to O.G.A. was a "charge in respect of (a) ... matter arising after exportation" could not arise. In its report the Authority did not explain why the transactions entered into by O.G.A. and Asahi were not regarded as transactions made between an importer and an exporter."[679]

Clearly the export transaction was between exporter in Singapore and the importer in Australia, and fell within the provisions of section 269 TAB(1)(a) as an arm's length price paid by the importer to the exporter. There was no need to resort to the application of section 269 TAB (1)(c) of the *Customs Act 1901*. Although *Pilkington* was concerned with the definition of "...any other matter arising after exportation...", which was decided to accord with its ordinary meaning, such that:

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[678] *Pilkington (Australia) Ltd v Anti-Dumping Authority & ors* Full Federal Court (unreported) 7 April 1995.
[679] *Pilkington (Australia) Ltd v Anti-Dumping Authority & ors* Full Federal Court (unreported) 7 April 1995 p 18-19.

> "The test under the section is a temporal one related to the point of exportation. The expression "matters arising after exportation" can refer only to an event in relation to the goods."[680]

the issue would not have arisen if the Authority had applied a contractual analysis to the transactions.

5.4.3.4 Difficulties in the measurement of the export price

When addressing the question of the reliability in the measurement of the export price, it is relevant to note the words of Lockhart J. in Marine Power Australia Pty Ltd and Marine Power International Pty Ltd v The Comptroller-General of Customs, Outboard Marine Australia Pty Limited, Yamaha Motor Australia Pty. Limited G78 of 1989 on the application of accounting concepts in dumping cases. Lockhart J. in commenting upon the application of accounting concepts said that, the Customs officer directing the case:

> "... did not pay regard to accounting concepts of the kind to which I have referred. In my opinion his approach was permissible. It would however, be permissible for the Comptroller to take into account accountancy concepts in the circumstances of a particular case. The determination of the "value" of labour and materials in Australia may, for example, support reference to accountancy concepts. In other words it may be of assistance to the Comptroller in performing his statutory duty to have regard to such concepts; but he is not bound to do so."

One of the problems encountered in the Powerlift (Nissan) case was the double counting by Customs of an interest expense, incurred by the dealer for inventory holdings, in the calculation of the export price. This expense of the dealer's was a receivable of the importer. These mistakes may have been avoided if general consolidation concepts had been applied to the facts of the case. This highlights the case for adopting accepted accounting standards for

[680] *Pilkington (Australia) Ltd v Anti-Dumping Authority & ors* Full Federal Court (unreported) 7 April 1995 p 10.

either the disclosure or consolidation of the accounts of the related parties or the economic entity. Guidance on consolidations is now included in the Corporations law as Australian Accounting Standard AASB1024 "Consolidated Accounts", which is consistent with minor variation with International Accounting Standard IAS 27 "Consolidated Financial Statements and Accounting for Investments in Subsidiaries".

The uncertainty associated with deriving an export price from a sale in the importing country arises from the number of variables which have to be considered in its calculation. Accounting information is by its nature an approximate description of the underlying economic events. The application of accounting standards to improve the reliability of accounting data is dealt with in the 'Statement of Accounting Concepts (SACs) issued by the Australian Accounting Foundation on behalf of the professional bodies. Paragraph 22 of SAC 3 aptly illustrates the inherent uncertainty in accounting information, where it is said that:

> "Most financial information is subject to some risk of being less than a faithful representation of what it purports to be. This is not due to bias, but rather to either inherent difficulties in identifying the economic phenomena to be measured or in devising or applying measurement or presentation techniques which can convey messages which correspond to those phenomena."

It follows therefore that the more variables one has to consider in the calculation of export price the greater the risk of error.

Without reference to accepted accounting concepts in its investigations, there is an added degree of uncertainty generated in the outcomes of dumping determinations beyond that which is accepted in the commercial community generally. This can only harm the application of this instrument of government safeguard policy, as the trading parties will adopt strategies which will give rise to greater conflict and consequent expensive litigation.

5.4.4 Normal Value

The basic provisions of Article VI of the *GATT* and the *Anti-Dumping Code 1994* on its implementation, apply both to the ascertaining of the normal value and the export price. These were referred to in the earlier section on the legal framework. Article 2 of the *Anti-Dumping Code 1994* is directly relevant to a number of issues relating to the establishing of the normal value. It is prudent therefore, to consider the Australian domestic law within the context of the relevant international public law to which Australia is party.

Having established the principles governing the ascertaining of the price at which the goods are exported to Australia, the price in the country of export (the normal value) with which it is to be compared needs to be established. This enables the level of dumping to be determined. The dumping margin is defined as the extent to which the export price is less than the normal value.

There are six methods for the determination of normal value: the exporter's domestic price; a constructed cost based approach; the exporter's selling price for exports to a third country; when the exports are from a centrally planned economy, the use of the price in a surrogate country; and where there is insufficient information, the best informational available. On the basis of the study by of the activities of the Anti-Dumping Authority by Feaver and Wilson (1995), the two most frequent bases by far for determining normal value have been the exporter's domestic selling price and the best information available.[681]

5.4.4.1 Exporter's Domestic Price

Article 2.1 of the *Anti-Dumping Code 1994* introduces the concept of the normal value being a "...comparable price, in the ordinary course of trade, for the like product when destined for home consumption in the exporting country." This is the first method of determination of normal value which can be referred to as the exporter's domestic price. It is the predominant method of determining normal value[682], and relies upon market determined prices.

[681]Feaver and Wilson (1995) p 229 report that between 1988 and 1993 the Anti-Dumping Authority made the following determinations of normal value: section 269TAC(1) - 95; section 269TAC(2)(c) - 27; section 269TAC(2)(d) - 4; section 269TAC(4) - 23; and section 269TAC(6) - 93.
[682]Lysewycz (1990) p 43,019.

The equivalent domestic provision section 269TAC(1) of the *Customs Act 1901* introduces an additional requirement to the *Anti-Dumping Code 1994*, that the domestic sales by the exporter be arms length transactions. As discussed in the section concerned with export price, section 269TAA defines those circumstances where the transactions are not at arm's length. This requirement is designed to exclude those situations where the price is not market determined. It has a parallel in the concept of hidden dumping in the discussion of the export price. Also included in the section is the *Anti-Dumping Code 1994* requirement that the domestic transactions are in the ordinary course of trade. The concept of ordinary course of trade provided for in Article 2.1.1 of the *Anti-Dumping Code 1994* is a wide one, and covers sales below fully absorbed cost in a situation where the price is unlikely to recover to a profitable on within a reasonable period of time.

The domestic provision also introduces a two stage process of application. Sales by the exporter must first be considered, where these are "...in the ordinary course of trade for home consumption in the country of export in sales that are arms length by the exporter". It is only "...if like goods are not so sold by the exporter,..." that sales by other sellers of like goods can be considered. This distinction between sales by the exporter and by other sellers is not made in the *Anti-Dumping Code 1994*, with the *Code* directing the attention towards the comparable (domestic market) price for like product, rather than the parties to the transaction. Both in theory and in practice the two methods should give the same result, and where they do not, this would flag possible concern with the reliability of the information or the suitability of the market for normal value assessment.

The need to examine the prices of other sellers in the domestic market was emphasised by Pincus J in *Wattmaster Alco*[683], where he said:

> "That all other vendors were, so far as the information available showed, selling both domestically and for export well under "normal value", assessed in accordance with a single standard, does not

[683] *Wattmaster Alco Pty Ltd v Button* (1985) 8 FCR 471.

> necessarily falsify the respondent's conclusions. It should, however, [have] prompted careful scrutiny of the Benchmark price."[684]

From a practical viewpoint, direct evidence of the exporter's domestic selling prices may not be available to the administering authority. There are many examples of such denials of access to information to the investigating authorities. One of these was noted by Burchett J. in *GTE (Australia),*[685] where he accepted price list together with evidence concerning discounting as valid for determining the exporter's domestic price. The exporter in this case had not allowed the administering authority direct access to the actual billing prices.

Davies J., in *Kanthal Australia,*[686] spoke of the way to apply price list information in the ascertaining of normal value. It is useful to refer to the text of his judgement, in which he said:

> "...The simplest and most straightforward manner of calculating "the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export and sales that are arms-length transactions by the exporter" was to adopt the price set out in Gunnebo's price list as published from time to time. That price could then be adjusted, having regard to all the relevant circumstances of the sale to the applicant. One such relevant circumstance was the quantity of the trade between Gunnebo and the applicant, for the evidence available at the time and since has shown that the level of discount was based wholly or primarily on quantity. Discounts for quantity are an ordinary feature of commerce. ..."[687]

It is necessary as part of the investigative process to consider a number of sources of market price information other than the exporter's domestic prices. Apart from publicly available information obtainable from industry journals

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[684] *Wattmaster Alco Pty Ltd v Button* (1985) 8 FCR 471 at 479.
[685] *GTE (Australia) Pty Ltd v John Joseph Brown* (1986) 14 FCR 309.
[686] *Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987 (unreported).
[687] *Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987 (unreported) at 8.

and commodity market information services, there are many market research bodies which collect information on particular industries and provide it to industry subscribers or other interested parties for a fee.

Some of these market services are highly reliable and well regarded by industry. They are best in those industries where the products are fairly homogeneous and the markets are well developed. For example, Mcgraw-Hill publish a journal covering the fertiliser industry called "Green Markets". This journal contains information on United States domestic and export prices of fertilisers, and is considered a highly reliable guide for that market.

5.4.4.1.1 Like Product

To determine whether there is a difference between the exporter's domestic price and the export price, it is necessary to be able to compare the price of the same product sold domestically with that sold for export. However, this is not as easy as it may appear at first sight, as there may be differences between the characteristics of the goods exported with those sold domestically in the country of export. The first step must be to determine whether any of these differences are likely to have such a sufficiently large effect on the prices of the goods to preclude reasonable price comparison. The *Anti-Dumping Code 1994* refers to this as the concept of "like goods".

Article 2.6 of the *Anti-Dumping Code 1994* defines the term "like product" to mean "...a product which is identical, ie. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration." This has now effectively been incorporated within s269T(1) of the *Customs Act 1901*.[688]

In *GTE (Australia)*[689] Burchett J. found with respect to a variation in the voltage of incandescent light bulbs where the difference in the cost of production for comparable volumes was negligible, that:

[688]Amended by Act No 5 of 1990, section 21 effective 1 January 1990.
[689]*GTE (Aust.) Pty. Ltd. v Brown* (1986) 14 FCR 309.

> "... it seems unlikely that the legislature intended, by reference in s.5(1) and (5) [which were the equivalent prior provisions in the Customs Tariff (Anti-Dumping) Act 1975] to "like goods", the selection for purposes of comparison of an item marked by a mere accident of arithmetical propinquity on a voltage scale, rather than the selection of the equivalent as an item of domestic use available on the supermarket shelf, being in all respects identical to the exported item except that it was intended to be illuminated by the common domestic source of power, while the exported item was intended to be illuminated by the common Australian source of power." [690]

In other words, Birchett J was departing from the "identity" criterion of comparison for a more practical "use" criterion in making price comparisons between sales on the export and domestic markets.

In *Tredex Australia*[691] Neaves J deals with the question of the application of the term "like goods" to the determination of normal value. Although also prior to the direct incorporation of the term in the Customs Act the approach adopted is also still relevant. The question addressed was how similar does the domestic product have to be for a price comparison to be made with the exported product? Neaves J decided in the determination of a normal value by reference to the exporter's domestic price, that:

> "To deny the relevance of...the comparative weight (grams pre square metre) of the papers under consideration and the end use for which the various papers were suitable, would be to adopt a too restrictive a view of what is encompassed within the reference in par 2 of Article 2 of the *GATT Anti-Dumping Code* to the "characteristics of the goods being compared."[692]

Such an viewpoint allows the administering authority to take a more practical approach than would appear in the strict wording of the *Anti-Dumping Code* and the domestic legislation. This wider Australian approach to "characteristics

[690] *GTE (Aust.) Pty. Ltd. v Brown* (1986) 14 FCR 309 at 320.
[691] *Tredex Australia Pty Ltd v John Norman Button* (unreported ACT G 28 of 1986 & 81 of 1987).
[692] *Tredex Australia Pty Ltd v John Norman Button* (unreported ACT G 28 of 1986 & 81 of 1987) at 36.

closely resembling" seems to be at odds with the stricter approach of physical identity adopted in at least two *GATT* panel reports. According to Baker (1989) these reports clearly ruled out mere substitutability as sufficient to make products "like" one another.

In a more general vein, it is reasonable to conclude that the application of the term "like goods" in relation to making price comparisons is usually narrower, than in its application in the more general accounting context in the measurement of the injurious effect of dumping. This stems from the sensitivity of prices to quality variations, and the relatively small differences in prices upon which many dumping actions are based. Article 3.6 of the *Anti-Dumping Code 1994*, although not widening the definition of "like goods" in an injury determination states that,

> "...If separate identification of the production is not possible the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided."

Although Article 3.6 of the *Anti-Dumping Code 1994* was not at issue in Merman[693], the issue of "like goods" was considered in the context of an intermediate product. The issue was whether the intermediate product (cement clinker) used in the production of Portland cement was a like product to the final cement product. Lee J concluded in his comments on the conduct of the prima facie investigation stage of the dumping inquiry that:

> "The eventual decision under s.8 of the Anti-Dumping Act will require a determination of the export price and the likely export price of clinker and the normal value of clinker in Korea and whether an Australian industry has been injured by the export of that clinker at an export price that is substantially less than normal value."[694]

[693] *Merman Pty Ltd v Comptroller-General of Customs and Others* WAG 65 of 1988 (unreported).
[694] *Merman Pty Ltd v Comptroller-General of Customs and Others* WAG 65 of 1988 (unreported) at 40.

In the discussion of the possible injury to the Australian industry Lee J leaves the question of the adoption of a wider view of the likeness of the clinker and the final cement somewhat open saying:

> "Such injury to an industry will be related to sales of produced goods in a market. The third and fourth respondents produce clinker but do not market it as such. They market cement. The question for answer will be whether the production and sale of cement in those circumstances is the production of a like product ..."[695]

Although there has been no conclusive view by the Federal Court on the question of how far the concept of "like goods" extends, it is apparent that there has been a reasonably liberal interpretation of the term by the Court. There is no doubt that the term extends to similar use.

5.4.4.1.2 Comparable Price

Turning to another issue which also has general application in establishing a normal value, we will now consider the need for price comparability. This is a corner stone of normal value and dumping margin assessment.

This requirement is recognised in *GATT* Article VI.1, as noted above, and expanded upon in Article 2.4 of the *Anti-Dumping Code 1994* which states that:

> "A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made as nearly as possible at the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics and for the other differences which are also demonstrated to affect price comparability."[696]

[695] *Merman Pty Ltd v Comptroller-General of Customs and Others* WAG 65 of 1988 (unreported) at 40.
[696] The *Anti-Dumping Code 1994* expands on the due allowance provisions of the previous *Codes*, although it is consistent with their general content.

These adjustments to normal value are contained in section 269TAC(8) of the *Customs Act 1901*, which deals with situations where the normal value and the export price differ where they:

> "(a) relate to sales occurring at different times; or
>
> (b) are not in respect of identical goods; or
>
> (c) are modified in different ways by taxes or terms or circumstances of the sales to which they relate;"[697]

Each of these elements of the due allowance adjustment are considered below in a holistic way rather than under the specific legislative regime.

Provision for specification differences

Morling J in *Stainless Tube Mills*[698] considered the question of the application of due allowance under section 269TAC(8) of the Customs Act. The first question was concerned with the construction of the sub-section and whether an adjustment to the normal value could be made to allow for specification differences, as some of the grades of tube exported to Australia differed from those sold on the domestic market of the exporting country. Morling J affirmed the administering authority's approach of including an adjustment to the normal value for specification differences by concluding that:

> "Section 269TAC(8) provides for an adjustment where the price paid for like goods and the export price of the goods exported are not in respect of identical goods."[699]

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[697] Section 269TAC(8) was not amended to incorporate the expanded due allowance provisions of the *Anti-Dumping Code 1994*.

[698] *Stainless Tube Mills Pty Limited and others v Comptroller-General of Customs, the Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* Nos G209 of 1992 and G517 of 1992 (unreported).

[699] *Stainless Tube Mills Pty Limited and others v Comptroller-General of Customs, the Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* Nos G209 of 1992 and G517 of 1992 (unreported) at 13.

The Australian law as reflected in this decision would appear to be consistent in this respect with the general provisions of Article 2.6 of the *Anti-Dumping Code 1979* in allowing for differences affecting price comparability, and more specifically the revised provisions in Article 2.4 of the *Anti-Dumping Code 1994* which include allowance for differences in physical characteristics.

It is also relevant to note the comments of Burchett J in *GTE(Australia),*[700] where he was highly critical of the method used by the administering authority in the adjustment for specification differences. The adjustment had been based on an analysis of the differences in the prices of the exported product, "... and was entirely unsupported by any sales effected in the Belgium domestic market."[701] That is, it is the adjustment to the domestic price which is required for price comparability under s269TAC(8) of the *Customs Act 1901*.

A contentious area in the assessment of due allowance claims has been the inclusion of a profit mark-up on the difference in the cost of materials used in the production of the export product and the like product sold at a profit on the exporter's domestic market. The Anti-Dumping Authority addressed this issue in its report on *Stainless Steel Tubular Products*[702] listing a mark-up on the cost of feed stock as a due allowance. Although the adjustments for such an item are quite small, it is important that the mark-up reflects that generally attainable on the like goods produced by the exporter. A mark-up applying in a profitable domestic market would not be appropriate, as it would simply be an off-set to the dumping margin.

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Levels of trade

In the *GTE (Australia)*[703] the question of the level of trade arose as a major issue. The investigation involved many errors by Customs. One of these was the failure of the investigating officers to recognise the information upon which they were relying on for normal values, represented transfer prices of

[700]*GTE (Aust.) Pty. Ltd. v Brown* (1986) 14 FCR 309.
[701]*GTE (Aust.) Pty. Ltd. v Brown* (1986) 14 FCR 309 at 319.
[702]Anti-Dumping Authority Report No 65 - *Review of the Australian Customs Service Negative Preliminary Finding on Certain Stainless Steel Longitudinally Welded Tubular Products from Taiwan Province* March 1992.
[703]*GTE (Aust.) Pty. Ltd. v Brown* (1986) 14 FCR 309.

the product within the corporation. It was only later in the investigation process that the administering authority became aware of the need to consider the sales on the domestic market of the legal corporate entity to domestic customers. The corporation was making export sales to a related distribution company in Australia, which then on sold to wholesalers and department stores. On the domestic market the corporation engaged in its own distribution, selling to wholesalers and department stores directly. In this case there were different circumstances of domestic and export sale, or what is termed differing levels of trade in sales to the two markets.

To make the sales to these markets comparable, it is necessary to make an adjustment to the price to reflect the different levels of trade in the domestic and the export market. Burchett J in *GTE (Australia)*[704] commented on the types of adjustments which should have been made to the normal value to account for the level differences. These included:

> "...the sales staff maintained by GTE Brussels [for domestic distribution], the fact that GTE Brussels had to bear the cost of warehousing the goods, transporting them from Tienen and delivering them to customers, and other matters related to the level of the sales, ..."[705]

Morling J in *Stainless Tube Mills*[706] addressed the question of the failure by the administering authority to make an allowance for the allegedly different levels of trade in the sales used for normal value assessment in the domestic market of the exporting country to that applying to the export sales to Australia. The export sales to Australia involved both direct sales from the manufacturer and sales from trading houses which had purchased the products from the manufacturer, whereas the sales on the domestic market used for assessing the normal value were sales by the manufacturer to a distributor.

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[704]*GTE (Aust.) Pty. Ltd. v Brown* (1986) 14 FCR 309.
[705]*GTE (Aust.) Pty. Ltd. v Brown* (1986) 14 FCR 309 at 336.
[706]*Stainless Tube Mills Pty Limited and others v Comptroller-General of Customs, the Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* Nos G209 of 1992 and G517 of 1992 (unreported).

In dismissing the allegation of failure to make any adjustment for level of trade, Morling J was of the view that:

> "The sales relied upon to establish normal value were made by the manufacturer to a distributor. The sales relied upon to establish export value were sales made by the manufacturer and by Taiwanese trading houses to Australian distributors. The sales were thus at the same "level of trade". In the case of both domestic and export sales, the price paid was the price paid by the distributor."[707]

In reaching this decision Morling J agreed with the administrating authority's submission that:

> "there was no evidence that the existence of trading houses as "middle men" in relation to the sales made to Australian purchasers had the effect of raising the prices of those sales above the prices that would have been charged by the manufacturer if it had exported tube direct to Australia. ...that is it is by no means obvious or in the nature of things that the existence of "middle men" would have such an effect on price. For all that appears from the evidence, these might be commercial considerations that lead to the result that prices which the manufacturer charge on sales by it are not significantly different from prices which traders charge on sales by them. Thus traders may sell at the same prices as those charged by the manufacturer because they have greater marketing skills and hence lower selling costs.
>
> ...the fact that both the manufacturer and the trading houses were competing in sales to Australian distributors tends to suggest that prices paid in sales by the trading houses were not higher than the prices paid in the sale by the manufacturer. Otherwise, Australian buyers would have made purchases only from the manufacturer."[708]

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[707] *Stainless Tube Mills Pty Limited and others v Comptroller-General of Customs, the Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* Nos G209 of 1992 and G517 of 1992 (unreported) at 15.

[708] *Stainless Tube Mills Pty Limited and others v Comptroller-General of Customs, the Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* Nos G209 of 1992 and G517 of 1992 (unreported) at 15-16.

The factual finding in relation to the similarity in export prices in the sales to Australian distributors is hardly surprising, assuming there were a number Australian distributors who were competitive buyers. However, to then translate the behaviour on the export market as being indicative of hypothetically similar circumstances on the domestic market of the exporting country represents a leap in logic. The essence of the inquiry is to establish a comparable price to the export price in the country of export for goods destined for consumption in the exporting country.

The approach in section 269TAC(8) of the *Customs Act 1901* is consistent with Article 2.1 of the *Anti-Dumping Code 1979.*[709] The export price is accepted as a given, and adjustments are made to the domestic selling price so that the differences in the circumstances of the sales do not affect comparison with the export price. The reliance on sales to one distributor and the apparent absence of "middle men" in the domestic market are not addressed in the *Stainless Tube Mills.*[710] This raises questions about the efficiency of the "middle men" in competing in the domestic market, and the status of the domestic distributor.

It is unfortunate that the *Stainless Tube Mills*[711] raises more questions than it attempts to answer. As indicated by Morling J there might be commercial considerations which allow the "middle men" to exploit a niche in the market. That is, the "middle men" are able to acquire large volumes of product at a discount from the manufacturer and sell at a premium to smaller end-users. Their relative efficiency in marketing the end product to smaller users is the basis for their existence. It cannot be simply assumed that the manufacturer was equally efficient in distribution on the domestic market as the "middle men".

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[709]As referred to earlier, section 269TAC(8) was inserted by section 13 of *Act No 174* of 1989 in a structural amendment to the legislation and has not incorporated the more explicit provisions of Article 2.4 of the *Anti-Dumping Code 1994.*

[710]*Stainless Tube Mills Pty Limited and others v Comptroller-General of Customs, the Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* Nos G209 of 1992 and G517 of 1992 (unreported).

[711]*Stainless Tube Mills Pty Limited and others v Comptroller-General of Customs, the Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* Nos G209 of 1992 and G517 of 1992 (unreported).

Levels of price discounts

It may not always be appropriate to adjust for the level of trade. Indeed it is important to look at the reason for the apparent difference in the pricing of the exports and the sales on the domestic market. Davies J in *Kanthal Australia*[712], looked at the situation where:

> "...a domestic purchaser or purchasers fairly comparable to the importer cannot be identified or where, as in the present case, domestic prices are not calculated by reference to the level of but by reference to the quantity of sales."[713]

In these cases Davies J was of the view that it is necessary to have regard to the discount which would be given for an equivalent quantum of purchases from the exporter if these purchases had been made on the exporter's domestic market. He also indicated that where the level of discount related to the total of all purchases, including those other than the goods under reference, that this would be comparable to a similar quantum of exports. The price discount given to the comparable quantity of domestic sales would apply as a due allowance. Furthermore, Davies J said:

> "In brief, notwithstanding that the discounts in Sweden were primary quantity discounts, the Swedish prices were not adjusted by the Minister or the ACS for the purposes of dumping duty, by reference to the fact that the sales of the subject goods to Kanthal far exceeded the sales of such goods to another purchaser, whether Swedish or overseas."[714]

There was no guidance given as to how such hypothetical discounts could be established. However, Davies J pointed out that there was potential for double counting adjustments to normal values where price discounts are used, particularly in relation to the costs of holding stock and selling expenses.

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[712]*Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987.
[713]*Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987 at 14.
[714]*Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987 at 14.

The disappointing feature of the decision of Davies J was the implication that you should always adjust the normal value to reflect price list changes, but not necessarily the appropriate level of discount structure. In his judgement Davies J. says:

> "Having determined the appropriate level of discount, the Minister ought to have given a direction ... as to it and that adjustment together with any other adjustments directed ought to have been applied to Gunnebo's price list from time to time."[715]

The interpretation of a certain inflexibility of price discounts may be a little too literal. However, it is important to stress the need to ensure that the normal value is applicable to the time of the sale for export. Otherwise it is not possible to make a proper comparison between the export price and the normal value to establish the dumping margin.

Date for comparison and currency conversion

The date for the comparison of the export price and the normal value is the date of the relevant export transaction. The question of the relevant time for comparison of the normal value with the export price was addressed by Davies J in *Kanthal Australia*.[716] He summarises the position with respect to the revision of normal values as follows:

> "ACS and the Minister had no power to fix normal value in this way. Normal value as calculated under [the then equivalent provisions] sub-ss.5(1) and 5(5) is based upon the price in the country of export. Whenever the price alters, so does the normal value. Section 5 does not give the Minister the power to fix normal value for the purposes of the Act, it empowers him under sub-s5(5) to give directions as to any adjustments that ought appropriately to be made to the price in the

[715] *Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987 at 12.
[716] *Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987.

> country of export. ... But they must be given effect by being applied to the price which the exporter receives from time to time on sales in the country of export. Whenever the exporter changes his domestic price, the normal value should be recalculated."[717]

This position was also taken by Lee J in *Merman*[718] where he said that:

> "The fair comparison between the normal value of the exported goods and the export price of those goods will require a comparison to be made as at the date of each export. Furthermore, it will require a conversion of the price from Korean currency to be calculated according to the appropriate exchange rate operating in respect of those currencies at the date of export..."[719]

Milthorp P (1993) in an article on the new scheme for the collection of dumping and countervailing duty, asserted that:

> "... the observations of Davies J. [above] are now subject to the express power of the Minister to collect interim duty according to the values last fixed or "ascertained". This may evidence a Parliamentary intention to overrule the view of Davies J. and the obligation to constantly vary the normal value if the appropriate domestic price alters"

If Milthorp was correct about "overruling" and the introduction of price rigidity into normal value determination, there would be cause for concern with both the separation of powers and measurement of the dumping margin. Fortunately neither situation is true, with the apparent confusion coming from the introduction of provisions for the initial application of an interim duty followed by an ex-post periodic review.

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[717] *Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987 at 11.
[718] *Merman Pty Ltd v Comptroller-General of Customs and Others* WAG 65 of 1988 (unreported).
[719] *Merman Pty Ltd v Comptroller-General of Customs and Others* WAG 65 of 1988 (unreported) at 46.

The situation is clearly that the date of the export transaction is the relevant date for comparing the export price and the normal value. To deviate from this standard would create considerable uncertainty in the goods market.

The question of the appropriate exchange rate to use for the comparison of export price and normal value has been the subject of an application for review by the Federal Court. As it is always necessary to convert either the export price and normal value, or both, to Australian dollars, consistent with the view of Lee J above on the relevant date for export price and normal value comparison, the export transaction date is also the appropriate date for the exchange rate conversion. Hill J also formed this view in *Powerlift (Nissan)*[720], where the administering authority had departed from this practice in the calculation of an export price was based on the first arm's length transaction in Australia.

It is useful to refer to the judgement of Hill J and to his reference to the provisions of the *Customs Act 1901* which were as follows:

> "Each of the "normal value" and the "export price" of goods, if...expressed in foreign currency, must be converted to an "equivalent amount" in Australian currency: s269T(2A). Section 269TAH(1) of the Customs Act then provides for currency conversions to be made "in accordance with a fair rate of exchange at the appropriate date".
>
> There is no definition of the "appropriate date". What that date is must, therefore, be determined by reference to the context of the legislation."
> ...
>
> "There can be no doubt that where currency rates are volatile, the use of different conversion dates for the calculation of "normal value" and "export price" of goods would involve either an error of law or, alternatively unreasonableness. It would create what the applicants referred to as a new form of dumping, "exchange rate dumping"; the

[720] *Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992).

> creation of a difference, expressed in Australian dollars, between export price and normal value dependent totally upon exchange rate fluctuations..
>
> "However the [export price] calculation is made, it will be an attempt to construct, so far as possible, an arm's length price between the importer and the exporter at the time of the actual export transaction. Logically therefore, whether the calculation is made under s269TAB(1)(a) or some other section, such as s269TAB(1)(c), if the figure arrived at is expressed in foreign currency, the appropriate date for conversion will be the date of the export transaction."[721]

This judgement is consistent with the treatment of sale of goods transactions in the Australian and International accounting standards ASRB 1012 (AAS 20 Part A paragraph 48) and IAS 21, respectively. In relation to the purchase and sale of goods, however, it did not address the question of specific hedge transactions up to the date of purchase or sale . By taking the date of transaction as the benchmark for the comparison of the normal value and export price of the goods covered by the export transaction, the effects of any exchange rate hedging are excluded.

However, in almost all export transactions there are terms extending the time for payment beyond the transactions date, and subsequent currency gains and losses are excluded from the cost of the inventory. The exception relates to the cost of a specific hedge transaction, which is included when a specific forward exchange rate hedge is used.[722] Therefore market "spot rates" at the transaction date for an equivalent trade purchase or specific forward exchange hedge rates are used for converting both the export price (where necessary) and the normal value to Australian dollars.

Following the case law as arising from applications to the Federal Court and the coming into effect of the Australian accounting provisions, the *Anti-*

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[721] *Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992) at 46.

[722] ASRB 1012 allows for the inclusion of the cost of a specific hedge transaction in the purchase price. Irvine (1996) pp 381-382.

Dumping Code 1994 addressed the question of exchange rate conversion directly. Article 2.4.1 of the *Anti-Dumping Code 1994* now provides some guidance on the question of currency conversion stating that:

> "When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange at the date of sale,[723] provided that when the sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. ..."

Section 269TAF(1) and (2) incorporates these provisions relating to the date of currency conversion and the use of forward exchange rates, although there is some ambiguity as to the specificity of the hedge and no reference is made to either the Australian or international accounting standards.

A situation which sometimes occurs and can be confusing to a practitioner, is where the export transaction relating to the goods appears to reflect a foreign currency amount, but in fact quotes a fixed rate of exchange. This is not a foreign currency transaction, as it is effectively in Australian dollars. In these cases it is only the normal value which would need to be converted at the market "spot rate". In this example it is the exporter who is taking the currency risk, and the comparison with the normal value is treated no differently than where the export transaction is expressed directly in Australian dollars.

Article 2.4.1 of the *Anti-Dumping Code 1994* also recognises that short-term fluctuations in exchange rates should not attract anti-dumping penalties. It says that:

> "Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation."[724]

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[723]Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

[724]Sections 269TAF(3) to (8) of the *Customs Act 1901* inserted by section 13 of *No 150 of 1994* and section 13 of *No 174 of 1989* reflect these provisions.

The exclusion of the effects of short-term fluctuations in the exchange rate will help overcome the problem of the inflexibility in inventory costing systems of manufacturers.

5.4.4.2 Where the Exporter's Domestic Price cannot be ascertained

Article 2.2 of the *Anti-Dumping Code 1994* provides for alternative methods of ascertaining normal value, where:

> "When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country[725], such sales do not permit a proper comparison, ..."

This is taken into the domestic legislation in section 269TAC(2) of the *Customs Act 1901* in a slightly different form, allowing the administering authority to adopt a prescribed alternative method than the exporter's domestic price for normal value determination, where the administering authority is satisfied that:

> "(a) ...
>
> (i) by reason of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for determining a price under subsection (1) : or
>
> > (ii) by because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);...; or
>
> (b) ..., in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are

[725]Footnote 2 to the *Anti-Dumping Code 1994* indicates that sale are of sufficient quantity for the determination of normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member.

> arms length transactions by the exporter, ..." [and it is not practical to obtain relevant sales by other sellers of like goods].

The pre-conditions for a move away from domestic market sales for normal value determination have been the subject of consideration by the Federal Court on a number of occasions, as the method of normal value assessment can be crucial to the establishment of the level of the dumping margin. The first point to note is the comment by Hill J, in *Hyster Australia*[726], that:

> "Sales other than in the ordinary course of trade fall within s269TAC(2)(a)(i)".[727]

The conditions for taking transactions "not to have been paid in ordinary course of trade. " are now in section 269TAAD of the *Customs Act 1901*.[728]

5.4.4.2.1 Ordinary Course of Trade

The *GATT 1947* does not define what is meant by the term "ordinary course of trade". The first real recognition of the application of this concept in the Australian context was in a discussion paper issued by the then Commonwealth Department of Industry and Commerce (1983). The interpretation by the Department, which administered the anti-dumping legislation, was to exclude sales in the domestic market of the exporting country made at a loss. This policy was said to be in line with the opinion of "...certain signatories to the Anti-Dumping *Code*,...". This was said to mean "... that domestic selling prices should recover average unit costs (fixed and variable) over a reasonable period of trading if such sales are to be regarded as a proper basis for normal value assessment within the meaning of the *Code*."[729]

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[726]*Hyster Australia Pty Ltd & Anor v The Anti-Dumping Authority & Ors* No NG 476 Fed Ct 20 March 1992 (unreported).
[727]*Hyster Australia Pty Ltd & Anor v The Anti-Dumping Authority & Ors* No NG 476 Fed Ct 20 March 1992 (unreported) at 34.
[728]Section 269TAAD was inserted by *Act No 150 of 1994*, with similar provisions previously included in section 269TAC(12).
[729]Department of Industry and Commerce (1983) p 6.

The practice of finding dumping where a foreign exporter sells over an extended period at prices below total average cost was incorporated into the United States anti-dumping law by the *Trade Act of 1974*.[730]

This question was again addressed in the Gruen Report (1986), which focussed on the impediments to competition resulting from the administration of Australian Anti-Dumping laws. However, the government rejected the Gruen recommendation to repeal the legal basis for considering sales at a loss not being in the ordinary course of trade. The government took the opportunity to re-affirm its retention of the domestic legal provisions on the basis that:

"...similar provisions operated in the US., Canada and the EC and it is not prepared to provide Australian industry with a lesser safeguard against unfair competition than that provided by these other countries".[731]

An interesting observation is made by Vermulst (1993) in a discussion of the *GATT* system and the application of cost recovery criteria in the United States. He says that:

> "Second the treatment of sales at below cost in anti-dumping law is completely different from and much more irrational than its handling under domestic competition laws. In the United States, for example, the Commerce Department looks at fully allocated cost in an anti-dumping case, while in an anti-trust case, the relevant standard is pricing below average variable cost - a far lower threshold".[732]

This issue goes to the core of the question of determination of ordinary course of trade. However, the relevant cost criteria has not been tested in Australia, leaving the administering authority open to a similar charge to that of the United States Commerce Department. There is not doubt that the recovery of average variable cost in the short-term is sufficient to retain competitive

[730]Baldwin and Moore (1991) p 256.
[731]Button (1988).
[732]Vermulst (1993); Hindley (1991) expresses a similar view stating that the relevant test should be below average variable cost.

viability, in contrast to the long-term where it is not. Should anti-dumping remedies provide relief sufficient to allow capital maintenance or expansion?

Article 2.2.1 of the *Anti-Dumping Code 1994* now includes considerable detail on the requirements for deeming sales "not to be in the ordinary course of trade". To be in the ordinary course of trade sales prices are to cover "...(fixed and variable) costs of production plus administration, selling and general costs." Sales at a loss may be disregarded in determining normal value where they "...are made within an extended period of time and in substantial quantities...". "The extended period of time should normally be one year, but shall in no case be less than six months".[733] Sales below unit cost are determined by comparison with the weighted average selling price and the weighted average unit cost, or where not less than 20 per cent of the volume of sales are below unit cost.[734]

Article 2.2.1.1 of the *Anti-Dumping Code 1994* suggests that cost allocation be based on those historically utilised by the exporter or producer, particularly in relation to amortisation and depreciation periods and allowances for capital expenditures and other development costs.[735] Article 2.2.2 indicates that costs should be based on actual amounts incurred and realised pertaining to production and sales within the domestic market of the country of origin of the same general category of products by the exporter or producer, or the weighted average amounts of other exporters or producers.

These provisions make it quite clear that it is full cost recovery which is the standard, and that recovery is normally to be assessed over a period of one year. That is, fluctuations in prices are of no consequence for normal value determination, provided that the weighted average of price exceeds that of cost, so as to be profitable over a one year period.

The domestic provisions relating to ordinary course of trade are contained in section 269TAAD of the *Customs Act 1901*. These provisions allow the

[733]Footnote 4 of the *Anti-Dumping Code 1994*.
[734]Footnote 5 of the *Anti-Dumping Code 1994*.
[735]Footnote 6 of the *Anti-Dumping Code 1994* draws particular attention to the costs associated with the starting-up of operations.

administering authority to deem sales at a loss which cannot be recovered over a reasonable period of time, as not being in the ordinary course of trade. Two issues arise in this provision. The method of determining whether sales are at a loss and the question of a reasonable period of time are not defined.

Apart from relying on the revisions of the *Anti-Dumping Code 1994*, it is useful to see how the concept of 'ordinary course of trade' has been applied in Australia. In the case of the period of time for acceptance of sales at a loss , the Anti-Dumping Authority in its *Inquiry into Material Injury, Profit in Normal Values and Extended Period of Time,*[736] lists a number of seasonal scenarios and a case of sales made while in bankruptcy (not liquidation). The concept of a "going concern" is not considered. It is also apparent that the Anti-Dumping Authority thought that the ordinary course of trade provision "... should be so interpreted as to allow ordinary trade and to catch unusual or extraordinary practice.".[737] It would appear that this interpretation led to a number of the Anti-Dumping Authority's conclusions on what was to be considered as in the ordinary course of trade.

The seasonal scenarios do not give any consideration to the relevant accounting period. Failure to look at the problem within the context of an accounting framework makes the application of the supporting propositions extremely difficult. A more practical approach would be to say that where there are losses on the sale of the product over a period up to or in excess of a year by an economic entity, then those sales should be rejected for normal value determination as they were not in the ordinary course of trade. Applying this approach to seasonal sales would at least discourage reckless pricing practices by northern hemisphere countries, without creation of the uncertainty inherent in a case by case approach.

Looked at from a practical business standpoint, the non-acceptance of sales at a loss could be regarded as unfair by foreign producers on two grounds. Firstly, it disregards selling at prices below average total cost but above average variable cost during a recession. Secondly, it does not allow for the high start-

[736]Anti-Dumping Authority Report No 4 *Inquiry into Material Injury, Profit in normal values and extended Period of Time* March 1989.
[737]Anti-Dumping Authority Report No 4 *Inquiry into Material Injury, Profit in normal values and extended Period of Time* March 1989 p 21.

up costs and strong learning curve effects of new producers in an industry.[738] The later point as noted above is now recognised by the *Anti-Dumping Code 1994*, which makes special mention of start-up costs, with the costs at the end of the start-up period, or the most recent costs forming the basis for assessment.[739]

It is also relevant to look at the decision of Beaumont J in *McDowell*[740], in which he said "that sales at a loss, without more, are not necessarily outside the ordinary course of trade, but if such are persisted in they may indicate the existence of an ulterior object thought to be achieved, which is sufficient to take the transactions outside the ordinary course".[741] The reference to ulterior object in the decision has been criticised by Bierwagen (1990) as being neither consistent with the *GATT 1947* or the Australian legislation.[742] Thurow (1992) in discussing the coming economic battle among Japan, Europe and America appears to argue the alternative, as a number of case studies which he cites show that there are dynamic factors within the control of foreign corporations and governments which would be likely to result in persistent sales at a loss.[743]

However, you may ask whether it is realistic to look at the concept of the ordinary course of trade in an overly legalistic way, when the law is putting into effect a publicly negotiated international agreement on the method of implementing fair trading practices among nation states based on a common core of economic principles. Morita (1993), the Chairman of Sony, in discussing a possible recipe for harmonising the world trading systems and anti-dumping laws, suggests an ombudsman type system which could give quick, fair, objective rulings. In coming to this conclusion, he refers to structural, legal and accounting differences between the Japanese business system and others as adding to the confusion. He also suggests that new harmonised anti-dumping laws are needed to take better account of the many complexities of product pricing in domestic and foreign markets.

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[738]Baldwin and Moore (1991) p 256.
[739]Footnote 6 to the *Anti-Dumping Code 1994.*
[740]*McDowell & Partners Pty Ltd & Another v Button and Another* 79 FLR 166; (1983) 50 ALR 647.
[741]*McDowell & Partners Pty Ltd & Another v Button and Another* (1983) 50 ALR 647 at 661-662.
[742]Bierwagen (1990) p 83.
[743]Thurow (1992) pp 129-133.

Even with a revision of the rules relating to dumping, the fundamental differences in the operational environment of Japan and the other industrialised countries would still be a source of trade friction. In particular, according to Morita (1993), the acceptance of "razor-thin profit margins" that Western competitors find intolerable. This feature of Japanese business is contrasted by Thurow (1992) with the American environment where "Income-seeking shareholders want to maximise the number bidders for their shares so that they can, when they want, sell out for the highest possible price".[744] These fundamental cultural differences are reflected in the strategic trade considerations of the trading states. These strategic trade considerations are at the core of the issues inherent in the application of the public law as represented in the *GATT* and its domestic implementation.

Returning to the decision of Beaumont J and the phrase "ulterior objective", this has some meaning when a strategic approach to the analysis of the case for the implementation of provisions to deal with sales at a loss is taken. Amongst other things, it is necessary to look at the business environment of trade competitors in order to establish a fair trading position. The acceptance of an international trading environment where sales at a loss may be normal behaviour by one of the major trading competitors would be adverse to the development (in its widest sense) of industry in the other competing countries where such behaviour is not tolerated by the market. The relatively simple rule of excluding sales at a loss over one year, tends to offset the competitive advantage of those who adopt the practice of selling at a loss in both domestic and external markets.

5.4.4.2.2 Situations where sales are unsuitable

The second limb of section 269TAC(2)(a) of the *Customs Act 1901*, allows the administering authority to adopt other than the price in the domestic market of

[744]Thurow (1992) p 131.

the exporting country for the determination of normal value, in situations where the sales are unsuitable.

There have been two recent cases dealing with situations in the relevant market where the sales were alleged to be unsuitable. These were in *Enichem Anic*[745] and *Hyster Australia*[746], and both deal with the suitability of the domestic market in the country of export where it was claimed that there was an existing monopoly (or oligopoly) inflating the domestic price. In the later case Hill J cites an example of a circumstance where arms length sales might be found to be unsuitable, which he gave in the full court judgement in *Enichem Anic*, such that there is:

> "some factor which so distorts the market that arms length transactions made in the ordinary course of trade are rendered unsuitable to give the true normal value in the country of export."[747]

Clearly the question at issue was one of degree, with Hill J in the later case supporting the conclusion of the Anti-Dumping Authority that imperfect market conditions are of themselves insufficient grounds to ignore domestic prices.

In coming to this conclusion Hill J makes a number of interesting observations. Firstly, the Australian legislation treats the cause of dumping as a matter of little significance. Although he does not refer to the *Anti-Dumping Code*, it is also silent on this point. Secondly, the Anti-Dumping Authority's assertion that the existence of some degree of monopoly or oligopoly power in the country of export or in some third country was necessary for an exporter to have any incentive to engage in price differentiation between domestic and export sales, was not accepted by the Court. The Anti-Dumping Authority had supported its case by reference to the possibility of arbitrage in a competitive market negating the discriminatory pricing between the domestic and export market, whereas arbitrage may be limited in an imperfect market. The Anti-Dumping Authority supported its thesis by reference to the writings of a number of economists on the scope and purpose

[745] *Enichem Anic SRL & Anor v Anti-Dumping Authority & Anor* (Full Federal Court, 30 November 1992).
[746] *Hyster Australia Pty Ltd & Anor v The Anti-Dumping Authority & Ors* No NG 476 Fed Ct 20 March 1992 (unreported).
[747] *Hyster Australia Pty Ltd & Anor v The Anti-Dumping Authority & Ors* No NG 476 Fed Ct 20 March 1992 (unreported) at 27.

of anti-dumping measures in international law.[748] These economists confined their discussion to the likelihood of price discrimination, when there is a monopolistic situation in the country of export. Hill J concluded that:

> "It is not suggested that what was said in these articles led to the *Anti-Dumping Code* in the *GATT Treaty*, or that these articles in some way set out the mischief which was taken into account by the legislature when enacting anti-dumping legislation in Australia."[749]

Following from these observations of Hill J, it would be reasonable to conclude that the reasons for the price discrimination could be numerous given the variation in possible fact situations, and were in any case irrelevant to the application of the Australian anti-dumping law. This is a particularly narrow interpretation of the relevance of extrinsic material, when used in the context of expert opinion with Viner being one of the original economists involved in the analysis of the developing anti-dumping law in the *ITO/GATT* negotiations.

5.4.4.2.3 Export price to third country and constructed normal value

Article VI.I of the *GATT 1947*, as outlined in the discussion of the legal framework above, allows for two alternative methods to be used where the sales in the exporting country cannot be used, either through the absence of sales which are suitable or where the sales are not in the ordinary course of trade. These are the export price to a third country and the full cost of production. Section 269TAC(2) of the *Customs Act 1901* reflects the *GATT* provisions.

The administering authority may direct that the normal value be based upon the price for like goods sold in the ordinary course of trade and at arm's length for export to a third country. This provision is less punitive than the *GATT 1947*, as the latter resorts to the use of the highest comparable price for export to a third country. It accords with the concept of a comparable export price to

[748]Deardorff (1990) Chapter 2; Bierwagen (1990) Chapter II; Beseler and Williams (1986) pp 41-41; Wares (1977) Chapter 1; and Viner (1966) pp 347-348.
[749]*Hyster Australia Pty Ltd & Anor v The Anti-Dumping Authority & Ors* No NG 476 Fed Ct 20 March 1992 (unreported) at 32.

an appropriate third country as provided for in Article 2.2 of the *Anti-Dumping Code 1995*. This provision is rarely used as the circumstances are rare where there is an absence of like sales in the country of export. Further the ordinary course of trade conditions apply to these sales, a condition requiring the determination of the full cost of production to be ascertained in the country of export.

The most common alternative is the constructed normal value based on the cost of production in the country of export and the ordinary delivery cost and other cost necessarily incurred in a hypothetical sale in the country of export. This methodology has never been tested by the Court, however, cost construction is not an easy concept to apply, particularly, where there is a need to consider the attribution of overhead costs. Without exploring this area in detail, it is sufficient to say that there are a range of approaches to product costing. For example, marginal costing can be used for short-term profit maximisation, full costing for long term asset utilisation, discounted cash for investment proposals, reciprocal costing for interdependent activities and linear programming models for solving joint production optimisation.[750] There is little evidence to support the full cost attribution model.[751] The full-cost attribution model would appear to be that contemplated in the anti-dumping law. The measurement of full-cost attribution becomes even more problematical the greater the contribution of overheads inherent in modern production processes.[752] The main concern in Australia appears to be with the inclusion of profit in the constructed normal value.

5.4.4.2.4 Constructed normal value - conditions for inclusion of a profit

[750]Kaplan (1989).
[751]Scapens (1989).
[752]One of the problems is deciding whether the generally accepted accounting principles applicable in the country of export are of sufficient standing to provide a sound basis for normal value assessment. In *Camargo Correa Metais S.A. v U.S.*, No. 91-09-163 (Slip Op. 93-163), 13 August 1993, the Court of International Trade held that the United States Commerce Department's International Trade Administration was not required to use the generally accepted accounting principles applicable in the home market of the exporter, if the administration was not satisfied that the principles of the country would not reasonably reflect all the costs of production. This approach is still permissible under the *Anti-Dumping Code 1994*, as Article 2.2.1.1 directs that costs shall normally be calculated ...in accordance with the generally accepted accounting principles of the exporting country...".

Article 2.4 of the *Anti-Dumping Code 1979* was less limiting on the level of profit to be included in the constructed normal value than Australian domestic law, simply saying that:

> "As a general rule, the addition of profit shall not exceed the profit normally on sales of the product of the same general category in the domestic market of the country of origin."

This provision has been omitted in the revised *Anti-Dumping Code 1994.*

The inclusion and the quantum of profit in a constructed normal value are both contentious issues in the Australian arena. The position taken by the Anti-Dumping Authority in its report on the *Inquiry into Material Injury, Profit in Normal Value and Extended Period of Time*[753] and in its advice to the Minister responsible for the administration of the legislation, was that a profit should only be included in a constructed normal value, "...where there are no sales of the like goods in the country of export, or where the sales in the country of export are in the ordinary course of trade".[754] The reason given for the exclusion of a profit when there were sales at a loss was that:

> "If the selling price which includes a zero profit can be accepted as the normal value..., it does not make sense to include a profit greater than zero when constructing a normal value..." [where there are sales at a loss on the domestic market].[755]

The Anti-Dumping Authority in reaching this conclusion adopted a static approach to their analysis. There is no consideration of the general economic conditions of the exporter's domestic market, and the effect on the relevant segment of the exporter's business. There was no reference to the Australian accounting standard AAS 16 and its international counterpart IAS 14, which provide guidance on the use of this information to assess the profits of the relevant segment of the exporter's business. By using industry information and by carefully analysing the relevant segments of the exporter's business,

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[753]Anti-Dumping Authority Report No 4 *Inquiry into Material Injury, Profit in Normal Value and Extended Period of Time* March 1989.
[754]Anti-Dumping Authority Report No 4 *Inquiry into Material Injury, Profit in Normal Value and Extended Period of Time* March 1989 p 42.
[755]Anti-Dumping Authority Report No 4 *Inquiry into Material Injury, Profit in Normal Value and Extended Period of Time* March 1989 p 29.

the circumstances for the sales at a loss are likely to become apparent. For example, where there have been long term losses, were these financed from market borrowing or cross-subsidisation from other products? It would be difficult to reason that a zero profit should be applied where the exporter was cross-subsidising the domestic product, as this would imply that the domestic industry in the importing country would be forced to also cross-subsidise or borrow to meet the capital servicing costs. Such an outcome, all other things equal, does little for rational resource distribution.

As has been discussed earlier, the resulting provisions in section 269TAAD of the *Customs Act 1901* are prescriptive, where the Minister is required to be satisfied that it is likely that the seller will not be able to fully recover costs within a reasonable period of time. The Anti-Dumping Authority in its report on the *Inquiry into Material Injury, Profit in Normal Value and Extended Period of Time*[756] reviewed both the period of time over which losses were to be tolerated before moving away from domestic selling prices as the basis for normal value determination, and the question of the inclusion of a level of profit in a constructed normal value determination. As a result it recommended to the Minister that a profit margin should not be included in a constructed normal value, where there are sales at a loss by the manufacturer in the domestic market over a period generally in excess of 12 months.[757] This was subsequently endorsed by the Minister.

Although, as the Anti-Dumping Authority points out, the resort to the constructed cost approach in Australia has been infrequent at about 10% of normal value determinations, the issue is of considerable concern to Australian industry as reflected in the number and length of submissions on this topic. There is no analysis of the types of products within the cost construction group or of the competitive environment of the industries affected. As has been mentioned, the Anti-Dumping Authority resorted to a static analysis of hypothetical situations in supporting its advice to the Minister. Apart from the lack of a factual context, the problem with the static analytical approach is that it fails to deal with the way in which competitive advantage is generated.

[756]Anti-Dumping Authority Report No 4 *Inquiry into Material Injury, Profit in Normal Value and Extended Period of Time* March 1989.
[757]The Anti-Dumping Authority was of the view that in only rare circumstances would sales at a loss over a period of less than one year be not in the ordinary course of trade.

Hill J in *Powerlift (Nissan)*[758] dealt with the conditions relating to the inclusion of profit in the calculation of normal value under section 269TAC(2)(c) of the *Customs Act 1901*. He was of the view that:

> "Prima facie, the language of TAC(2)(c) suggests that consideration should be directed only at the level of the manufacturer and not at the level of the dealer, for it is the manufacturer's costs of production which are used as the starting point. No actual sale is thereafter to be looked at. Rather, there is to be assumed a hypothetical sale in the ordinary course of trade in the country of export, so that the profit margin on that sale is to be calculated."[759]

However, the inclusion of profit is not appropriate where the sales on the domestic market of the exporting country were found not to be in the ordinary course of trade under section 269TAC(12)[760], as section 269TAC(13) specifically excludes the addition of profit in these circumstances. Hill J comments that:

> "...where both TAC(12) and TAC(2)(a) lead to a determination of normal value, TAC(2) is to be read subject to the remainder of TAC, including TAC(12) and (13), so that if TAC(12) is literally satisfied, that section requires the Minister to determine normal value under TAC(2), with the consequence that TAC(13) will always have application."[761]

It could be argued that s269TAC(13) provides for the exporter producing the like goods at a loss, to be able to offset some of that loss by selling into the export market, and therefore continuing to cause dumping injury to its competitors in the importing country.

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[758]*Powerlift (Nissan) Pty Ltd & Anor v Minister for Small Business, Construction and Customs & Ors* No NG 527 of 1992 (unreported).
[759]*Powerlift (Nissan) Pty Ltd & Anor v Minister for Small Business, Construction and Customs & Ors* No NG 527 of 1992 (unreported) at 41.
[760]Now inserted as section 269TAAD of the *Customs Act 1901* by *Act No 150 of 1994*.
[761]*Powerlift (Nissan) Pty Ltd & Anor v Minister for Small Business, Construction and Customs & Ors* No NG 527 of 1992 (unreported) at 41.

The real issue from a long-term policy perspective is whether the normal value is at a sufficient level to service the capital employed in the production process. The capital may take the form of either borrowing or equity capital and is part of the cost of the products. The cost of servicing equity is a traditional point of departure between the economists and the accounts, with the former wishing to recognise the opportunity cost of the funds employed. The opportunity cost of capital is an issue which has not surfaced in the debate in Australia. If the economic approach was taken, then the question of the level of profit relates to the issue of economic rather than accounting profits. The distiction between these two approaches was not helped by the confusion generated by the Anti-Dumping Authority's comments on the report by Gruen (1986) into Australia's Anti-Dumping Legislation as illustrated by the following excerpt from Anti-Dumping Authority report on the *Inquiry into Material Injury, Profit in Normal Value and Extended Period of Time*:

> "...Gruen was of the view that a profit should not be included when constructing normal values. It appears that Professor Gruen thought there was a tendency in constructing normal values to over-estimate the various components and, presumably, believed that not adding in a profit would help offset this tendency."[762]

The question is surely directed at the inclusion of economic rent, which cannot be justified on economic grounds where temporary assistance is being sought against import competition. The question of the level of assistance becomes a contextual one, which is well illustrated by the contribution of Sekiguchi and Horiuchi (1988) on adjustment assistance discussed earlier in this thesis.[763]

An example of this continuing debate about the accounting rules, is the strong criticism levied by some academics and practitioners[764] of the United States practice of using a statutory 8 percent profit and 10 percent overhead margins in the calculation of constructed values. They are also concerned with the administrative limits placed on indirect selling expenses in the calculation of fair values.

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[762]Anti-Dumping Authority Report No 4 *Inquiry into Material Injury, Profit in Normal Value and Extended Period of Time* March 1989 p 32.
[763]see Chapter 2 The Economic Context - further refinements of the classical approach.
[764]Boltuck and Litan p 14.

An example of the difficulties in the estimation of overhead expenses is the inclusion of research and development expenses in the constructed cost. The inclusion of these expenses is criticised by Murray (1991)[765] on the basis that forward pricing will have little connection with the costs constructed using normal accounting standards. There is no doubt that there are difficulties in amortising research and development costs and, in particular, the allocation of research expenditure to individual product costs. Murray (1991), however, provides no evidence to support the assertion of the lack of relevance of international accounting standards.

The allocation problem can be reduced where the economic entity applies International Accounting Standard 9 covering research and development. This will ensure that research and development costs incurred are amortised to the extent that future benefits derived from those costs are expected.[766] Where the economic entity has not adopted such a practice, uncertainty in the full cost allocation is increased. However, the Murray (1991) argument is based not upon the economic utility or disutility of the practice of full cost attribution, but simply advocates the substitution of a higher dumping threshold based on average variable cost. Murray's conclusion is that this latter test may also be unduly influenced by the allocation of the variable general selling and administration costs. Therefore she is arguing for a new standard based on the relevant degree of difficulty in calculation. This does not advance the analysis of the constructive cost basis.

5.4.4.2.5 Centrally planned economies

The previous methods of determining normal value are considered inappropriate for economies which are centrally planned and where price is not determined in the context of a domestic market for goods. In the note 2 to paragraph 1 of Article VI of the *GATT 1994* it is explained that:

[765]Murray p 48

[766]International Accounting Standard 9 requires that the benefits will accrue beyond reasonable doubt, therefore limiting the extent that amortisation can be used to reflect future cost allocations

> "It is recognised that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining the price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate."

Article 2.7 of the *Anti-Dumping Code 1994* entrenches this provision.

Provision is made in section 269TAC(4) of the *Customs Act 1901* for the recognition of these circumstances. The *Act* goes on to provide for the normal value to be determined by reference to an appropriate and reasonable application of the normal value methods of determination in another country. Garnaut (1989) commented on the application of these provisions in a case concerning an investigation of alleged dumping from the Peoples Republic of China:

> "The greatest arbitrariness arises in relation to China. Under the *GATT Code*, importing countries are permitted to judge whether exports from a centrally planned economy are dumped by comparing export prices with costs of production, not in the centrally planned economy itself but in a third country.
>
> Australian producers competing with imports from China are allowed to make their case by presenting data from economies with cost structures which bear no relation to those from China. While recent developments have introduced consultations with China on choice of third country, there is still a problem with the approach. The three most recent cases against China used comparisons with costs in The Republic of Korea, Malaysia and Argentina respectively."[767]

The relative proportion of trade subject to market versus command control is changing in the Chinese economy as China prepares for full membership of the

[767]Garnaut (1989) pp 212-214.

GATT. In March 1993 more than 80 per cent of the categories of goods traded in China had been market priced. This coincides with the relaxation of price controls as part of the move towards a market economy.[768]

An example of the extent of the move towards a market based economy is the 1992 court action by the regional Shenzhen Government to stop the listed Sino-foreign stock of Shenzhen Champaign Industrial Co Ltd being traded on the Shenzhen Stock Exchange. The Guangdong Court of Economic Appeal ruled that the trade in shares was a matter for the company and its shareholders.[769] The outcome of this case is further evidence of the move towards a market based economy, with the legitimisation of commercial transactions involving the company as an economic entity and its owners as shareholders, a basic premise of the Western commercial system.

However, the use of surrogate countries for setting normal values for China has continued. In the dumping case on *Access floor panels from China*[770], the Authority chose South Africa as a third country for normal value determination. This followed the inquiry into the dumping of *Fibreglass insect screening from China*[771], where the Authority used the domestic price in Australia as the basis for the normal value, on the grounds that there was no other information available.

The treatment of China as a centrally planned economy, which has been the subject of considerable deliberation since the mid-1980's, should be contrasted with that accorded to the Czech and Slovak Federal Republic. The Department of Foreign Affairs and Trade advised Customs in favour of adopting a free market approach in the dumping case on *Multi-tyred rollers from the Czech and Slovak Federal Republic*[772], which was subsequently reflected in Customs decision that: "the criteria of paragraphs 269TAC(4)(a) and (b) were no longer

[768]Wang (1995) p 9 refers to the report of Xinkui Wang (1993) p 9 on the preparation of the Chinese economic system for returning to *GATT*.
[769]Referred to in Guiguo Wang (1995) p 27 Case No 18 of 1993 (unreported).
[770]Anti-Dumping Authority Report No 147 *Dumping of access floor panels from China* 1995.
[771]Anti-Dumping Authority Report No 111 *Review of the Australian Customs Service negative preliminary finding on fibreglass insect screening from the People's Republic of China* October 1993.
[772]Anti-Dumping Authority Report No 92 *Review of the Australian Customs Service negative preliminary finding on certain self-propelled, multi-tyred rollers from the Czech and Slovak Federal Republic* February 1993.

met in the case of CSFR."[773] The Authority in agreeing with Customs also considered a report by the United Nations Development Program Trade Expansion Program, a report by the General Agreement on Tariffs and Trade Committee on Balance of Payments Restrictions and data from the then Czechoslovak Chamber of Commerce and Industry, and concluded that: "...the Government of CSFR has begun a major program of economic reform, including the liberalisation of prices and foreign trade."[774] The question is how different are developments in China, one of Australia's major trading partners, as it gears-up for *GATT/WTO* Membership, to those that are maintained in the Czech and Slovak Federal Republic? Or is there another explanation for the relative openness in trade, such as the composition of the components from China not originating in one of the industrialised countries of the North?

5.4.4.3 Where there is Insufficient or Unreliable Information

Article 6.8 of the *Anti-Dumping Code 1994* provides that:

> "In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings, affirmative or negative, findings may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph."[775]

Although a procedural issue, the assistance of the exporter is not always forthcoming and as this party is outside the immediate domestic jurisdiction, it is not possible to rely upon the investigative provisions of the *Customs Act 1901*. In these circumstances it is necessary to have provisions in the *Customs Act 1901*, which will allow for the determination of normal value in the

[773]Anti-Dumping Authority Report No 92 *Review of the Australian Customs Service negative preliminary finding on certain self-propelled, multi-tyred rollers from the Czech and Slovak Federal Republic* February 1993 p 11.
[774]Anti-Dumping Authority Report No 92 *Review of the Australian Customs Service negative preliminary finding on certain self-propelled, multi-tyred rollers from the Czech and Slovak Federal Republic* February 1993 p 12.
[775]This is subject to the provisions of Annex II, which provides details of the conduct expected of the investigating authorities and the interested parties during the inquiry.

circumstances of refusal of access to the necessary information.[776] Sections 269TAC(6) & (7) of the *Customs Act 1901* allow the administering authority to ascertain the normal value of the goods having regard to all relevant information, where there has been insufficient information furnished or it is not available, and may disregard any information considered to be unreliable.

The question of the relevance of information for determination of a normal value was addressed by Beaumont J in *McDowell.*[777] The case involved the use of a constructed basis for normal value determination based upon costs in the USA when the product had been produced, sold domestically and exported from Spain, and the domestic pricing information had been disregarded. Beaumont J concluded that:

> "..., the information gathered in the USA as to the profitability of the operations of PPG was not relevant to a determination of the costs of production and other expenses of a producer carrying on a different type of operation in Spain. Nor does s5(4A) [as it then stood] entitled the Department to take into account irrelevant material in determining normality on an appropriate and reasonable basis. Nor did s 5(4A) justify the Department in rejecting all the Spanish information outright: it may well have required adjustment, even significant modification, in order to achieve a normal value, but it was none the less relevant and should have been taken into account, even if on a limited basis only."[778]

This was rather an extreme example of the misuse of the provisions relating to the determination of normal value, where there was a deficit in the information available from the administering authority's inquiries.

The next occasion for the Court to address these provisions was in *Wattmaster Alco.*[779] The question at issue was that the information relating to domestic prices had been deemed unreliable by the administering authority, and yet it

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[776]Paragraph 7 of Annex II to Article 6.8 of the *Anti-Dumping Code 1994* allows authorities to use information from a secondary source where an interested party is not co-operating with an inquiry.
[777]*McDowell v Button* (1983) 50 ALR 647.
[778]*McDowell v Button* (1983) 50 ALR 647 at 663.
[779]*Wattmaster Alco Pty Ltd v Button* (1985) 8 FCR 471.

was that information upon which the normal value of all the exporters had been based. The dilemma is summarised by Pincus J. in the following terms:

> "The suggestion in the report that normal values should be established under both ss (1) and (4) was in error; the two are mutually exclusive. It is only if there is not enough information to enable a determination under sub (1) that a determination may be made under subs (4).
>
> Section 5(4) is not a provision which enables normal value to be determined "at large", if there is any doubt whether, for example, subs (1) applies. Reference in the report shows that there was not thought to be any shortage of reliable information to enable a determination under subs (1)."[780]

The fundamental issues in the case was the uncertainty over the level of discount granted to domestic customers in Hong Kong, which Pincus J maintained as a matter of fact had been left out. This question of fact was critical to whether there was dumping.

The issue in *Vredelco*[781] was whether the information given by the exporter for a normal value to be constructed under section 269TAC(2)(c) of the *Customs Act 1901* was sufficient and reliable. The exporter had supplied information relating to the costs to make and sell the goods exported to Australia and the profit achieved on those export sales. The Anti-Dumping Authority had no information available to it to show the delivery and other costs that would have been incurred in domestic sales or the amount of profit that would have been made on domestic sales as required by the *Act*. Even with the provision of further unverified material late in the inquiry process, which the Authority had difficulty in reconciling with the information relating to domestic prices in the domestic market in Singapore, Neaves J held that it was open for the Authority to make a finding under section 269TAC(6) of the *Customs Act 1901* taking account of the non-discounted domestic selling price in Singapore of a third

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[780] *Wattmaster Alco Pty Ltd v Button* (1985) 8 FCR 471 at pp 478-479.

[781] *Vredelco Food Industries Pte Limited v Anti-Dumping Authority; Christopher Cleland Schacht in his capacity as Minister of State for Science and Small Business; Meadow Lea Foods Limited* No ACT G 12 of 1994 (unreported)

party and the information provided by the Australian industry in its original application. In particular, Neaves J rejected the proposition that:

> "...the decision that normal values could not be determined in accordance with par 269(2)(c) was so unreasonable that no reasonable person could have made it cannot be sustained."[782]

Recalling the decision of the High Court in *Bond*[783] and that of Gummow in the Federal Court in *Bienke*[784]**,** circumscribing the extent to which the judicial arm of the government should become involved with factual issues, the attitude of the Court appears to recognise the practical difficulties associated with overseas investigations of normal value when the exporter is not co-operating fully with the inquiry.

5.4.5 Summary

The experience of the administration of Australia's Anti-Dumping law has been a rocky road. This has been mainly in the area of the administrative legal process which needs to be effectively dealt with by the administering authority before the substantive legal issues become relevant. From the above analysis of the substantive issues, a number of principles can be deduced:

- Clearly the Court has adopted the view that international public law can be used as extrinsic material only. However, one should not close this avenue completely, as there are some who would challenge this view.

- There is a clear indication that sale at a loss in Australia by the importer is evidence of "hidden dumping". Once this is established, prescribed deductions from the first arms length sale may include general administrative expenses. The quantum of these expenses

[782]*Vredelco Food Industries Pte Limited v Anti-Dumping Authority; Christopher Cleland Schacht in his capacity as Minister of State for Science and Small Business; Meadow Lea Foods Limited* No ACT G 12 of 1994 (unreported) p 42.
[783]*Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321.
[784]*Bienke v Minister for Primary Industries and Energy* (1994) 125 ALR 151 at 165.

can be arrived at by using a proportional cost attribution method. Normal profit on sales in the Australian market is also a relevant deduction in establishing the export price in a "hidden dumping" case. However, the *Customs Act 1901* should be amended to better reflect the *Anti-Dumping Code 1994*, where an export price may be considered unreliable because of association or a compensatory arrangement. This would avoid the use of the arm's length criteria currently in the Australian law, and allow the use of a constructed price in a way that discourages profit shifting within an economic entity.

- The fall back provisions relating to export price determination, where there is said to be insufficient or unreliable information, should rarely be invoked if indeed used at all. There are extensive investigative provisions in the *Customs Act 1901,* which enable the administering authority to obtain the required information within Australia.

- Many of the legislative provisions could be improved by reference to the general accounting standards now incorporated in the Australian Corporations law. This would have the effect of reducing some of the uncertainty in the application of anti-dumping laws.

- The exporter's domestic price should be compared with the domestic prices of other sellers of 'like goods' in the exporter's domestic market. This would add confidence to the findings with respect to the price applicable in the country of export.

- Price lists with information relating to discounts may suffice as evidence of normal value, where billing prices are unattainable in the country of export.

- "Like product" is more widely defined in Australia, including end-use to which the product is put as a criterion of likeness. The definition appears to also extend to the final product for injury analysis, where an intermediate product is the one being exported.

- Due allowance for the product specification difference appears to include an allowance for profit mark-up on the domestic cost differential. The question of an allowance for different levels of trade is still a contentious issue, whereas an allowance for price discounts, even hypothetical ones, are allowable.

- The date for the comparison of the normal value and the export price is clearly the date of the export sale, which is also the date for any currency conversion. The 'spot rate' or a specific forward hedge rate can be used for exchange rate conversions depending on the circumstances.

- Sales at a loss extending over a one year period would appear to be accepted as ground for those selling prices to be not in the ordinary course of trade.

- Sales made in a market where there is a monopoly or other uncompetitive market condition, are not precluded from being used for establishing the exporter's domestic price for normal value determination.

- The difficulties associated with the construction of normal values arise mainly from the allocation of overheads in the modern manufacturing environment. There needs to be a much deeper analysis of the effects of different costing techniques on normal value determination.

- There is an absolute limitation in the inclusion of profit in a constructed normal value where sales on the domestic market are not in the ordinary course of trade. There is, however, still an unresolved question of what is meant by profit and what is the normal commercial environment which is to be preserved.

- There is still a substantial gap in the method of applying normal value assessment to centrally planned economies. Where it is

shown that there has been a significant move towards a market economy, domestic prices are more likely to be acceptable as a basis for a normal value determination. In the case of China it would appear that full MFN is not being extended to China by Australia.

- There would appear to be substantial practical limitations on using the fall back provisions relating to situations where there is insufficient or unreliable information for normal value determination. One cannot rely on the information collected and then call it unreliable.

The above summary shows that the Federal Court has contributed to the reduction in the uncertainty of the application of the anti-dumping rules in a number of areas. The nature of the subject is one which still requires considerable judgement by the administering authority in the execution of the rules. However, it would be appropriate to try to align the anti-dumping rules at least with those accounting definitions already accepted by the trading community. There is a strong case for the harmonisation of the day to day rules concerning the determination of normal value and export price with the international accounting standards and the provisions of the *Anti-Dumping Code 1994*.

5.5 Subsidisation

5.5.1 Introduction

The definition of a subsidy found in dictionaries is generally a wide one. Black (1990) in Black's Legal Dictionary defines a subsidy as:

> "A grant of money made by the government in aid of the promoters of any enterprise, work, or improvement in which the government desires to participate, or which is considered a proper subject for government aid, because such purpose is likely to be of benefit to the public."

The economists on the other hand have seen taxes and subsidies as policy instruments, which are used for the application of corrective action to bring private marginal costs or benefits more closely into alignment with the marginal social ones.[785] The concept of the inability to exclude people from the costs or benefits associated with an activity, linked with the high communication costs associated with achieving a mutually beneficial solution where there are a large number of people affected, may be a rationale for government intervention by taxes or subsidies.[786] However, there is a need for caution on two aspects of the above rationale for intervention. One concerns the proposition of Coase (1960) on the process of intervention, who suggested:

> "A better approach would seem to be to start our analysis with a situation approximating that which actually exists, to examine the effects of a proposed policy change and attempt to decide whether the new situation would be, in total, better or worse than the original one. In this way, conclusions for policy would have some relevance to the actual situation."[787]

The other is the caution generated in the public choice debate about the size and allocation of government spending. Reisman (1990) in discussing the Downs and Galbraith proposition that special interest groups apply political pressure through the democratic process to encourage over expenditure on publicly provided services, contrasts the view of Harry Johnson who stresses the disproportionate effect of political influence on the different social groupings. It is asserted that public expenditure on social services is under-funded, whereas that on defence and the subsidisation of long-established industries is over-funded, directly reflecting the political influence of these groups.[788]

Whether the proposition of the disproportionate funding of industry through subsidisation is correct, does not alter the fact that industry subsidies are granted by governments in a number of ways. It is where they are granted on exports of goods, or on domestic production, and this adversely affects another nation state, the government action in subsidising goods become the subject of international public law. Although it was noted that Coase (1960) urges for the

[785]Eatwell et al (1987) for discussion of this approach to taxes and subsidies.
[786]Turvey (1963) pp 312-313 cautions against the use of taxes/subsidies where negotiation between the parties is not possible. Instead each case should be considered on its own merits as another measure may be more appropriate.
[787]Coase (1960) p 43.
[788]Reisman (1990) p 58.

analysis to look at the overall picture, it is relevant in the context of international relations to assess the impact on the nation state directly affected by the injurious subsidisation on the assumption that the subsidising country is benefiting from its actions.

Australia's use of measures to countervail the injurious effects of subsidisation has been quite low when compared with the application of anti-dumping measures, or with the activity of the United States in applying countervailing duties.[789] Between 1982-83 and 1992-93 there were 58 countervailing initiations investigated by the Australian administering authority, with 34 proceeding to a positive final finding. Almost without exception, the findings have been directed against subsidisation by the European Community.[790] This is a consequence of the level of subsidisation by the European Community of it agricultural products, which is reflected in the processed food products entering the Australian market from the European Community. However, there is a need to consider the application of these measures in some detail, as they have both an effect on resource allocation within Australia and on Australia's relations with its trading partners.

5.5.2 Legal Framework

Recognition was given to the subsidisation of exports as a non-tariff barrier and relief against the effects of these subsidies was contained in the original text of GATT 1947. Article XVI deals with subsidies generally, and Article VI places limitations on the unilateral actions of the affected party in the imposition of countervailing measures. Article II.2(b) exempts any anti-dumping or countervailing duty applied consistently with the provisions of Article VI from being bound by the schedule of concessions negotiated during multilateral trade negotiations. That is, the *GATT 1947* treats measures against injurious dumping and subsidisation as being outside the scope of the general disciplines limiting the imposition of protective measures.

Article XVI.1 of the *GATT 1947* encourages consultations between Contracting Parties, where a subsidy has caused or threatened serious prejudice to the interests of a contracting Party, with the aim of limiting the subsidisation. Article XVI.3, although

[789]Boltuck & Litan (1991) p 5 shows the number of countervailing duty investigations during the period 1980-88 as: 332 for the United States; 11 for the European Community; 22 for Australia; 23 for Canada; and nil for developing countries. During the same period Australia's anti-dumping investigations were 478.
[790]In the 1980s the exception was New Zealand. There were 9 countervailing cases investigated involving New Zealand and of those 6 resulted in positive final findings.

discouraging the use of subsidies to increase exports of primary products, provides an exception, where the subsidy does not result in the subsidising party having a more than equitable share of world export trade in the subsidised product. Article XVI.4 instructs Contracting Parties to cease to grant either directly or indirectly any form of subsidy on the export of a product (other than a primary product) which results in the sale of such a product for export at a price lower than the comparable price charged for the product to the buyers in the domestic market. The effect of these provisions was to exclude the subsidisation of primary products from the disciplines of the *GATT 1947*, and to impose a prohibition on the use of export subsidies for secondary and tertiary products, where there was a price differential with the export price lower than the domestic price in the country of export. According to Jackson (1989) some people view export subsidies as more pernicious than domestic subsidies as export subsidies are such an obvious attempt to impose burdens on other countries.[791]

The *Subsidies Code 1979* was concluded as part of the Tokyo Round of multilateral trade negotiations. The motivation for a codification of the international law relating to subsidies came on the one hand from the European Community trying to limit the definition of what could be considered an injurious subsidy, so as to contain the United States in its use of countervailing measures. On the other hand the United States wished to have stricter enforcement of bans on subsidies.[792] Although there was little achieved in the clarification of what was meant by an actionable subsidy,[793] the outcome of the negotiations on the *Subsidies Code 1979* was that: export subsidies on other than certain primary products were prohibited without the need for the application of the secondary test on differential pricing;[794] domestic subsidies were actionable but allowable when used for the promotion of social and economic objectives;[795] illustrative lists of domestic and export subsidies were introduced as examples of the possible forms of such subsidies;[796] an injury test was to be applied before the imposition of countervailing measures;[797]

[791]Jackson (1989) pp 249-250.
[792]Evans (1994) p 42.
[793]Jackson (1989) p 263.
[794]Footnote 29 to Article 9 excludes 'any minerals' from the definition of 'certain primary products'.
[795]Article 11.1 list these objectives as including: the elimination of industrial, economic and social disadvantages of specific regions; to facilitate restructuring; to sustain employment and to encourage re-training and change in employment; to encourage research and development; programs to promote the economic and social development of developing countries; and , redeployment of industry to avoid congestion and environmental problems.
[796]Article 11.3 and ANNEX to the Code.
[797]Articles 6 and 8.

special consideration for the application of subsidies by developing countries;[798] and a tight system for the settling of disputes.

Article 14.1 of the *Subsidies Code 1979* gave recognition to the use of subsidies as an integral part of the economic programs of developing countries. In particular, Article 14.2 allows for the developing countries to use export subsidies in relation to industrial products and minerals. Although there is the freedom to apply export subsidies by developing countries, they are still actionable where serious prejudice to the trade or production of another signatory results (Article 14.3). Article 14.4 places positive evidence requirement on the proving of serious prejudice, removing any presumption of the *per se* adverse effects on the trade or production of other signatories where the export subsidisation is by a developing country. According to Long (1985) developing countries benefit from differential and more favourable treatment in one of the most sensitive areas of international trade - subsidisation - under these legal rules.[799]

5.5.3 Actionable Subsidies

One of the difficulties with the implementation of the *Subsidies Code 1979* was the inadequate definition of an actionable subsidy. Baldwin (1979) refers to the weakness of the new Code, saying that "It is not as detailed as necessary to cope with the increasing use of domestic aids...".[800] It is further asserted that:

> "...subsidies can no longer be regarded as insignificant in their impact, or directed at the attainment of some special national goal which should be accepted by the international community. They are now used for precisely the same purpose as were tariffs and other trading-restricting devices for which the GATT was established to reduce."[801]

Jackson (1989) suggested a method of dealing with subsidies which followed the United States preferred position for the Tokyo Round.[802] That is, to divide subsidies into non-actionable, actionable and prohibited groups in order to give guidance to policy makers

[798]Long (1985) pp 104-105.
[799]Long (1985) p 105.
[800]Baldwin (1979) p 21.
[801]Baldwin (1979) p 22.
[802]Jackson (1989) pp 262-263.

about the potential response of other nations or of international systems to subsidy practices. The way in which the subsidy is measured can have a significant effect on whether it is actionable. The United States has been a supporter of the benefit test, which measures the benefit of the subsidy conferred on the firm, compared with what the firm would have received under normal market conditions without government intervention. Whereas the European Community has supported the cost to government of providing the subsidy.[803] Both result in markedly different outcomes.[804]

Distinguishing subsidies from the normal expenditure of governments by way of providing for public goods and transfer payments through its social security systems, is a major definitional problem. The concept of the 'specificity' of a subsidy limited to particular firms or industries was proposed to restrict countervailability to those actions by governments which are likely to produce trade distortions.[805] The arguments in favour of this test of 'specificity' are according to Jackson (1989) twofold. Firstly, subsidies applying evenly across the board to all sectors of society are unlikely to cause major distortions to trade. Secondly, if they are large enough will reflect in a change in the exchange rate, in much the same way as a move towards a higher tariff structure, making products from that country less competitive in the international market.[806] However, for this test to have any meaning it is important that it is the actual application of the subsidy which is evaluated, as a statement in the law saying that it has general applicability when in fact it has only a very limited set of recipients would defeat the purpose of the test.[807]

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[803]Jackson (1989) p 264.

[804]Jackson (1989) p 264 - gives as an example the government providing a special loan at 8% when the market rate is 10%. Clearly there is a benefit of 2% to the borrowing firm. However, if the government borrowed at 6% and lent at 8% there would be no cost to the government. The United States position would be to declare the benefit to the firm of 2% as a countervailable subsidy.

[805]Jackson (1989) p 396 in footnote 64 gives the following summary of the legislative history of the *1988 Omnibus Trade and Competitiveness Act* as it relates to the need for de facto or actual non-specificity rather than the mere nominal availability of the benefits of the program to be proved in defence. The legislative history of the 1988 Act states: "The amendment codifies the holding by the US Court of International Trade in *Cabot Corporation v United States*, 620 F Supp 722 (CIT,1985) that, in order to determine whether a domestic subsidy is countervailable, the Commerce Department must examine on a case-by case basis whether the benefits provided by a program are bestowed upon a specific enterprise or industry or group of enterprises or industries." (*Omnibus Trade Act of 1987*,S.Hrg. 100-71, Senate Finance Committee, 100th Cong., 1st sess., 1987, 122.)

[806]Overt action of this kind would be subject to dispute as to the nullification or impairment of a benefit.

[807]*Cabot Corporation v United States* 620 F Supp 722 (CIT, 1987), appeal dismissed, 788 F 2d 1539 (Fed Cir, 1986).

In the Uruguay Round the United States position was accepted and the *Subsidies Code 1994* incorporates the three levels of actionable subsidisation, the benefits test and the specificity test for actionable subsidies. The definition of a subsidy included in Article 1.1 of the *Subsidies Code 1994,* required a financial contribution by a government or some form of income or price support conferring a benefit.[808] Article 1.2 of the *Subsidies Code 1994* qualifies the application of the subsequent provisions prohibiting subsidies and allowing countervailing action, by ensuring that before countervailing action can be invoked the subsidy must be specific in accordance with the provisions of Article 2.

In determining whether a subsidy is specific to certain enterprises (ie an enterprise or industry or group of enterprise or industries) in accordance with Article 2.1 of the *Subsidies Code 1994*,[809] there needs to be: legislation specifically limiting the subsidy to certain enterprises;[810] on the other hand, where objective criteria are applied by the administering authority which are neutral in their application as between certain enterprises, such as, a subsidy applied automatically based on the number of employees or size of enterprise, these subsidies are not considered specific;[811] however, a finding of specificity is influenced by the administration of the subsidy, for example, where the subsidy is used disproportionately by certain enterprises, after taking into account the extent of industrial diversification in an economy and the length of time a subsidy program has been in operation.[812] Article 2.2 defines as specific a subsidy limited to certain enterprises within a designated geographical region,[813] Article 2.3 deems export performance and import replacement subsidies prohibited under Article 3 as specific subsidies.[814]

Having defined an actionable subsidy as a financial contribution by a government (or income or price support) benefiting certain enterprises specifically, how is this benefit to

[808]Reflected in section 269T of the *Customs Act 1901* (as amended by section 7 of 1994 Act No 150) which includes this definition in its provisions. However, it also includes an agglomeration of provisions which according to the explanatory notes to the Bill attempt to reflect Article 1.1 of the *Subsidies Code 1994,* however, take into account some of the illustrative list of export subsidies in Annex 1.
[809]Section 269TAAC of the *Customs Act 1901* which defines a countervailable subsidy reflecting the specificity provisions of Article 2 of the *Subsidies Code 1994*, and excludes both non-actionable subsidies as described in paragraph (a), (b) and (c) of Article 8.2 of the *Subsidies Code 1994* and domestic support measures set out in Annex 2 to the Agreement on Agriculture.
[810]Reflected in section 269 TAAC (2) (a) of the *Customs Act 1901.*
[811]Reflected in section 269 TAAC (3) of the *Customs Act 1901.*
[812]Reflected in section 269 TAAC (5) of the *Customs Act 1901.*
[813]Reflected in section 269 TAAC (2) (b) of the *Customs Act 1901.*
[814]Reflected in section 269 TAAC (2) (c) & (d) of the *Customs Act 1901.*

be measured? Article 14 of the *Subsidies Code 1995* gives guidelines as to the method to be used in the calculation of the amount of a subsidy in terms of the benefit to the recipient by giving four examples: provision of equity capital inconsistent with the usual commercial practice of private investors; a loan at less than comparable commercial rates; a loan guarantee by the government which reduces the amount a firm pays below that available at commercial rates; provision of goods and services by the government for less than adequate remuneration, or purchased for more than adequate remuneration.[815],[816]

Limits were placed on the level of subsidy which was countervailable under the *Subsidies Code 1994.* For developed countries a subsidy representing less than 1 per cent of the export price was deemed to be non-countervailable.[817] In the case of developing countries a subsidy of not more than 2 per cent of the export price is non-countervailable,[818] whereas it is 3 per cent for a special developing country.[819] The special and differential treatment of developing countries was continued in Article 27 of the *Subsidies Code 1994,*
on the basis that subsidies play an important role in economic development programs of developing country Members.[820] In particular, the developing countries were released from the prohibition on export subsidies in paragraph 1(a) of Article 3 of the *Subsidies Code 1994.* The requirement that there be no presumption of serious prejudice, and the need by an adversely affected party to demonstrate this by positive evidence, is continued from the earlier code.[821] Particular subsidies granted by developing countries are non-actionable, where they are for a limited period and relate to the direct forgiveness of debt or cover social costs associated with a privatisation program.[822]

Subsidies benefits may be calculated using different methods. The Industry Commission uses four different ways to measure the price effects of a subsidy, which are the: gross subsidy equivalent to output; tax equivalent on materials; subsidy to value adding factors;

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[815]This is only a precise of the provisions of Article 14.
[816]Reflected in section 269 TACC (1) to (7) of the *Customs Act 1901.*
[817]Article 11.9 of the *Subsidies Code 1994* reflected in s 269 TDA(16) of the *Customs Act 1901.*
[818]Article 27.10 of the *Subsidies Code 1994* reflected in section 269 TDA(16) of the *Customs Act 1901.* The Anti-Dumping Authority Report No 137 *Revocation Inquiry: Canned tomatoes from Italy and Thailand* September 1994 recommended the revocation of countervailing duties with respect to Thailand as the subsidy was found to be de minimus.
[819]Article 27.11 of the *Subsidies Code 1994* reflected in section 269 TDA(16) of the *Customs Act 1901.*
[820]Article 27.1 of the *Subsidies Code 1994.*
[821]Article 27.8 of the *Subsidies Code 1994.*
[822]Article 27.13 of the *Subsidies Code 1994.*

and the net subsidy equivalent. The price effects are then used to estimate the three commonly used summary rates of assistance, which are the: nominal rates of assistance on outputs; nominal rates of assistance on intermediate products; and effective rates of assistance. A detailed explanation of each of these approaches to the measurement of the benefits of assistance is given by the Industry Commission in its report on *Research and Development*.[823] For example, the Commission calculated that research and development subsidies to Australian manufacturing were about 8 per cent of total industry assistance or 1.2 per cent of the value added per unit of output.[824]

Although both the *Subsidies Code 1979* and *1994* abandon the need to show price discrimination within the country of export for an export subsidy to be actionable, the Federal Court has required that the price effect of the subsidy be quantified prior to invoking any countervailing action.[825] There is no contradiction between the requirements of the Federal Court and the *GATT* on this point. The Federal Court is simply saying that the beneficial effects of the subsidy need to be quantified, before it is actionable and countervailing duties can be imposed. As indicated above, the Industry Commission tends to rely on measuring the effective rate of assistance in order to quantify the effects of an assistance measure. If such a measure were not adopted by the administering authority in assessing the effects of a subsidy in an exporting country, then there could be an over-estimation or under-estimation of the effect of the assistance. For example, an over-estimation would occur where there was an import tax on inputs which were not eligible for duty drawback on re-export, and could give rise to a reduction of the price effect on the exported final products.

In *La Doria*,[826] a case on appeal to the Federal Court of Australia concerning the subsidisation of canned tomatoes from Italy, the European Commission had set the

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[823]*Industry Commission Report No 44 on Research and Development of 15 May 1995* Appendix QD 29-36.
[824]The value added figure was the effective rate of assistance which is derived from the value added less the unassisted value as a proportion of the unassisted value. This concept can be represented another way, such that: $g = (df - x.dm + i)/(1-x)$ where *df* is the nominal rate of assistance; *dm* is the nominal rate of assistance on material and other inputs; *x* is the input to output ratio expressed in unassisted prices and *i* is assistance to value adding factors. This formulation of the rate of effective assistance *g* highlights its main weakness, as it assumes the full pass through of the tax on inputs in proportion to the input output ratio.
[825]Compares Article XVI.4 of *GATT 1947*, Article 9.1 of the *Subsidies Code 1979* and Article 3.1 of the *Subsidies Code 1994*.
[826]*Minister for Small Business, Construction and Customs, Anti-Dumping Authority, Comptroller-General of Customs v La Doria Di Diodata Ferraiolli SPA* No G428 of 1993 FED No 24/94 Full Federal Court (unreported).

purchase price for tomatoes and the Italian manufacturers had received a production aid to compensate for the high cost of the tomatoes as inputs into the canning process. As there had been a failure to quantify the effect of the subsidy on the export price, the court set-aside the notices specifying the amount of countervailing and dumping duty which should apply on imports of canned tomatoes from Italy. That is:

> "...there had been no finding of the extent to which the subsidy of the Italian government was reflected in the export price of the canned tomatoes exported by La Doria, a finding it was necessary to make before any determination could be made by the Minister of the amount of countervailing duty required to offset the benefit of the subsidy applied by the exporter to the export price."[827]

The judgement in *La Doria* followed *Castle Bacon*[828] where Gummow J had already dealt with the question of the effect of the subsidy on export price, setting aside the finding of the Anti-Dumping Authority imposing countervailing duties on canned ham from Ireland, the Netherlands and Denmark. A previous finding had been set-aside for further consideration by consent of the parties.[829]

What is this effect on export price? One possibilty is to simply take the Industry Commission approach and calculate the effective rate of assistance. Although a practical solution it ignores market conditions in the country of export. Parry, an associate professor of economics called as an expert witness in *Irish Country Bacon*[830] presented by affidavit a number of factors which could influence the effect of the subsidy on the export price. To summarise the evidence given by Parry, a difference may have arisen between the export restitution amount received by the exporter in relation to exports to Australia and the amount spent to 'subsidise' exports to Australia and this 'excess amount' could be used:

(a) to lower the price charged for its products in the domestic market;

(b) to lower the price charged for products in other European Community markets;

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[827] *La Doria* para 29.
[828] *Castle Bacon Pty Ltd v The Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* No G 179 of 1992 unreported judgement of Gummow J 9 November 1992.
[829] *Irish Country Bacon (Cooked Meats) Limited v Comptroller - General of Customs* (1991) (unreported) order to set-aside by consent.
[830] *Irish Country Bacon (Cooked Meats) Limited v Comptroller - General of Customs* (1991) 32 FCR 355 at 374 to 375.

(c) to lower the price charged for products in export markets other than the European Community and Australia; or
(d) be taken as a 'windfall profit'.

In order to reach a conclusion as to how the excess amount was used by the exporter, Parry considered that the following factors needed to be considered:-

(a) the nature of the relevant markets and in particular the price structure within these markets and the nature of competition within these markets;
(b) the proportion of total sales which are derived from each of the relevant markets;
(c) the proportion of total profits which are derived from each of the relevant markets; and
(d) the objectives and strategies in relation to the various markets.

Although useful in directing the courts attention to the types of factors which may influence the passing through of a subsidy into the export price, the expert evidence was not critical to the decision to refuse relief from provisional measures. Forster J followed the decisions with respect to countervailing securities in *Tasman Timber*[831], *Feltex Reidrubber*[832] and *J Wattie Canneries*[833], as it was a decision to protect the revenue in the event that the goods would enter home consumption and be liable to a countervailing duty. The imposition of provisional measures was distinguished from the application of countervailing duties when the deliberations of the Anti-Dumping Authority and the Minister were completed.[834]

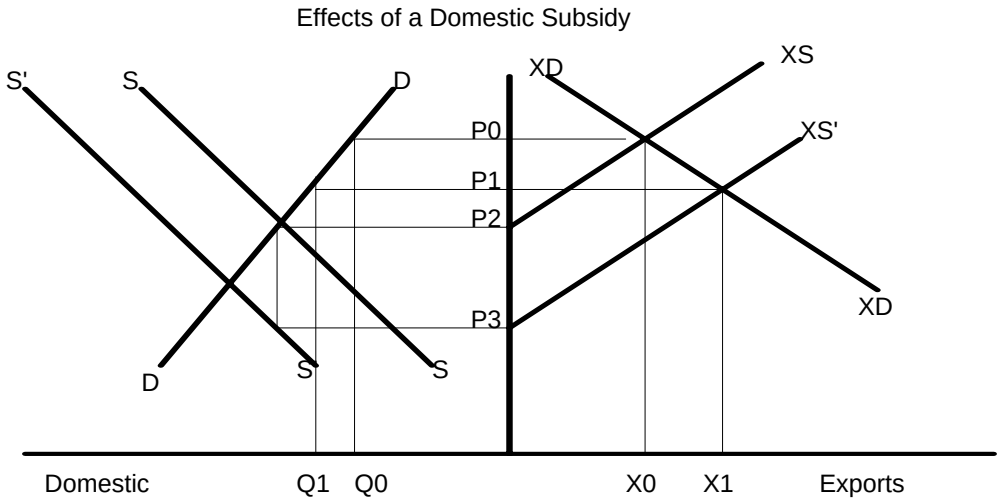
To put this into an economic context Boltuck, Francois and Kaplan (1991) provide an analytical assessment of the effect on export prices of an export subsidy, a domestic production subsidy, and on the pass-through effect of an upstream subsidy given on inputs into a final export product.[835] The analysis relies upon a partial equilibrium equation describing the market conditions facing an exporter, where for a domestic subsidy:

[831]*Tasman Timber Ltd v Minister for Industry and Commerce* (1983) 67 FLR 12 at 27-28.
[832]*Feltex Reidrubber v Minister for Industry and Commerce* (1983) 67 FLR 32 at 40-41, 42-43.
[833]*J Wattie Canneries Ltd v Comptroller-General of Customs* (1987) 16 FCR 136 at 142.
[834]*Irish Country Bacon (Cooked Meats) Limited v Comptroller - General of Customs* (1991) 32 FCR 355 at 376-377.
[835]Boltuck, Francois and Kaplan (1991) pp 160-172.

$$SX = s\{1/[1 + (|e_dQ_d|/e_sQ_s)]\}\text{----------(5.5.3-1)}$$

In this equation the following definitions for this marginal analysis apply: *SX* is the export equivalent subsidy rate at which the duty set at this rate is sufficient to offset the price effect of the subsidy *s*; e_s is the elasticity of supply (hence measures the elasticity of the industry marginal cost curve);and e_d is the elasticity of domestic demand.[836] It is useful to refer to a diagrammatic representation to understand the influence of market conditions on the effects of a subsidy on price:

Diagram 5.5.3-1



In this diagram[837] the following definitions apply: P0 is the price maintaining without subsidy; P1 is the price maintaining with subsidy; Q0 is the quantity consumed domestically without subsidy; Q1 is the quantity consumed domestically where there is a domestic subsidy; X0 is the total of both domestic and foreign consumption without subsidy; X1 is the total domestic and foreign consumption with subsidisation; DD is the domestic demand curve; SS is the domestic supply curve without subsidisation; S'S' is the domestic supply curve with subsidisation; XD is the export demand curve; XS is the

[836]Boltuck, Francois and Kaplan (1991) p 167. The partial equilibrium equation and definitions are taken and adapted from the text.
[837]Francois, Palmeter and Anspacher (1991) p 102 adapted from Figure 4-1.

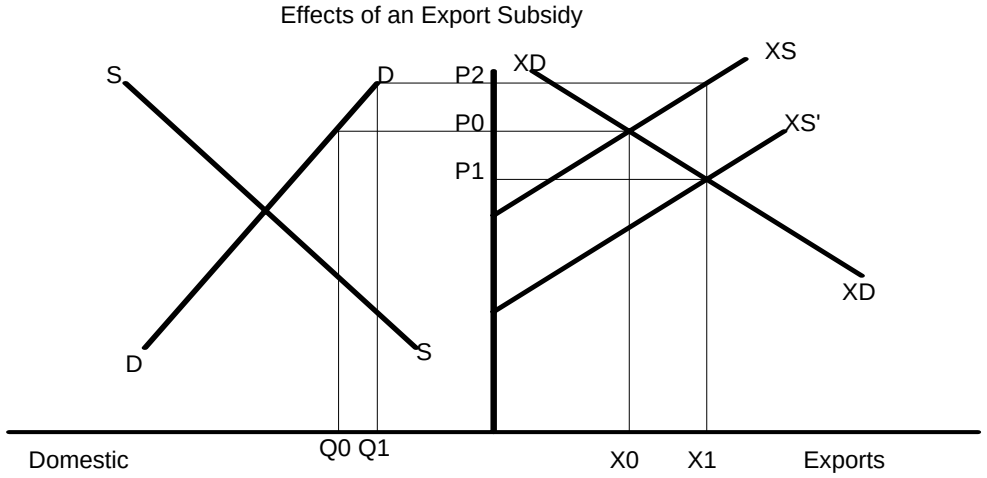
export supply curve without subsidisation; and XS' is the export supply curve with subsidisation.

The key feature of this diagram is that it illustrates the effects of changes in the variables. For example, it can be seen that the effect on prices P0 to P1 of a subsidy P2 less P3, and that the price effect increases where demand increases in lessening proportion to decreases in price (less elastic demand conditions). A similar situation exists where supply conditions change and the elasticity of supply decreases the effect on export price reduces. It can be shown from equation 5.5.3-1 above, that where the elasticities of supply and demand are both set at unity and half of the production is exported, the price effect is two thirds of the subsidy amount.[838]

Turning to the case of the straight export subsidy given on exports in a two country model, the effects are illustrated by a variation in the above diagram:

Diagram 5.5.3-2

[838]Francois, Palmeter and Anspacher (1991) p 106 Table 4-1.



In Diagram 5.5.3-2 the symbols used are the same as in Diagram 5.5.3-1 above. However, in this case as there is no shift in the domestic supply curve to reflect a domestic subsidy, the full effect of the difference between the domestic price P1 without subsidy and the export price P2 with subsidy does not fully reflect the export price effect of the subsidy. That is, the domestic price in country of export rises to P2 as a result of the subsidisation of exports, as there is less product Q1 available for domestic consumption. The countervailable subsidy in this case is P2 less P1, the full amount of the subsidy being passed on through both an effect on lowering of export prices and the dumping effect of a rise in the domestic price ie $SX = s$.

When discussing the measurement of the effective rate of assistance as used by the Industry Commission, although giving a more accurate assessment of the rate of assistance by allowing for the off-setting of market factors influencing the price of upstream inputs, the method fails to take account of other market conditions. Boltuck, Francois and Kaplan (1991) adjust for three additional factors in their modelling of upstream subsidy pass-through, other than the ratio of inputs to outputs.[839] The countervailable amount of an upstream subsidy can be calculated from the following equation:

$$SX = s\ \{1/\{1 + (|e_d Q_d|/e_s Q_s)]\}\{(\alpha\beta[e_{su}/(e_{su} - e_{du})]\} \quad \text{----------5.5.3-2}$$

[839]Boltuck, Francois and Kaplan (1991) p 167.

The variables are defined as in equation 5.5.3-1 with the additional definitions as follows: α is the cost share of the input; β is the output elasticity of the input; e_{du} and e_{su} are the elasticity of demand for the upstream product (including both domestic and foreign demand). The addition to the domestic subsidy on downstream products is a component which allows for an assessment of the price effect of the upstream subsidies. This accounts for differences in technology and in the demand and supply elasticities effecting the impact on the price of upstream subsidies or their opposite taxes. The higher the elasticity of upstream demand the lower the subsidy pass-through, whereas the higher elasticity of supply the greater the pass-through.

The discussion of the export subsidy equivalent of a domestic subsidy, shows that the application of a simple numeric approach tends to over-estimate the competitive effect of the subsidy needing to be countervailed. It is essential that the administering authorities give consideration to these effects in their final findings as directed by the Federal Court. So far the issues faced by the Australian authorities have been primarily concerned with continuing subsidies, and not with equity infusions or preferential loans. These questions raise present value considerations and the methods which could be employed to countervail the benefits of these subsidies. Quick (1991) and Pappalardo (1991) have looked extensively at these problems, and it must be said that each different form of government assistance needs to be analysed separately in relation to its export price effect.

One of the key areas of the *Subsidies Code 1994* are the guidelines in Article 8 for the identification of non-actionable subsidies. As footnote 23 mentions, the provisions on non-actionable subsidies do not restrict the ability of Members to provide assistance even though it may not qualify as non-actionable.[840] Article 8.1 states that subsidies are non-actionable where they are non-specific, however, exempts some subsidies described in Article 8.2 which are specific. It is these latter subsidies which are of particular interest from a policy perspective. The first mentioned are subsidies relating to research and development conducted by firms or by higher education or research establishments on a contract basis if the assistance covers no more than 75 per cent of the cost of the industrial research or 50 per cent of the pre-competitive development activity.[841] The second type are subsidies to disadvantaged regions for the purpose of regional development, subject to

[840]That is, where such assistance is actionable under another part of the Code.
[841]Paragraph 2(a) Article 8 of the *Subsidies Code 1994* which also describes the includable cost categories.

comparative disability tests.[842] The third is to deal with the adaptation of existing facilities to meet new environmental requirements imposed by law. These are essentially one-off conversion costs and are limited to 20 per cent of the cost of the adaptation.[843]

Each of the general exceptions have a different policy base. The subsidies on research and development would appear to derive support from the strategic trade theories. In particular, those proffered by Spencer and Brander (1983) relating to the subsidisation of research in industries where trading takes place in an imperfectly competitive market. Alessandrini (1991) refers to the strategic trade theory model in support of the use of subsidies to improve domestic welfare of the subsidising country through the comparative (perhaps competitive) advantages based on economies of scale, increasing returns or monopolistic exploitation of special advantages, premised upon the gains being passed on to consumers in lower prices.[844] Although such subsidies may be accepted as second best, Walther (1991) points out that the more trade is influenced by state intervention, be it for special strategic or general protectionist reasons, the poorer is the country's economic performance and welfare.[845] Alternatively, it is suggested that concept of subsidy control under the *GATT*, should be modelled on the practice adopted in the original *Treaty of Rome.* That is, to have the *GATT* extend the prohibition to all subsidies, similar to Article 92 of the *Treaty of Rome.* The *Treaty* places a general ban on aids which distort trade and confers control of state aids upon an independent agency, the Commission of the European Community. It is claimed that the promotion of competition rather than free world trade should be the *GATT* objective.[846] However, the European Community's record on discipline on subsidies is not strong, and it would be difficult to model a subsidy policy on such an unconvincing example.[847] It should also be said that the strategic trade theories, as discussed earlier under the economic framework, are not overwhelmed with serious supporters. Footnote 25 to the *Subsidies Code 1994* schedules a review by the *Committee on Subsidies and Countervailing Measures* of the non-actionabilty of research and development subsidies commencing not later than 18 months after the date of entry into force of the *WTO Agreement.*

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[842]Paragraph 2(b) Article 8 of the *Subsidies Code 1994* describing the disability requirements in detail.
[843]Paragraph 2(b) Article 8 of the *Subsidies Code 1994* details the constraints on this exception.
[844]Alessandrini (1991) p 6 & 7 - although based on theoretical conditions, the guesswork with targeting future developments and the inevitable political interference with the market are also mentioned.
[845]Walther (1991) p 17.
[846]Walther (1991) p 18.
[847]Steenbergen (1991) p 24 suggests that acceptable ceilings for domestic subsidies may be a useful way to allow some flexibility for the subsidising country.

The other subsidies on regional development and new environmental initiatives are related to temporary adjustments and of a less controversial in nature. The approach adopted here is a practical one the first being more of a safeguard measure analogous with Article XIX protection,[848] and non-objectionable on that basis.[849] The second relating to the need for existing plants to conform with environmental standards, which have costs external to the firm and may not easily be rectified simply by the passage of a prohibiting law.[850] The definition of allowable subsidies is an area of continuing debate.

5.5.4 Further Cases on Subsidies

In analysing the development of the Australian law in this area of countervailable subsidisation it is useful to deal with the case law. This is the preferred option as the Anti-Dumping Authority has had limited exposure to applications for this form of relief. The law has also been changing to reflect the developments during the multilateral trading negotiations. Therefore, the emphasis is on the stage reached as a result of these negotiations. However, the only cases judicially reviewed have been under the domestic law conforming with the *Subsidies Code 1979.*

There have been three decisions where what constituted a subsidy was in question. The first was *Atlas Air Australia*,[851] claiming injury from a range of grants provided by the Eire Government to an exporter to Australia of modular process cooling systems. These grants included: a reduced company tax rate; non-taxable grants to assist in the cost of building and equipment; grants for training programs; research and development grants; accelerated depreciation on certain capital expenditures; which in sum amounted to about 7 to 10 per cent of the ex-factory cost to produce the goods under inquiry. Both Customs and the Anti-Dumping Authority had refused to initiate the case, first on the grounds that there were no reasonable grounds for the publication of a countervailing notice, and second on the grounds that the subsidisation was not sector or regionally specific. Both these grounds for refusal of the application for relief were rejected by the court.

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[848]Naidin (1991) p 78.
[849]For example, Article 8.3 of the *Agreement on Safeguards 1994* provides that safeguard measures may apply and the exporting Member may not suspend equivalent concessions for the first three years, where there is an absolute increase in imports causing serious injury to the importing Member.
[850]Coase (1960).
[851]*Atlas Air Australia Pty Ltd v Anti-Dumping Authority* (1990) 26 FCR 456.

When reviewing the application by the Anti-Dumping Authority of the 'sector specific' approach, Wilcox J agreed in the following terms with the facts as stated, but not the Authority's application of the law, that:

> "... the assistance was apparently available to all manufacturers, regardless of the nature of the goods which they produced or the location in Ireland of their factory. But contrary to the view expressed by the Authority, there is nothing in s 269TJ which limits the application to the goods produced with the benefit of assistance peculiar to a particular product, or range of products, or geographical region in the assisting country."[852]

Wilcox J continues in a more general vein saying that:

> "It may be agreed that, if countervailing action were taken against exports of cooling systems from Ireland because of assistance to industry generally, countervailing action ought logically be available in respect of any manufactured goods exported from Ireland to Australia. But that observation merely indicates the width of PART XVB, as presently framed."[853]

Even though there was no ambiguity in s 269TJ of the *Customs Act 1901*, Wilcox J examined the provisions of the *Subsidies Code 1979*. He found that:

> "It may be agreed that some of the objectives referred to in Article 11(1) are of their very nature, achievable only by subsidies etc which are region-specific and sector-specific; although those referred to in sub-pars (c) and (f) might be met by general subsidy programmes. It may also be agreed that, in Art 11(3), the signatories noted that region-specific and sector-specific are the norm. But they went on to state that their enumeration of forms of subsidies was "illustrative and non-exhaustive, and reflects these currently granted by a number of signatories to this Agreement". Plainly, they left open the possibilty of subsidies other than those enumerated, which might or might not fall within the norm. I do not think that the Code may be read as stating, even by implication, that countervailing duties may be concerned with region-specific or sector-specific subsidies."[854]

[852](1990) 26 FCR 456 at 467.
[853](1990) 26 FCR 456 at 468.
[854](1990) 26 FCR 456 at 471.

If this was the legal position of subsidies, that they can be of a general form and still be countervailable, has the position changed with the *Subsidies Code 1994* or its domestic enactment.[855] As mentioned, Article 14 defines the method used to calculate the amount of the subsidy in terms of the benefit to the recipient. It also limits the application of Part V: Countervailing Measures, to the benefit to the recipient calculated in accordance with paragraph 1 of Article 1 of the *Subsidies Code 1994.* Therefore as the benefit to the recipient in paragraph 1 of Article 1 is only subject to countervailing action if such a subsidy is specific in accordance with the provisions of Article 2, the specificity test is relevant in the determination of a countervailable subsidy. The question then becomes what is meant by the term specificity?

To answer this question there is a need to evaluate the breadth of Article 2 of the *Subsidies Code 1994* and the equivalent provisions in the *Customs Act 1901*. This is no easy task, as the definition of a specific subsidy in Article 2.1 depends on the application of subsidies to "certain enterprises". The meaning of certain enterprises extends to a group of industries. Although the subsequent provisions attempt to narrow the definition, Article 2.2 refers to "... the setting or change of generally applicable tax rates by all levels of government entitled to do so shall be deemed not to be a specific subsidy for the purposes of this Agreement." This qualification is hardly helpful, as it would be hard to think how such general fiscal measures could in any way be construed as a subsidy.

To help clarify the general understanding of the notion of specificity it is useful to look at the approach of the United States courts and authorities to the use of the specificity test. Greenwald (1991) refers to the revisions of the United States Countervailing Statute[856] and the associated administrative decisions. One amendment required that for a domestic subsidy to be countervailable, it must be provided to "a specific enterprise or industry or group of enterprises or industries".[857] Greenwald (1991) refers to two cases which appear to limit the scope of the application of countervailing action. The first is an unsuccessful industry appeal to the United States Court of International Trade and then to the Federal Circuit Court in *PPG Industries Inc v United States*[858], where the US Department of Commerce had decided not to take countervailing action against Mexico on subsidy

[855] *Act No 150 of 1994* incorporates the provisions of the *Subsidies Code 1994* into domestic law.
[856] *Tariff Act* of 1930.
[857] 19 USC s 1677 (5)(B).
[858] 978 F 2d 1232 (Fed Cir 1992).

programs relating to access to foreign exchange and the pricing of natural gas.[859] The reason for this decision was that the subsidies were of a general nature being paid to companies that represented a range of exporting and non-exporting enterprises and industries. The appellate court reiterated that at least three factors must be considered on a case-by-case basis to determine whether a program is specific in its application: (1) the extent to which the foreign government acted to limit the availability of the program; (2) the number of enterprises or industries which actually use the program; and (3) the extent to which the foreign government exercise discretion in making the program available.[860] The second case referred to by Greenwald (1991) was *Certain Carbon Steel Products from Austria*[861], where the approach taken by the US Department of Commerce was to limit the reach of the law to overt subsidies which can be tied to specific products exported to the United States.[862]

A result of the adoption of the concept of specificity by the United States has been a change in focus for countervailable domestic subsidies, from a broad application to one where the domestic subsidy has an impact on resource allocation within the foreign country.[863] That is, the subsidy needs to be resource distorting within the economy of the exporter. Quick (1991) suggests, referring to the work of Goetz, Granet & Schwartz (1986), that:

> "... the basic idea of the entitlement rationale is that the countervailing duty law only entitles domestic producers to protection if the imports adversely effect the position of domestic producers in the domestic market. These adverse effects occur if the subsidy is 'output-increasing' which in turn results in lower variable costs of production as a consequence of the subsidy."[864]

The adoption of the specificity rule in the *Subsidies Code 1994*, closely follows criteria for the definition of a subsidy proposed by the International Chamber of Commerce which includes:

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[859]The particular program involved loans by the Mexican government through a trust fund for Mexican firms with long-term foreign debt for the coverage of exchange rate risks.
[860]978 F 2d 1232 (Fed Cir 1992) at 1240-41 as cited by Seastrum & Alagiri (1995) p 527.
[861]50 Fed. Reg. 33369 (1985).
[862]Greenwald (1991) p 34.
[863]Greenwald (1991) p 38.
[864]Quick (1991) p 112.

- action by government which affects the pattern of resource use;
- specificity, that is the benefit of government action is confined to specific sectors, and not available to the economy as a whole;
- the action produces adverse competitive effects on competitors in the sector; and
- a net advantage is bestowed on the object of the action (the recipient).[865]

It can be seen as an attempt to limit the application of countervailing actions to those subsidies which are likely to have an adverse impact on producers in an importing country. Although the provisions are displayed in a different way in the *Customs Act 1901* as amended, rather than a direct incorporation of the *Subsidies Code 1994*, it is clear that the domestic law reflects the international agreement in relation to specificity. It is arguable that the decision of Wilcox J in *Atlas Air Australia*[866] would be a useful guide in the interpretation of the current legislative provisions. However, the decision warns against obtuse and irrelevant argument, and proposes that the legal basis for the application of the countervailing law be strictly adhered to.

The next countervailing case considered by the Federal Court was that of *Darling Downs Bacon Cooperative v Comptroller-General of Customs.*[867] This case considered the treatment of subsidies on the export of frozen cuts of pork from Canada to Australia. The Anti-Dumping Authority had attempted to test whether the subsidy to the pig producers in Canada had any effect on the domestic price in that country. It was hypothesised that even if the subsidy on pig production was withdrawn, the domestic price in Canada would remain unchanged, as the North American market for pigs was dominated by the United States production. Moore J could not see the relevance of the hypothesis, and expressed the view that:

> "... if the price of those imported goods reflects the effect of subsidies operating on the raw product or inputs used to produce those goods, so as to result in a price that undercuts the price of like Australian goods, those subsidies may have caused material injury. It is because of those subsidies, reflected in the price of those

[865]Quick (1991) p 114 cites the International Chamber of Commerce Document No. 130/120 dated 19 September 1988, adopted at the 55th Session of the ICC Executive Board (Istanbul, 20 September 1988).
[866]*Atlas Air Australia Pty Ltd v Anti-Dumping Authority* (1990) 26 FCR 456.
[867]*Darling Downs Bacon Co-operative Association Ltd v Comptroller-General of Customs* (1994) 50 FCR 435.

> goods which are actually imported, that an Australian producer might not be able to compete. It is thus immaterial that a comparable price, which could also undercut the price of like Australian goods, might be achieved by the producer of the imported goods by obtaining raw product or inputs from sources other than those whose price is supported by subsidies."[868]

Although the case did not turn on this point, the alluding to hypothetical market conditions in a foreign country is of little relevance to the determination of whether a subsidy had been paid and its effect of the subsidised goods on producers in Australia. The proposition which has to be proved in terms of section 269TJ(1) of the *Customs Act 1901*, is whether a subsidy has been paid, directly or indirectly, on the production of goods that have been exported, and whether because of that, material injury to an Australian industry producing like goods has been caused.[869]

There was no reference by Moore J to the report of a *GATT* Panel on *United States Countervailing Duties on Fresh, Chilled and Frozen Pork from Canada*.[870] There was reference to this report in the Australian Customs Service preliminary finding, reviewed by the Anti-Dumping Authority and later appealed to the Federal Court.[871] The facts were similar to the Australian inquiry relating to the subsidies on Canadian pork, with the subsidy being given to the upstream producers of pigs which were then processed into pork. The panel found that:

> "given the existence of separate industries for swine and pork production in Canada operating at arm's length, the subsidies granted to swine producers could be considered to be bestowed on the production of pork only if they had led to a decrease in the level of prices for Canadian swine paid by Canadian producers below the level they have to pay for swine from other available sources of supply. The panel fully recognised that subsidies need not in all cases, particularly in cases involving only one industry, have a price effect to be countervailable; its

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[868](1994) 50 FCR 435 at 448.
[869](1994) 50 FCR 435 at 448 Moore J. Although there is now a separate definition of 'countervailable subsidy' arising from *Marrakesh Agreement* amendments in *Act No 150 of 1994*, the same conditions apply to making a finding of injury from subsidisation.
[870]*United States Countervailing Duties on Fresh, Chilled and Frozen Pork from Canada* adopted by the Contracting Parties on 11 July 1991 DS7/R.
[871]Anti-Dumping Authority - *Review of the Australian Customs Service Negative Preliminary Finding on Frozen Pork from Canada* Report No 90 of January 1993 pp 53 & 56.

> finding was merely that Canadian pork producers, as an industry separate from the swine producers and operating at arms length, could not have been considered to be subsidised unless the subsidy bestowed on swine production has had a price effect."[872]

The Panel concluded that the United States countervailing duties were levied inconsistently with Article VI.3 of the *GATT*, as the determination of pork production had been subsidised as a result of the subsidies provided to the swine producers required an examination of the impact of the subsidies on the price of swine.[873] It would appear that where an arms length market interposes between subsidised seller and a purchaser, there would have to be positive evidence of an effect on the price of the final product.

Although referring to a different fact situation concerning the privatisation of a company, the United States Court of International Trade in *Saarstahl AG v United States*[874] and *Inland Steel Bar v United States*,[875] appears to have endorsed the principle that the value of a previously bestowed subsidy on a company does not survive the arm's length transaction associated with its purchase. The court stated that:

> "One must conclude that the buyer and the seller have negotiated in their respective self-interests, the buyer has taken into consideration all relevant facts, and the buyer has paid an amount which represents the market value of all it is to receive."[876]

The decision of other appellate bodies indicate a greater reliance being placed on the economic assessment of the market conditions in the resolution of trading disputes under international public law. A Full Federal Court in *Rocklea Spinning Mills v Anti-Dumping Authority*[877] observes that:

> "As the case law points out, an important consideration in examining legislation intended to implement international agreements is to give weight to the construction which the international community would attribute to the relevant

[872] *GATT* BISD Supp No 38 (1992) p 45
[873] *GATT* BISD Supp No 38 (1992) p 45-47
[874] 858 F Supp 187 (Ct Int'l Trade 1994)
[875] 858 F Supp 179 (Ct Int'l Trade 1994)
[876] 858 F Supp 187 at 858 and 858 F Supp 179 at 193.
[877] (1995) 129 ALR 401 at 415.

> instrument or concept: see *Queensland v Commonwealth (1989)* 169 CLR 232 at 240; 86 ALR 519."

It is suggested that consideration of some of the relevant international precedents by the parties reviewing the preliminary finding may have helped avert unnecessary litigation.

Rocklea Spinning Mills v Anti-Dumping Authority[878] involved the alleged subsidisation of cotton yarn exported from Pakistan. In *Rocklea* the Full Federal Court considered on appeal on a judgement by Moore J, the question of whether the setting of lower compulsory export prices for cotton yarn by the Pakistan government, which had the effect of lowering the demand and hence the domestic price paid for raw cotton by yarn manufacturers,[879] was within the meaning of section 269TJ(1) of the *Customs Act 1901* of the phrase 'subsidy, bounty, reduction or remission of freight or other financial assistance'.

The court first addressed the meaning of this subsidy phrase by looking at the other sections of 269TJ and noted that an extension of meaning was used in particular situations, which tended to confirm a more restricted meaning of the subsidy phrase as used in section 269TJ(1). Reference was made to the definition of prescribed assistance in section 269 TJ(7), which was introduced to enable Australia to take action where another country had imposed a countervailing duty without the application of an injury test. The definition of 'prescribed assistance' refers to:

> "any assistance, incentive, exemption, privilege, or benefit (whether financial or otherwise) in relation to the goods other than forms of assistance covered in subs (1), namely the payment or grant of a subsidy, bounty, reduction or remission of freight or other financial assistance."[880]

It appears that section 269TG(7) extends the concept of a subsidy to include subsidies of a non-financial kind, but only in relation to subsidies of a prescribed kind. Reference is also made to the widening of the scope of the deeming provision of section 269TG(10), where the scope of the financial assistance is extended to cover a benefit accruing to an exporter from the use

[878] *Rocklea Spinning Mills PTY Ltd v Anti-Dumping Authority* (1995) 129 ALR 401.
[879] The facts were more complicated with the setting of a benchmark price, a minimum export price, and a differential tax regime on the difference between the actual export price and the benchmark price for cotton yarn.
[880] (1995) 129 ALR 401 at 409.

of dual or multiple rates of exchange in relation to the proceeds of export sales. Again an example where the assistance is not money flowing from the public account, and the need to have a special provision to include such a situation as an actionable subsidy.

In the opinion of the court section 269TJ(1) required either a direct transfer of funds from one party to another, or a grant where there is a relationship between the grantor and the grantee.[881]

The court next looked at two Australian decisions, and in particular that of *Vacuum Oil v Queensland*[882] on the question of whether the prescribing of a rate of payment by the government constituted a bounty within the meaning of section 90 of the Constitution. The court noted that Starke J at 120 characterised the obligation as being to pay a price or sum which persons licensed to sell motor spirit are compelled to pay for power alcohol. Applying this to the analogous situation in the regulation of the export price by the Pakistan government, the court said:

> "The fixing of a price under the Pakistan cotton policy, coupled with the taxation measures, does not have the immediate legal effect of a payment or grant to the exporter. There is no liability or obligation imposed on the government to make a payment or grant to assist the exporters. The advantage or benefit to the exporter arises from the action or behaviour of the buyers of raw material under the regulatory pricing scheme set up pursuant to the cotton policy."[883]

As there were no payments or grants by the government of a pecuniary or financial assistance to the Pakistani exporters of yarn, the court considered that section 269TJ could not extend to the cotton policy of Pakistan.[884]

The court then looked at the relevant provisions of Australia's international agreements. The provisions of section 269TJ(1) were considered to be consistent with that of paragraph 3 of Article VI of the *GATT 1947*.[885] However, there is no definition of a

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[881](1995) 129 ALR 401 at 409.
[882]*Vacuum Oil Pty Ltd V Queensland* (1934) 51 CLR 108.
[883](1995) 129 ALR 401 at 410.
[884](1995) 129 ALR 401 at 411.
[885]Article 19.5(a) of *Subsidies Code 1979* requires that there be conformity of government laws, regulations and administrative processes with the provisions of the Agreement.

subsidy or bounty in Article VI. Reference can be made to footnote 22 to Article 7 of the *Subsidies Code 1979* which says that:

> "In this Agreement, the term "subsidies" shall be deemed to include subsidies granted by any government or any public body within the territory of a signatory.."

In addition, Annex to Article 9.2 of the *Subsidies Code 1979* gives an illustrative list of export subsidies. These sources of international law are referred to by the court for guidance in the definition of a subsidy. The essential features of subsidies coming from the court's consideration of the *GATT* agreements appear to be that they are:

- related to measures taken by governments or their agencies;
- directed to payments or remissions of moneys;
- related to charges on the public account; and
- on the payment or forgoing of pecuniary sums.[886]

This analysis was said to support the narrow interpretation of section 269TG(1) of the *Customs Act 1901*.

The court then turned to the decisions of the European Court of Justice and those of the *GATT* panels. According to the Australian Federal Court in the *Fedoil*[887] cases, both concerned the imposition of differential taxes on exports favouring the processed product. The European Court of Justice held that the differential tax was not a subsidy as it did not involve a charge on the public account. This decision was made after consideration of the Annex of illustrative export subsidies by the European Court of Justice. The court came to the view that a charge on the public account could arise in the form of a payment, exemption or remission of debts by government or government bodies. In this case there was no such charge and therefore the differential export tax was deemed not to be a subsidy. The Federal Court saw these decisions as reinforcing the view that the cotton policy of Pakistan did not come within section 269TJ(1) of the *Customs Act 1901*.[888]

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[886](1995) 129 ALR 401 at 403-404.
[887]*EEC Seed Crushers' and Oil Processors Federation (Fedoil) v Commission of European Communities* (1988) ECR 4155 (Argentina) and at 4193 (Brazil).
[888](1995) 129 ALR 401 at 414-415.

Reference is then made to the decision of the Panel of the *GATT* Committee on Subsidies and Countervailing Measures, which ruled that the forgiveness of a debt by German private banks to a German steel manufacturer was not a subsidy.[889] This view was said to support the position that the payment or grant must be that of a government agency or public body. The court also points out that the meaning given to the words "subsidy bestowed directly or indirectly upon the manufacture ... of the merchandise" in Footnote 4 to Article 1 of the *Subsidies Code 1979* related to the way the subsidy was provided and not with the ultimate commercial effect on the conduct of the manufacturer.[890] It is this approach of the cost to the government which pervades the analysis of the Full Federal Court of the Pakistani export price setting case.

As this case is a benchmark for the application of countervailing duties in Australia, it is instructive to state the summary reason for decision. The court in holding that the minimum export price setting by the Pakistani government was not a countervailable subsidy said that:

- there was no payment or remission by the government; and
- no charge on the public purse, in the sense of a payment of public funds or the remission of duty or tax or the foregoing of other government revenues.

It was also suggested that the amendment to the *Customs Act 1901* defining a 'subsidy' as a result of the *Marrakesh Agreement*,[891] favours the narrow approach to the subject matter of section 269TJ(1). That is:

> "To be a "subsidy" there must now be a "financial contribution" by a government or a public body."[892]

If this obiter proposition were true, then the provision by governments of a loan guarantee below the normal commercial rate would not be considered a subsidy. This would, for example, be inconsistent with guideline (b) to Article 14 of the *Subsidies Code 1994.* Relying on a decision of the European Court of Justice prior to the *Marrakesh Agreement* as the sole source of foreign jurisdictional reference on this matter is likely to

[889] SCM/185 of 15 November 1994.
[890](1995) 129 ALR 401 at 415.
[891]Section 7 of *Act No 150 of 1995*.
[892](1995) 129 ALR 401 at 417.

favour the cost to the government as a pre-condition for a subsidy to be actionable, rather than the benefit to the recipient. For the provisions on subsidies to be read consistently within the *Subsidies Code 1994*, the concept of government revenue foregone in sub-sub-paragraph (a)(1)(ii) of Article 1.1 needs to be read to include such matters as non-commercially constructed guarantees by governments.

Balassa (1993) succinctly summarises the position:

> "From an economic point of view, the subsidy should be measured in terms of the benefit to the recipient. As a practical matter, this will be gauged in terms of the cost to the government. An important exception was noted: in cases when banks provide a subsidised credit against which there are lower reserve requirements, the interest preference should be calculated relative to generally-applicable interest rates."[893]

5.5.5 Summary

There is no easy answer to what constitutes an actionable subsidy. Clearly there is a view that export subsidies are pernicious, but not so when it comes to agricultural products. Black's legal definition of a subsidy refers to a grant of money for some public purpose, whereas the economist sees subsidies as a form of negative taxation. The rationale given for intervention by the state in the economy through subsidisation is to alleviate market failure or for social reasons. However, taxes and subsidies can have a distorting effect on resource usage as Coase (1960) illustrated. Public international laws on subsidies have the purpose of trying to minimise the resource distorting effects which spill-over national boundaries.

The *GATT* framework has been one of constant evolution. There would appear to be three main factors which may deem a subsidy to be actionable:

- a primary resource transfer through payment or revenue foregone by a government;
- a benefit to be derived by a firm from the primary resource transfer; and

[893]Balassa (1993) p 333.

- the primary resource transfer needs to be specific or limited to particular firms for there to be a secondary resource distorting effect.

However, there is a need to distinguish these resource transfers from normal transfer payments by governments for social security and other welfare reasons. It has also been agreed as part of the *GATT* negotiating process that there may be resource transfers: to stimulate research and development; to satisfy regional social objectives; for adjustment to more stringent environmental standards; and exemption of export subsidies imposed by developing countries. These concessions are subject to conciliation if they are shown to have had an adverse impact on another Member.

In analysing the decisions of the Australian Federal Court on the question of what constitutes a subsidy, there appears to be a bias towards the more restrictive view of the European Community. In *Atlas Air*[894] Wilcox J rejected the application of the specificity test, and did not refer to United States cases, in particular *Cabot Corporation*[895] where the specificity test was enunciated and later enacted into United States law. The concept of entitlement linked to the adverse output-increasing effect of a subsidy was not considered. In *Darling Downs Bacon*[896] Moore J ignored the *GATT* Panel cases which looked at the effect of the intermediate market on the passing-through of a subsidy, and the relevant United States cases. In *Rocklea*[897] there tended to be an over-emphasis on payment and charge to the public account, rather than the benefit of the subsidy in the hands of the recipient. The over-reliance on European case law prior to the coming into effect of the *Marrakesh Agreement* again provided a narrow focus. It is suggested that the Court should have had more regard to the concept of revenue forgone, although the decision would not have been likely to have been affected by the use of such a criteria.

The area of actionable subsidisation under the *Subsidies Code 1994* is one where policy and judicial intervention are still very much in the developing stage. Although there are now quite elaborate rules, there is still a large area for differences of opinion as in other

[894]*Atlas Air Australia Pty Ltd v Anti-Dumping Authority* (1990) 26 FCR 456.
[895]*Cabot Corporation v United States* 620 F Supp 722 (CIT, 1987), appeal dismissed, 788 F 2d 1539 (Fed Cir, 1986).
[896]*Darling Downs Bacon Co-operative Association Ltd v Comptroller-General of Customs* (1994) 50 FCR 435.
[897](1995) 129 ALR 401.

areas of the law, leading to uncertainty in the operation of this law.[898] The discussion of the export subsidy equivalent of a domestic subsidy, shows that the application of a simple numeric approach tends to over-estimate the competitive effect of the subsidy needing to be countervailed. It is essential that the administering authorities give consideration to these effects in their final findings as directed by the Federal Court. The Federal Court in *Rocklea*[899] emphasised the need to view the operation of these laws in an international context. It may be better to encourage their resolution through the *GATT/WTO* dispute settlement process than through the domestic courts, in order to develop some consistency in the application of these measures.

5.6 Remedies

5.6.1 Introduction

Remedies can be divided into two broad classes. The first are the provisions in the *Codes* limiting the way nations can retaliate against unfair practices using its own domestic laws and procedures. The second are the provisions of the international public laws which can be invoked to stop another nation from continuing with its offensive practices in breach of their substantive international agreements. In the context of Australian domestic legislation, the provisions allow for the imposition of anti-dumping and countervailing duties following a finding of injurious dumping or subsidisation.[900] Whereas the *GATT* and the *Codes* and the procedural rules now contained in Annex 2 to the *WTO* Agreement on dispute settlement,[901] allow for a system of international third-party dispute settlement to be invoked.[902] The remedies available under domestic and international public law deal with both the unfair act and the abuse of agreed process in the application of domestic retaliatory actions.

Comment [EL1]: Page: 283 need to explain how the domestic law is involved - jurisdiction of the Federal court in the review process

[898] eg. the lack of any concept of public purpose in the provisions of this law, and has its parallel in section 92 of the *Commonwealth of Australia Constitution Act 1900* which is a frequently litigated area.
[899] (1995) 129 ALR 401.
[900] Sections 269TG(1) or (2) and sections 269TJ(1),(2),(4),(5) or (6) of the *Customs Act* 1901 for anti-dumping and countervailing actions, respectively.
[901] 33 ILM 112 (1994)
[902] This system is built on the provisions of Article XXIII of the General Agreement. The Annex to the *WTO* Agreement now specifies those Agreements (Covered Agreement) which are fully covered by the Dispute Settlement Understanding. Article XXIII disputes can take two forms (a) 'violations' where benefits under *GATT* have been denied by the actions of another member, and (b) 'non-violations' where a benefit currently being enjoyed has been 'nullified or impaired' by another member or in some cases impeded.

Article XXII of the *GATT* places considerable emphasis on consultations between the parties to resolve any dispute. These processes have developed to such a stage in the *Codes* that to ignore them would prejudice the outcome of any favourable decision through the *GATT* legal process as it is generally understood in Article XXIII.[903] Vermulst and Driessen (1995) suggest that even with the new dispute settlement procedures, that there will be a reluctance of the *GATT* Members to let a proceeding reach the stage of countermeasures.[904]

5.6.2 Choice of Jurisdiction

In the case of injurious dumping and subsidisation, the conditions and processes for the application of domestic remedies are contained in the *Codes*. The process requires that an investigation be conducted leading to a preliminary finding, where, if positive, a dumping or countervailing provisional duty may be imposed. If upon further investigation a positive final finding is reached, then a dumping or countervailing duty may be imposed. The process allows for access to non-confidential information by the parties to the inquiry, and for the rules of procedural fairness, including natural justice, to apply.[905] The whole process is subject in the first instance to legal appeal direct to the Federal Court of Australia under the provisions of the *Administrative Decisions (Judicial Review) Act* 1977.[906] Complaints about the administration of the anti-dumping law are referable to the Commonwealth Ombudsman under the *Ombudsman Act* 1976.

Where a domestic industry complains of injurious dumping or subsidisation, the utilisation of domestic law is the preferred route. This allows for the full investigation of the facts by the authorities, and consideration of any appeals by an administrative authority or legal review body. However, there is no bar to a Member nation bringing matters to the *World Trade Organisation* to have them dealt with under the *Code* or through the general *GATT* dispute settlement process where the *Code* provisions have

[903]Vermulst and Driessen (1995) p 134 are not as convinced of a distinction between legal and consultative provisions under the *GATT* as there is still emphasis on conciliation and harmonisation of views.
[904]Vermulst and Driessen (1995) p 153.
[905]*GTE (Aust.) Pty. Ltd. v Brown* (1986) 14 FCR 309.
[906]s.5 of the Act allows that "A person aggrieved by a decision...may apply to the Court for an order of review..."

been exhausted.[907] The choice of venue is that which a nation sees as most advantageous. However, the place of domestic courts in the dispute settlement process is well entrenched in both the *Codes*.[908]

The history of the application of remedies has placed a major emphasis on settlement via domestic law when this is available.[909] International public laws were only used as a last form of remedy.[910] Hudec (1993) provides some valuable insights into the development of the dispute settlement process. It appears that during the 1950's the concept of third party adjudication of disputes arose out of an imbalance of power between the United States and the other parties, with the United States keen on the use of an independent umpire to prove its benign intentions in the application of the *GATT* rules. This was evidenced by the relative low level of disputation and the high level of acceptance of the third party decisions by the parties to a dispute. The concept of the need for unanimity of acceptance of the parties arose from the structure and membership composition of the *GATT*, with only a small number of parties to the initial agreement aided by the cohesiveness of the officials involved.[911]

Considerable gains in the effectiveness of the dispute settlement process were made during the Tokyo Round. The final position was a trade off between the United States' wish for stronger rules and the European Community's preference for diplomatic solutions. In the case of the *Codes* the dispute settlement process was one of an automatic establishment of a panel with only the power of veto at the stage of the Committee's consideration of a panel report. In the new *Subsidies Code* the United States had agreed to incorporate an 'injury' test into its domestic law and to limit any substantive

[907]Importers subject to anti-dumping duty or dissatisfied domestic producers have no choice other than the domestic law, as the *GATT* in contrast to the *NAFTA* will not allow companies to bring cases against their host governments.(The Economist 10 June 1995 p 100)
[908]Article 13 of the *Anti-dumping Code 1994* and Article 23 of the *Subsidies Code 1994*, both encourage prompt review by domestic courts of final determinations and the continuation of measures.
[909]In Australia's case there were 665 initiated complaints of dumping and subsidisation finalised in the eleven year period between 1982-83 and 1992-93 (refer Table para 5.6.1) under domestic law with only 3 disputes, for example, referred to *GATT* by Australia for third party adjudication during the period 1982-83 and 1988-89 (see-Hudec(1993) Appendix Part II).
[910]There was the view that the *GATT* legal system lacked teeth as commented upon by Evans and Walsh (1994) p 46 in the following terms: "The main weakness lay in the principle of consensus, which required the acceptance by the party being complained against of the need for its actions to be investigated and, if found to be in the wrong, to accept remedies."
[911]Hudec (1993) pp 29-31 explains his view as to the early development of the dispute settlement process.

discipline on subsidies in return for the European Community agreeing to a rigorous dispute settlement procedure.[912]

Progress with the general dispute settlement rules under *GATT* Article XXIII resulted in two documents[913], which were more restrained. The *Agreed Description of Customary Practice* is said by Hudec to have "certified that the objective of third-party adjudication was well established as a *GATT* practice."[914] The *Decision on the Improvement to the GATT Dispute Settlement Rules and Procedures* defined the procedures to be used for creating panels, and set out rules of thumb guidelines for the time limits for the phases for settling disputes. It generally cautioned against the use of the panel process and where a panel had been formed to "consult regularly with the parties...and give them adequate opportunity to develop a mutually satisfactory solution."[915]

The United States was still unhappy with the Tokyo Round solution and wanted a far more legalistic approach to the *GATT* process. Bello and Holmer (1994) claim that the United States used aggressive unilateral trade sanctions under section 301 of the *US Trade Act of 1974* with the object of increasing the pressure on other countries to restore support for freer trade; obtain better access abroad for US exports of goods and services; and remain in control of the trade agenda.[916] The victory was the virtual adoption of the December 1991 "Dunkel Text" in the *Dispute Settlement Understanding 1994* with the new rules providing for:

- automatic establishment of a panel and the automatic adoption of panel reports (unless the Council, by consensus, decides to the contrary);
- an exceptional opportunity for review of panel reports;
- rigorous surveillance of the implementation of adopted panel reports;
- compensation, or *WTO* authorisation, for the suspension of concessions if a report is not implemented in a reasonable period of time;

[912]Hudec (1993) pp 54-55
[913]The *Agreed Description of Customary Practice* and the *Understanding on Dispute Settlement* both appearing at *GATT BISD 26 Supp. 210-19 (1980)*
[914]Hudec (1993) p 56
[915]Hudec (1993) p 56 - *Decision on the Improvement to the GATT Dispute Settlement Rules and Procedures* April 12, 1989 (GATT Decision L 64/89; BISD Supplement 36, 1988-1989, 61).
[916]Bello & Holmer (1994) p 1099. This view is also supported by Low (1993) who analyses the outcomes of the Super 301 actions in 1989 and 1990 and found that the results were predominantly trade liberalising.

- expeditious arbitration in event of disputes about a reasonable period of time for implementation or the appropriate level of compensation or suspension; and
- recourse to these procedures considered as violating the *WTO*, or nullifying or impairing *WTO* benefits.[917]

These changes in the dispute settlement procedures of the *WTO*/*GATT 1994* produce an outcome which could be more legalistic in nature and, as such, is available to parties who wish to use third party adjudication as a way of resolving disputes.[918] To understand how the new dispute settlement process may assist in the resolution of disputes it is important to have regard to the structure of authority within the *WTO/GATT* organisation. The following table shows the decision hierarchy as it applies to dumping and subsidy disputes:

[917]Bello & Holmer (1994) p 1099 - It was the last point which was directed at the provisions of the *Omnibus Trade and Competitiveness Act of 1988*, Pub. L. No. 100-418, s 1101(b)(1), 102 Stat. 1107, 19 U.S.C. s 2901(b)(1) (1988) known as Super 301 where the trade negotiating objective is spelt out as "to provide for more effective and expeditious settlement mechanisms and procedures...and enable better enforcement of United States rights." The Super 301 provided additional clauses to those necessary to preserve the right to pursue violations of GATT or nullification or impairment of the United States GATT benefits. It allowed the United States to authorise actions which in response to government acts, policies, or practices that were deemed unjustifiable, unreasonable, or discriminatory and that burden or restrict United States commerce. However, the *Dispute Settlement Understanding 1994* only deals with the covered agreements leaving service, investment and intellectual property rights still subject to the Super 301.
[918]Kohona (1994) p 204.

WTO ORGANISATION

MINISTERIAL CONFERENCE (main organ of the WTO meeting at least every two years)		
I		
COUNCIL (comprises of officials of Members and conducts affairs between the meetings of the Ministerial Conference)	-	**DISPUTE SETTLEMENT BODY** (The Council changes its name when it meets to resolve disputes)
I		I
COUNCIL FOR TRADE IN GOODS (this is one of three specialised divisions of the Council, the others relate to Trade in Services and TRIPS)		**APPELLATE BODY** (comprises permanent members who can be appointed for two 4 year terms)
I		I
CODE COMMITTEES (formed by officials of the Members and supervise the application of a Code meeting half yearly)		**PANELS** (appointed from a list of panellists maintained by the secretariat and hear disputes refereed by the DSB)
I		
GROUPS OF EXPERTS *(Subsidies Code* has a permanent group. Provide expert advice to panels and code committees)		

One reason the change may encourage the use of third-party dispute settlement, is that Article 16(4) of the *Dispute Settlement Understanding 1994* provides for the adoption of panel reports by the Dispute Settlement Body, on matters arising under Covered Agreements, within 60 days after circulation to members. This is unless a party to the dispute decides to appeal or if the Dispute Settlement Body decides not to adopt the report.[919] It contrasts with the practice prior to the *Dispute Settlement Understanding*

[919]Vermulst & Driessen (1995) p 143.

1994 where a decision to adopt a panel report was by way of consensus of the contracting parties.[920] Such a practice allowed the Contracting Party against whom the report was directed to have the power of veto.[921]

In evaluating this traditional view of the ineffectiveness of *GATT* panel rulings prior to 1994, Horlick (1995) refers to an analysis by Hudec (1993) on the enforcement of international trade law. Hudec looked at the response of the United States to valid complaints against it by other members over a 42 year period. He found that in 88% of cases there were positive results for the complaining party. Where the United States has not been so compliant is in the area of anti-dumping. Horlick reports that the United States has not complied with any of the three anti-dumping panel decisions it lost.[922]

The agreements relating to dumping and subsidy measures, although covered by the *Dispute Settlement Understanding 1994*, have specific rules relating to consultation and dispute settlement which take precedence over the application of the rules of the general understanding.[923] It is in the context of the application of these specific rules that the choice of jurisdiction should be weighed, and now given the changed circumstances with by which panel decisions are dealt with under the dispute settlement procedures the use of *GATT* panels may be a more attractive option . However, it is hardly likely that the post war influence of the imbalance of power would now be persuasive in getting the stronger parties to use the *WTO* dispute settlement procedure rather than bilateral negotiation.[924]

5.6.3 Consultations

As alluded to in the introductory remarks, consultation is an ingredient in all anti-dumping and countervailing actions. The incentive for consultation is illustrated by Kelly's example of market cartelisation behaviour of multi-national firms which he gave during the debate on the *Customs Tariff (Anti-Dumping) Bill 1975*.[925] It is only when negotiation between the private parties break down that the government may become involved. This involvement

[920]Pescatore P, Davey WJ and Lowenfeld AF (1992) p 21.
[921]Brenchley F The Australian Financial Review 11 May 1995 p 13.
[922]Horlick (1995) p 165.
[923]Article 17 of the *Anti-dumping Code 1994* and Article 7 of the *Subsidies Code 1994.*
[924]An example of the use of a bilateral agreement post *GATT 1994* was the dispute between the United States with Japan on access to the Japanese market for foreign motor cars. This was settled privately between the two parties outside the *GATT* disputes settlement process, although there was use of informal *GATT* mediation and continual reference to the use of a *GATT* umpire by Japan throughout the dispute.
[925]Second Reading Debate House of Representatives Hansard 23 April 1975 p 2082

by government is initiated by the party alleging injury through the lodgement of a complaint.

Messerlin (1989) illustrates the incentive for firms to cartelise by reference to the subsidisation of the Airbus by the European Communities and the effect on the marginal costs and monopoly pricing of Boeing. The end result was a deal between Boeing and Airbus to a reduction in price with the Airbus subsidy reflecting the marginal cost differential between Airbus and Boeing. The net result appears to have been an enhancement of total profit for Boeing, while allowing Airbus an agreeable market share.[926] There has been no countervailing case lodged by either the United States or the European Community on aircraft manufacture. This form of behaviour suggests that the use of government intervention mechanisms such as the threat of countervailing action occurs where there are conditions which prevent the parties being able to privately enforce an agreement on market restrictions.

The Airbus example is one where there is no market discipline, with only two suppliers and one the dominant party, and a limited number of buyers world wide. This highly concentrated industry structure inhibits the achievement of a classical economic competitive equilibrium solution. The rationale for countervailing duty action is based on the need to counteract the distortion of the application of subsidies in a competitive market. As there is no competitive market the rationale for the application of countervailing duties vanishes. The solution in the Airbus example is simply based on the exercise of market power, and market sharing according to the "Stackelberg" equilibrium solution.

Australian domestic law places considerable emphasis on dispute settlement through consultation. After receiving a request for either anti-dumping or countervailing measures, the country(s) exporting goods against which the measures have been requested are to be notified.[927] In relation to countervailable subsidy claims there must be an invitation to the foreign government affected to consult with the administering authority.[928] These domestic provisions are in conformity with Articles 5.5 and 13.1 of the *Anti-dumping Code 1994* and the *Subsidies Code 1994*, respectively.

[926]Messerlin (1989) p 35 Annex
[927]Sections 269TB(2A) and (2B) of the *Customs Act 1901*
[928]Section 269TB(2C) of the *Customs Act 1901*

Moving to the process of invoking government restraining measures on subsidisation, Article 13.2 of the *Subsidies Code 1994* makes provision for mandatory consultations, with other *GATT 1994* Members whose products may be subject to the investigation, before the initiation of an investigation by the authorities and throughout the investigation. The aim is to arrive at a mutually agreed solution between the Members championing the cause of the domestic producer within their territory. The failure of such consultations may provide a basis for proceeding under the dispute resolution provisions of Parts II, III or X of the *Subsidies Code 1994*.

Article 17 of the *Anti-Dumping Code 1994* also provides for consultations as part of the dispute settlement procedure. The provision requires affording adequate opportunity to consult on representations made by another Member, rather than the mandatory consultations of the *Subsidies Code 1994*.[929]

Consultation is seen within the *GATT* system as an important part of the dispute resolution process, particularly with anti-dumping and countervailing disputes. Vermulst & Driessen (1995) claim that panels have tended to hold:

> "that issues that were not raised during the conciliatory phase could not be raised later in the proceeding.[930]

Whether this emphasis on trying to reach a mutually acceptable agreement between the parties to a dispute is a reasonable 'second best' option to the solution of international trade disputes, depends on an acceptance of the perpetuation of market distortions by administrative intervention.

5.6.4 Duty Imposition and Exporter Undertakings

Given a failure in consultation and the history of third-party adjudication, it is unlikely that this form of adjudication will take centre stage over the remedies available under the domestic law. It is in the interests of the import affected domestic industry to use local administering authorities for investigation and adjudication on alleged injurious dumping

[929] These are not new provisions in either of the *Codes*
[930] "Vermulst & Driessen (1995) p 141

and subsidy claims.[931] The *Codes* allow domestic remedies to be applied by way of duty imposition or undertaking. Under Australian law, a security may be taken on goods subject to a positive preliminary finding.[932] If the final decision is positive, then an (interim) dumping duty is applied, or in the case of an injurious subsidy, a countervailing duty.[933] These duties are generally applied on each individual exporter found to have been injuriously dumping.[934] With countervailing duties, however, the position of the *Subsidies Code 1994* regarding the imposition on the individual exporter is less clear.

The administration by the authorities of both the *Anti-Dumping Code 1994* and the *Subsidies Code 1994* should be permissive in the application of duties. They are required to choose an amount less than the total amount of dumping or subsidy if the lesser amount would be adequate to remove the injury to the domestic industry.[935] However, both the *Codes* allow for the imposition of duty retrospectively 90 days prior to the imposition of provisional measures in exceptional circumstances.[936] Australia has domestic provisions consistent with the *Codes* but has not made a practice of applying these provisions.[937]

A related question concerns the application of anti-dumping duties on intermediate goods which are destined for re-export albeit in an incorporated form. Currently there is a policy applied by the authorities in Australia to not allow for the remission of dumping and countervailing duty on re-export of goods subject to those duties.[938] It is difficult to

[931]This is based on the presumption that domestic administering authorities would tend to favour an outcome conducive to the pressures of domestic industry.
[932]The period may be up to 9 months for anti-dumping preliminary findings, or for a period not exceeding 4 months for a countervailing duty preliminary finding; see Article 7.4 of the *Anti-Dumping Code 1994* and Article 17.4 of the *Subsidies Code 1994.* The relevant Australian provisions are contained in sections 42 and 45 of the *Customs Act 1901* .
[933]In *Wattmaster Alco Pty Ltd v Button* (1986) 70 ALR 330 it was held that where a decision to impose a duty was bad in law, the decision was to be treated as invalid from the date on which it was made. This had the effect of allowing the applicant importer in this case to seek the recovery of any dumping duties paid.
[934]Where it is too difficult due to the large number of offending exporters, the supplying countries are named.; see Article 9.2 of the *Anti-Dumping Code 1994*.
[935]Articles 9.1 of the *Anti-Dumping Code 1994* and 19.2 of the *Subsidies Code 1994.*
[936]Articles 10 and 20 of the *Anti-Dumping Code 1994* and *Subsidies Code 1994*, respectively.
[937]Anti-Dumping Authority Report No 93 on *Triethanolamine from the Federal Republic of Germany and Mexico* February 1993.
[938]Industry Commission's *Draft Report on the Packaging and Labelling Industry* (1995) p xxii it says: "Until 1988 users were able to obtain duty drawback of dumping duties on imports into exports." This comment appears to be supported by internal legal advice from within the administering authorities in Australia. Such a change of practice was not advertised since a previous report by the Industry Commission on *Export Concessions* (1987) p 3 had reported that: "Drawback enables firms to obtain a refund of import duties including dumping duty and other penalty duties, when the goods are exported."

see how the remission of duty could affect the relief to an industry in Australia, where the dumped goods are not destined for home consumption. These intermediate goods are to be incorporated into price sensitive final products for export. However, if an additional charge for the anti-dumping duty is to be included in the cost of these final products, it is unlikely that these products would be produced for export. That is, international competitors in final goods market do not have to bear the additional cost of the anti-dumping duty on intermediate inputs, whereas dumping duty is payable by the producers located in Australia. This places international competitors at a distinct cost advantage to the Australian exporter in the servicing of export markets. As export demand sets the export price, it is likely that the failure to remit dumping duties on export will lead not only to the direct loss of sales of exportable final products. It also discourages price discrimination by the intermediate product producer in Australia in favour of goods incorporated in final products for export.[939] That is, there would be fallacious attempts by the intermediate goods producer in Australia to extract monopoly rents in a market where they are unsustainable. The Industry Commission (1995) in its *Draft Report on the Packaging and Labelling Industry* draws attention to this anomaly.[940]

Is it simply coincidental that the United States changed its policy in 1988 on the granting of drawback of dumping duties on re-export? The *Omnibus Trade and Competitiveness Act of 1988*, included the relevant legislative provisions to put this policy change into effect.[941] As Baldwin and Moore (1991) point out, such a change has the effect of penalising United States exporters who lose export sales because they are required to pay

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[939]The question of the extra-territorial application of the *Trade Practices Act 1974* was addressed by Lockhart J in *Trade Practices Commission v Australian Iron and Steel Pty Ltd* (1990) 22 FCR 305 at 319-321 a merger case, where a determining factor was the effect on the Australian market. The principle is equally relevant to the application of section 49 of the *Trade Practices Act 1974* governing price discrimination. Lockhart J expands on the question of extra-territorial application in this way:

> "The existence of a body corporate which is the subject of the proposed merger or takeover is an essential component of that prohibited conduct and the extra-territorial operation of s 50 which is achieved by subs 5(1) necessarily includes that body corporate wherever it is incorporated or carrying on business. The relevant territorial nexus with Australia is derived from the statutory requirements that the corporation which is the subject of the prohibition imposed by subs 50(1) must be incorporated and carrying on business within Australia (subs(1)) and that the conduct must affect the market in Australia in the manner mentioned in subs 50(1).

[940]Industry Commission (1995) pp XX - XXIII, the policy appears to have changed in 1988 without public announcement.

[941]19 USCA § 167h Drawback treatment includes the amendments of Pub L 100-418 § 1334 (a) which substitutes "not be treated as regular" for 'to be treated as any other" effective on and after August 23 1988. The law had been that a "special duty imposed pursuant to the *Anti-dumping Act* is treated in all respects as a regular customs duty within the meaning of all laws relating to drawback. 19 USCS § 170 as discussed in American Jurisprudence 2d Customs and Import Regulation Vol 21A p 799 of 1981.

more for their intermediate inputs.[942] At least the United States is large enough to be able to influence the world price of certain products, whereas Australia is a price taker in almost all markets and the adverse consequences of such a policy are therefore magnified.[943] It is a matter requiring urgent attention by the Australian authorities.

Apart from representing a policy dilemma for the Australian government, the practice is questionable in law. The policy of not allowing a remission of dumping duty on export also places Australia in a position inconsistent with the intention of the *Kyoto Convention on Customs Procedures*[944], and apparently at odds with the behaviour of other international trading competitors as reflected in the provisions of *GATT 1947* Article VI.4. Australian domestic laws are in accord with the provisions of both of these agreements. Simply stated, the *Customs Act 1901* and its regulations provide for the collection and drawback of duties of Customs. Section 168 of the *Customs Act 1901* provides for the regulation of the drawback of duty paid on goods imported into Australia. Regulation 129(2) of the *Customs Act 1901* provides for drawback of import duty on exportation of the imported goods, and other regulations prescribe the circumstances where such drawback will be given. No provision in the *Customs Act 1901* excludes dumping duties from drawback of import duties on the re-export of incorporated goods. The only definition of duty is in section 4 of the *Customs Act 1901* which gives its meaning as a duty of Customs.

However, it has been argued in order to refuse drawback on goods subject to dumping and countervailing duties, that these duties are special duties of customs[945] and cannot be considered normal import duties. It is clear from reasons given in the unanimous decision of the High Court in *Nott Bros & Co Ltd v Barkley* that any distinction between a special duty and a duty of Customs is ill founded. Knox CJ and Higgins J came to the view, when considering the recovery of an amount paid under protest in respect of a special duty levied under section 8(2) of the *Customs Tariff (Industries Preservation) Act 1921-1922* and its validity in terms of paragraph 2 of section 55 of *The Commonwealth of Australia Constitution Act 1901*, that:

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[942]Baldwin & Moore (1991) p 261.
[943]Caves (1993) p 204.
[944]In Note 1 to the Scope of the drawback provisions which may restrict the application of drawback to certain goods or classes of goods. Commentary (3) to Note 1 gives examples of the form of restriction to certain tariff headings, or to specified descriptions of goods or classes of goods.
[945]Sections 8(2) and 10(1) of the *Customs Tariff (Anti-Dumping) Act 1975* impose a special duty of customs to be known as dumping duty and countervailing duty, respectively.

> "The special duties imposed by the Act are in all cases chargeable on or in respect of goods imported into Australia, and are clearly duties of customs in the ordinary meaning of that expression."[946]

Isaacs J, with Rich J in agreement, when dealing with the same issue in that case, expanded on the application of the law saying that:

> "... the provision requires that "laws imposing duties of customs shall deal with duties of customs only." In the result, so long as a customs law deals only with customs duties, it matters not on what subjects or on what conditions those duties are imposed. Novelty is no objection; for stagnation is not a ruling principle of government."[947]

Comment [EL2]: Page: 158
Page: 294
need to get reference and details of convention

The same matter arose again in the High Court in the case of *Carmody v Lovelock* which involved the question of the application of a dumping duty on goods entered prior to the publication of a notice by the Minister. Gibbs J referred with approval to the common position taken by the parties relating to the prospective application of a dumping duty in the following terms:

> "It was conceded that if the notice had applied only to goods imported after the date of publication of the notice the duty would have been a duty of customs and that this concession is correct is established by *Nott Bros. & Co. Ltd. v Barkley*."[948]

These unanimous decisions of the Full High Court leave the argument supporting the distinction between dumping and customs duties very thin.[949] Therefore on both policy and legal grounds the exclusion of dumping and countervailing duties from entitlement to drawback, by the administering authorities in Australia, would appear contrary to public policy. That is, such a policy would tend to inhibit wealth creation by discouraging exportation of final products from Australia, and appears inconsistent with Australia's international obligations.

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[946] *Nott Bros & Co Ltd v Barkley* [1925] 36 CLR 20 at 24.
[947] [1925] 36 CLR 20 at 26.
[948] *Carmody v F C Lovelock Pty Ltd* [1970] CLR 1 at 26.
[949] Lane (1971) pp 96-97 discusses "What is a Customs Duty".

The *Subsidies Code 1994* makes provision for the waiver of duty imposition where the subsidy has been withdrawn, the subsidies have been renounced or an exporter undertaking has been accepted.[950] Both the *Anti-Dumping Code 1994* and the *Subsidies Code 1994* have allowed for the acceptance of exporter undertakings where there is agreement to revise prices so that the injurious effect of the dumping or subsidisation is eliminated.[951] In the case of subsidies, the *Subsidies Code 1994* allows the government of the exporting Member to eliminate or limit the subsidy or take other measures concerning its effects. Upon acceptance of an undertaking, proceedings may be suspended or terminated. However, it may be to the benefit of the exporting or importing Member to complete the investigation so as to obtain a definitive determination. The *Anti-Dumping Code 1994* and the *Subsidies Code 1994* allow the investigation to continue in these circumstances even though an undertaking has been given.[952]

Australia has relied more on duties than on the undertaking mechanism to resolve dumping or subsidy disputes.

ACTIONS

[950]Articles 19.1 and 19.3 of the *Subsidies Code 1994*.
[951]Articles 8.1 of the *Anti-Dumping Code 1994* and 18.1 of the *Subsidies Code 1994*.
[952]Articles 8.4 of the *Anti-Dumping Code 1994* and 18.4 of the *Subsidies Code 1994*.

Year	Initiations	Pos. Prelim. Findings[953]	Final Duties	Undertakings
1980-81	61	na	21	2
1981-82	54	na	18	8
1982-83	85	98	46	11
1983-84	71	94	36	5
1984-85	68	30	15	3
1985-86	54	50	21	6
1986-87	40	15	3	1
1987-88	29	38	6	1
1988-89	20	17	10	5
1989-90	31	6	1	4
1990-91	73	11	11	0
1991-92	88	56	47	1
1992-93	77	44	22	0

Source: Gruen (1986), Banks (1990) and Australian Customs Service

However, the EC frequently use price undertakings as a means of solving these trade disputes. The United States and Canada favour duty application, except that the United States enters into voluntary export restraint arrangements with exporters. It is interesting to note that Taiwan with its newly introduced anti-dumping and countervailing duty laws, initially relied on the application of undertakings rather than duties. It was only in 1994 that the first ever anti-dumping duty was imposed.[954] Sui-Yu Wu (1995) saw the undertaking route as being "...operated with the view to solving the dispute between private interests, as opposed to enforcing a trade policy measure."[955]

A potential problem arises in Australia where the solution is to raise prices to a level to prevent injury to the affected party, that this could be construed as simply price fixing. Although price fixing is prohibited under section 45A of the *Trade Practices Act 1974*, it is permitted where it is a result of a price undertaking by an exporter to the Australian government to resolve a dumping or subsidy inquiry. As the *Customs Act 1901* is

[953]It should be noted that in the early 1980s positive preliminary findings in a year may exceed the number of initiations. This comes about through the lags associated with the time taken to reach a preliminary finding, as there were no statutory time limits at that stage.
[954]Sui-Yu Wu (1995) p 32
[955]Sui-Yu Wu (1995) pp 31-32 indicates there was an upsurge in dumping complaints in Taiwan in 1992-93 with 13 cases filed, and in the first half of 1994 there were 6 cases of dumping duty imposition.

specifically directed towards the resolution of such disputes in this way, and the provisions of the *Trade Practices Act 1974* are specifically excluded.[956] The *Customs Act 1901* also allows for discussion between Australian government representatives and Australian manufacturers on the question of terms of an exporter undertaking sufficient to remove material injury to the affected Australian industry.[957] These provisions are consistent with the emphasis on consultation inherent in both the *Anti-Dumping Code 1994* and the *Subsidies Code 1994*. The provisions do not extend to the discussion of pricing or supply with importers. Importers are not covered by the provisions allowing for discussions of the non-injurious price.

The exclusory provisions of s 51(1)(a)(i) of the *Trade Practices Act 1974* relate solely to those matters authorised by another Act. Therefore any of the parties would not be exempted from the jurisdiction of the *Trade Practices Act 1974* in relation to discussions concerning the pricing of their imports which may lead to price fixing, resale price maintenance, misleading or deceptive conduct or any other relevant activity covered by Parts IV and V of the *Trade Practices Act 1974*, subject to the secondary test where applicable of leading to a lessening of competition. Given the possibilty for conflict between the application of anti-dumping remedies and the desire to limit anti-competitive practices, it is surprising that there have been no cases to date concerning anti-competitive practices as a consequence of anti-dumping or countervailing actions. This is not so in relation to alleged misleading and deceptive conduct.

In *Merman v Cockburn Cement*[958] it was asserted that there had been misleading and deceptive conduct under s 52 of the *Trade Practices Act 1974* designed to mislead the Minister in an application for anti-dumping relief. The respondent's motion to strike out the claim or to stay the court's proceeding was dismissed. Merman had asserted that the alleged misrepresentation may have influenced the Minister in commencing an anti-dumping inquiry under the *Customs Act 1901*, and Lee J held that:

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[956]It could be argued that the specificity of the anti-dumping law gives it coverage in this area, and also the concept of an expectation that the legislation being in conformity with Australia's international obligations under the *Anti-Dumping Code 1994* and the *Subsidies Codes 1994* with undertakings being an acceptable remedy that the domestically enacted international public law provisions would prevail. This is supported by s 51(1)(a)(i) of the *Trade Practices Act 1974* which exempts actions taken in accordance with the provisions of other Acts from its jurisdiction.

[957]Section 269U *Customs Act 1901* allows discussions between Customs and industry representatives of the terms of undertakings before recommending their acceptance by the Minister.

[958]*Merman Pty Ltd v Cockburn Cement Ltd and Another* (1988) 84 ALR 521.

> "...it would be difficult to conclude that the proceedings have no true foundation if they contained a real question for determination and sought orders that may be made in the public interest under the Trade Practices Act."[959]

This case illustrates the linkage between the anti-dumping law relating to international unfair trading practices and the application of internal competition law in Australia.

5.6.5 The Non-Injurious Price Remedy

Having accepted the principle that anti-dumping measures should be applied so as to remove the material injury to the domestic production, how is this remedy assessed and applied in Australia. As a precondition to the imposition of a duty, the Minister is required to declare under ss.269TG-TJ of the *Customs Act 1901* that there is a case for remedial action, as there is either dumped or subsidised imports causing material injury to the domestic producer in Australia. An anti-dumping or countervailing duty may then be levied in accordance with the provisions of ss.8-11 of the *Customs Tariff (Anti-Dumping) Act 1975*.

The Australian legislation provides for less than the full margin of dumping to apply where that would be more than was required to relieve the material injury to the Australian industry caused by the dumping (s.8(5) of the *Customs Tariff (Anti-Dumping) Act 1975*). This provision is consistent with Article 8.1 of the *Anti-dumping Code*.

The Authority in its Annual Report for 1990-91 discusses the method of assessment of the level of duty which they consider is sufficient to remove the material injury caused by the dumping or subsidisation and found:

> "The usual method is to begin by calculating an 'unsuppressed selling price' for the Australian industry: a price, that is, at which the industry might reasonably expect to sell its product in the Australian market, if prices in that market were not being suppressed by the dumped imports.

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[959] *Merman Pty Ltd v Cockburn Cement Ltd and Another* (1988) 84 ALR 521 at 535. Lee J reviewed the case material in support of the application of section 52 of the *Trade Practices Act 1974* holding that it was not confined solely to consumer protection. Merman failed in a later attempt to obtain an injunction against the initiation of the anti-dumping inquiry in *Merman Pty Ltd v Comptroller-General of Customs* (unreported, Lee J, 16 September 1988), and the case alleging misleading conduct was later withdrawn.

> From that price are then subtracted the costs of getting the goods to Australia and of selling them in the Australian market.
>
> The result is a 'non-injurious free-on-board' price, or NIFOB: a price at which the goods could be exported without causing injury to the Australian industry producing like goods.
>
> The dumping duty charged is, then, the difference between the export price of the goods and the lower of (a) the normal value of the goods, or (b) the non-injurious FOB price of the goods.
>
> A very similar set of provisions applies in calculating the 'countervailing' duty charged on subsidised goods, when the subsidy has been found to be causing or threatening material injury to the Australian industry producing like goods."[960]

The question of the correct level of the 'unsuppressed selling price was considered by Wilcox J. in *Swan Portland Cement v Minister*.[961] By way of background, the Authority had determined an unsuppressed price based on a long term supply contract between a domestic producer (the purchaser) and the importer of the dumped goods, subject to a number of conditions and rights benefiting the purchaser. At the time the contract was entered into, the market price was found by the Authority to be suppressed by the dumped imports. Wilcox J. made the following observations:

> "It is, of course, theoretically possible -- although, perhaps, unlikely -- that even a price offered in a suppressed market could represent the price at which a vendor would be prepared to supply in an unsuppressed market. There are two methods of testing that possibility: by examination of the cost structure of the vendor to see whether the price sufficed to cover its costs and to return a reasonable profit; and by analysing other sales, made by vendors not affected by dumping."...[962]

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[960] Anti-Dumping Authority Annual Report 1990-91.
[961] *Swan Portland Cement Limited v The Minister for Science, Customs and Small Business* (1989) 88 ALR 196.
[962] (1989) 88 ALR 196 at 208.

The judge then turned to the question of the influence of the non-price components of the contract pointing out that:

> "There is a further difficulty about the acceptance of the figure [upon which the Authority relied] ... This figure was negotiated in the context of its applying to sales made under a long-term agreement pursuant to which Merman would allow Cockburn the right to supply the whole of its needs for cement clinker; thus effectively terminating Merman's imports. Moreover, Cockburn was granted an option to purchase Merman's grinding plant. No attempt was made to determine the value of these terms..."[963]

Then looking at the alternative pricing indications, Wilcox J while commenting upon the thought of the Authority's project officer that:

> "...a price negotiated for a long-term contract was a more reliable guide than one used for a single sale."(said) " No doubt this is so, although sufficient number of comparable "spot sales" will often provide guidance as to price levels in a market."[964]

However:

> "In the end, the Authority rested its "unsuppressed selling price" directly and solely upon the price struck between Cockburn and Merman. As the Authority was aware, that the price was struck at a time when the market was influenced by dumping. The appropriateness of the figure of $64, as an indication of the price which cement clinker would fetch in an unsuppressed market was contradicted, rather than supported, by the other information which the Authority obtained.[965]

Having considered the facts of the case in light of the above principles, Wilcox J. concluded that the Authority's decision on the 'unsuppressed selling' price was legally

[963](1989) 88 ALR 196 at 208.
[964](1989) 88 ALR 196 at 208.
[965](1989) 88 ALR 196 at 208 & 209.

flawed.[966] As this was the first case the Authority had considered, there was considerably more focus in later reports on the methodology applied.

In the *Report on Canned Tomatoes* from a number of sources, the Authority explains its approach to NIFOB calculation where there are multiple producers in Australia. It said that where:

> "... the level of the NIFOB (is) based on the unsuppressed selling price determined for the most efficient producer, then the effects of dumping on that producer and other producers will be removed. Producers that have traditionally received higher prices in the Australian market than a more efficient company can continue to receive this higher price if other market factors do not change.
>
> The Authority has therefore adopted its usual practice and used the unsuppressed selling price for the most efficient local producer."[967]

Presumably, the Authority is having regard to the provisions of section 8 of the *Anti-Dumping Authority Act 1988*, not to use the imposition of duties under the *Anti-Dumping Act 1975* to assist import competing industries in Australia or to protect industries in Australia from the need to adjust to changing economic conditions. This provision, apart from its ambiguity, is silent as to the need for the unsuppressed price to reflect that achievable in a competitive domestic environment; it gives no regard to shipments arriving at different entry points based upon one NIFOB value, or the weight to apply in a NIFOB calculation to the relative price competitive factors in a geographically dispersed market before the injurious dumping became apparent. Although there would undoubtedly be circumstances where the most efficient producer should provide a benchmark for the level of the unsuppressed selling price, this is unlikely to be so in all cases.

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[966](1989) 88 ALR 196 at 209 - Wilcox J considered that it did not matter whether the illegality of the decision was based upon the existence of a particular fact, which did not exist, or whether it be seen as a decision which was so unreasonable that no reasonable person could have reached it. Lockhart J in *Swan Portland Cement Limited and Another v The Minister for Small Business and Customs and Another* (1991) 28 FCR 135 at 139 refers to the finding of Wilcox J *Swan Portland Cement v Minister* (1989) that the NIFOB calculation was 'legally flawed'.

[967]Anti-Dumping Authority Report No 68 on *Canned Tomatoes* April 1992.

In its report on reconsidering the countervailing duties applying to *Brandy from France*[968] the Anti-Dumping Authority used the local industries cost to make and sell plus an 'appropriate' profit margin. The profit margin was based on that in the *Business Review*
Weekly's survey of company profitability. In this case it was difficult to establish an unsuppressed selling price, as the brandy was in bulk form having undergone maturation. The only relevant selling prices were those for bottled brandy. However, the Authority found that: "working back from data an bottled brandy...adds unnecessary complexity and...the results of the calculation were found to be unrealistic".[969] It is unclear in these circumstances what the authority meant by the use of the description 'unrealistic'.

A further comment should be made on one element of the calculation. This relates to the use of the importer's rate of profit for deduction from the unsuppressed selling price. It is unlikely to be correct to use the importer's profit from the distribution of the dumped product, as this is obviously affected by the dumping. The Authority recognised this dilemma in the report on *Glace Cherries*,[970] where it examined stock exchange and other data on profitability. This way the effects of the dumping can be diluted and a more reliable estimate of an importers expected rate of return can be ascertained from the aggregation of the results of companies with comparable activities.

The question of the appropriate duty to charge on dumped imports to offset the effect of the dumping is conceptually difficult. There is no doubt that the level of international price discrimination reflected in the dumping margin or resulting from a subsidy of the imports can, in some cases, be directly related to the level of material injury experienced by the domestic producer. The United States practice of taking the full margin is the logical remedy, if the desire is to remove the material injury where it is solely caused by the dumping. This proposition would hold, all other things equal, if the dumped imports were homogeneous and identical to the goods produced in the importing country's market. However, sales at the same price point are rare.
Often there are a number of import sources of the like good some of which are dumped and some not so. It is argued that where there is a significant volume of undumped

[968]Anti-Dumping Authority Report No 145 on the *Continuation of countervailing duties on brandy from France: reconsideration* of June 1995.
[969]Anti-Dumping Authority Report No 145 on the *Continuation of countervailing duties on brandy from France: reconsideration* of June 1995 p 4.
[970]Anti-Dumping Authority Report No 64 on *Glace Cherries from France and Italy* March 1992.

products being imported into the domestic market, the raising of the prices of the dumped imports to the "unsuppressed selling price", would result in the domestic producer in the importing country being able to sell at an average price above that which would have been possible prior to the materially injurious dumping. This arises from the natural distribution of prices around a mean. By eliminating the lower prices forced by the previously dumped imports then the average must rise. The question of the level of the non-injurious price is therefore not susceptible to receiving a simple answer, and requires the serious analysis which Wilcox J suggests.[971]

5.6.6 Anti-Circumvention

Holmes (1995) maintains that the general reduction in customs duties, the globalisation of production and distribution, and legal and administrative changes have made selective forms of trade protection more important.[972] One of these forms of trade protection is anti-dumping action. The imposition of anti-dumping measures against the products exported from a country can have a trade diverting effect. For example, the two classic responses are to set-up a manufacturing operation in the country imposing the duty, or to relocate the last manufacturing operation to a third country. Both these responses are directed at changing the origin of the goods, and avoiding the imposition of anti-dumping duties.

Australia like most legal jurisdictions has a complex set of origin rules. The rules of origin for goods for which a preferential duty is applicable under the *Customs Tariff Act 1987* are contained in Part VIII - Division 1A of the *Customs Act 1901*. These determine the eligibility for preferential tariff treatment in accord with Australia's treaty obligations.[973] The *Customs Act 1901* contains separate rules for the determination of the origin of dumped or subsidised products.[974] Application of these rules substitutes the

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[971]*Swan Portland Cement Limited v The Minister for Science, Customs and Small Business* (unreported, Federal Court, Wilcox J, No 461 of 1989, 21 August 1989).
[972]Holmes (1995) p 161.
[973]For example, *Treaty for Closer Economic Relations - Trade Agreement 1983* with New Zealand, *South Pacific Regional Trade and Economic Cooperation Agreement 1982, Papua New Guinea Australia Trade and Commercial Relations Agreement 1977, Canada Australia Trade Agreement 1960,* and unilateral concessions to developing countries.
[974]The general rule relating to the origin of manufactured goods for the purpose of determining the tariff rate to apply under the *Customs Tariff Act 1987* involves two elements. Firstly the last process of their manufacture was performed in that country, and secondly their allowable factory cost (from within the qualifying geographic area) is at least 50% of their total factory cost. The rules are complex in their

country of origin for the country of export for the determination of the normal value for the goods.[975] The determination for dumping purposes of origin in the case of manufactured goods is based on the country in which the last significant process of manufacture or production of the goods was performed.[976]

An example of the application of rules of origin determinations in Australia was in the Anti-Dumping Authority report on *Clear float glass from Singapore and Indonesia.*[977] The Authority explained its approach to the exercise of the discretion on the use of the country of origin rather than the country of export for normal value assessment. It sees the provision being invoked, where a third country is being used as a place of export to avoid the imposition of dumping duties on the goods, which would have applied if the goods had been exported from the country of origin.[978] However, although this use of the provision would be expected, the provision has generally been seen as a means of combating screw-driver assembly operations.

The origin provisions of the *Customs Act 1901* as they apply to the determination of dumping reflect those of Article 2.5 of the *Anti-dumping Code 1994.* Both provisions leave considerable area for discretion in their application. They are used by the authorities to counter screwdriver operations circumventing their decisions to apply dumping duties on imported goods. That is, the application of anti-dumping duties can have a serious trade diverting influence, as the lower the value added in either the country of import or the third country of export the higher is the protection for the last stage of manufacture.[979]

Circumvention occupied the mind of the European Community and the United States during the Uruguay Round negotiations on the *Anti-dumping Code 1994.* However, there was no agreement reached on the content of any code provisions, and it was agreed that this matter should be the subject of further post Uruguay Round consultations.[980] The

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specific application, and do not apply to the application of dumping duties. There are also separate rules relating to the labelling of imported goods.

[975]s 269TAC(10) of the *Customs Act 1901*.

[976]s 269TAC(11) of the *Customs Act 1901*.

[977]Anti-Dumping Authority Report No 134 on *Clear float glass form Singapore and Indonesia* of July 1994.

[978]Anti-Dumping Authority Report No 134 on *Clear float glass form Singapore and Indonesia* of July 1994 p 24.

[979]The classic example of this unintended effect was in the *Hyster* case as discussed above in section 4.3.2.

[980]Holmes (1995) pp 164-165 - Anti-circumvention provisions were included in the so-called "Dunkel Draft" of the Anti-Dumping Code, and were opposed by a number of countries. The statement of the

European Community has gone its own way with the inclusion of new rules within its anti-dumping regulation.[981] According to Holmes (1995) these rules cover five main situations: assembly plants in the European Union and third countries; where remedial measures are being undermined; the registration of imports with the authorities while an investigation is being conducted; certification by the authorities that the import of the particular goods does not constitute circumvention; and the normal Customs rules applying to the duty on parts or kits having the "essential character" of the finished product or to the application of a value-added test for origin. Further, there is a wide provision extending the application of dumping duties to the imports from the third countries of like products where there is circumvention.[982]

Article 13.2 of *Council Regulation (EC)3283/94* specifying the conditions where dumping duties can be applied to goods produced by way of assembly operations is complex. The requirements for duty imposition include a substantial increase in assembly operations, the parts to constitute 60% or more of the total value of the assembled product, and the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled product and there is evidence of dumping for like or similar products. Assembly operations can be exempted from the rigours of the application of anti-dumping measures if it can be shown to add significant value within the European Community. The exemption can be claimed where the value added to the parts brought into the European Community exceeds 25% of the manufacturing cost. This presumably means that the assembly operation would be considered to be a domestic industry in the European Community if the value-added in production within the Community exceeds 25% of the manufacturing cost.[983] There is a similar provision in the Australian *Customs Act 1901*.[984]

Ministerial Decision on Anti-Circumvention is as follows: "The problem of circumvention of anti-dumping measures formed part of the negotiations which formed part of this agreement. Negotiators were, however, unable to agree on the specific text, and, given the desirability of the application of uniform rules in this area as soon as possible, the matter is referred to the Committee on Anti-Dumping Practices for resolution." Sources - GATT (1994) p 453; Internet address http://ananse.irv.uit.no/trade_law/gatt/art/iii1 1a.html

[981]Article 13 of *Council Regulation (EC) No 3283/94*, OJ 994 L349/1.

[982]Holmes (1995) pp 167-177.

[983]Vermulst and Waer (1995) p 73 say that the use of the phrase "manufacturing cost" excludes sales, general and administration costs incurred in the factory from the determination by the Commission of local value added.

[984]One of the preconditions for a valid application for anti-dumping or countervailing duty relief in Australia is to be an Australian industry producing like goods - s 269TB(1) of the *Customs Act 1901*. To qualify as an Australian industry in respect of those like goods the applicant needs to be a person who produces like goods in Australia - s 269T(4) of the *Customs Act 1901*. The goods have to be partly or wholly manufactured in Australia with at least one quarter of Australian factory or works cost - s 269T(2).

The development of anti-circumvention rules in the United States is discussed by Palmeter (1995). Anti-circumvention rules were introduced in 1988 into United States law.[985] These initial criteria were re-written as a result of the Uruguay Round amendments.[986] They are similar to those operating in the European Community. Their application is dependent on whether it is simply minor assembly in the United States or the third country to which the manufacturing activity has moved, and on whether the value of the parts originating in the country subject to the order is a "significant" portion of the total value of the merchandise.[987]

Active rule making in this area without agreement of the Members would appear somewhat provocative.[988] Unilateral action on the application of origin rules and other anti-circumvention measures by the European Community and the United States adds to the uncertainty surrounding the application of anti-dumping laws. The issue of origin is much wider than just its application to anti-dumping actions. The recently concluded *GATT Agreement on Rules of Origin 1994* makes it clear that, even during the transition period when the results of the harmonised program are being implemented, Members should apply their rules equally to imports and exports, and their domestic goods.[989]

If the goods were only partly manufactured in Australia, then at least one substantial process in the manufacture of the goods needs to be carried out in Australia - s 269T(3) of the *Customs Act 1901*. It should be noted that the concept of factory or works in s 269T(2) of the *Customs Act 1901* is undefined except for the mention of the inclusion of three general categories: the value of labour, materials and overheads. Detailed definitions of factory cost used for determining the origin of goods for Customs Tariff purposes are contained in Part VIII - Div 1A of the *Customs Act 1901*. In particular, those applying to the calculation of allowable expenditure on labour and overheads may be prescribed by regulation - s 153F(2) and s 153G(2) of the *Customs Act 1901*, respectively. Prescriptive regulations, including quite detailed descriptions of the includable costs are contained in *Customs Regulation* 107A and 107B. Tariff Concession Orders also possess separate rules relating to whether goods are produced in Australia. Such inconsistency relating to rules of origin within the same piece of legislation, the *Customs Act 1901*, does not help its clarity or certainty of effect.

[985]*Omnibus Trade and Competitiveness Act* of 1988, Pub L 100-418; 102 Stat 1192; which added § 781 to the *Tariff Act*, 19 UCS § 1677j.

[986]*Tariff Act* § 781, 19 USC § 1677j, as added by the *Uruguay Round Agreements Act f* 230.

[987]Palmeter (1995) p 79.

[988]The European Community had imposed similar provisions prior to the new rules. The panel decision in the Japanese challenge to these provisions was against the European Community, see - *Report on EEC Regulation on Imports of Parts and Components*, *GATT* Document, L 6657, 20 March 1990; BISD 37S/132. There were two grounds for the decision: Firstly, it was contrary to Article III(2) of *GATT* which prohibits internal taxes which discriminate against imported products; and secondly, limitations on the use of parts in assembly plants were contrary to Article III(4) of *GATT* which prohibits the treatment of imported products less favourably than domestic products.

[989]Article 3(a) of the transitional provisions of the *Agreement on Rules of Origin 1994* - http://ananse.irv.uit.no/trade_law/gatt/art/iia1a11.html

Australia has rules of origin for the determination of the country of origin for the assessment of normal value, which could be seen to be consistent with the objectives and principles for the harmonisation of rules of origin as contained in the *Agreement on Rules of Origin 1994*. However, the Australian test of the last significant process of manufacture is equally as vague as the *Agreement on Rules of Origin 1994* criterion of the country where the "last substantial transformation" had been carried out. As recognised during the Uruguay Round multilateral trade negotiations, to facilitate trade the current multitude of rules of origin need to be better defined and harmonised between Members.[990] Rules of origin in Australia face similar criticism to those of its trading partners, as being inconsistent in their application in both preferential and non-preferential commercial policy measures. This inconsistency should be remedied during the transitional process in the introduction of a harmonised set of origin rules.[991]

Apart from the necessity to harmonise the origin rules to reduce uncertainty in trade, the question of the level of local value added necessary to characterise the production process in a country as a domestic industry can have a substantial trade diverting effect. The lower the local value added criterion the greater the chance of minimal processing within a country. The efficiency of location becomes distorted by the influence of the effective rates of protection accorded to a production activity. Theoretically, but most probably practically, trade diversion is rife, with many countries contributing to a single production process simply allowing the multinational corporations to exploit each country's production incentives. Such a result would be detrimental to the interests of the participating nations. Its maintenance depends on lobbying of the receptive governments

[990]Preamble to the *Agreement on Rules of Origin 1994*
http://ananse.irv.uit.no/trade_law/gatt/art/iia1a11.html

[991]The Australian Department of Industry, Science and Technology issued a paper outlining and seeking comment on some of the administrative options for consideration for inclusion in Australia's contribution to the WTO/WCO working party on the rules of origin. Paragraph 1 of Article 1 of the *Agreement on Rules of Origin 1994* defines its scope of harmonisation excluding those rules relating to contractual or autonomous trade regimes leading to tariff preferences going beyond the espoused principle of paragraph 1 of Article 1 of *GATT 1994* of general most-favoured-nation treatment. That is, the *Agreement on Rules of Origin 1994* is seen as having restricted harmonisation to non-preferential commercial policy instruments. Paragraph 2 of Article 1 lists the non-preferential commercial policy instruments that shall be included as: Most-favoured-national treatment under Articles I, II, III, XI and XIII of *GATT 1994*; anti-dumping and countervailing duties under Article VI of *GATT 1994*; safeguard measures under Article XIX of *GATT 1994*; origin and marking requirements under Article IX of *GATT 1994*; and any discriminatory quantitative restrictions or tariff quotas. The rules shall also cover government procurement and trade statistics. However, there is nothing to prevent any Member from harmonising its preferential commercial policy instruments.

by corporations within an industry for the exclusion of potential competitors.[992] This proposition clearly shows the dangers inherent in moving away from the most favoured nation principle of the *GATT*.

5.6.7 Dispute Settlement

Meier (1973) refers to Hudec's explanation of the *GATT* dispute settlement process.[993] It is suggested that the jurisprudence of *GATT* is 'diplomat's jurisprudence', to the extent that there is an attempt to reconcile the regulatory objectives of a conventional legal system with the turbulent realities of international trade affairs.

Both the *Codes* are subject to the provisions of Articles XXII and XXIII of *GATT 1994* as elaborated and applied by the *Dispute Settlement Understanding 1994*, except as otherwise provided specifically in the *Anti-Dumping Code 1994* and the *Subsidy Code 1994*. The *Anti-dumping Code 1994* relies upon the provisions of paragraph 1.2 of the *Dispute Settlement Understanding 1994* for the execution of its specific dispute settlement clauses. On the other hand, the *Subsidies Code 1994* has a specificity clause in Article 30 of Part X on dispute settlement.

The *Codes* specific provisions for the settlement of disputes differ in certain aspects. The *Anti-dumping Code 1994* provides for matters to be referred to the Dispute Settlement Body, where there has been a failure in consultations and a definitive duty has been imposed or there is acceptance of an undertaking. It is also possible to seek a review of a provisional measure where this has a significant impact on a Member.[994] The *Anti-dumping Code 1994* sets out the process to be followed by a panel reporting to the Dispute Settlement Body on a dispute.[995] However, Vermulst and Driessen (1995) point out that the panel must further examine the matter based upon:

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[992]Bifani (1989) p162 indicates that transnational corporations would prefer to transfer new knowledge through subsidiaries rather than through the market, since there is a risk of it being imitated. It would therefore be in the interests of multinational corporations to operate subsidiaries in the countries joining their rent seeking schemes so as to keep the new knowledge within their corporate group for as long as possible. It would be difficult to argue a case for preferential assistance under the origin rules based on the benefits of technological transfer.
[993]Hudec RE (1970) referred to by Meier (1973) at p 9.
[994]Article 17.4 of the *Anti-dumping Code 1994.*
[995]Article 17.5 to 17.7 of the *Anti-dumping Code 1994.*

> "...the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member."

If the authority is found to be "unbiased and objective" the panel will have to respect that conclusion.[996] Furthermore, the customary rules of public international law shall be applied, so that the authority's interpretation will be confirmed if it is one of a number of the possible interpretations.[997] The perpetuation of multiple interpretations could result. The question of how much tolerance will be allowed in the decisions of national authorities is a moot point. The *Ministerial Decision on Dispute Settlement on Dumping and Subsidies 1994*, stresses the need for the consistent resolution of disputes.[998]

The dispute resolution provisions of the *Subsidies Code 1994* are wider.[999] Firstly, there are extensive provisions for countering prohibited subsidies contained in Article 4 of the *Subsidies Code 1994*. The emphasis is on reaching a quick resolution of a dispute between the Members. Consultations may be requested based on a belief that a prohibited subsidy is being granted or maintained by another Member. The Dispute Settlement Body may reach a decision within 150 days of a party seeking consultations, and if it is appealed the minimum time period is extended to 200 days. Where there is arbitration under paragraph 6 of Article 22 of the *Dispute Settlement Understanding 1994*, the arbitrator shall determine whether the countermeasures are appropriate. The strength of the dispute settlement provisions on prohibited subsidies is indicative of the seriousness with which the Members view these subsidies as interfering with trade.

Actionable subsidies are also subject to specific dispute settlement rules.[1000] These rules require consultation and, if unsuccessful, for the matter to be referred to the Dispute Settlement Body. The process is similar to that used for prohibited subsidies but the timetable is longer with the minimum period for decision by the Dispute Settlement Body being 225 days and with appeal 305 days.[1001] There is no requirement that a preliminary or final duty has been imposed or an undertaking accepted before the dispute can be submitted to the Dispute Settlement Body for resolution.[1002] There is a requirement that

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[996]Article 17.6 (i) of the *Anti-dumping Code 1994.*
[997]Article 17.6/(ii) of the *Anti-dumping Code 1994.*
[998]Gatt Secretariat (1994) p 453; http://ananse.irv.uit.no/trade_law/gatt/art/iii12.html
[999]Article 4.2 to 4.12 of the *Subsidies Code 1994.*
[1000]Articles 6.6, 7.2 to 7.10 of the *Subsidies Code 1994.*
[1001]Article 7.2 to 7.10 of the *Subsidies Code 1994.*
[1002]Articles 17, 18 and 19 of the *Subsidies Code* deal with the imposition of these measures.

Members who are third parties to a dispute, where it is alleged that serious prejudice has arisen in their market due to subsidisation by a party to the dispute, are to make available information on market shares of the parties to the dispute as well as the prices of products.[1003]

Non-actionable subsidies are also subject to specific dispute settlement procedures where it is alleged that a subsidy is in fact actionable. Requests for the review of a notification of a non-actionable subsidy are reviewable by the WTO Secretariat, and the results are notified to the Committee. If the Committee fails to make a determination, or a Member disputes the determination, the conditions of the subsidy shall be submitted to binding arbitration on request of the Member.[1004] A Member may seek consultations where the implementation of a non-actionable program has resulted in a serious adverse effect to the domestic industry of that Member. If a mutually satisfactory solution is not found within 60 days, then the matter may be referred to the Subsidies Code Committee to be determined within 120 days. Where the Committee's recommendation has not been followed within 6 months, the Committee may authorise countermeasures to be taken.[1005]

Hudec (1993) has compiled a data base of *GATT* complaints from 1947 up to 1989. Australia was the defendant in three disputes within the period 1947 to 1994. There have been only two disputes on Australia's administration of anti-dumping and countervailing measures subject to consideration by a *GATT* panel. The first of these concerned a complaint by Finland on the method of calculating anti-dumping duties on Finnish power transformers exported to Australia.[1006] The case involved a switch by the Australian authorities from a calculation of normal values based upon constructed costs to one based on market value in Finland for custom made power transformers. Adjustments were made to the normal value based upon the "Westinghouse Price Rules" for differences in design. The complaint was withdrawn by Finland in 1991 following discussions between Australia and Finland; however, there is no public record of the outcome of this case.

[1003]Article 6.6 of the *Subsidies Code 1995* is subject to the provisions of paragraph 3 of Annex V which limits the extent to which a third party Member is required to produce market information in such a way as to not impose an unreasonable burden on the Member.
[1004]Article 8.4 and 8.5 of the *Subsidies Code 1994*.
[1005]Article 9 of the *Subsidies Code 1994* - see also Vermulst and Driessen (1995) p 149.
[1006]Complaint was notified on 14 April 1989 (ADP/42) and a panel established on 25 September 1990 (ADP/M/29) without members and remained on the *GATT* list of panels until October 1991.

The second complaint was from the European Communities on countervailing duties applicable to exports of glace cherries from Italy. The Italians claimed that the relevant industry was the secondary processing of the cherries into the glace product in Australia, and this was unaffected by the glace imports from Italy. Australia's case had been based on the 'upstream' injury to the primary producers of the cherries required for glace processing. The Australian government argued that if the European Community claimed the production of glace cherries was that of a secondary product, then the Italian export subsidy was on a secondary product. As subsidisation of products other than certain primary products is prohibited under Article 9 of the *Subsidies Code 1979*, the EC was in breach of their *GATT* obligations. The European Community withdrew its complaint under threat from Australia of notifying a dispute to the *GATT* Secretariat, on the Italian export subsidy on glace cherries. The panel was disbanded in the middle of 1993 without report.[1007]

On the other hand, Australia has used the dispute settlement mechanism of the *GATT* against the allegedly unfair practices of other countries more frequently. Between 1948 and 1989 Australia lodged complaints against 12 countries, whereas Australia has been a defendant on only two occasions. The complaints all concerned agricultural commodities and 9 were aimed at non-tariff barriers with 3 relating to EC subsidised exports. Two of the cases in the late 1950's involved assistance to exports of wheat and wheat flour from France and Italy. The panel ruled that there was an export subsidy, that there was a "more than equitable share" of the world market attained, and the displacement of Australian flour exports to Southeast Asia markets caused damage, and would likely do damage in future. These cases were settled by agreement.[1008] The other case commenced with a complaint in 1978, and was against the EC refunds on the exports of sugar.[1009] The panel found that there was an export subsidy; was inconclusive as to whether the EC had taken "more than an equitable share" of the world market, due to the inability to establish a clear causal connection between EC exports and effects on Australian exports and the world market; the EC subsidy was having a depressing effect on prices with serious prejudice to Australia; and there was a "threat of prejudice" under

[1007]Anti-Dumping Authority Annual Report 1992-93 p 20 discusses the outcome of the panel. It should by way of record be noted that the glace cherry industry in Australia is minuscule. However, the Australian government was prepared to pursue the matter to the point of a *GATT* panel. This is an indication of the reliance which Australia places upon the application of anti-dumping measures to secure a 'fair' trading.
[1008]L/1323 (24 October 1960).
[1009]L/4701 (25 September 1978)

Article XVI of the *GATT*.[1010] There was little result for Australia as the EC disputed the findings of prejudice, and working party consultations failed to resolve the issue.[1011] This failure of the dispute settlement process in this case was substantially due to the nature of the international market. The real issue was hidden behind the facade of the *GATT* rules. As Cutbush-Sabine (1984) points out:

> "...Australia has participated in each of the International Sugar Agreements (ISAs) which had operated since 1937. These agreements had usually included the major exporters and importers of sugar and have sought to regulate trading in sugar on the 'world free market'. The fact that the EC had not been a member of the ISA and is selling its sugar on third markets for less than the price agreed between ISA members cannot justify Australia blaming the EC uncompetitive and 'ruthless' conduct. It's simply the action of two protected trading groups undermining each others position in a market where somebody has to be the loser, because of world-wide over-production."[1012]

Australia by no means came to the *GATT* dispute settlement process with clean hands, since as well as being a member of an international cartel, domestic sales were protected absolutely since 1923. It is only now that the import prohibition has been withdrawn and is now replaced by a prohibitive tariff and marketing regime.

One of the difficulties with the panel review process is where the matter is not pursued to finality in the formal sense of a panel finding, the outcome of the dispute is normally unknown and of little precedent value. It could be claimed that the process of consultation without the need for formal findings aids the development of better trade relations between the parties to the dispute. However, there is a need for the parties to disputes to be more open about their activities, consistent with the thrust for more openness within the enabling *Codes.* Another difficulty with the panel review process has been the lack of enforcement as illustrated in the EC subsidy cases brought by Australia.

[1010]L/4833 (25 October 1979) - Of particular interest was the view of the panel that it was not required to consider claims under Article XXIII, as the submissions lacked detail.
[1011]Brazil also made a subsequent claim relating to EC refunds on exports of sugar, and as there was violation found consultations failed - L/5011 (7 October 1980).
[1012]Cutbush-Sabine (1984) p 10.

Some of the challenges through the domestic Federal Court are also resolved by consent or withdrawn by the applicant prior to a completion of the hearing. Again there is no agreed report of the reasons for the withdrawal. It is only those cases resolved through judgement where it is possible to gain some guidance as to the manner in which remedies are applied by the Australian Courts.

Perhaps there is undue expectation of the dispute settlement process in the context of the *GATT* developments. Reisman and Wiedman (1995) refer to the concept of 'hard' and 'soft' law, as describing the way "...the intentional fuzziness of a soft provisions normative statement contrasts with the rigidity or "bright-line" precision of the hard one.".[1013] They assert that international agreements are characterised by a hard statement on the legitimacy of the agreement backed by the law making prerogative of the parties, with a less clear view of the normative aspects (ie what the parties would like to prohibit or encourage), followed by an even less definitive position on the question of enforcement. This is done to obtain the agreement of the parties to the introduction of new ways to deal with problems that the parties have a common interest in solving.

Although the *GATT* process of dispute settlement has been criticised as lacking in legal discipline, in the two cases where Australia has had its anti-dumping actions referred to a panel, the settlement of the dispute has been resolved between Australia and the other party without the need for externally imposed sanctions.[1014] There is a question of whether smaller countries rather than the larger countries could more usefully settle their disputes through the *GATT* dispute settlement process.[1015] The asymmetry of power between nations is likely to be reflected in the smaller state seeking a rapid resolution of a dispute with binding enforcement, with the larger state leaving the dispute settlement process at the recommendation stage. Ultimately the success of an agreement will depend on the degree of interdependence of the nations ratifying the agreement.

[1013]Reisman and Wiedman (1995) p 7.

[1014]It would be difficult to assert that Australia benefited from the actions it took as a small country against the much larger EC block. Although there have been only 5 cases on anti-dumping and subsidies before a panel involving Australia, in those with the EC as defendant the asymmetric power relationship is evident resulting in less than satisfactory outcomes for Australia.

[1015]Reisman and Wiedman (1995) pp 8-9 - It is said that the international legal process can equalise the asymmetry in the strength of the parties although decisions are still only enforceable as a consequence of economic power.

A major difficulty, however, is the position of the domestic courts in the dispute settlement process, as there would appear to be a considerable overlapping of the jurisdiction with the *WTO/GATT*. The Australian government along with its trading partners[1016] has given the *WTO* ultimate appellate jurisdiction on matters falling within the agreements covered by the *WTO Dispute Resolution Understanding 1994*.[1017] As the Federal Court has original jurisdiction through section 8 of the *Administrative Decisions (Judicial Review) Act 1977* to hear applications for review of administrative decisions made under an Act of the Commonwealth of Australia, it is possible to have a dispute being subject to simultaneous adjudication by the Federal Court of Australia and the *WTO*. There would be different nominal parties in each jurisdiction, with the ultimate decision being made by the *WTO* Dispute Settlement Body.[1018] Where Australia needs to modify its actions as a result of acceptance by the Dispute Settlement Body of an adverse panel or appellate body report, this is a matter for the executive to implement.[1019] When it is clear that the provisions of the Australian law are in conflict with Australia's international commitments, it becomes a matter for the Parliament to resolve the issue by way of legislative amendment.

5.6.8 Summary

[1016]Australia's major trading partners are all members of the *WTO* Agreement apart from the Peoples Republic of China and the Province of Taiwan, although both are seeking to become members.

[1017]Section 61 of the *Commonwealth of Australia Constitution Act 1900* vests the treaty-making power in the Crown. Stephen J in *Koonwarta v Bjelke-Petersen* (1982) 153 CLR 168 at 215 said that "the federal executive, through the Crown's representative, possesses exclusive and unfettered treaty-making power". Articles 17.4 to 17.7 of the *Anti-dumping Code 1994* and Articles 4.2 to 4.12, 6.6, 7.2 to 7.10, 8.5, Annex V to the *Subsidies Code 1994*, provide special or addition rules and procedures to those in the *WTO Understanding on Dispute Resolution 1994*.

[1018]In anti-dumping and countervailing cases where a duty has been imposed, the private parties are effectively aligned to the governments of the country where the manufacturing activity affected by the duty imposition takes place. For example, if Australia was to impose a duty then the Australian government would defend domestic producers against the claims of an exporter in the Australian courts or against the country of export in the case of a *GATT* panel hearing. It is only where the Australian government decides against the producer in Australia in not imposing a protective duty that the interests of the Australian government and the complaint may diverge. It is this latter case where the jurisdiction of the Australian courts and the *GATT* do not overlap, and there is no scope for the corporation producing in Australia to have the matter reviewed by a *WTO/GATT* panel.

[1019]The Australian *Customs Act 1901* provides for the Minister by way of delegated power of the Parliament to impose anti-dumping or countervailing duties where it is found that the conditions of injurious dumping or subsidisation have been found to have occurred. Section 269TAJ of the *Customs Act 1901* specifically provides for the revocation of notices imposing anti-dumping and countervailing duties or release from undertakings where if the notice had not applied, the Minister would not have been authorised to publish a notice imposing the measure.

There is a choice of the remedies available to the parties to a dispute, including those within the initial investigation phase. The difficulty with the current administrative and legal arrangements, is that the choice is so wide that it is likely to prolong the uncertainty generated by the initiation of the retaliatory action. The positive aspects of the process are the tight controls over the investigation stage as reflected in the requirements for the application of the rules of natural justice, the substantial evidential provisions, and a limit of 12 months on the time for completion of an investigation unless there are special circumstances where it may extend to 18 months.[1020] The *Codes* also have well established rules and standards for the assessment of injurious dumping or subsidisation. The Australian domestic legislation is said to reflect the *Codes*.

Another positive development is in the dispute resolution processes contained in the *WTO/GATT* agreements. The automatic establishment of a panel, the appeal rights of the members to a fully constituted Appellate Body, and a consensus rejection rule replacing a consensus acceptance rule for panel and Appellate Body decisions, have increased the potential for resolving disputes between parties willing to submit to third party adjudication.[1021] Underlying the administrative and legal processes is the encouragement given by the *WTO/GATT* agreements for consultations between the parties to resolve disputes. A willingness of countries to participate in the agreed *WTO/GATT* dispute settlement processes looks a reasonable prospect for dispute resolution in anti-dumping and countervailing actions, given the well entrenched behaviour of the parties and the history of the development of these processes in the *Codes*.

There is a need to implement a procedural rule to suspend any hearings before the Australian courts where the matter is being adjudicated before a *WTO/GATT* panel.[1022]

[1020]Articles 5 and 6 of the *Anti-Dumping Code 1994* and Articles 11 and 12 of the *Subsidies Code 1994* are applicable. Section 269TC (4) of the *Customs Act 1901* and section 7 (1) of the *Anti-Dumping Authority Act 1988* provide for preliminary findings to be made by Customs within 100 days of acceptance of an application for anti-dumping or countervailing duties, and a recommendation by the Anti-Dumping Authority to the Minister on a final finding (where the preliminary finding has been positive) within a further 120 days.

[1021]Submission to third party adjudication under the *WTO/GATT* agreement requires one of the parties to refer a dispute to the Dispute Settlement Body in accordance with Article XXIII of the *GATT* as enhanced by the *Understanding on Dispute Settlement 1994.*

[1022]A similar issue of dual process arose during the arbitration of the dispute with the United States over the entitlements of North West Airlines on the North Pacific route under the bilateral *Air Transport Agreement*. On resolution of such a dispute by arbitration under an international agreement, the matter is decided. The judicial system lacks jurisdiction on the matter as the performance of a treaty obligation is an act of state and is non-justiciable - see *Coe v Commonwealth* (1979) 24 ALR 118 at 128 per Gibbs J on the question of acts of state. In *Re Ditfort; Ex parte Deputy Commissioner of Taxation (NSW)* (1988) 19

Whether the dispute is settled by a change in Australian domestic law through the Parliamentary process, or enforced externally by the adversely affected party through a withdrawal of benefits to Australia, once the matter is referred to the Dispute Settlement Body it is in practical terms no longer a question for enforcement of a domestic law through the Australian Courts.

An analogous point is whether the *Codes* should be simply incorporated into Australian domestic legislation, rather than being separately written into Australian law. In fact, this problem is not peculiar to just the *Anti-dumping Code* and the *Subsidies Code.* It is applicable to all of the *WTO/GATT Agreement 1994,* which is subject to the *Dispute Settlement Understanding 1994.* Currently, the position is that there are a local set of rules which are applicable in Australia, and an international set of rules which govern the settlement of disputes under the *WTO/GATT* process.[1023] As the *WTO/GATT* Dispute Settlement Body has the ultimate authority to determine disputes,[1024] the differing local provisions are anomalous.[1025]

5.7 Summary

The central benchmark is whether the application of the injury, dumping and subsidy criteria are consistent with international standards as reflected in the *Anti-Dumping Code 1994* and the *Subsidies Code 1994.* The Australian parliament has passed legislation reflecting the provisions of the revised *Codes.* Having chosen not to incorporate the *Codes* directly into domestic law, there are a number of self-imposed drafting difficulties

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FCR 347; Gummow J held agreements and understandings between governments to be non-justiciable. In *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 at 229 Mason J held that the act of making and performance of a treaty was not reviewable.

[1023]Both Article 18.4 of the *Anti-dumping Code* and Article 32.5 of the *Subsidies Code* provide that the domestic laws are to be in conformity with the provisions of the agreements.

[1024]Members of the WTO have agreed to allow the Dispute Settlement Body under paragraph 22 of the *Dispute Settlement Understanding 1994* to grant authorisation to the complaining Member of a regulated right to retaliate through countermeasures, if the Member found to be in breach of the recommendations adopted by the Dispute Settlement Body has not implemented them. The *Subsidies Code* has specific provisions in Articles 4.10 and 7.9 allowing for such retaliation by and injured party.

[1025]The concept of incorporation of international agreements into Australian legislation is not novel. Section 4 of the *Income Tax (International Agreements) Act 1953,* includes the international taxation agreements as a schedule to the Act, and states that the Act prevails over any inconsistent provisions of the *Income Tax Assessment Act 1936* with certain exceptions. Another example is the *Navigation Act 1912* where both the *International Convention on Load Lines 1966* and the *International Convention for the Safety of Life at Sea 1960* are incorporated schedules into the Act, and section 187 A allows for the automatic incorporation of amendments to the conventions "...other than those not accepted by Australia, ...".

resulting from the domestic legislative style adopted by Australia. There is a need to review the Australian legislation to simplify its application and to make it more consistent with the *Codes*. This would be best achieved by incorporating the *Codes* directly into the domestic law. However, there is considerable policy discretion in the application of the *Code* provisions, particularly with regard to injury findings.

Australia and New Zealand have an agreement under the CER to exclude the application of anti-dumping measures on trade within the free trade area. The trans-Tasman market is now regulated by application of the misuse of market power provisions of the Australian *Trade Practices Act 1974* and the New Zealand *Commerce Act.* Misuse of market power does not require the notion of predation as a test applying to this form of aberrant conduct. It would therefore appear that the Australian government has defacto rejected predation as a necessary ground for retaliatory action against New Zealand imports. As the injury provisions of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994* regulating the application of retaliatory measures are devoid of any predication clause, it is inconceivable that predation is a test relevant for proving material injury as indicated by the Minister's second reading speech.

There is little theoretical justification for the taking of measures against dumping. What there is, involves the need for the creation of a 'fair trade' environment so as to facilitate free trade. Although the partitioning of the market though uncompetitive behaviour appears to be the motivating factor behind injurious dumping; such causal relationships appear to be at best a part of ex-post reasoning. It is the injury criteria which are paramount in the mind of the complaining industry.

The question of what constitutes an Australian industry depends on the notion of a producer of like goods to the dumped or subsidised imports. This is a critical question as it determines the scope of the inquiry, and is seen as applying to goods of the same general category. For an industry to acquire its domestic origin it need only add 25% in value in their manufacture of a product, and following the Uruguay Round revisions to the *Codes*, complainants need only account for 25 % of total domestic production.

Injury is seen as a matter of degree. However, the Minister must be satisfied that the industry has suffered detriment because of the dumped goods sufficient to meet the statutory meaning of "material injury", and to quantitatively separate the material injury

from detriment caused by other factors. Even though the injury needs to be quantified, this is not able to be done precisely. The current application of this test in Australia is based on a fairly subjective assessment, as are the tests for market power and lessening of competition under the *Trade Practice Act 1974.*

Although the revised *Code* provisions enhance the criteria for determining whether there is a foreseeable and imminent threat of injury from dumped imports, the court has stressed the need for the determination to be based on up to date information. The *Codes* have also set limits for the adoption of the principle of injury cumulation from a number of importing sources. These provisions were to an extent a reflection of the then current practice of major users of these measures.

There is a clear indication that sale at a loss in Australia by the importer is evidence of "hidden dumping". Once this is established, prescribed deductions from the first arms length sale may include general administrative expenses. The quantum of these expenses can be arrived at by using a proportional cost attribution method. Normal profit on sales in the Australian market is also a relevant deduction in establishing the export price in a "hidden dumping" case. However, the *Customs Act 1901* should be amended to better reflect the *Anti-Dumping Code 1994*, where an export price may be considered unreliable because of association or a compensatory arrangement. This would avoid the use of the arm's length criteria currently in the Australian law, and allow the use of a constructed price in a way that discourages profit shifting within an economic entity.

The exporter's domestic price should be compared with the domestic prices of other sellers of 'like goods' in the exporter's domestic market. This would add confidence to the findings with respect to the price applicable in the country of export. The term 'Like product' is more widely defined in Australia, including end-use to which the product is put as a criterion of likeness. The definition appears to also extend to the final product for injury analysis, where an intermediate product is the one being exported.

Due allowance for the product specification difference appears to include an allowance for profit mark-up on the domestic cost differential. The question of an allowance for different levels of trade is still a contentious issue, whereas an allowance for price discounts, even hypothetical ones, are allowable.

The date for the comparison of the normal value and the export price is clearly the date of the export sale, which is also the date for any currency conversion. The 'spot rate' or a specific forward hedge rate can be used for exchange rate conversions depending on the circumstances.

Sales at a loss extending over a one year period would appear to be accepted as ground for those selling prices to be not in the ordinary course of trade.

The difficulties associated with the construction of normal values arise mainly from the allocation of overheads in the modern manufacturing environment. There needs to be a much deeper analysis of the effects of different costing techniques in normal value determination.

Profit is excluded in a constructed normal value where sales on the domestic market are not in the ordinary course of trade. There is, however, still an unresolved question of what is meant by profit and what is the normal commercial environment which is to be preserved.

There is still a substantial gap in the method of applying normal value assessment to centrally planned economies. Where it is shown that there has been a significant move towards a market economy, domestic prices are more likely to be acceptable as a basis for a normal value determination. In the case of China it would appear that full MFN is not being extended to China by Australia.

There would appear to be substantial practical limitations on using the fall back provisions relating to situations where there is insufficient or unreliable information for normal value determination. You cannot rely on the information collected and then call it unreliable.

The Federal Court has contributed to the reduction in the uncertainty of the application of the anti-dumping rules in a number of areas. The nature of the subject is one which still requires considerable judgement by the administering authority in the execution of the rules. However, it would be appropriate to try to align the anti-dumping rules at least with those accounting definitions already accepted by the trading community. There is a strong case for the harmonisation of the day to day rules concerning the determination of normal value and export price with the international accounting standards.

There is no easy answer to what constitutes an actionable subsidy. Clearly there is a view that export subsidies are pernicious, but not so when it comes to agricultural products. The rationale given for intervention by the state in the economy through subsidisation is to alleviate market failure or for social reasons. Public international laws on subsidies have the purpose of trying to minimise the resource distorting effects which spill-over national boundaries.

The *GATT* framework has been one of constant evolution. There would appear to be three main factors which may deem a subsidy to be actionable: a primary resource transfer through payment or revenue foregone by a government; a benefit to be derived by a firm from the primary resource transfer; and, the primary resource transfer needs to be specific or limited to particular firms for there to be a secondary resource distorting effect.

However, there is a need to distinguish these resource transfers from normal transfer payments by governments for social security and other welfare reasons. It has also been agreed as part of the *GATT* negotiating process that there may be resource transfers: to stimulate research and development; to satisfy regional social objectives; for adjustment to more stringent environmental standards; and, exemption of export subsidies imposed by developing countries. These concessions are subject to conciliation if they are shown to have had an adverse impact on another Member.

The Federal Court of Australia appears to have adopted the more restrictive view of the European Community on the question of what constitutes a subsidy. United States judicial support for the specificity test, which was later enacted into United States law, has not been followed in Australia. The concept of entitlement linked to the adverse output-increasing effect of a subsidy has likewise not been considered. There has been a tendency to ignore the *GATT* Panel cases and the relevant United States cases, which looked at the effect of the intermediate market on the passing-through of a subsidy. There also appears to be an over-emphasis on payment and charge to the public account, rather than the benefit of the subsidy in the hands of the recipient.

The area of actionable subsidisation under the *Subsidies Code 1994* is one where policy and judicial intervention are still very much in the developing stage. Although there are now quite elaborate rules, there is still a large area for differences of opinion as in other areas of the law, leading to uncertainty in the operation of this law. The discussion of the export subsidy equivalent of a domestic subsidy, shows that the application of a simple numeric approach tends to over-estimate the competitive effect of the subsidy needing to be countervailed. It may be better to encourage their resolution through the *GATT/WTO*

dispute settlement process than through the domestic courts, in order to develop some consistency in the application of these measures.

There is a choice of the remedies available to the parties to a dispute, including those within the initial investigation phase. The difficulty with the current administrative and legal arrangements, is that the choice is so wide that it is likely to prolong the uncertainty generated by the initiation of the retaliatory action. The positive aspects of the process are the tight controls over the investigation stage as reflected in the requirements for the application of the rules of natural justice, the substantial evidential provisions, and a limit of 12 months on the time for completion of an investigation unless there are special circumstances where it may extend to 18 months. The *Codes* also have well established rules and standards for the assessment of injurious dumping or subsidisation. The Australian domestic legislation is said to reflect the provisions of the international public law.

Another positive development is in the dispute resolution processes contained in the *WTO/GATT* agreements. The automatic establishment of a panel, the appeal rights of the members to a fully constituted Appellate Body, and a consensus rejection rule replacing a consensus acceptance rule for panel and Appellate Body decisions, have increased the potential for resolving disputes between parties willing to submit to third party adjudication. Underlying the administrative and legal processes is the encouragement given by the *WTO/GATT* agreements for consultations between the parties to resolve disputes. A willingness of countries to participate in the agreed *WTO/GATT* dispute settlement processes looks a reasonable prospect for dispute resolution in anti-dumping and countervailing actions, given the well entrenched behaviour of the parties and the history of the development of these processes in the *Codes*.

There is a need to implement a procedural rule to suspend any hearings before the Australian courts where the matter is being adjudicated before a *WTO/GATT* panel. Whether the dispute is settled by a change of administrative practice, a change in Australian domestic law through the Parliamentary process, or enforced externally by the adversely affected party through a withdrawal of benefits to Australia, once the matter is referred to the Dispute Settlement Body, it is in practical terms no longer a question for enforcement of a domestic law through the Australian Courts.

SECTION 6 The Benefits Of The Measures

6.1 Introduction

Having examined the application of the public law and its application in considerable depth, the next step is to assess the performance of anti-dumping and countervailing measures as a policy instrument. In this section the application of anti-dumping and countervailing law is analysed in terms of its public policy outcomes. This includes an economic and trade perspective to better understand its national and international impact.

There are constant reminders that anti-dumping measures are simply correcting market distortions to "fair trade". One of these is in the Australian *Anti-Dumping Authority Act 1988*, which cautions the authority against recommending the imposition of measures which would:

> "...assist import competing industries in Australia or to protect industries in Australia from the need to adjust to changing economic conditions."[1026]

The question of whether this proposition has been adhered to by the administrative authorities in Australia is explored in this section, as it is the only policy direction to be found in the Australian anti-dumping legislation. It is particularly relevant to the assessment of the public benefit, as the major tool of micro-economic reform used by the Australian government so far has been the reduction in the effective rates of tariff protection afforded to some producers in Australia. There have also been a number of complaints made about the excessive use of this safeguard measure.[1027] If only some of these assertions are correct, it would be reasonable to evaluate the effects of the application of anti-dumping and countervailing measures from a national interest perspective.

Initially, to put the application of this law into context there is some discussion of the manufacturing environment in Australia. It is important to see where anti-dumping and countervailing safeguards fit into the protection framework for producers in Australia.

[1026]Section 10 of the *Anti-Dumping Authority Act 1988.*

[1027]Gruen (1985) p 37 paragraph 7.1.4 - Complaints have been made as part of consultations on Australia's bilateral and multilateral trade agreements.

Attention then shifts to the analysis of the incidence of initiations of anti-dumping and countervailing cases based on complaints by industry. Industry and exporting country factors which appear to be driving the initiations are identified. By looking across industries and between sources of import competition, it is possible to obtain a reasonable picture of the industry and country factors which relate to the incidence of industry initiations.

Some of the work of others in the field is analysed with the view to identifying further areas for research and to see whether the results of the preliminary work on initiations is consistent with their results. Many of the observations go to the questions raised in the theoretical economic survey in Section 3. The next stage is to see which factors relate to positive final findings, again from industry and source of import competition perspective. Are these measures applied in a discriminatory manner, and if so, which countries bear the burden of these actions?[1028] Is the purpose of these actions simply to eliminate predatory dumping consistent with the thesis that they are not industry protective measures, or are there other explanations for anti-dumping and countervailing activity?

Having established the factors relating to retaliation, the relevant question is whether there is any measurable beneficial effect for industries obtaining 'relief' from the application of anti-dumping and countervailing measures. Do the industries which use anti-dumping and countervailing measures perform well in the external market as reflected in their relative export performance? Is the viability of an industry enhanced through obtaining anti-dumping or countervailing relief? This is answered by comparing the industry and company performance data, with the success of an industry obtaining a remedy. In conclusion there is an assessment of the cost and benefits of the application of the law.

6.2 Australia's International Economic Environment

[1028]The principle of non-discrimination as reflected in the general most favoured nation treatment clause of Article 1 is said to be the cornerstone of the *General Agreement on Tariffs and Trade.* Based upon the principle of an advantage accorded to one nation being extended to all other contracting parties (Touchette (1994) p 2), linked with a scheduled reduction in the application of tariffs and quantitative restrictions on imports has been reduced across the board, conditions conducive for gains from trade between countries have been achieved.

In analysing the impact of the anti dumping and countervailing law it is useful to look at Australia's economic circumstances. In terms of real gross domestic product per person, Australia has fallen during the 1980s relative to other OECD countries. In the early 1990s it was at 93% of the OECD average.[1029] Australia's growth in gross domestic product per person employed during 1980 to 1992 was of the order of 1.3% per annum, and below the average of the OECD countries.[1030] Australia has not been alone in that fall with a similar story for the United States, Canada and New Zealand. These countries also have labour productivity growth well below the OECD average.[1031]

In Australia's case it is argued that three factors have led to the slowdown in productivity. First the mining boom in the 1960s and early 1970s increased resource rents and investment in technology. This was followed by a substantial fall in the terms of trade with the investment in the technology proving to be uneconomic. The accelerated pace of structural change since the 1980s is also likely to have had transitional costs which may have further reduced total factor productivity.

The main factor contributing to structural change in Australia continuing from the 1970s has been the reduction in the effective rates of import protection to the manufacturing sector. The decline in the effective rates of protection are illustrated in the following table:

[1029]OECD Economic Survey of Australia 1994 p 53.
[1030]OECD Economic Survey of Australia 1994 p 56.
[1031]Castles (1995) pp 52-88 makes a number observations and conclusions about the process of measurement of economic well-being. In particular, he shows that relying on one measure may be misleading. See also Goldsmith (1994) for a critique on measuring and understanding and GATT and global free trade in Chapters 1 and 2 , respectively. However, the purpose of the above comments on comparative growth is to simply dispel the idea of Australia as a dynamic economic leader as some politicians would like the electorate to believe.

Effective rates of assistance in manufacturing 1970-71 to 1990-91

	1970-71	1975-76	1980-81	1985-86	1990-91
Industry	%	%	%	%	%
Food & beverages	18	20	10	5	3.1
Textiles	42	50	55	72	68
Clothing & Footwear	91	99	140	148	176
Wood & Furniture	26	19	15	18	13
Paper & products	50	30	25	17	7
Chemical & Petroleum	31	23	15	12	10
Non-metallic	15	10	4	4	3
Basic metallic	28	16	10	9	7.9
Fabricated metal	60	38	31	22	17
Transport equipment	51	59	63	61	33
Other machinery	43	25	20	24	15
Miscellaneous man.	32	26	28	26	20
Total manufacturing	**36**	**28**	**23**	**20**	**15**

Source: OECD (Organisation for Economic Co-operation and Development).[1032]

Work by Daniels (1993) on the effects of the reductions in assistance levels to industry indicates that any of the suggested protection related gains have not been able to offset the protracted decline in the competitiveness of producers of manufactures in Australia. This finding is consistent with the results of the OECD survey of relative factor productivity.[1033]

The reduction in levels of assistance does not include the effects of any anti-dumping or countervailing action taken by Australia against dumped or subsidised imports. The reduction in protective rates has also been uneven with the rates for textiles, clothing and footwear, and passenger motor vehicles still very high. They are covered by special

[1032]OECD Economic Survey of Australia 1994 p 78 Table 15.
[1033]OECD Economic Survey of Australia 1994 p 120 Table A1 - Productivity Growth.

industry sector schemes.[1034] The average effective rate of protection for the textile, clothing and footwear industry was 73 per cent, and that for the automotive industry 41 per cent in 1992-93. For the manufacturing industry as a whole, the average effective rate was 12 per cent in 1992-93.[1035] As a result there is little call for anti-dumping or countervailing action from the industries covered by special industry sector schemes. Therefore the textile, clothing and footwear, and automotive sectors have been excluded from the analysis of the relative incidence and effects of anti-dumping and countervailing measures between industries.[1036]

In contrast to these highly protected industries, Australia's agricultural sector is quite efficient with producer subsidy equivalent of around 13% maintaining on average from July 1990 to June 1993.[1037] Unprocessed agricultural commodities, however, are not part of this analysis as they have not been the subject of anti-dumping or countervailing actions in Australia.

The reduction in protection combined with the moves by the Australian Government to improve internal competition were designed to increase Australia's international

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[1034]The automotive and textile clothing and footwear industry schemes apply to the year 2000. These two industries cover two significant industry sectors contributing 17 per cent to total manufacturing value added in Australia in the 1989-90 financial year. They have two principle elements, an export subsidy and high import tariffs. The export subsidy element is based on a credit for the value added component of exports, and in addition for passenger motor vehicle manufacturers for reaching certain production targets. The credits are used to off-set customs duty payable on industry imports. On the automotive scheme, the Industry Commission remarks that:

> "The cost of producing in Australia many of the components (and vehicles) currently sourced duty free using export credits would almost certainly exceed the duty paid price of the imported equivalents. In the absence of export facilitation, it would be rational for vehicle producers to continue to import these components duty paid. Thus, the tariff regime now applying in the industry, the effect that export facilitation used to have on forcing out higher cost import competing automotive production has been significantly reduced and, potentially, removed altogether. Export facilitation is therefore now virtually identical in its effects to a straight export subsidy."

The value of the credits for the automotive industry and the textile, clothing and footwear industries was $100 million in 1993-94 and $274 million in 1993, respectively. These credits are generally applied to imports attracting the higher tariff rates. In the case of the textiles, clothing and footwear scheme, apparel and certain finished textiles at 51 per cent and footwear at 41 per cent tariff rates attracted the majority of the credits (Industry Commission (1994)).

[1035]Industry Commission (1995) - Assistance to agriculture and manufacturing industries pp 198, 205 & 207.

[1036]However, comparisons with the automotive industry and those using anti-dumping protection are made later in this thesis.

[1037]OECD Survey of Australia 1994 p 78.

competitiveness and improve its prospects for growth. However, Australia's growth in trade orientation[1038] over the last 30 years has been low compared with its major trading partners.[1039] On the other hand, the Industry Commission in a study of the manufacturing industry covering data over the last 25 year period points out that:

> "...there has been a significant change to the trade orientation of manufacturing - the share of production exported has more than doubled from 9 per cent to 20 per cent, while the import share of the domestic market has increased from around 17 per cent to over 30 per cent."[1040]

The Commission also notes that:

> "The persistent growth of resource-based manufacturing ahead of other industries confirms Australia's continuing competitive advantage in these resource-based industries."[1041]

The strongest growth in exports since 1981-82 was in agriculture related manufacturing, mining and mining related manufacturing.[1042]

Of the five industries which have been the major users of anti-dumping and countervailing measures as protective devices since 1 July 1983, chemicals, petroleum and coal products; other machinery and equipment; and miscellaneous manufacturing, were net importing industries. On the other hand the food, beverage and tobacco industry; and, basic metal product manufacture both have had a significant export orientation.[1043] The following table shows the number of initiations by industry group for a recent 11 year period[1044]:

[1038]Trade orientation is the volume of exports plus imports as a proportion of real gross domestic product.
[1039]Industry Commission Annual Report 1992-93 p 103 Table E1.
[1040]Industry Commission (1995) p 1 - Australian Manufacturing Industry & International Trade Data.
[1041]Industry Commission (1995) p 1 - Australian Manufacturing Industry & International Trade Data.
[1042]Industry Commission Annual Report 1992-93 p 105 & comments by Hughes H (1995) pp 74-77
[1043]Industry Commission Annual Report 1992-93 p 111 and p 115.
[1044]New Zealand exports were not subject to anti-dumping action by agreement from 1988. From an examination of the industry composition of initiations, the exclusion of New Zealand from anti-dumping action from 1988 onward appears not to have affected the industry composition of complaints. This is contrary to generally held perception that initiations of inquiries on white goods from New Zealand would have unduly distorted the composition between periods.

ANTI-DUMPING & COUNTERVAILING INITIATIONS x INDUSTRY GROUP

1982-83 TO 1992-93

ASIC subdivision	1982-83 1987-88	% Distribution	1988-89 1992-93	% Distribution	1982-83 1992-93	% Distribution
Food & beverages	29	7.73	51	17.59	80	12.03
Textiles	15	4.00	6	2.07	21	3.16
Clothing & footwear	3	0.80	0	0.00	3	0.45
Wood, wood products & furniture	4	1.07	0	0.00	4	0.60
Paper & paper products	8	2.13	14	4.83	22	3.31
Chemicals & petroleum products	115	30.67	105	36.21	220	33.08
Non-metallic mineral products	5	1.33	15	5.17	20	3.01
Basic metal products	48	12.80	9	3.10	57	8.57
Fabricated metal products	23	6.13	8	2.76	31	4.66
Transport equipment	6	1.60	12	4.14	18	2.71
Other machinery & equipment	91	24.27	14	4.83	105	15.79
Miscellaneous manufacturing	28	7.47	56	19.31	84	12.63
Total	375	100.00	290	100.00	665	100.00

Source: Australian Customs Service Annual Reports

Actions against food imports have all involved some allegation of subsidisation, and have been directed almost solely against the European Community exporters. This suggests retaliation against the European producers for lack of access to the market. Australia's food exports have been a slow growth area despite the large increase in productivity in that industry since 1982-83. This would be expected to further compound frustration with access to the European markets or third markets, where producers in Australia are competing with heavily subsidised European food products. However, another explanation may be that the multinational food processing companies initiate countervailing actions against the European Community, so that they can achieve a similar level of protection in the Australian market as they enjoy in Europe.

The picture with basic metals is much brighter. Here there has been a decrease in the proportion of initiations over time from 13 per cent of total initiations in the 1982-83 to 1987-88 period to 2 per cent in 1988-89 to 1992-93. This movement coincides with the industry's movement in export bias which occurred during that period.[1045]

These preliminary observations on the trading behaviour of the industries using the anti-dumping and countervailing laws, tend to confirm that there is a prima facie import replacement bias in the initiation of complaints.

[1045]Industry Commission Annual Report 1992-93 p 105 & comments by Hughes (1995) pp 74-77.

6.3 Factors Influencing Complaints

6.3.1 The Influence of Industry

As a first step in the analysis of the impact of economic factors on retaliation through anti-dumping and countervailing measures, the influence of some relevant industry aggregates was assessed. The following industry factors were assessed for their relation to the initiation of complaints by industry groups:

Profits 1983 - 1984 to 1992 - 1993[1046]
Concentration 1989 - 1990[1047]
Foreign ownership 1986 - 1987[1048]
Effective protection 1987 - 1988[1049]
Turnover 1987 - 1988[1050]
Research and development spending[1051]
Increases in import share (1987 - 1988 to 1992 - 1993) - (1981 - 1982 to 1986 - 1987)[1052]

The manufacturing industry group was taken at the 2-digit 1983 Australian Standard Industrial Classification (ASIC) level.[1053] This allowed for a consistent application of an industry definition for a period 1 July 1982 - 30 June 1993. There is a close match for the period between the application of the domestic legislation implementing the revised *Anti-Dumping Code 1979* and new *Subsidy and Countervailing Code 1979*, which came into effect on 10 July 1981 and the coming into effect of the domestic law imposing interim duties on 1 January 1993. Both these factors are important legislative milestones in the application of the substantive law in Australia.[1054] The static measures were taken

[1046]Australian Bureau of Statistics Cat No 5651.0.
[1047]Australian Bureau of Statistics Cat No 8221.0.
[1048]Australian Bureau of Statistics Cat No 5322.0.
[1049]Industry Commission Annual Report 1987-88.
[1050]Australian Yearbook 1990.
[1051]Australian Bureau of Statistics Cat No 5330.0.
[1052]Industry Commission Annual Report 1992-93 Table 3.
[1053]Australian Bureau of Statistics Cat No 1201.0.
[1054]Also there were two other significant institutional developments during the period. In 1988 a Protocol under the *CER Agreement* between Australia and New Zealand provided the opportunity to pass complementary legislation replacing the access to anti-dumping measures between the two countries within the free trade area, with rules prohibiting the misuse of market power. Also in 1988 the Anti-Dumping

as near as possible to the mid-point in the period, whereas the incremental measures were taken as differences around the mid-point or as a cumulative index covering the period.

As mentioned earlier three industry groups were excluded from the analysis either due to their very high levels of tariff protection and/or their resultant infrequent use of anti-dumping and countervailing measures.[1055] In testing the relationship between the incidence of initiations of inquiries and the industry variables as listed above, the dominant and significant relationships were the extent of foreign ownership in an industry weighted in terms of attributable turnover, and changes in import market shares. The relationship was tested by the application of a multiple linear least squares regression analysis which showed that these two factors gave goodness of fit of regression of r^2 = 0.96 of which F was significant at the 1 in 1000 confidence level of rejection of no relationship for the test period.[1056] There was a positive relationship between foreign ownership and the dependent variable of dumping initiations by industry. It is also significant, that the degree of aversion to import penetration by an industry, as demonstrated by the smaller decrease in import market share in that industry, was reflected in the increased level of dumping and countervailing initiations for that industry[1057].

The resulting equation explaining the relationship between the variables tested is as follows:

$$Z_i = -19.42 - 6.10\ X_i + 2.72\ Y_i \text{ ----------(1)}$$

where:

Z_i is the incidence of initiations by industry 'i'.
X_i is the change in the percentage import share in industry 'i'.
Y_i is the proportion of foreign ownership in industry 'i'.

Authority was established in Australia as an outcome of the Government's deliberations on the recommendations of the Gruen Report on the administration of anti-dumping measures in Australia.

[1055]The excluded industries are those producing unprocessed primary commodities; textiles, clothing and footwear; and transport equipment (ie. mainly motor vehicles).

[1056]ie. July 1983 to June 1993.

[1057]The regression coefficient between the level of foreign ownership and the increase in import market share was minimal, confirming that the two variables were independent of each other. - Refer to Spreadsheet: FOR_II.XLS - Appendix 6.3.1 A for detailed tabulations.

This relationship was maintained post-1988 when the Anti-Dumping Authority was introduced into the administrative process, evidenced by the profile of initiations between industry groups not significantly altering.[1058]

On the surface, the findings of a relationship between a decrease in the import market share and the incidence of initiations are in conflict with those of Eymann and Schuknecht (1993). They identified a change in market share as not significantly affecting the acceptance or rejection of anti-dumping claims. This study found, however, that industry layoffs and decreases in European community profits were highly significant factors in deciding final findings.[1059] As this study was more concerned with the injury parameters which appeared to influence the final findings of the European Commission, rather than an analysis of industry outcomes as in the present paper, it is discussed later in that context.

Turning to the negative findings from the current analysis, it is interesting that none of the other industry variables tested were significantly related to the incidence of dumping and subsidisation initiations. The degree of local concentration in an industry, as measured by the first four enterprise groups ranked by turnover, was itself insignificant.[1060]

The results also tend to debunk the proposition that anti-dumping measures are taken to ensure that the level of tariff protection is maintained on imported goods. If the proposition were true it would be expected that those industries which relied upon the tariff to preserve their domestic competitive position would rely more on anti-dumping measures. This would ensure that any effects of the erosion of the valuation for duty base would be minimised. However, there was no positive relationship established between effective rates of protection and the

[1058]The details of the F-Test for the significance in the differences between the two population variances are shown in Spreadsheet: INITTEST.XLS - Appendix 6.3.1 B. The difficulty with this later proposition is that the Australian Bureau of Statistics figures on foreign ownership relate to 1986-87, which is before the commencement of the Anti-Dumping Authority in 1988. It is assumed that the proportion of foreign participation in manufacturing industries would have been unlikely to change over the short period. However, the proportion of foreign ownership and therefore control would have been likely to have increased as Australia's foreign debt situation has been deteriorating. There is no evidence of any substantial Australian financed buy-out of foreign interests in manufacturing.

[1059]Eymann and Schuknecht (1993) p 237 - Their results show an increase in market share was a significant variable at the 10% level. This is not considered sufficient to reject the null hypothesis of a lack of association with success in obtaining a dumping finding. However, a reasonable explanation can be offered for the failure to obtain such a fundamental association. That is, as increased imports is one of the primary injury tests, the effect may be suppressed due to the intimidatory effect of the threat or action on imports well in advance of their possible materialisation.

[1060]However, the 2-Digit ASIC may be too wide to pick-up any possible relationship.

incidence of dumping initiations. The counter argument that those industries with least tariff protection needed anti-dumping protection is also not supported, as there is a lack of any negative relationship.[1061]

The size of the industry was also not a significant factor in predicting anti-dumping actions. However this could still be a factor at the firm level.[1062]

The finding on research and development spending indicates that Australian industry does not rely on the use of anti-dumping or countervailing measures to effect research and development. This does not support the proposition that foreign owned firms seek protective relief to foster research and development in Australia.[1063]

6.3.2 Against Whom are Complaints Made?

Looking at country specific factors, it is not surprising that the level of anti-dumping initiations is correlated with the level of imports from exporting countries. That is, the countries which are major suppliers of imports to Australia are those most likely to be the subject of a dumping complaint. The relationship is significant at less than the 1 in 1000 level and the correlation coefficient $r^2 = 0.64$. This finding is consistent with the use of anti-dumping measures as a means of 'temporary' protection of production in Australia against imports from external competitors.[1064]

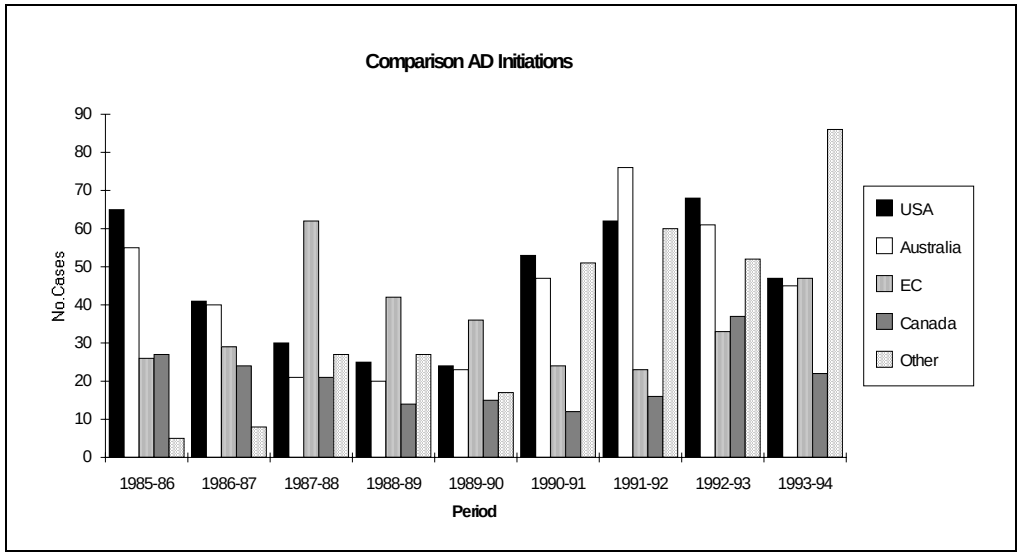
The application of anti-dumping and countervailing measures is increasing in world trade, to the extent of it being considered a significant non-tariff barrier. As can be seen from the chart below, Australia along with the United States, Canada, and the European Union are the main users of anti-dumping protective actions. The situations is changing with other countries such as Mexico, New Zealand, Poland, Finland, Sweden, the Republic of Korea India, Austria, Japan, and Brazil joining the club.[1065] Of this group

[1061]Gruen (1986) p 6 paragraph 2.2.12 refers to the Industries Assistance Commission investigation which found no relationship between the levels of protection and the propensity to obtain anti-dumping protection. The conclusion reached in examining the later evidence, confirms the situation as reported by Gruen remains unchanged. Drysdale et al (1995) p 5 confirms the lack of any relationship between tariff levels and non-tariffs barriers in the *APEC* region.
[1062]Eymann and Schuknecht (1993) p 237.
[1063]The tables with correlation and regression analyses are at Spreadsheet: INITANAL.XLS - Appendix 6.3.1 C.
[1064]The details of the calculations are at Spreadsheet: OECDINTR.XLS - Appendix 6.3.2.A.
[1065]Nivola (1991) p 283 in commenting on the work of Baldwin and Moore on identifying those factors which relate to the level of the dumping margin, noted that the United States anti-dumping enforcement

Finland, Sweden and Austria were mentioned by Gruen (1986) as having rarely resorted to the use of the *Anti-Dumping Code.* Gruen was of the view that:

> "These countries, have evolved broadly efficient outward-looking economic structures (At least outside agriculture). They seem to have made the strategic policy decision not to subject user industries and their economies generally to the costs of imposing anti-dumping duties,..."

Even though there appears to be a rise in anti-dumping actions generally, the comments by Gruen (1986) were against the background that Australia was responsible for 30 per cent of anti-dumping actions among the major users while only accounting for 3 per cent of imports by that group.[1066]



Source: *GATT* C/RM/OV/4 3 May 1993 and C/RM/OV/5 5 December 1994

From an analysis of initiations on an import weighted basis, covering the period 1982-83 to 1992-93, it is evident that they are strongly biased against the exports of industries in the developing countries. The developing countries have about twice the average incidence of cases initiated against them, whereas the developed countries fair much better. This is consistent with the experience in the European Community where Eymann

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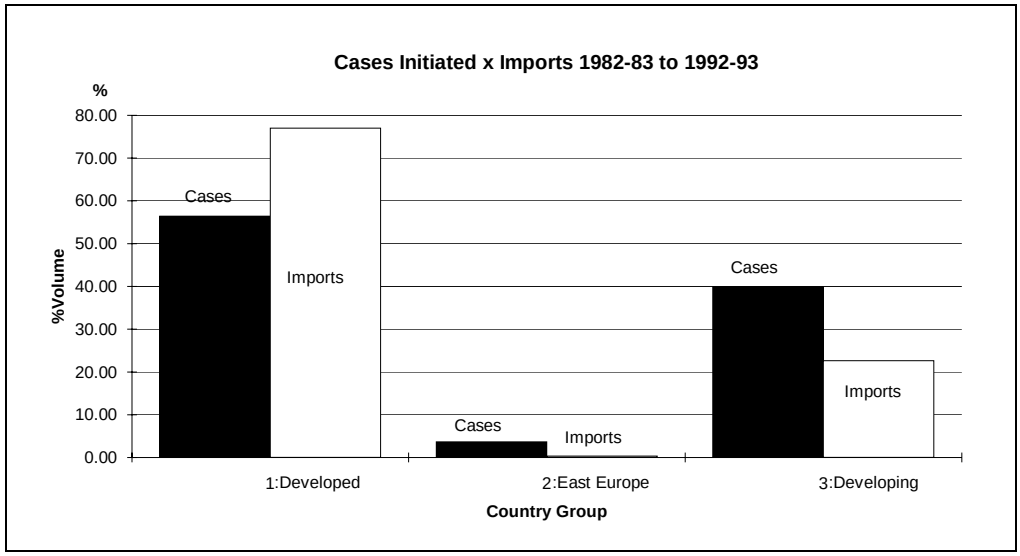
program is being mimicked by a number of other trading partners. As a result American exporters are being subjected to the kinds of regulatory hurdles which are imposed on imports into the United States.

[1066]Gruen (1986) p 10.

and Schuknecht (1993) noted a similar bias against developing country exports. It is also notable that the Eastern European block is discriminated against by both the European Community and Australia at about four times the import weighted average.[1067]

The figure below demonstrates the relative incidence of initiations by Australia by exporting country type:



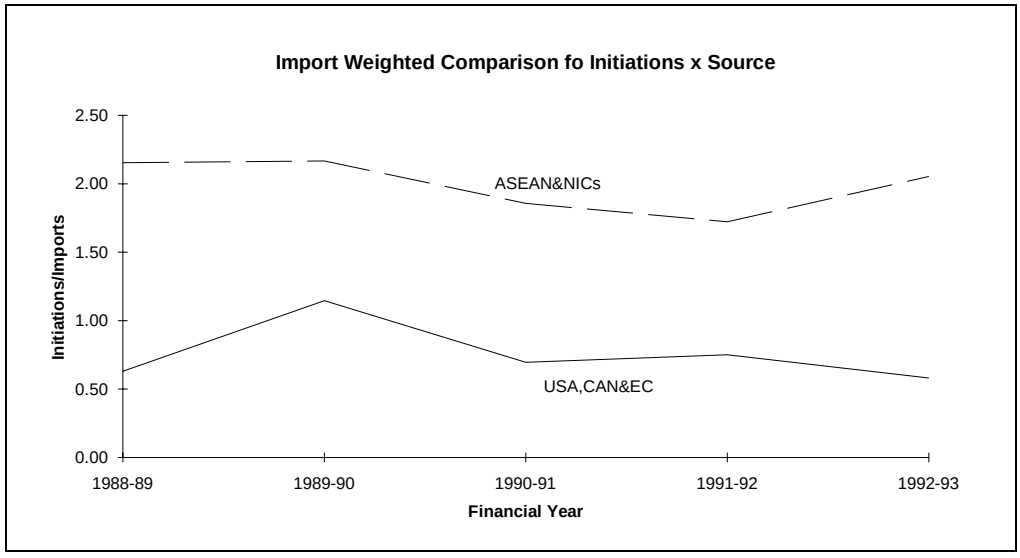
Source: Australian Customs Service Annual Reports & Australian Year Book

The strong relationship with foreign ownership in the manufacturing industries is of further interest as 80% of foreign equity ownership in manufacturing weighted by turnover is from the United States, United Kingdom, other EC and Canada source.[1068] These countries along with Australia are the major users of anti-dumping and countervailing measures.[1069]

Looking at the incidence of anti-dumping and countervailing initiations, it is apparent that the cases are biased against the *ASEAN* and the newly industrialised countries of the Republic of Korea and Taiwan. Australia's import trade from these countries has

[1067]Eymann and Schuknecht (1993) p 226.
[1068]Australian Bureau of Statistics Cat No 5322.0.
[1069]Foreign ownership in basic industries is not peculiar to Australia. An analysis of foreign ownership of industries resident in the Federal Republic of Germany also shows high levels of foreign ownership. The major chemical companies have about 50% foreign equity interests. (Capital July 95 p 44).

increased from around 13% of total imports in 1988-89 to 19% in 1992-93. The proportion of dumping and subsidy initiations against these countries has increased from 28% to 39% over the same period. On the other hand, Australia's import trade from the United States, the European Community and Canada was of the order of 46% of all imports in 1988-89 reducing to 43% in 1992-93. The proportion of dumping and subsidy cases was 29% and 25% respectively.



Source: Australian Customs Service Annual Reports & Australian Year Book

From trade volume and initiation figures it can be deduced that exporters from the *ASEAN*, Republic of Korea and Taiwan, are three times more likely to attract an anti-dumping or countervailing investigation than exporters from the United States, the European Community and Canada.[1070] This may simply be a reflection of increased competitive advantage from manufactured imports of the newly industrialised Asian economies, whereas the competitive pressures from the United States, the European Communities and Canada is less severe as reflected in their reduced import share. It may also reflect a desire to restrict trade by multi-nationals, similar to the sentiment expressed by Arndt and Wie (1994) that:

[1070]The difference in the means of the import weighed incidences ratios over the period 1988-89 to 1992-93 is significant at the 99% level with t = 10.8 with 4 degrees of freedom. That is, the trend in the ratios has been consistently different over the five year period.

> "The fact that several of Australia's large manufacturing companies, such as Cadbury, are subsidiaries of multi-nationals which also have subsidiaries in Indonesia may have also limited bilateral trade in these products."[1071]

The view that multinationals have this capacity to restrict trade has also surfaced in the re-emergence of the debate over the need for substantive rules for international competition law. Globalisation of the economy has led to more and more competition problems which transcend national boundaries. For example the emergence of international cartels, export cartels, restrictive practices which are international by nature, mergers on a world scale, or even the abuse of a dominant position on several major markets.[1072]

You do not need anti-dumping measures to restrict trade in a product. If the manufacturer in the other country is a subsidiary of a related company, as in the Cadbury case above, this can be done by direction within the corporate group. In this way, where the industries in two countries are concentrated and able to exclude others through the threat of anti-dumping measures, the likely preferred solution would be for each of the manufacturing arms to exploit the monopoly rents in their host country.

The evidence points to a more than proportional incidence of anti-dumping actions on imports from sources other than the countries of the foreign owners of manufacturing facilities in Australia. It would therefore be reasonable to conclude that the anti-dumping actions of foreign owners of manufacturing facilities within Australia were aimed at competition from foreign firms without such facilities, to restrict their entry into the Australian market.[1073]

6.3.3 Discussion of Analysis of Initiations

Dumping and subsidy safeguard measures only affect about 2 per cent by value of imports into Australia.[1074] However, this is likely to be a significant underestimate of its effect. Anti-dumping and countervailing actions are concentrated in four industry

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[1071] Arndt & Wie (1994) p 17.
[1072] *Report of the Group of Experts: Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules* COM(95) 359 pp 3-5.
[1073] The results of the analysis are at Spreadsheet: ACSINCNT.XLS - Appendix 6.3.2 B.
[1074] Gruen (1986) p 5 - The estimate was based upon the proportion of statistical keys affected and the value of imports subject to anti-dumping and countervailing duty as a proportion of the value of imports; both give the same result.

groups, and there are opportunities for pricing arrangements to be concluded between affected domestic manufacturers and exporters. Each party is then able to share in the economic rent as a result of the pricing arrangements. The mere threat of an anti-dumping initiation can result in agreements as to market share and import pricing. It is in the interests of the private parties to enter into an agreement on price so as to avoid the payment of duty.[1075]

It has been demonstrated that these measures are highly discriminatory between exporting countries, anti-dumping and countervailing measures being alone among the *GATT* protective measures which may be applied in such a way.[1076] That is, domestic industries can use these actions selectively against their most competitive sources of supply. Used in this way the effective protection by way of selective duty imposition can afford producers of the goods in Australia substantial relief against import competition. Again this shows that the value of imports affected by anti-dumping measures is an inappropriate measure.

As shown in the following table, the major users by order of frequency of actions taken are chemicals, other machinery, miscellaneous manufactures, and food and beverages.

[1075]Prior to 1 January 1993, when interim anti-dumping duties were introduced, dumping duty could be avoided by the exporter and importer agreeing to invoice their goods at an undumped price. Subject to any export price inquiry, of which there were few, the import trade could continue unfettered by any anti-dumping duties, but in such a way as to avoid further confrontation with the producer in Australia. As this was the case where a duty had been invoked, it would be reasonable to conclude that such negotiations between the exporter, importer and the producer in Australia would take place even before the initiation of the inquiry. The imposition of a duty is essentially a statement that the private parties could not reach agreement as to price or market access. Such an assertion is not new, as Adam Smith in his treatise on *"The Wealth of Nations"* puts considerable emphasis on the profit motive behind business transactions - see Barber (1967).

[1076]Article II.2(b) of the *GATT 1947* excludes anti-dumping and countervailing measures from bindings.

Dumping Initiations and Foreign Ownership x Industry Group

Industry Description 2-digit ASIC	Complaints Initiated 1982-83 to 1992-93		Foreign Ownership 1986-87
	No	%	%
Food&Beverages	80	12	27.9
Wood&Furniture	4	1	10
Paper&Products	22	3	14.4
Chemical&Petrols	220	33	60.6
Non-Metallic	20	3	18.8
Basic Metal	57	8	38.5
Fabricated Metal	31	5	14.7
Other Machines	105	16	39.6
Misc.Manufactures	84	13	28
Textiles	21	3	20.2
Clothing&Footwear	3	0	7.5
Transport	18	3	58.9
Total Manufacturing	665	100	32

Source: Australian Customs Service Annual Reports & Australian Bureau of Statistics.[1077]

These industries are responsible for over 74% of the dumping actions taken and accounted for about 45% of manufacturing turnover.[1078] They now have low effective rates of protection. Both the chemicals and the miscellaneous manufacture appear to obtain about three times the safeguard measures as would be expected if actions were in any way related to industry size. It is also noticeable that the high users of anti-dumping are among the top group of foreign ownership concentration.

From the examination of the complaints initiating dumping actions, it is revealed that they are predominantly from foreign owned corporations. They do not appear to relate to any of the other industry variables tested, apart from the lack of openness to import

[1077]Note: % Foreign Ownership is the proportion of foreign equity to total equity weighted by turnover of each establishment surveyed.
[1078]Industry Commission (1995) - Australian Manufacturing Industry & International Trade Data.

competition of the industries initiating complaints. Even this initial analysis may lead to a serious questioning of the usefulness of the governments tariff reduction policy. It is as if by stealth that this non-tariff barrier appears to be neutralising the tariff reforms for a large proportion of the less competitive import replacement industries.

6.4 Factors Influencing Retaliation

6.4.1 Recent Econometric Models

Baldwin and Moore (1991)

There are a number of studies which look at the factors isolated and reported on in final findings by the administering authorities, which appear to influence the imposition of anti-dumping measures. Recent work in this area has been undertaken in the United States by Baldwin and Moore (1991). They look at the relationship using least squares regression between the final dumping margin as the dependent variable and the following factors:

Changes in the volume of dumped imports
Changes in the volume of all imports
Changes in domestic production
Changes in exchange rates
Domestic wage rates
Number of production workers
Dumping margin based on best information available
Industry in state represented on Senate trade committee
Industry in state represented on House trade committee
Imports are sourced from Japan
Imports from less developed countries[1079]

The only variables having any relational significance to dumping margins were:

Best information available dummy variable - at 1% level
Changes in the exchange rate - at 5% level.[1080]

[1079]Baldwin & Moore (1991) p 274.

Less developed countries - at 5% level
Changes in volume of all imports - 10% level

The difficulty with the Baldwin and Moore (1991) model is that it focuses on the extent of the dumping margin as the dependent variable. This may tell something about the behaviour of the administrators in their determination of dumping margins, but does not necessarily indicate the resource allocative influence of the measures. For example, the influence on dumping margins of the application of the use of the best information available criteria, and the effect of variability in export prices on dumping margins where there are large exchange rate variations prior to the initiation of an investigation. However, there may be a discriminatory effect in cases against less developed countries.

Looking at one of the factors identified by Baldwin and Moore (1991), the use of the best information available for normal value determination, this may also a proxy for non-market economy assessments as the price is only attainable from a third market. This has its origins in the initial *GATT 1947*, where centrally planned economies were treated as a special case and excluded from the agreement.[1081] Another factor is the dumping resulting from lags in the follow through of currency appreciation, being a special case of variations in exchange rates and the influence on dumping margins.[1082] This can lead to an exaggeration of the level of the dumping margin over the period following a currency adjustment. The point that imports from lesser developed countries are more likely to be dumped is also worth testing, as the developing countries have won certain concessions in the *Codes* against the imposition of duties on their exports.[1083] Although only found significant by Baldwin and Moore (1991) at the 10% level, it is relevant to test for the impact of increased levels of all imports as this is likely to reflect the competitiveness of the import source country rather than injury from the dumped goods as reflected in the core injury criteria in the *Tokyo* and *Uruguay Rounds*. A reason for the apparent lack of relationship between the finding of dumping and an increase in the volume of dumped imports could stem from the intimidatory activities of the complainants resulting in an

[1080]Baldwin & Moore (1991) p 277.
[1081]Note 2 paragraph 1 *GATT* 1947 Article VI.
[1082]Krugman (1991) p 49 identified in another context variations in exchange rates as a factor as giving rise to a temporary disequilibrium in external economic balance.
[1083]Article 27 of the *Subsidies Code* 1994 ;Article 15 of the Anti-Dumping Code 1994.

inhibition of imports as mentioned earlier.[1084] This is in contrast to overall competitiveness which is more difficult to restrain.

Eymann and Schuknecht (1993)

The approach adopted here was to analyse the factors giving rise to decisions of the European Community on accepting or rejecting anti-dumping claims. They used a binary logit model to test whether the variables said to explain the reasons for decisions in each case, were reflected in the expected direction of the factor for either acceptance or rejection. The primary information they relied upon were the published reports of the European Commission and OECD trade and UNIDO industry variables. They focussed on the European Community's investigation process, rather than on the economic impact of the measures.[1085] In this way it is similar to the earlier Baldwin and Moore analysis.

Proxies for injury associated with final findings were found to be significant variables at the 1 per cent confidence level. The significant variables were those of layoffs, decreased profits, and loss of market share by European Community producers. Industry size and active government support were also influential in obtaining relief.[1086] These results are not surprising and led Eymann and Schuknecht (1993) to conclude that:

> "Injury is what anti-dumping is all about. Anti-dumping laws are a flexible tool for preventing imports from displacing domestic production in politically influential industries."[1087]

Although the resulting variables identified with anti-dumping measures were somewhat different from those of Baldwin and Moore (1991), the emphasis on the injury driven nature of the process is consistent with the nature of a safeguard measure.

[1084]Banks (1990) p 39 refers to Carmichael (1986) p 11 where one witness to an Industries Assistance Commission inquiry is quoted as saying that "...overseas suppliers are generally not prepared to offer their best export price to Australia for fear of...being charged with dumping."
[1085]Eymann and Schuknecht (1993) p 231.
[1086]The definition of industry used in anti-dumping cases is much more restrictive than those used for statistical purposes. In anti-dumping the industry is the producer of like goods - refer Article 4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.*
[1087]Eymann and Schuknecht (1993) p 238.

Krusberg (1994)

A similar logit analysis was completed by Krusberg (1994) on the application of anti-dumping and market disturbance laws in Finland.[1088] The analysis was unable to find any significant causal connection between the decision to impose retaliatory measures and the injury variables tested. Those variables tested included decreases in domestic production, increased imports, price undercutting and changes in domestic consumption. There was also no connection found between the measures imposed and the level of dumping or whether the source of imports were from non-market economies. One factor influencing the inconclusive outcome of Krusberg's analysis of the Finnish administration of these laws, was the small number of actions invoked by Finland when compared to the economies which are more active in their retaliation against dumping.

United States International Trade Commission (ITC)(1995)

The ITC in looking at the economic effects of anti-dumping and countervailing measures focussed on the period after the *Dumping Code 1979* and the *Subsidies Code 1979* were enacted by the *Trade Agreements Act 1979.*[1089] There were three basic approaches use in the analysis. The first was to review the key indicators of industry performance:

- prices and output of the domestic like product;
- prices and levels of imports;
- cost of production;
- market share;
- investment;
- employment;
- profitability; and
- research and development expenditures by domestic producers.

[1088]The Finnish *Dumping and Subsidies Import Act* and the *Decree on market Disturbances* under the *Protection of Foreign Trade and Economic Growth Act.*

[1089]The review involved approximately 50 full-time staff and spanned a period of two years prior to publication in June 1995. The data collected for the econometric analysis and the computable partial equilibrium analysis was obtained from public sources, fieldwork, questionnaires, and submissions to public hearings.

The second approach was to analyse this information in a time series to estimate supply and demand parameters, this way the effects of the unfair trade practices and the remedies could be quantified in terms of their effect on prices and production, and imports of products from countries both subject to and not subject to anti-dumping or countervailing measures.

The third method was to use a computable partial equilibrium analysis applied to eight selected industries. The base period chosen was in the mid-1980s, with the results reflecting the industry parameters around that time.

The overall result of the econometric model from the elimination of the measures in 1991 showed that the effect of the measures was of the order of 0.03 per cent of United States gross domestic product. The upstream industries using the measures were only affected in a minor way with losses in employment or output of about 25% of the gains to the rest of the economy.[1090] However, the influence of a number of factors on the accuracy of the simulated effects is questioned by the Commission.[1091] The usefulness of the USITC work for the current study is not in its econometric techniques, as they are beyond the scope of this thesis, but for the identification of the indices which were used to reflect the economic conditions in the industries studied. That is, the reliance on market share, investment, employment, profitability and research and development expenditure in measuring economic effects.

Some measurement Difficulties

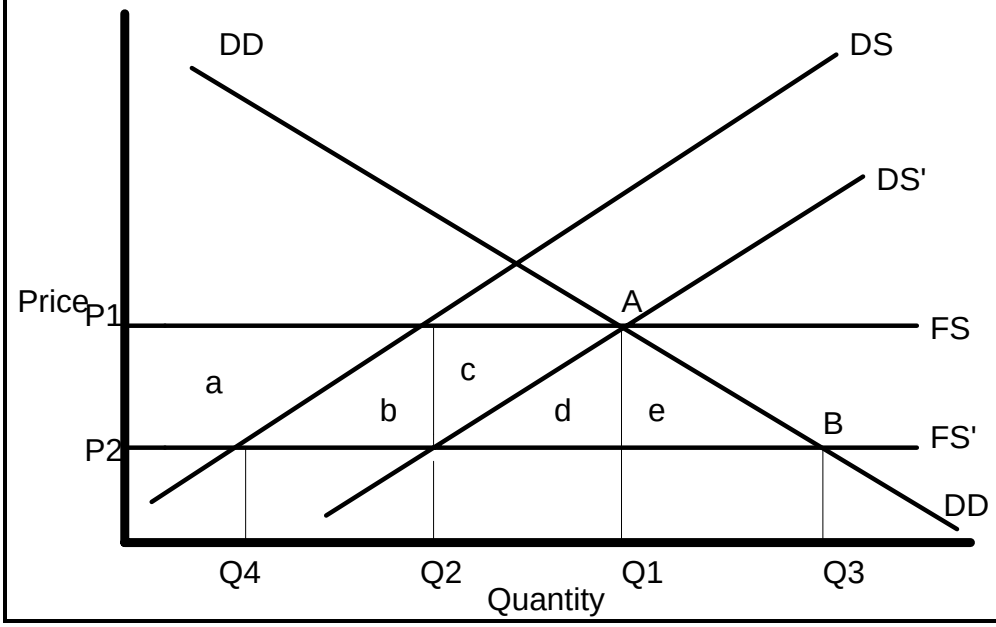
One difficulty in trying to adapt an analysis based upon the dumping margin as the dependent variable to a wider industry study is that it is not possible to determine the level of nominal protection in cases where the product is not homogeneous and the product is being imported from a number of sources.[1092] Attempts to rely upon dumping

[1090]USITC (1995) p x.
[1091]USITC (1995) p 1-2 These effects are of the fall in the nominal rate of dumping duty after the initial finding, by exporters raising export prices thereby reducing the revenue to the US Treasury, or the effects of revocations etc. which both have an underestimation influence on the result. However, it is likely that the use of the full-margin assumes that consumers pay the pre-dumping price plus the full dumping margin. The effect of these untested and unincorporated assumptions places some doubt on the overall result.
[1092]The Industry Commission (1994) p 286 attempted to measure the weighted average nominal anti-dumping and countervailing duty rates in its 1993-94 Annual Report. It reported that in 1992-93 5% of imports were covered by anti-dumping duties with nominal rates ranging from 10 to 40 per cent of the value for duty. In the annual report for 1994-95 the Industry Commission p 157 appears to have discontinued trying to establish the nominal rate, relying on the dumping margin ranges established by the

margins weighted by volume of product lines or import sources are likely to be unsuccessful, as the protective effect depends, all other things equal, on the difference between the lowest traded landed price and the lowest landed duty paid price after dumping duty is imposed.[1093]

The following diagrammatic partlial equilibrium representation attempts to put the application of remedial measures in perspective.

Dumping and the Imposition of Remedial Measures[1094]



Anti-Dumping Authority and included in Australia's bi-annual report to the *GATT/WTO*. These margins range from 0 to 200%. Regardless of the accuracy of these figures, the magnitude of the duty impost is large, and its impact on domestic prices is likely to be significant.

[1093]An example of reliance on weighted average dumping margins is the Code Committee reporting requirement for the volume weighted dumping margins by product and exporting country to be recorded.

[1094]Adapted from Pomfret (1995) p 16 where he outlines the standard model of partial equilibrium analysis of a tariff imposed by a small country. Hufbauer & Elliott (1994) expand this form of analysis to cover the

Partial equilibrium conditions relating to the demand and supply of a commodity without dumping are illustrated by point **A,** and with dumping by point **B** in the diagram. For those who believe that anti-dumping measures simply restore fair trading conditions and reduce the cost of temporary adjustment to short-term low priced imports, then the start point and the end point of the analysis is **A,** with the move to **B** being only transitory and limited to the period before dumping duty is imposed**.**[1095] On the other hand, for those who believe that anti-dumping measures have a protective or a resource distorting effect the desirable equilibrium is **B,** and the equilibrium where dumping duties are imposed is the less desirable **A.**[1096] It is useful to look at each of these positions separately, with the traditional small country assumption that the foreign supply function is infinitely elastic.

Restoration of the fair trade position with equilibrium **A** as the objective, would mean that of the total supply Q1, Q2 is supplied from domestic production in the importing country, whereas Q1-Q2 is supplied from imports. With the on-set of dumping reflected in a price drop from P1 to P2 there is a move of the equilibrium conditions from **A** to **B,** with the quantity domestically supplied contracting from Q2 to Q4, and the amount supplied by imports increasing by Q2-Q4 plus Q3-Q1.
The displacement of domestic production is represented by Q2-Q4, whereas the increase in the

secondary effects of imperfect substitutes and large country effects through the influence on exchange rates. The following is a definition of terms: DD = Domestic Demand; DS = Domestic Supply; DS' = Domestic Supply with Fixed Subsidy; FS = Foreign Supply without dumping; FS' = Foreign Supply with dumping; P1 = Price before dumping; P2 = Price after dumping; P1-P2 = Remedial measure; Q1 = Total quantity supplied to domestic market without dumping; Q2 = Total quantity supplied by the domestic manufacturer without dumping; Q3 = Total quantity supplied to domestic market with dumping; Q4 = Total quantity supplied by domestic manufacturer to domestic market with dumping.

[1095]This is the Viner (1923) p 147 and Bhagwati (1988) p 35 scenario.

[1096]Snape (1987) p 229 says "...While fair trade rhetoric may cloak the pressures for countervailing and anti-dumping actions, the basic motivation is, after all, protectionist."

total demand generated by the lower priced imports is Q3-Q1. Consumers make a gain represented by the segments **a + b + c + d + e** whereas the loss in surplus accruing to domestic manufacturers is **a.** Clearly the difference is a net social gain to the economy. However, the dumping position **B** is deemed to be unfair and the application of a dumping duty P1-P2 restores the equilibrium to **A.** In doing so the government collects duty to the extent of **c + d**, the domestic producers acquire their previous producer surplus of **a**, whereas consumers lose **b + e**, where the government remits the duty collected to the consumers. The fair traders would argue that the application of dumping duty to reach equilibrium **A** is preferred, as there is only a small effect on consumer welfare whereas there is a large gain for the producers.

Against this is the more conventional analysis which starts from equilibrium **B.** This assumes that the foreign price is always a dumped price, and that the reason for the retaliation is to protect domestic producers from international competition. Here the imposition of dumping duty has the effect of increasing the price from P2 to P1, and reducing consumption from Q3 to Q1. There is the same loss in consumer surplus and gain in producer surplus as discussed above, however, the loss is real in the sense that there is no restoration of equilibrium **B** contemplated. The debate is therefore about what are the normal market conditions which should prevail from both efficiency and equity standpoints. The framers of the *GATT* and the subsequent developments in the Codes tend to take the first paradigm as the relevant starting and ending points, but there are many who do not agree with the *GATT* position and seek to change the debate to concentrate mainly on the resource distortion aspects as emphasised by the second paradigm.

However, there is a tendency to over-estimate the protective effect of the application of the dumping duty by not dissecting the measures. In the 1995 ITC study, dumping duties were taken as the trade weighted average dumping margins. In the Australian context, where there can be no effect on the foreign supply from the imposition of dumping measures, the ITC approach would be a significant over-estimate of the nominal tariff. The protective duty where there are a number of sources of supply is P1-P2 where, P1 equals the lowest foreign supply undumped or non-injurious landed price, and P2 is the

lowest landed foreign supply price.[1097] There are no figures available to be able to assess this nominal tariff equivalent level of anti-dumping or countervailing duties in Australia.

Although more related to the question of an appropriate remedy, in theory an anti-dumping duty has its production subsidy equivalent. This is represented by a shift in the domestic supply curve **DS** to **DS'**. Under this condition the effect of the subsidy P1-P2 is to keep overall consumption at Q3 and to encourage domestic production to supply Q2. This outcome allows consumers a net of tax benefit of **c + d + e** from the lower price P2, at the expense of the increase in domestic taxes to finance the industry subsidy **a + b**. That is, everybody wins except the general taxpayer. However, it is an achievable outcome where intermediate goods are concerned, which are incorporated into final products for domestic consumption or export.

This analysis, although useful in identifying the questions which need to be addressed in the application of anti-dumping and countervailing laws, has a number of significant limitations.[1098] The main problem is that the intermediate goods industries in Australia, such as the chemicals industry, have discontinuous stepped supply functions. It is only where you have a large number of firms in an industry, such as in the United States economy, where supply functions approach continuity. Another assumption concerns the use of an infinitely elastic supply curve. This again may not represent the industry position, as it assumes that there are a large number of producers in the international market operating independently of one another. It is also assumed that the tax effect of the duty is passed on to consumers, whereas this is a doubtful outcome both in the European Community and Australia.[1099] Another important limitation is that the analysis is partial and ignores the economy wide effects.

What has been gained from the application of this crude partial analysis, is that it is necessary to have some notion of the nominal effects of each anti-dumping or countervailing measure. That is, the nominal tariff equivalent level of an anti-dumping or

[1097]Normal import duty has not been included in the comparison as it has an equally proportionate effect on both prices.
[1098]Hafbauer and Elliott (1994) p 31.
[1099]In the European Community the accent is on reaching an undertaking with the exporter to raise the export price. In Australia although duty application is a more likely outcome, the opinion expressed by the Anti-Dumping Authority Report No 114 *Review of Australian Customs Service negative preliminary decision on sodium cyanide from the United States of America* January 1995, confirms the view of the administration in Australia that by the raising the export price the exporter can avoid, from the beginning, the imposition of anti-dumping duties.

countervailing duty in Australia, if the aim is to proceed with a partial equilibrium analysis. This is essential information for the administering authority if the resource effects through trade creation or diversion are to be gauged.

The further the measurement of the dumping margin was examined, it became apparent that the extent of the data constraints become greater.[1100] The secrecy (confidentiality) provisions preclude access to the information within the administering authorities.[1101] Australia now has the practice of keeping information on dumping margins confidential. This has the effect of reducing the transparency of the law in favour of selected parties involved in the trading transactions. This makes the task of collecting a reasonable representation of current data on Australian anti-dumping duty rates impossible.[1102] The historical data collection on market pricing is not available, as it is held by private corporations who have little interest in disclosure even if the records were accessible. After consideration of the above, it was decided to rely upon the incidence of country specific initiations and final findings as indications of expected and realised initial benefits of anti-dumping and countervailing measures.

[1100]*GATT* documents are slow to become de-restricted for public use, placing impediments in the way of public scrutiny of the *GATT* process.

[1101]Letters from the Anti-Dumping Authority and the Australian Customs Service Anti-Dumping Branch refusing access to this data dated 9 May 1994 and 18 April 1994 respectively (Appendix 6.4.1).

[1102]Section 269 TG (3A) *Customs Act* 1901 allows the provider of information relating to normal value, export price and non-injurious price to request that it be confidential if it would 'adversely affect the person's business or commercial interests. However, a party affected by a review of the rate of interim duty may obtain such information. Three recent Administrative Tribunal Appeals concerning the release under the *Freedom of Information Act 1982* of commercial information obtained under the provisions of the *Customs Act 1901* have been decided against the applicant. In *Midland Metals Overseas Ltd and the Collector of Customs & ors* AAT 23 August 1991 the Administrative Appeals Tribunal refused to release information under section 45 of the *Freedom of Information Act 1982*. The Tribunal followed *Corrs Pavey Whiting & Byne v Collector of Customs* (1987) 13 ald 254, where it was said that the information must be confidential and received in circumstances incorporating an obligation of confidence and which has not lost its inherent quality of confidence. The Tribunal further to said that in a highly competitive market, disclosure of the documents containing information concerning business, commercial or commercial affairs would not be incidental or trivial as it would give the edge to competitors. This same line of reasoning was later applied in relation to information contained in an objection to a tariff concession order on the grounds of public interest: *Bag & Jute (T'wth) Pty Ltd and the Collector of Customs* (AAT, 17 December 1993, Ref No W92/12, 13). Of more specific interest is a refusal of access to anti-dumping documents where the Administrative Appeals Tribunal held that disclosure of the information contained in the documents would be a breach of confidentiality and they were exempt under a number of provisions of the *Freedom of Information Act 1982: Day and the Collector of Customs* (AAT, 22 April 1994, Ref No N93/441, N93/458). These restrictions are to be distinguished from the release of information to lawyers during discovery under a confidentiality undertaking approved by Wilcox J in *Kanthal Australia Pty Ltd v Minister for Industry, Technology and Commerce* (1987) 14 FCR 90 on the balance of the competing public interest claims, including that justice not be denied to the applicant.

A significant difficulty with measurements based on the findings of the administrative authority is alluded to by Messerlin (1995) in his comparative analysis of the anti-dumping and national competition rules. Messerlin (1995) in discussing the simultaneous enforcement of anti-dumping and competition rules in the European Community says that:

> "The key constraint is imposed by the confidentiality principle: even if the cases are investigated simultaneously, confidential information for an anti-dumping case could not be used for a competition case, and visa versa. The confidentiality constraints allow asymmetric behaviour."[1103]

That is, there are opportunities for management accounting data to be used to show a particular result suitable to the purpose of the inquiry. There is a reasonable likelihood that the information upon which such studies are based to be biased in favour of the injury factors. This is acknowledged by Eymann and Schuknecht (1993) by way of a footnote where it is said that:

> "We suspect, however, that not only the result of an investigation but also information provided in the reports was tailored to the political winds. Scattered information on certain attributes of some cases resulted in many missing values in the investigation."[1104]

In view of these uncertainties and the difficulties experienced in collating the data contained in the Australian reports, it was decided to analyse the factors influencing the frequency of final findings in terms of industry and country classifications.

6.4.2 Industry and Country Models Used in this Analysis

To establish the reasoning for Australian industry to pursue anti-dumping relief and demonstrate the manner in which that relief is applied, it will help to identify those factors which should be taken into account in a trade policy context. By considering the economic variables which either promote retaliation or cooperation in trade, those likely to be active factors in the Australian industry merchandise trading context are able to be identified and analysed.

[1103]Messerlin (1995) p 49.
[1104]Eymann and Schuknecht (1993) p 232.

In a more formal setting, the first null hypothesis is that none of the identified industry variables have any effect on an industry's incidence of anti-dumping and countervailing measures. The second null hypothesis is that none of the country variables have any effect on the incidence of anti-dumping and countervailing measures. The period of the study is as described above 1982-83 to 1992-93.[1105] As in the case of the study of initiations a 2-digit Australian Standard Industrial Classification is the first industry classification level used.[1106] The particular relationships which were examined for affected industry groups and countries are contained in the following descriptive functions:

An industry's relative incidence of anti-dumping and countervailing actions is a function of:

[(Comparative advantage)
(intra-industry trade index)
(changes in domestic market share)
(changes in exports to sales ratio)
(proportion of foreign direct investment)]

Country specific incidence of anti-dumping and countervailing actions is a function of:

[(value of imports)
(changes in import source share)
(non-market economy)
(developing country)
(exchange rate change)]

[1105]The data base used for the analysis of the dumping and countervailing actions is in Spreadsheet: OECDSUM.XLS - Appendix 6.4.2.

[1106]A classification at the 3-digit ASIC level reveals that the same relationship between initiations and foreign ownership holds. The correlation coefficient is reduced and the significance is only at the 10% level. As some of the variables tested are only available at the 2-Digit level, this level was chosen for the analysis. There were marked variations in both the number of anti-dumping actions within the 2-digit ASIC. For example, ASIC 27 comprises chemicals, petroleum and coal products all with high foreign ownership, but all the anti-dumping activity is concentrated in the chemicals area.

The reasons for the selection of these factors for testing their influence on the application of anti-dumping and countervailing retaliatory measures are discussed in the context of the review of the relevant economic literature in Section 3, in the analysis of the results of the incidence of initiations, and in the consideration of the econometric models of administrative behaviour. The definitional aspects are now discussed in detail.

6.4.3 Definitional aspects

Comparative advantage

$$\text{Relative Comparative Advantage (RCA)} = \frac{\text{Value of } i \text{ Exports of Australia}}{\text{Total Value of Exports of Australia}} \text{ divided by } \frac{\text{Value of } i \text{ Exports of World}}{\text{Total Value of Exports of World}}$$

It is considered that relative comparative advantage will be reflected in the growth of the Australian industry (*i*) exports to those of the industry (*i*) in the rest of the world. Source is OECD "C" Trade Statistics 1992. The difficulty with this index is that it is based on the two digit commodity level of the Standard International Trade Classification which does not correspond with the industry establishment based classification. However, each of the relative comparative advantage indices used has a corresponding industry association, although not descriptive of the whole of that industry. This relative comparative advantage measure is the best estimate available.

Intra-industry trade index

The Industry Commission (1993) refers to intra-industry trade as the simultaneous export and import of goods produced within the same industrial classification. It is said that a significant proportion of this trade may not be explained by traditional theories of comparative advantage based on factor endowments. It is claimed that factors such as product differentiation, consumer taste for variety, global integration of production and government intervention designed to promote exports are reflected in this measure.[1107]

[1107]Industry Commission (1993) p 119.

It is argued that the trade between Japan and Australia is predominantly inter-industry trade, with Australia exporting commodities and importing manufactured goods. Although complimentary trade may reflect the broad situation, it depends very much on the level of statistical disaggregation and on the degree of product transformation.

An intra-industry trade index of *i* goods=$(1-\frac{|X-Y|}{X+Y}) \times 100$, where

X: Value of foreign countries exports of *i* goods to Australia

Y: Value of foreign countries imports of *i* goods from Australia[1108]

The indice used is that computed by the Industry Commission at the two digit level of the Australian Standard Industry Classification using Australian Bureau of Statistics data.[1109]

Domestic market share

This measures the share of the Australian market held by the local manufacturers (or its residual the share of the Australian market held by importers). Sales to the local market (LM) is defined to be: sales of locally produced goods (S) less exports (X), divided by (S-X) plus Imports (M) and duty paid on imports (D). Algebraically, local market share (LMS) is expressed as:

$$LMS = \frac{S-X}{(S-X)+(M+D)} * 100.$$ [1110]

Exports to sales ratio

Exports to Sales Ratio (ESR) measures the share of sales of locally produced goods which are exported, such that:

$$ESR = \frac{X}{S} * 100$$

[1108]Jetro (1992) p 168 use the Grubel & Lloyd index.
[1109]Industry Commission (1995) *Australian Manufacturing Industry & International Trade Data* (1995).
[1110]Further detail on this definition - *Australian Manufacturing Industry & International Trade Data* (1995) p 47.

Proportion of foreign direct investment

Measured as the ratio of the stock of direct foreign investment to total investment in an industry weighted by sales turnover. The only reliable source of data on foreign ownership within Australian industry is from the Australian Bureau of Statistics. The information is dated covering the period 1986-1987.[1111] However, it is useful as the Bureau was able to go behind the nominee holdings.

Ideally it would be useful to look at foreign direct investment from the source of dumped or subsidised imports in the complainant industry as a proportion of total investment in the industry. This would give a reasonable indication of the concentration of foreign ownership and control by source by industry, and the associated use of anti-dumping and countervailing measures . However, the data on foreign ownership in industry is limited. This is particular so as most of the corporations of interest have significant nominee share holdings. This has the effect of hiding the extent of foreign ownership within an industry.

Non-market economy

These are evidenced by the treatment accorded the country in the Anti-Dumping Authority Reports. This is the area of assessment where a de facto best information available test is most likely to be used.

Developing countries

Included are those market economies classified as developing countries by UNCTAD, excluding newly industrialised countries of East Asia.[1112]

Exchange rate change

[1111]Australian Bureau of Statistics Cat No 5322.0.
[1112]UNCTAD (1993).

For the purpose of the country based study the movement over the period 1982-83 to 1992-93 is used. The source for exchange rate data was the World Bank Tables country pages.

The ideal is to test the change over the financial year prior to the financial year of the final finding, to see if this is reflected in the incidence of duty imposition. Six months prior to initiation is a convention adopted for the period of injury. The period as outlined would approximate the practice of using periods coincident with the beginning and the end of financial periods. However, although attempted there were considerable data constraints. Also, where the same commodity is the subject of a series of measures at different times, results in this measure losing its value.

6.4.4 Application of Safeguard Measures in Australia

Looking at the level of positive final findings across industry groups as outlined in the model above, it was found that the only significant relationship between the final findings and the variables tested was that of foreign ownership and change in domestic market share.[1113] The multiple regression correlation coefficient[1114] was $r^2 = 0.95$ adjusted to 0.93 and F = 62 and was significant at less than 1 in 100 and for the two variables individually, and resulted in the following equation[1115]:

$$Z_i = 0.69\ X_i + 1.44 Y_i \text{ ----------(2)}$$

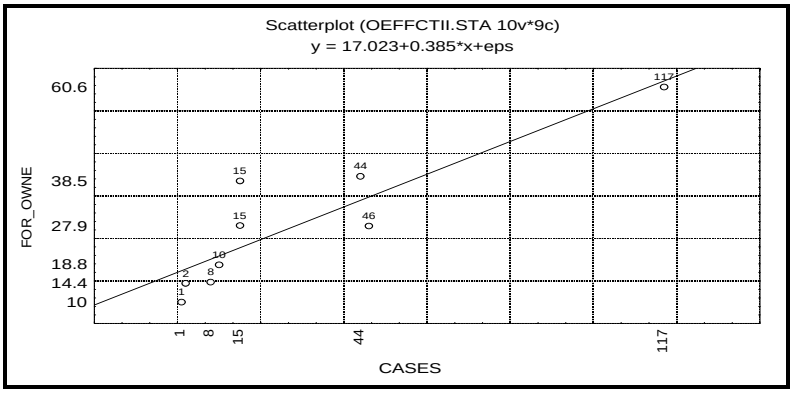
where:

Z_i is the incidence of final findings by industry '*i*'.
X_i is the change in the domestic market share in industry '*i*'.
Y_i is the proportion of foreign ownership in industry '*i*'.

This confirmed that the final findings reflected the industry incidence found in relation to the initiation of complaints. The same conclusions can be drawn as to the influence of

[1113]The details of the step-wise regression procedure used are at Spreadsheets: INFFFOII.XLS and INFFFORD.XLS - Appendix 6.4.4.A
[1114]The Durban-Watson statistic was 1.80 and there was a serial correlation of -0.1511. The residuals appear to be normally distributed.
[1115]The constant was insignificant and the equation reflects the forcing of the constant term to zero.

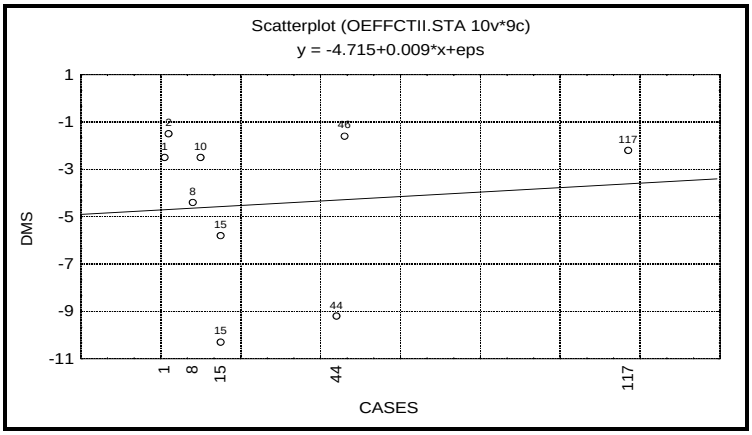
foreign ownership and the propensity to inhibit import competition as being the main drivers for the application of anti-dumping and countervailing measures. However, the number of industries is small and even though the correlation is very significant, it is wise to decompose the relationship of the dependent with each of the independent variables. The following scatter graph plots the frequency of positive final findings against the degree of foreign ownership within an industry.



Source: OECD Submission, ABS Cat No 5322.0 and Industry Commission (1995).

It will be noticed that the data point with the highest level of foreign ownership and frequency of measures dominates any relationship, a reflection of the influence of the chemical industry. Although the lower values are closely grouped and therefore the median is well below the mean of the sample, the observations closely conform to the linear line of best fit. However, the functional relationship between the two variables is illustrative of the influence of foreign ownership, and in no way meant to be predictive.

The scatter plot below looks at the second relationship between the ability to maintain domestic market share, that is a reduction of 'openness', and the frequency of the measures.

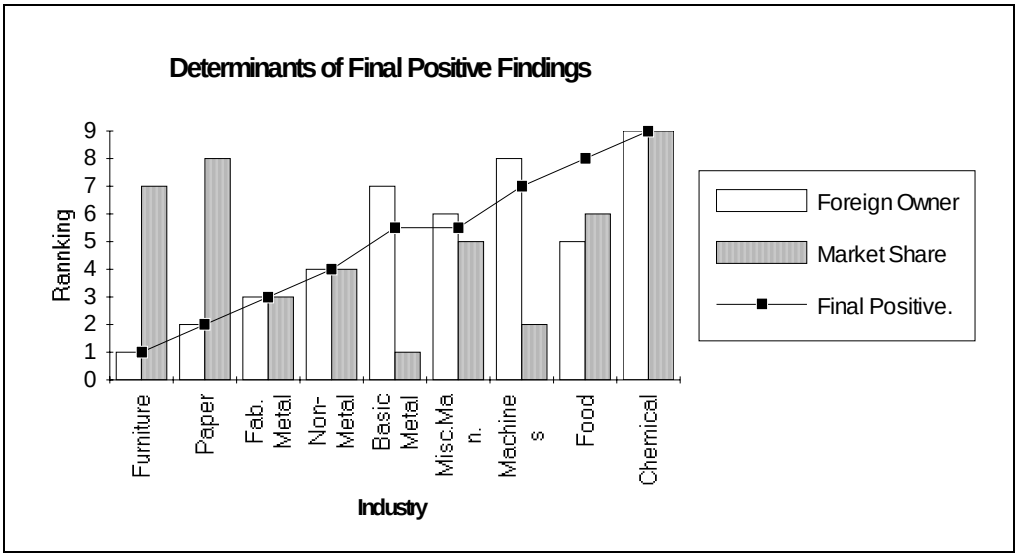


Source: OECD Submission, ABS Cat No 5322.0 and Industry Commission (1995).

This is a much weaker relationship, skewed towards the lower values and not as prescriptive as the former. Even with the qualifications on the statistical relationships the analysis is still informative. The chemical industry is one of the more aggressive industries in keeping domestic market share, and quite obviously assisted by anti-dumping measures.[1116]

The results demonstrate that it is unlikely to be 'fairness' which is driving this debate on the application of anti-dumping and countervailing duties. It is simply being used by those industries with high foreign ownership to increase their already substantial hold on the market. There seems to be little room for Australian owned enterprises to participate in this area of industry regulation.

[1116]At the 4-digit ASIC level, the only sector experiencing a significantly higher level of growth in imports between 1982-83 and 1992-93 than the manufacturing industry average was pharmaceutical and veterinary products ASIC 2763.



Source: OECD Submission and Industry Commission

To illustrate this point, 85 of the applicants in anti-dumping and countervailing cases out of the 140 applicants associated with cases reaching a positive final finding between 1988-89 and 1993-94, were well known subsidiaries of foreign corporations. The major user by far was ICI Australia Ltd, followed by BFGoodrich Chemical Ltd and Pilkington Australia Ltd.[1117] As discussed previously, the extent of foreign ownership is hidden in many of the remaining companies by the use of nominee share holdings. The compilation of applicants by frequency of use shows the imbalance in the use of anti-dumping and countervailing measures in favour of overseas manufacturing subsidiaries. The situation as outlined above is not static as the measures are inherited through foreign acquisitions, with Carter Holt being acquired by International Paper Corp. USA adding an additional case to the foreign subsidiary list[1118]; or in the example with Nestle taking over dairy division Pacific Dunlop Ltd with the incorporation of a larger production base.[1119] As Australia becomes more reliant on foreign capital through the continued

[1117]The successful foreign subsidiary applicants between 1988-89 and 1993-94 were by frequency of successful application: ICI Australia Ltd 39; BFGoodrich Chemical Ltd 10; Pilkington Australia Ltd 6; JS Staedtler GMBH 4; Esselte Business Systems 4; Hoechst GMBH 3; Esso Australia Ltd 3; Outboard Marine Corp 3; Bayer 2; BTR Engineering Australia Ltd 2; BASF Australia Ltd 2; ACI Fibreglass 2; Shell 1; Smith and Nephew PLC 1; Cockburn Cement Ltd 1; Bowater Tutt Industries Pty Ltd 1; and Nestle Australia Ltd 1. For full details see Appendix 6.4.4 B for the spreadsheets DUMPING.XLS sourced from ACS and ADA data and FIRMS.XLS from business directories.

[1118]Australian Financial Review reported the acquisition on 26 April 1995.

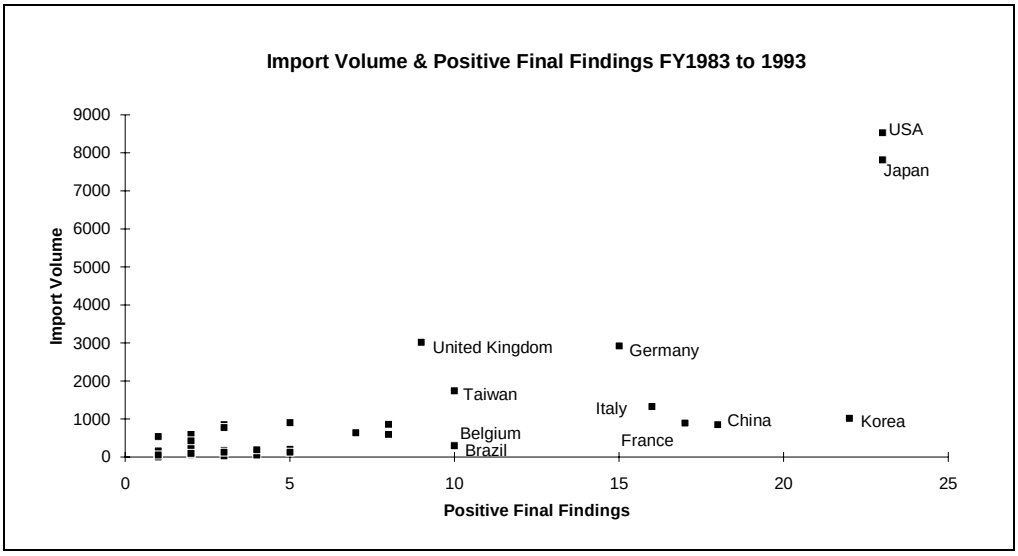
[1119]Business Review Weekly 18 December 1995 p 56 reports the acquisition by Nestles of Pacific Dunlop's dairy division.

current account deficits, then it naturally follows that Australian trade policy is influenced to a greater degree by foreign business interests. The question is where is the political economic balance?

From a country perspective again the results of the study of the initiations are reflected in the final findings.[1120] There was a significant relationship between incidence of positive final findings by country relating both to the volume of imports and the increased share of imports. Again the import volume variable showed that there was an increased incidence of duty application where the import volume was larger. The result of a significant relationship between duty imposition to increased import share is consistent with the protective behaviour of the industries using anti-dumping and countervailing relief to aggressively defend their domestic market. It was found that the increase in the import share has been from the newly emerging industries in China, Korea, Thailand, Malaysia and Taiwan.

The following figure shows the clear relation between import volume and anti-dumping and countervailing duty actions. It can be seen that there are a number of outlying observations. These relate particularly to the discriminatory treatment of two of Australia's large export markets and with whom there is a large trading surplus, Korea and China. The other two countries which have a significantly disproportionable number of measures to trade volume taken against them are France and Italy. This can be explained by the subsidy practices of the European Community in relation to agricultural processed products, which producers in Australia have been active in seeking the application of countervailing measures against these subsidised imports entering Australia.

[1120]New Zealand was excluded from the analysis as anti-dumping measures were replaced under the CER agreement with internal competition rules applying within the territories of the member states - for further details refer to discussion in the Section 2 on historical development. Germany also presents some difficulty in classification, as both East and West Germany have been combined although the influence of the former does not appear significant.



Source: Submission to the OECD & the Australian Year Book

This relationship has an $r^2 = 0.64$ and the level of confidence of rejection of no relationship with F=33, which is highly significant at less than 1 in 1000 also applying individually to the coefficients of the constant and the independent variables.[1121] The relationship established by the regression equation is:

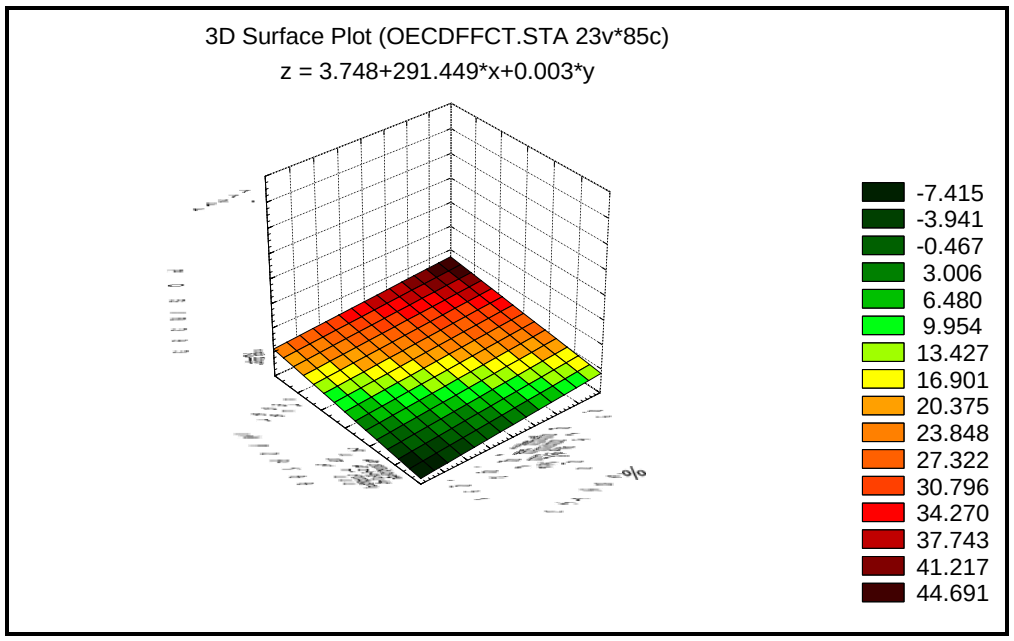
$$Z_c = 3.709 + 275.83X_c + 0.0029Y_c \text{----------(3)}$$

where:

Z_c is the incidence of final findings by country '*c*'.
X_c is the change in share of imports from country '*c*'.
Y_c is the value of imports from country '*c*'.

To illustrate this relationship more vividly the following 3D surface plot of the functional relationship is conceptually useful:

[1121]The details of the multiple regression anlysis are at Spreadsheet: OEFFCTII.XLS - Appendix 6.4.4 C.



Source: Australian Year Book and OECD Submission.[1122]

Looking at the analysis more closely it would appear that the most urgent areas where there needs to be a concerted effort to contain the impact of anti-dumping actions on Australia's trading relations is with Korea and China. This is by no means a novel finding, as it follows that of Garnaut (1989) where anti-dumping actions were seen as a deterrent to better trading relations with these countries. Garnaut(1989) goes on to point out that the application of anti-dumping duties to imports from the Peoples Republic of China is largely arbitrary, as normal values are always established on a surrogate country basis.[1123] The problem, however, rests with the fact that nothing has been done to reduce this problem since it was originally publicly identified by Garnaut (1989). In the period 1988-89 to 1992-93 total positive final findings from all sources accounted for 36% of those for the period 1982-83 to 1992-93. The equivalent figures for the Republic of Korea and the Peoples Republic of China were 45% and 44%, respectively.[1124] That is, the presence of the Anti-Dumping Authority as an expert review body, even with the suggestion by the government that it would take into account situations where there was a trading surplus with the country concerned, the application of anti-dumping duty has

[1122]3D graph OECDCTTY.STG from OECDCTTY.STA is another representation of this relationship.
[1123]Garnaut (1989) pp 212-214.
[1124]Details at Spreadsheet: ADCVCTFY.XLS - Appendix 6.4.4 D

become even more discriminatory against these two countries.[1125] This question of continued discriminatory treatment of valued export markets is a serious issue for Australia's trade relations within the *APEC* Group.

6.4.5 Is There Predation?

Willig (1994) considered whether one of the reasons for the seeking of anti-dumping relief was due to predation. Ordover and Willig (1981) define 'predatory pricing' as:

> "...a response to a rival that sacrifices part of the profit that could be earned, under competitive circumstances where the rival remains viable, in order to induce exit and gain consequent monopoly prices."[1126]

Such a test for predation means that the all potential competitors must be unable to re-enter the market, as to have this capacity would preclude the predator from exercising monopoly power within the market. As discussed in Section 3 the possibilities for re-entry are difficult to exclude. However, predation is clearly not in the global economic interest when such distortions occur.

Placed in the context of the application of anti-dumping measures, their application in kerbing predatory practices would be beneficial. That is, as Willig (1992) expresses:

> "...it protects competition rather than competitors."[1127]

Following the definition proposed by Willig (1992), Bourgeois and Messerlin (1994) looked at whether there were grounds for characterising EC anti-dumping actions as protecting competition (ie anti-predatory).[1128] They applied the following technique:

> 1. All those cases where the potential market share of a foreign firms was less than 40% were screened out. This was based on the findings in the EC competition cases of *Michelin* with 57% to 65% and in *United Brands* with 40% to 45 % market share being seen as sufficient evidence of a dominant market position.

[1125]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2313.
[1126]Ordover and Willig (1981).
[1127]Willig (1992) p 13.
[1128]Bourgeois and Messerlin (1994) Section III.

2. Of those which remained the cases where there were negative findings were eliminated, as the authorities had determined that there was no injury from dumping.

3. The remaining cases were then examined to see if there were four or more countries involved, as it would be unlikely that there could be joint predation by such a group of countries.

4. Of the cases remaining these were subject to a screen of whether there were more than eight foreign firms involved, as the costs of maintaining such a joint monopoly would be high.

5. The final test was to screen the remainder for the domestic producers market concentration in the EC. Where there was very low levels of market concentration the opportunities for the remaining foreign firms to exert monopoly power is limited.

The end result of the analysis did not support the proposition that predatory dumping was a factor which would justify the imposition of anti-dumping measures in the EC. A similar analysis was conducted of United States dumping cases by Hyun Ja Shin (1992), producing a like result:

> "...that only a small portion of the US anti dumping cases brought in the 1980's with non-negative outcomes are consistent with the viewpoint that the attacked dumping posed a foreseeable threat to competition."[1129]

As the presence of predation is seen as a justification for anti-dumping measures it is worth running the same test over the Australian data.[1130] The data used comprised all cases between 1982-83 and 1992-93, excluding those cases on New Zealand exports.[1131]

[1129]Hyan Ja Shin (1992) p 18.
[1130]Second Reading Speech House of Representatives Hansard 28 April 1988 p 2311.
[1131]New Zealand was excluded from the whole period analysis as Anti-Dumping measures were dropped on trade between Australia and New Zealand from 1988 onwards. It was replaced by the application of misuse of market power provisions under the Trade Practices Act 1974. Legislation giving effect to this change was introduced in the *Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990* which was enacted to implement Australia's obligations under Article 4 of the 1988 Protocol to the *Australia New Zealand Closer Economic Relations Trade Agreement 1983.* This had the effect of eliminating the use of

The information used on market share covering the cases for the period was that of the Industry Commission (1995) at the 4-digit ASIC level on domestic market share[1132], rather than the 'like goods' case level which was unavailable. The Industry Commission (1995) industry and trade data is based on Australia Bureau of Statistics data which is a reliable source. It is unlikely that the statistics on domestic market share will introduce a bias in the application of the cut-off criteria for potential market dominance. It was found from the application of 60% market share threshold to 591 dumping cases in the period, that 59% of the dumping cases were eliminated. From the cases remaining, a further 23% of the dumping cases were negative findings and therefore eliminated. The application of the third criteria relating to multiple sources of supply numbering 4 or more involving the same like goods, a further 13% of cases were eliminated leaving 27 cases or 5% where predation may be a problem.[1133] The further exclusion of textile clothing and footwear case in light of their very high level of tariff and export assistance brings the number of remaining cases down to 4%.[1134] These results are consistent with both the European and United States studies, ruling out the predation argument as the basis of the current administration of anti-dumping measures.

In the final group commodities which could possibly be the subject of predation there were no chemicals. It would therefore appear that the chemical industry has captured the anti-dumping policy instrument for industry assistance purposes. From this study the industries which could be under threat of predation during the period were: paper products, in particular uncoated wood-free paper, kraft liner board, and facsimile and other thermal paper; tableware; dental amalgum; agricultural ground engaging tools; multi-tyred rollers; windlasses; passenger car tyres; and pencils.[1135] However, this is not to say that predation was likely in those industries, but rather it was possible. The

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anti-dumping measures by either of the two parties to the agreement from 1 July 1990. Anti-dumping measures were replaced by the application of the section 46A of the *Trade Practices Act 1974* of Australia, and sections 36A, 98H and 99A of the *Commerce Act 1986* of New Zealand. Section 46B of the *Trade practices Act 1974* ensures that there is no immunity from the jurisdiction of these New Zealand laws in Australia.

[1132]Industry Commission (1995) *Australian Manufacturing Industry & International Trade Data* (1995).

[1133]There was little point in proceeding any further with the analysis as from knowledge of the remaining cases there were significantly less than 9 firms involved, and the market concentration in the industries producing 'like goods' appears to be relatively high.

[1134]Appendix 6.4.5 Spreadsheets 3XNZDMSD.XLS and OECD3XNZ.XLS

[1135]A4 copy paper is available for m a number of source and as the Industry Commission (1995) p 156 points out, anti-dumping action was initiated in 1993 against 11 countries. However, as the positive final findings were only made against 3 sources, the commodity has not been excluded from being possibly subject to predation. A similar remark could be made about passenger car tyres.

conclusion from this research is that there is little in way of support for the application of anti-dumping duties based on the predation argument in the Australian market.

Another important issue arising from this research is that between 1982-83 and 1987-88 there were 38 cases against New Zealand resulting in 16 positive findings. As a result of the 1988 protocol under the *CER*, anti-dumping provisions were to be replaced by misuse of market power provisions and incorporated in the trade practices law. In the period 1990-91 to 1992-93, subsequent to the amending legislation coming into force, there were no findings against New Zealand under the trans-Tasman misuse of market power provisions of the *Trade Practices Act 1974*. This raises the question of whether the change in the law had any effect on the incidence of the retaliatory actions between the two Member states?

One possible explanation for the lack of retaliatory action in the later period could have been, that the misuse of market power required the act of predation to be proved by the applicant before a remedy can be invoked by the Court, whereas for relief under the anti-dumping law there was no such requirement. In *Queensland Wire Industries*[1136] it was argued by the defence that the concept of predation was a requirement for proving the misuse of market power. However, the Court rejected that argument. This means that predation is not a condition precedent for the proving of the misuse of market power, just as it is not a requirement for the proof of material injury. Given that both tests are devoid of the requirement to prove predation, and there have been no proceedings of a public or private nature under section 46A of the *Trade Practices Act 1974*, there is a need to look for the explanation of what appears to be an inconsistency in the application in the two periods of similar damage or injury provisions in both the laws.

Although there is little case law on the question of what constitutes "... or substantially damaging a competitor of a corporation..." which is a purpose requirement under section 46A(2)(a) of the *Trade Practices Act 1974* as it relates to the proving of misuse of market power, its plain meaning is not dissimilar to the requirement for proving 'material injury' under section 269TAE of the *Customs Act 1901*. That is the misuse of market power test could be a tougher test, but if it is, there is unlikely to be any significant difference in meaning as the damage is allegedly the result of 'unfair' competition. The fact that there were no cases under the misuse of market power provisions of the *Trade Practices Act 1974* from 1990 onwards, is an unlikely result, if there was a reasonably even application of the tests.

[1136] *Queensland Wire Industries Pty Ltd v BHP* (1989) ATPR 40-925.

There was, however, one significant change of an administrative nature which could account for this change in practice. Prior to 1988 the administration of the anti-dumping law was the responsibility of Customs, a body within the industry portfolio. With the change in the law relating to New Zealand, the application of the misuse of market power was a matter for the Trade Practices Commission, part of the Attorney-General's Department.[1137] As there is no substantive difference in the material injury or substantial damage provisions, it would appear that the institutional change may have resulted in a fundamental shift in policy application, with the Trade Practices Commission unwilling to intervene in situations where anti-dumping measures would have previously been applied. If the above presumptions are correct, this supports the view that the most likely explanation of the apparent over-use of anti-dumping measures is institutional in nature.

The policy relating to the application of anti-dumping measures states that these measures are to be taken to combat predatory actions by other exporters. It has been shown that anti-dumping measures are applied in a much wider context. The law in section 9 of the *Anti-Dumping Authority Act 1988* cautions against the use of anti-dumping measures as a substitute for assistance to industry. The foregoing analysis indicates that the anti-dumping law is not being administered according to these government policy intentions. The problem appears to reside in the institutional framework, with the industry portfolio being associated with its application. The emphasis on industry assistance needs to change if the governments policy on anti-dumping measures is to be effectively administered, and in accordance with its stated goals.

6.5 Assessment of Outcomes

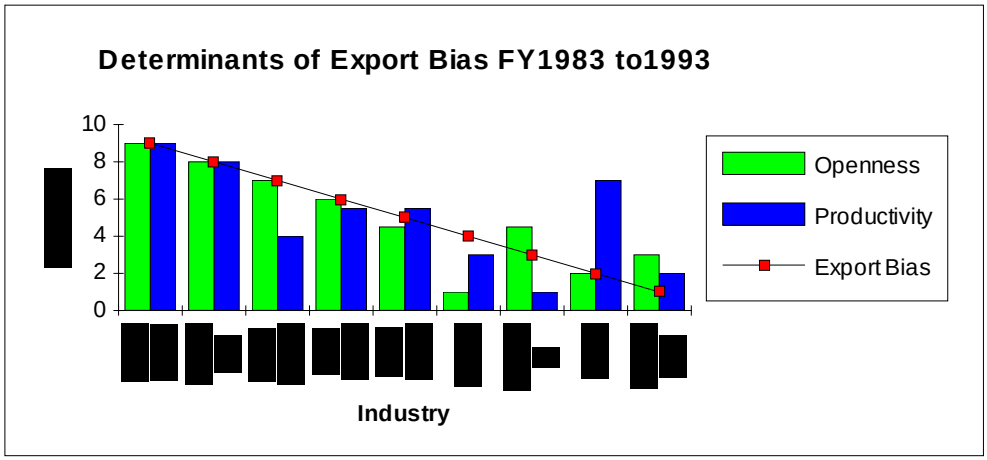
6.5.1 Export or Perish

Export or perish is the message coming from the head of BHP, the largest multinational company listed in Australia. Prescott (1995) proposes the 'export test' of efficiency, that is if you can't export the product or service against international competition don't do it. As

[1137]The Trade Practices Commission has since become the Australian Competition and Consumer Commission (ACCC).

explained earlier, this test ignores the many of the welfare considerations, and does not take into account the externalities which are non-excludable. The test also assumes that markets are contestable, which the strategic theorists would dispute. However, as a test for the tradeable goods sector it has a lot of supporters in both government and industry , and therefore worthy of consideration.[1138]

On analysing the Industry Commission data on manufacturing industry and international trade,[1139] it was found that those industries (other than the automotive, and textile, clothing and footwear industries) which had an increased 'export bias'[1140], were those with more 'openness' to import competition[1141], and those with the largest labour 'productivity' gains[1142]l. The following figure illustrates this relationship which showed an $r^2 > 0.94$ with 'export bias' as the dependent variable[1143]:



Data source: Industry Commission - Australian Manufacturing Industry & International Trade Data - refer Appendix 6.2.1 for ASIC Industry *Codes*

[1138]On the other hand, applying this test generally to the construction of public roads is likely to be too remote to be of any useful purpose.
[1139]*Australian Manufacturing Industry & International Trade Data* - Industry Commission (1995).
[1140]For this analysis 'export bias' is measured by the 'value by which exports increased as a proportion of an industry's sales' over the period 1982-83 to 1992-93.
[1141]For this analysis 'openness' to import competition is measured by the extent to which domestic production holds a decreasing Australian market share over the period 1982-83 to 1992-93.
[1142]Labour 'productivity' gains are measured by the decrease in the ratio of wages to turnover over the period 1982-83 to 1992-93.
[1143]The results were derived from a simple multiple regression analysis covering the period 1982-83 to 1991-92. The null hypothesis that there was no relation between the independent variables was rejected with an F value which was unlikely to be attained more than 1 in 1000 observations. Each of the independent variables was significant, market share at 1 in 1000 and productivity at 1 in 100. The results are at Spreadsheet: ICEXPORT.XLS - Appendix 6.5.1.

This result while consistent with the policy emphasis advocated by the Industry Commission on relative competitiveness, further highlights the importance of 'productivity' and 'openness' in trade performance. It is noticeable that the heaviest user of anti-dumping measures, the chemical industry, had the lowest ranking in 'export bias'. The second worst performer was the food industry, which is the heaviest user of countervailing measures. However, there was no relationship found between the incidence of anti-dumping and countervailing measures and 'export bias' for the eleven year period 1982-83 to 1992-93.[1144]

The application of the 'export test' to the industries supported by anti-dumping and countervailing measures demonstrates the ineffectiveness of these measures as a positive public policy device. Any expected theoretical export outcome from the application of these measures is not sustainable.

6.5.2 Benefit to Industry

The primary focus of any assessment of the application of anti-dumping and countervailing measures is whether there are any resultant efficiency gains to the domestic economy of the importing country. This has proved a difficult question to test. However, by taking a public policy perspective, it is possible to test whether the anticipated direct benefits have been achieved. That is, has there been any improvement in industry outcomes as a result of applying these measures?

To test the benefit of these safeguard measures on industry outcomes, a testable hypothesis was developed. To some extent the hypothesis is circumscribed by the type of event being measured and the nature of the data available for analysis. The following functional relationship :

Change in the relative outcome of the industry =
f [(benefit of the safeguard measure)
+ (other specific industry benefits)]

formed the basis of the test.

[1144]Again the small number of industry catagories must be considered with all these conclusions.

If the application of anti-dumping or countervailing measures were beneficial to an industry, it would be expected that the relative outcome of an industry's performance would vary positively with the level of subsidy equivalent benefit received. The null hypothesis would be expected to show no such relationship. A relative outcome measure of effect has been chosen as it eliminates the impact of changes in general economic conditions. Therefore any change in the relative outcome of the industry in terms of [sales, earnings, net assets, or market capitalisation] is likely to be driven by industry or firm specific factors. The outcome measure tested was the change in the ratio of turnover of an industry to total industry turnover for the period 1982-83 to 1992-93.

The principal industry specific independent variable which best reflects the magnitude of the change in anti-dumping or countervailing duties would be their subsidy equivalent benefit. However, the numeric incidence of anti-dumping and countervailing measures should reflect the level of the subsidy equivalent benefit. The numeric incidence measure was selected as the principle variable, as it is not possible to define a before and after scenario for the relief accorded to the industries in the study. This is due to the lowest available unit of effect of the measures being that of an industry segment, and an industry segment may have more than one product benefiting from anti-dumping or countervailing measures at any one time. Another independent variable was included to help explain any remaining variation. The specific industry policy variable was selected based on its likelihood to effect the relative outcome of a domestic industry. The variable tested was the effective rate of protection for each industry applying at the mid-point of the period 1987-88.

The proposed correlation test is the minimum test required to satisfy the public policy requirement of removing the injury caused by the import competing dumped or subsidised exports. The safeguard measure requires that an affected industry's outcome be restored to its former non-injurious level. Therefore any significant negative correlation under the proposed test would confirm the null hypothesis, that the measures are ineffective.

The results of the test confirm that there was no significant negative correlation between dependent variable the change in the relative turnover of each industry and the independent variables, the number of anti-dumping and countervailing measures applied in that industry and the rate of effective protection accorded to that industry. This finding

is at both the 2-digit and 3-digit ASIC levels.[1145] Therefore there is no evidence to support the view that anti-dumping and countervailing measures are ineffective as a policy instrument in increasing the relative turnover of particular industries. As there is no relationship between the industry output variable tested and the level of anti-dumping and countervailing measures it can be concluded that there is no systematic effect of these measures on the relative turnover of these industries. This does not preclude the possibilty of isolated effects which are examined with respect to the major user.

Thurow (1983) reported the results of a study spanning 20 years from 1960 to 1980 of the annual rates of return on stockholders' equity by industry. It was found that there was a wide variance between industries and within an industry, both over time and within a year. However, it was also found that industries did not substantially change their ranking in the rate of return over the 20 year period, with two minor exceptions. Thurow maintains that the results of the study support the view that the price-auction model commonly relied upon in economics is contradicted by the continuing disequilibrium between industry performance. He sees this as evidence of firms specialising in what they can do best, and investing accordingly, rather than devoting their resources to the most profitable industry activities as the market economist may predict.[1146] Whether this situation exists today in the light of the number of non-specific industry takeovers of the 1980's is not known, although this situations has recently reversed with companies divesting and moving to expand core business activities in keeping with the Thurow proposition.

However, the application of rational economic tests may not be the answer to the assessment of the effectiveness of anti-dumping actions, rather they may be part of the institutional scene for certain industries. However, this does not preclude looking at whether some of the detrimental impact of these measures can be reduced.

6.5.3 Cost/Benefit Appraisal

Another question raised in the evaluation of the measures is their costs and benefits, including their impact on consumers[1147] and administrative efficiency. The costs comprise the additional revenues accruing to producers both local and foreign and the net cost of administration of the measures, and the benefits are reflected in the increase in the

[1145] Spreadsheets OECDXN2.XLS and OECDXN3.XLS - Appendix 6.5.2.
[1146] Thurow (1983) pp 145-147.
[1147] Blinder (1988) p 117.

operating profits accruing to the industries receiving the relief. The net effect of these costs in a similar study in the United States produced a negative result, with the cost outweighing the benefits by a significant margin.[1148] The question in the Australian context could be addressed by the compilation of similar ex-post benefits and costs.[1149]

However, it is proposed to use a subjective assessment based on the results of the analysis in this thesis. The following points emerge from the analysis:

- The objective of neutrality of effect between industries would not appear to have been fulfilled. There is substantial evidence that the incidence of anti-dumping measures is biased towards import competing industries. This is likely to have resource distorting effects within the Australian economy.

- The other disturbing aspect of these measures is that the nominal rates of anti-dumping and countervailing duties applying to some products is substantial. These rates apply in a very selective manner within each industry group.[1150] This means that there is an absence of a 'level playing field' within these industries in Australia.

- Anti-dumping and countervailing measures have been applied in a discriminating way to those countries where Australia's import trade has been increasing. The countries which have been singled out for anti-dumping action are the Republic of Korea and the Peoples Republic of China, which also happen to be major export markets for Australia. The situation deteriorated further since the administration of the Anti-Dumping Authority became responsible for recommending anti-dumping duty imposition. This discrimination is a serious issue for Australia's trade relations within the *APEC* Group.

- Predatory activity by the exporters of dumped goods to Australia is not supported by the evidence. Less than 5 per cent of the anti-dumping cases initiated could be possible targets for predatory take-over. These targets were

[1148]Hurfbauer et al (1986) referred to by Blinder (1988) p 118.
[1149]The effects on the end users where the industry produces intermediate products will be reflected in the increased cost of purchasing the product.
[1150]Industry Commission Annual Reports 1993-94 p 286 and 1994-95 p 157.

not among the heavy user industry groups. The absence of litigation since 1990 on the possible misuse of market power by companies involved in trans-Tasman trade, suggests that the 'level playing field' thesis for anti-dumping actions, at least between Australia and New Zealand, is questionable. This supports the view that there is another explanation of anti-dumping activity, namely that of industry protection.

- When export performance of the industries seeking anti-dumping -and countervailing relief is considered, the products protected by anti-dumping measures are not amongst the strong export performers.[1151] In fact, chemicals have been the worst export performers overall. Organic chemicals have been well below the average export growth for total manufacturing. The processed food industry, the major user of countervailing measures, was the second worst export performer after chemicals.

- Anti-dumping and countervailing measures do not appear to be factors affecting relative industry performance as measured by relative industry turnover for the period 1982-83 to 1992-93. This leads to the questioning of anti-dumping and countervailing duties as effective safeguard measures.

Overall there is little that can be said in support for the application of these measures from the measurement of their industry and trade effects. It could be that the measures are too broad to identify the effects, however, their failure on all grounds tested would not add confidence to this proposition. The costs would appear substantial, both in direct administration and party costs. The cost of the effects of the measures on end users would also appear substantial, in view of the high level of nominal duty that is imposed on the imported products subject to anti-dumping and countervailing duties.

6.5.4 Intimidatory Effect

[1151]Although inorganic chemicals ASIC 2755 have shown an outstanding growth performance this has not been in the inorganic chemicals subject to anti-dumping measures, but rather in mineral products subject to a primary treatment process, eg. titanium dioxide.

There are frequent allegations of firms benefiting by simply applying for anti-dumping and countervailing relief. This question can only be relevant if the firms obtaining relief are shown to be better off as a result. However, Banks[1152] gives some weight to the view that even though the proportion of trade affected is small the effect may be larger, as the frequency of actions taken by Australia appears to have an intimidating effect on overseas suppliers who are not prepared to offer their best price to Australian importers. He says that to the extent the anti-dumping system has had an intimidating affect on exporters' pricing behaviour, the statistics relating to formal anti-dumping actions may considerably understate its potential effect on domestic price formation.

Moetaryanto (1994) in discussing the obstacles to [Australian] market access from the Indonesian viewpoint, cites Australian non-tariff barriers, in particular, dumping charges against Indonesian goods. He sees not only the rise in the sales price of goods subject to anti-dumping measures as inhibitory of trade, but also:

> "Indirectly, Australian importers who learn that their Indonesian supplier is being investigated for dumping will hesitate to order more goods while the case is under investigation. Further costs are also incurred as the legal process is quite expensive."[1153]

If this allegation of an intimidating effect were true, you would expect there would be a positive correlation between the frequency of unsuccessful applications for relief and relative industry outcomes. To determine whether the applications resulted in excessive protection it would be necessary to divide the unsuccessful applicants into two groups. The first group comprises those industries where no causally related injury was found. It could be said that there was excessive protection if this groups outcomes improved with the frequency of applications. The second group were those industries where there was a decline in the relative performance of the industry, but there was a nil dumping or subsidy finding. A similar outcome to the first group would confirm the hypothesis of an intimidatory effect. However, with this later group the likelihood would be reduced as there is by implication some other industry specific factor responsible for the industry's demise. Therefore a similar outcome would add additional weight to the intimidation hypothesis.

[1152]Banks (1990) p 39 refers to a citation in Carmichael (1986) p 11.
[1153]Moetaryanto (1994) p 225.

There are practical difficulties with conducting such an evaluation. The major difficulty is the small number of economic entities involved in the initiation of anti-dumping and countervailing complaints. It is not possible to isolate the outcomes of the actions as the major complainant economic entities share both success and failure in obtaining anti-dumping and countervailing relief.

However, some assistance may be obtained from an examination of the industry differences in initiating actions and in obtaining relief through a positive final finding. Looking at the period 1982-83 to 1992-93 there was no significant difference in the distribution of the proportion of initiations to positive final findings between industry groups.[1154] As would be expected there was no difference in the results of the multiple linear regressions when either of these dependent variables was related to foreign ownership and change in domestic market share. Therefore both initiations and positive final findings appear to be responses stimulated by the desire of foreign owned industries operating in Australia to aggressively defend their domestic market share. As there is no difference between industries in the excess of initiations to those reaching positive final finding, it could be concluded that all industries see merit in taking action regardless of whether the end result is duty application. This is consistent with these actions having a real and intimidatory effect.

6.6 Proposed Case Study - The Chemicals Industry

The next stage would be to analyse each case where anti-dumping and countervailing measures were imposed, and see if the position of the industry has improved against the factors on which the injury finding was based. This data should be available from the reports of the administering authorities. There are two lines of approach which could be taken in such an evaluation. The first is to look at the data available within the administering authorities. The second is to interview the firms obtaining relief, after the dispatch of a questionnaire outlining the results so far obtained. The questions could be constructed to elucidate the changes in the initial injury variables. Where there appears to be no change, the intuitive reasons for that situation would be sought. These may be important in identifying those areas which the analysis may have overlooked. This

[1154]For calculations see Spreadsheet: ININFFFT.XLS - Appendix 6.4.4.

feedback could lead to some further research. Unfortunately, it was not possible to obtain the industry data from the administering authorities, so this analysis was aborted. One of the questions posed by the above approach, is whether the magnitude of the relief was insufficient, sufficient or excessive. Clearly this question does not arise if the null hypothesis of no causal relationship is proved. However, if there is a causal relationship, the sufficiency of the measures would be reflected in the convergence in the injury indicators with their values prior to injury. The results case by case approach can then be represented as the proportion of those industries which attained a better, no worse-off or a worse outcome from the application of the measures. When these proportions are compared to the experience of manufacturing industry as a whole for the corresponding periods, the effect of changes in economic activity are standardised. That is, where there is no difference in the proportion of improvement of those like goods industries receiving safeguard assistance from manufacturers in industry generally, the null hypothesis is not disproved. Conversely, a significant difference in outcomes would lead to a rejection of the null hypothesis.

This outline of a proposal for further analysis would require the cooperation of the authorities and the dedication of professional resources to complete.

6.7 Problems with Measurement

During the evaluation many references were made to data unreliability, deficiency or unwarranted protection under the guise of secrecy provisions by the administrating authorities. It is useful to summarise these difficulties:

- the lack of a coherent and complete data base available to researchers in this area;

- the failure of the authorities to publish normal values, non-injurious prices and export prices, hiding behind the confidentiality provisions of the Customs Act 1901[1155];

[1155]Gruen (1986) p 50 Recommendation 8.12 was that: "All normal values and non-injurious free-on-board values should be freely available although the basis for them may have to remain confidential."

- from an examination of the Anti-Dumping Authorities reports, it was evident that there was an inconsistency in the analysis of cases, between the various officers compiling the reports[1156];

- the low standard of analysis and reporting represents a failure of public duty, as the decisions would likewise be of dubious quality;

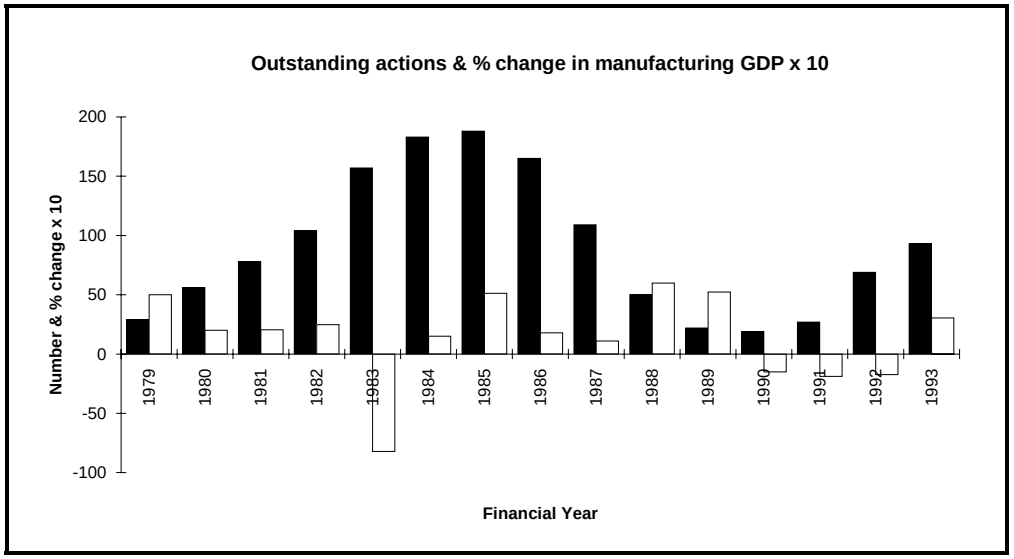
- there is no periodic (annual) follow-up injury inquiries to see if the measures are still warranted, representing a complete breakdown in the quality control of the measures in place; and

- the data is quite often non-separable and therefore it is not possible to isolate the effect of a particular measure.

However, the public industry and trade information from the Industry Commission is a very useful for the analysis of the impact of these measures. It is a pity that the administering authorities are not inclined to use it. The monitoring of the effectiveness and the impact on imports of anti-dumping and countervailing actions, and the regular public reporting on these matters was a recommendation of the *Report on the Review of the Customs Tariff (Anti-Dumping) Act 1975* by Gruen in March 1986.[1157]

The lynch-pin of the impact of the application of anti-dumping and countervailing duties and undertakings is how many are in force at any one time. The analytical approach adopted for both the industry and country analysis has been based on a simple cumulation of all measures initiated during the period, which assumes that they were of equal magnitude and that they were imposed for about the same period of time. However, if the impact of the measures as a whole were to be assessed it would be preferable to consider the actual number of measures outstanding at the end of each period and compare this series with the economic well-being of manufacturing industry. The following graph illustrates the lack of any relationship between those measures outstanding and the percentage change in manufacturing GDP.

[1156]Gruen (1986) p 50 Recommendation 8.17 supported an upgrading of the accountancy, commercial and legal resources applied to the inquiry process.
[1157]Gruen (1986) p 50 Recommendation 8.14.



Source: Australian Customs Service & Australian Bureau of Statistics Cat Nos 5206.0 & 5211.0

If anti-dumping were taken as a temporary safeguard measure in times where manufacturing activity was weak and under pressure from abnormally priced imports, it would be expected that the level of measures outstanding would decrease with the on-set of improves economic conditions. From the above graph it was not until the third year after the period of negative GDP growth in 1983, that the number of outstanding measures began to decline. Similarly in the most recent period following negative GDP growth in 1990-91, the number of outstanding measures continue to rise. Four years after the negative growth period the outstanding measures are at 101.[1158] This confirms the need for constant monitoring of these measures.[1159]

6.8 Summary

To summarise the results of this analysis of initiations of and final findings on anti-dumping and countervailing actions at the two digit ASIC industry level, it has been found that:

[1158]Industry Commission (1995) p 151. It should be noted that there is some inconsistency with the way in which cases are recorded between ACS published figures and the bi-annual reports to the *GATT/WTO.*
[1159]Industry Commission (1995) p 156 reports that the anti-dumping measures against A4 copy paper are still in place, even though the world paper prices have risen markedly and pulp prices are reported to have doubled.

dumping and countervailing duties are generally imposed at high levels of nominal assistance. Estimates by the Industry Commission have shown ranges from 10 to 40 per cent ad valorem covering up to 5 per cent of imports. The effect of the application of these measures is significant;

the relative incidence of initiations and positive final findings in an industry group is closely related to the level of foreign ownership. Of the applications for relief, 60% came from well known subsidiaries of foreign corporations;

the source of foreign ownership of manufacturing industry in Australia is concentrated in the United States, European Communities and Canada to the extent of 80% of all foreign ownership;

in the period 1988-89 to 1992-93, 74% of all initiations have involved four industry groups out of the 12 two digit ASIC groups, and these four groups accounted for about 45% of manufacturing turnover. This indicates that the application of these measures is not likely to be neutral in its effect on resource deployment between industries; and

almost all anti-dumping and countervailing actions during the study period were taken by Australia, United States, European Communities and Canada.

Turning to the impact of Australia's anti-dumping measures on its trading partners, it is apparent that:

although anti-dumping initiations and positive final finding actions are related to import volumes, exporters in the *ASEAN* member countries, the Republic of Korea and Taiwan are on average three times more likely to be subject to an Australian dumping or subsidy investigation than those in the United States, European Community and Canada;

there has been a re-orientation by Australia of imports away from its traditional sources of the United States and the European Communities towards *ASEAN*, Korean and Taiwanese sources. The share of imports from the traditional sources

has declined over the period 1988-89 to 1992-93 by about 4% whereas the later group has increased by about 6 %; and

on further investigation of the changes in the proportionate share of imports from source countries, it appears that a distinguishing factor in retaliation is the growth in imports from source countries. That is, industries using anti-dumping relief are directing their actions against the most competitive import sources. In particular, the Republic of Korea and the Peoples Republic of China appear to be singled out for the application of anti-dumping measures. The situation has deteriorated further since similar findings were made in the *Garnaut Report* of 1989. This period also coincides with the change in the administration of dumping measures from Customs to the Anti-Dumping Authority.

As well as the increased competitive pressures coming from the Asian newly industrialised group, it is apparent that foreign owners of manufacturing activity in Australia are playing a key role in the initiation of investigations and the subsequent imposition of dumping and countervailing measures. The extent of control over this policy process is reflected in the level of foreign ownership found in each industry group. That is, the less foreign ownership in an industry, the less there is a resort seeking protection from dumped or subsidised imports. As the anti-dumping and countervailing measures are more than proportionately directed at the growth areas of East Asia, and as parents of the foreign owned corporations seeking relief against imports from these East Asian sources are located in the countries which were traditional sources of import supply to Australia, anti-dumping and countervailing measures are being directed by foreign owned corporations with manufacturing plants in Australia at inhibiting trade creation with Australia's East Asian trading partners. It appears that the anti-dumping and countervailing duties are being used to protect the Australian market for the parents of the foreign owned subsidiaries manufacturing similar products here in Australia. That is, Australia's trade policy towards its Asian neighbours is being significantly influenced by the foreign owners of Australia's manufacturing industry.[1160] This may be a legitimate

[1160]"The Australian Financial Review on 15 May 1995 reported Willis R, the Australian Treasurer, as saying with respect to the threat of trade sanctions by the United States against Japan over motor vehicle access in the Japanese market, "...I do not think it is appropriate for the Americans to be forcing their way in , which is what they are trying to do." Whether this support for Japan is a reflection of the growing influence of Japan in Australia's motor vehicle manufacturing sector or is sheer coincidence is an interesting point.

position, but it also tends to reveal an opposite direction to the adoption of a more liberal regional trading position as espoused under Australia's *APEC* initiatives.

Two hypotheses were tested in defence of the use of anti-dumping measures. One of these was the proposition that anti-dumping action was necessary to stop predatory behaviour by exporters to the Australian market. It was found that predation was only possible in less than 5% of cases, a finding consistent with both research in the European Community and the United States. In other words predation was not a factor which could support the application of anti-dumping measures. The second proposition was that there was some direct measurable benefit to the industries using these measures. Again the answer was in the negative. There is no ascertainable relationship between the relative turnover of industries and their use of anti-dumping or countervailing measures. One disturbing observation is that once an industry has obtained relief, it is unlikely to lose the protection and if it does it will be lost for only a short period of time. Protection through the anti-dumping and countervailing system is effectively permanent, and does not vary with market conditions.

In the general context of industry policy, it is apparent that the industry sectors which are performing well in export growth are those which do not overly rely on anti-dumping and countervailing. These sectors are where there is increased import competition as evidenced by increased imports in the domestic market and where there has been above average productivity gains. One must seriously question whether the Australian government through retaliatory anti-dumping and countervailing trade discriminating measures is focussing on the relevant industry sectors for generating future growth in the trade in manufactures.

SECTION 7 What Has Been Learned

7.1 Introduction

The aim of this thesis was to ascertain what was driving companies and hence the Australian government to retaliate against trading partners through the use of anti-dumping and countervailing measures. The second question was to look at the effects of the application of the law imposing these measures, and whether they were in accord with Australia's interests. This involved the identification of the factors which could be said to be beneficial or detrimental to the national interest, and looking at how the law was applied. Having established indicators of national interest and assessed the application of the law against these goals, the discussion turns to whether there are any policy changes which could be made to enhance the operation of this law. A number of recommendations are made to either change the law or how it is to be administered.

7.2 Results

It would appear by far the most important outcome for the application of anti-dumping and countervailing measures is that their application is not to assist import competing industries. This policy direction is provided for in the Australian anti-dumping law. From the analysis of the application of these measures by industry and by change in domestic market share, it would appear that the industries with a more substantial import competing bias are those which are receiving the bulk of anti-dumping assistance. The major user by far is the chemical industry, anti-dumping measures applying to plastics and certain inorganic chemicals with a large domestic market.[1161] The situation with countervailing duties is that these are dominated by the processed foods industry which has shown little export growth, although about 20 per cent of its sales are exported. It is

[1161] In a report on the chemical industry in Australia by the then Department of Industry Technology and Commerce in 1992 pp 7-8, the Department finds that: "The Australia domestic market is sophisticated, demanding but small. This results in the industry producing small volumes of a large number of grades in an attempt to maintain throughput in plants. It is a feature of this industry that domestic sales tend towards full cost recovery but over-capacity for most commodities results in international trade being at marginal cost. The large number of grades is expensive to support in the market and transport costs are generally high.
... The Australian industry can be competitive with full cost recovery, low cost imports provided the price is controlled by an effective anti-dumping system."

hard to argue that the legal directive has been adhered to by those concerned with the administration of Australia's anti-dumping and countervailing law.

Whether the injury from dumping or subsidisation has been off-set by the imposition of duties or undertakings has not been possible to ascertain. The evidence is inconclusive with there being no relationship between the relative performance of the industries, as measured by their relative increased share of manufacturing industry turnover, and the frequency of anti-dumping or countervailing measures applied to that industry.

Predation is given as a reason for the imposition of anti-dumping duties. However, the finding which was consistent with similar studies in both the European Community and the United States has shown that predation is also not a significant factor in anti-dumping cases in Australia. There is little likelihood that the large foreign multinationals with significant shares of the world market who are the major users of anti-dumping measures, are likely to be knocked out of the Australian market by short-term dumping by other manufacturers and be unable to return.

The direction that before taking anti-dumping actions, consideration should be given to any trading surplus with the country of export, has been ignored by the administering authorities. There has been a heightening of the discriminatory treatment of both the Republic of Korea and the Peoples Republic of China, with a more than proportional share of imports being subjected to anti-dumping measures.

Majors industry users of anti-dumping and countervailing measures are poor export performers. They do not satisfy the 'export test' in any form. It would appear that the chemical industry has a history of internal market focus. The processed foods industry may be the unfortunate recipient of European Community market access measures. This is the market failure explanation. However, the alternative view is that it is simply using restrictive measures in the European Community and any other market, including Australia, to raise domestic prices.

The policy that Australia should match the provisions of the anti-dumping and countervailing laws applying in the European Community and the United States to encourage investment in Australia from these countries has been observed. For example, the support for the provision relating to the use of constructed cost as a basis for normal value assessment. The question of whether it has encouraged such investment cannot be

answered, as there are many macro-economic factors such as a chronic current account deficit which would interfere with any such assessment.

Although it was not possible to quantify the costs and benefits of the application of anti-dumping and countervailing measures, on the five benefit factors examined, there were no positive benefits identified. There were substantial costs of increased prices for consumers, and for the administration of the scheme. The position overall was not supportive of the application of anti-dumping and countervailing duties, their retention could only be explained in terms of political and commercial environmental considerations, than on economic or stated national interest objectives.

Finally, it must be said that the domestic legal provisions have become unnecessarily complex, drafted to confuse rather than to clarify the law. This has led to a cult of people in the know, otherwise called consultants and large legal practices who are capturing significant rents from participating in the process.

7.3 Policy implications

The analysis gives a reasonably clear view of the policy options available in the application of anti-dumping and countervailing duties.

If trade liberalisation is a reasonable intermediate goal for national wealth generation through gains from increased trade and specialisation, then the comments by Henderson (1995) of the threat of an increasing incidence of anti-dumping duty application would need to be heeded by policy makers. Henderson says that:

> "These measures, and the threat of resorting to them, are already a well-entrenched (and widely supported) form of selective protection, which the Uruguay Round agreements have done little to restrain. For the future, they could well be used more extensively as a protectionist device; and the pressure on governments to move in this direction may increase if other forms of restrictions on imports are wound down in accordance with the Uruguay Round provisions."[1162]

[1162]Henderson (1995) p 71.

It is not only in the area of anti-dumping and countervailing measures where the protectionist agenda has been captured by large foreign owned manufacturers. There are the examples of the motor vehicle industry,[1163] and textile, clothing and footwear arrangements; the role of foreign owned trading companies in export trade;[1164] primary product agreements and access agreements on primary products endorsed by *GATT/WTO*; and that over 70% of trade is intra-industry trade between large corporations. This listing of indications of the domination of trade by foreign interests is not to pass any judgement on the whether this position is desirable or otherwise. However, in a policy context it is important that the Australian government is cognisant of with whom it is dealing. The old adage still applies in a re-coined fashion, 'what is right for General-Motors may not be the way for Australia'.

However, regardless of the merits or otherwise of laws imposing anti-dumping and countervailing measures they are part of the international culture, and their application to some extent is regulated through the *WTO/GATT Agreements.* If the global political climate dictates that these laws are to be applied, then the question facing the Australian government is to ensure that they are applied, in a manner which is beneficial rather than detrimental to the national interest of wealth creation through competition in a contestable market environment. Of course not all the factors to meet this aim are within the scope of a national government, and this limitation should be recognised and explicitly stated in the strategies adopted. Nation states can influence industry location through the provision of a supportive infra-structure. An immediate start could be made on the simplification of the laws relating to anti-dumping and countervailing measures by the incorporation of the *Codes* into domestic law, and the fusing of the two administrative bodies associated with the application of these laws.

The promotion of conditions for the evolution of a continuous learning curve methodology by producers, and the subsidisation of basic and applied research is an

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[1163]Conlon and Perkins (1995) indicating that Ford is bringing pressure on the Australian government to modify its current assistance arrangements, or otherwise withdraw from manufacturing in Australia.

[1164]Bureau of Industry Economics (1995) p 67 reports that:

> "According to the ABM survey of Australia's top exporters, six of our top 20 exporting companies are actually large private wholesalers (table 2). These firms sell a range of goods from simply-processed commodities to more complex manufactured goods. Interestingly five of these companies (Mitsui, Mitsubishi, Marubeni, Itochu and Nissho Iwia) are Australian subsidiaries of large global Japanese corporate groups."

These companies appear, on the basis of the variability in patterns of exports of industry groups, may control up to 40% of Australia's export trade.

important area of government intervention in the economy. It is unlikely, whether desirable or not, that the level of subsidisation of research and development will decrease, particularly when the green light has been given to subsidisation of this type in the *Subsidies Code 1994.* The *Marrakesh Agreement 1994* also favours the use of subsidies for environmental adjustment purposes and for temporary industry adjustment. The *GATT/WTO* therefore gives its imprimatur to certain subsidy measures.

One of the results of the application of anti-dumping and countervailing measures is to raise prices in the importing country. This encourages industries to continue with their current practices rather than rising to the increased competition by becoming more productive. This can have a long-term debilitating effect on industry performance, leading to lower domestic productivity than that of trade competitors. Where the price of an intermediate product is raised, this can also have an adverse effect on the viability of downstream user industries. As the industries which produce intermediate products are large enterprises with the financial capacity to respond to short-term fluctuations in pricing, a more demanding test of injury should be considered in these cases. Although the use of the *Anti-Dumping Code 1994* and the *Subsidies Code 1994* require dumping or subsidisation to be proved before the injury and causation test applies, this procedure does not screen out very many cases. However, it is still useful to at least recognise some motivating factor before retaliatory measures are applied.

The conditions for the application of a remedy should reflect those of *Safeguards Code 1994* governing the application of Article XIX of the *GATT.* These have been applied by Members in a more conservative manner than in the assessment of injury for the application of anti-dumping or countervailing measures. There is no reason why the administering authorities cannot apply a more stringent injury test as they do with safeguard applications. The tightening up of the injury test was suggested by Gruen (1986), but does not appear to have been acted upon. The limit on the length of time that the measures are allowed to operate is four years, and only able to be extended for another four years if it is shown that there is evidence of the industry adjusting.[1165] With these additional policy requirements on the administering authority, production subsidies could be used to initially off-set the incidence of unfair trading practices affecting these intermediate producer industries. This would avoid the elevation of the price to the users who were taking advantage of the dumped product, through the domestic industry then

[1165]Article 7 of the *Safeguards Code 1994.*

being able to selectively target the sales made in competition with the dumped imports by offering competitive subsidised prices.[1166] As the use of the conditions in the *Safeguards Code 1994* would also require Parliamentary agreement, and linked with the need to fund off-setting subsidies from the Federal Budget, it is likely that there would be a reduction in the number of anti-dumping actions taken on intermediate products by Australia.

However, the emphasis should be on cooperation rather than on retaliation in trade. It is important that any anti-dumping or countervailing action be followed by negotiations between governments and industry. This would be best achieved through the *GATT/WTO* dispute settlement mechanism, to give a more formal framework for resolution of the issue.[1167] In the case of subsidisation it would be appropriate for disputes on actionable subsidies to be referred to the Dispute Settlement Body at the preliminary finding stage. With respect to dumping there needs to be pro-active consultation by Australia with the aim of settling the dispute during the investigation phase. If this fails and duties are applied, or in the case of intermediate goods temporary subsidies are granted, the matter should be referred to the Dispute Settlement Body for adjudication.

Dispute settlement procedures are particularly useful to a small country like Australia as a means of getting the other party to the negotiating table. They are also conducted under

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[1166]The Member found to be injuriously dumping or subsidising an imported product, would find it difficult to argue a case for relief based on temporary subsidisation of an intermediate products on equity grounds. As the relief would be directed by the local producer towards meeting the low priced dumped or subsidised products, it would also be difficult for other Members to claim spill-over effects inhibiting competition from non-dumped sources.

[1167]It is recognised that dispute settlement is often thought of as only being availed of by a Member being injured by the actions of another Member. It could be said that unless appealed by the exporter, subject to the application of an anti-dumping or countervailing duty, there is no cause. However, neither the *Anti-Dumping Code 1994* or the *Subsidies Code 1994* require the exporter, subject to the measures, to initiate a dispute.

Article 17.3 of the *Anti-Dumping Code 1994* provides for a Member to seek consultations where "...any benefit accruing to it, directly or indirectly, under this agreement is being nullified or impaired, or that the achievement of any of its objectives is being impeded,...". As Article VI.1 of the *GATT 1947* could hardly be more definite as to the negative effects of dumping saying that:

> "The contracting parties recognise that dumping, ..., is to be condemned if it causes or threatens material injury to an established industry...".

Article 17.4 of the *Anti-Dumping Code 1994* provides for the initiation of a dispute, once consultations have failed and anti-dumping measures applied, by the Member who sought consultations.

The position with respect to the *Subsidies Code 1994* is more straight forward although the procedure varies between prohibited, actionable and non-actionable subsidies. These have been discussed in detail in Section 5.6.7 on remedies. However, it should be noted that the request for consultations is initiated by the Member affected by the subsidies of the other Member. There is no requirement that a final finding be reached before reference to the Dispute Settlement Body or the Committee. However, it would be sensible with actionable subsidies to delay the reference until a preliminary finding had been reached.

the supervision of an unbiased panel process. The chances of achieving improved access for Australia to the other country's market under the discipline of the dispute settlement process with its time-frame for resolution, would be much more likely than by direct bilateral negotiation. For example, there may be opportunities for some specialisation in the grades of a product produced in each country, which would allow both trading partners to win from a supervised compensation agreement resolving an anti-dumping or countervailing measures dispute. Not only would there be relief from unfair trading practices but also new trade creating opportunities for each of the Members involved. Such a process would help reduce trade friction between Members, with no Member being able to say that the outcome was simply an exercise based on an imbalance of power between Members. The process should help compensate for the inferior bargaining position of small country Members in international markets. By its emphasis on trade creation it should assist in reducing distortions in resource allocation and capital flows, and reducing the bias in retaliatory actions against the more rapidly growing import sources.

To achieve these gains would require a quantum shift in thinking by the Australian government, and the foreign owners of industries in Australia. The ability to meet competitive imports, and exploit the opportunities of guaranteed access into foreign markets would require a different approach to the mercantalistic behaviour which is evident in Australia's current foreign policy. For example, the Department of Foreign Affairs and Trade would need to take a leadership role within the bureaucracy. It would need to lead consultations from the start, backed up with the expertise on foreign markets by AUSTRADE, on the industry perspective by AUSINDUSTRY and on the detailed technical investigatory knowledge by CUSTOMS.[1168] That is, there needs to be a more hands-on professional externally oriented focus on the application of both anti-dumping and countervailing measures. There is no room for prolonged policy deliberations in relation to consultation and dispute settlement.

The application of remedies by the Australian judicial system are restricted to dealing with matters which are not subjected to the *GATT/WTO* dispute settlement mechanism. The practice of relying on the application of domestic remedies tends to entrench anti-dumping and countervailing retaliation, rather than lead to a negotiated settlement in the

[1168]It is assumed with the greater emphasis on international dispute settlement, that there would no longer be a need for review of Customs findings by a domestic Tribunal such as the Anti-Dumping Authority.

interests of both Member states. However, there are some matters which would still be dealt with by the Australian judicial or administrative review system. The Federal Court would deal with applications contesting the refusal of the administering authorities to institute anti-dumping or countervailing procedures. Questions concerning the level of duty or of provisional measures would still be subject to determination by the Administrative Review Tribunal.

However, the main game is still to focus on impediments to trade, which as Snape (1987) argues are critical as:

> "...most of the trade-promoting subsidies would be of minor influence if they were not buttressed by trade barriers on the same products. Similarly, most dumping would not be feasible without frontier barriers in the dumping country which enable its producers to segment markets."[1169]

A similar conclusion can be drawn with respect to subsidies with spill-over effects on the production activities of other Member states.

This position should be tempered with the knowledge that there are likely to be other impediments to trade and investment in the form of non-competitive behaviour. This feature of trade has now become a focus of the *WTO*. Australia therefore needs to take an active part in the *WTO* review of the *Agreement on Trade Related Investment Measures 1994*, and in particular, with its relation to investment and competition policy.

7.4 Summary

The application of anti-dumping and countervailing measures has always been controversial, particularly, as they do not address the issue of the level of local value added in the production process. Are these measures simply industry assistance measures under another guise, or are they to protect the 'fair trade' framework to further the opportunity for free trade? All the indications are that these measures reflect the former option. However, the global political climate as represented through the *GATT* and now the *WTO Agreements* is to tolerate the imposition of both anti-dumping and countervailing measures provided they are applied according to the provisions of the

[1169]Snape (1987) pp 230-231.

Agreements. It is becoming increasingly more difficult for any nation state to abolish the right of their 'guest' industries to obtain anti-dumping or countervailing relief, given the economic power of multinational industries operating within their boundaries. The practical issue is for each nation state to use these measures in a way which is of least detriment to their economy.

Gruen in 1986 reviewed the application of the then *Customs Tariff (Anti-Dumping) Act 1975*, and found that there needed to be a tightening-up of the injury test applied to anti-dumping cases. It is recommended that Gruen's tougher injury standards be implemented forthwith. He also recommended a continuing role for the Industry Commission as the appeal body for a review of the facts, and for there to be a continuing assessment of the effects of the measures imposed. The government, however, created an Anti-Dumping Authority attached to the then Department of Industry Technology and Commerce (DITAC), whose member and officers came from that department. The principal function of this body was to review the preliminary decisions of Customs, and to recommend the imposition of duties or acceptance of an undertaking to the Minister. There was no provision for an independent review of facts. One of the results of the increased complexity of the existing process and consequently the law, is a large increase in litigation before the Federal Court. There is a need to simplify the administrative structure and the provisions of the domestic law. The latter should be accomplished by the incorporation of the provisions of the *WTO Agreements* directly into domestic law.

The espoused policy objectives of the government have not been met. The application of anti-dumping and countervailing measures favour import competing industries, and are against countries from which imports are growing. Korea and China have been singled out, with these countries showing the highest incidence of import weighted of anti-dumping measures. They also happen to be countries with which Australia has a trade surplus, a policy factor which is neglected by the administering authorities. There is a need to redress this imbalance. Predation identified by the government as a reason for taking anti-dumping action, has been shown not to be a reason for the application of anti-dumping duties in Australia.

As a small country, Australia should take advantage of the use of the *WTO* dispute settlement process in settling anti-dumping and countervailing disputes. Consultations should commence at the earliest possible stage in inquiries, with the view to the settlement of the dispute by trade negotiation so that the outcome can be beneficial to

both parties. This may, for example, allow for the specialisation in production between the two Members. *WTO* dispute settlement is seen as a positive approach to dispute settlement, whereas the use of the domestic courts tends to elevate the dispute between the parties. The Department of Foreign Affairs and Trade needs to take a leadership role in settling all anti-dumping and countervailing actions through the *WTO* dispute settlement process, with a view to a positive outcome for both Members.

Placing an anti-dumping import tax on intermediate products entering Australia is counter-productive, as it increases the cost of inputs to downstream users. Temporary relief should be given by way of production subsidy, if the matter cannot be resolved through *WTO* trade consultations.

SECTION 8 - Recommendations

Recommendation:	**Relevant Argument found in:**	**Section of thesis:**
1. To use subsidies to off-set the effect of dumped and subsidised intermediate products, so as to reduce the cost burden on downstream user industries. This would require Parliamentary approval of the appropriation of funds, adding a further discipline on the application of these measures to intermediate goods -	The *Brigden Report* -	2.4
	The *Hyster* case and the *Sodium Cyanide Report* -	4.3.2
	Draft Report on the Chemicals and Plastics Industries; and Article 19.2 of the *Subsidies Codes 1994* -	4.3.3
	To counter rising prices -	7.3
2. That anti-dumping measures be applied as short-term measures, revoking them whenever the adverse effects of the dumping or subsidisation cease. The administrating authority is to continually monitor the effects of the measures imposed, to ensure that they only apply where needed to off-set the adverse effects of the dumping or subsidisation.	MITI comments on the need to maintain fair competition -	2.4
	Vernon Committee Report and the *Group of Experts on GATT Article VI* -	2.5
	Gruen Report and the Button: *Industry Statement 1988* -	2.6
	Sekiguchi and Horiuchi -	3.2.4
	Minister's speech -	4.4
	Viner -	5.3.2
	Ordinary course of trade -	5.4.4.2.1
	Marginal costing -	5.4.4.2.3
	Temporary adjustment -	6.4.1
	Predation -	7.2

3. There be an urgent review of the excessive application of anti-dumping measures against imports from China and Korea. With respect to China the preferred option at this stage would be to apply Article XIX measures by way of the *Safeguards Agreement 1994* where necessary, until Australia decides to accept China as a market economy.	Cairn's 1965 -	2.5
	Bilateral solution with Korea -	4.2.4
	Garnaut 1989 and market pricing -	5.4.4.2.5
	Full MFN for China-	5.4.5;5.7
	Incidence of initiations -	6.3.2
	Increases in imports, large trading surplus and concerted effort needed to reduce the effects of these measures on trading relationships, and arbitrary normal values for China -	6.4.4
	Continued deterioration -	6.5.3
	China and Korea singled out -	6.8
	Discriminatory treatment -	7.2
	Countries singled out -	7.4
4. A single administrative body be responsible for inquiry and reporting on anti-dumping and countervailing cases, using an organisational matrix structure.	*Crawford Report* and the *Gruen Report* -	2.6
	Complex procedures -	2.9
	Increased litigation -	5.2.6
	Deficiencies in organisational structure, inadequate skills base -	5.2.4.7
	Cumbersome process -	5.2.5
	An increase in discriminatory findings and costs	6.5.3
	Simplification --	7.3
5. Revocation of the countervailing duty provisions relating to the prescription of assistance provided by other countries.	A temporary provision to insure that Australia could take reciprocal countervailing action where a country did not apply an injury test to Australian exports, and has never been used. The *WTO* dispute settlement provisions make this provision redundant -.	2.6;5.6

6. Conduct periodic reviews of the need for the anti-dumping or countervailing measures in place, with the view to revoking those where there is no longer injury.	*Gruen Report* -	2.6
	Not to be used as a substitute means of assistance -	2.7
	Need for an independent review mechanism -	5.2.5;7.4
	Failure of review by Authority -	6.4.4
	Monitoring the effectiveness and impact on imports -	6.7
	Role for an independent review body -	7.4
7. Australia should take an active role in the *WTO Council for the Trade in Good's* consideration of the integration of the provisions on investment and competition policy. Australia's dialogue in the *APEC Group* should compliment its activities in the *WTO* forum.	Competition policy discussions in the *APEC Group*, the failure of the *ITO*, limited success of the *OECD*, and misconceptions on application in different jurisdictions -	4.2.4
	The operation of internal competition laws in *CER* -	4.2.3
	Hilmer's separation of competition and trade policy, public benefit of competition -	4.3.1
	Promotion of competition rather than free trade should be a *WTO* objective -	5.5.3
	Globalisation has given rise to the need for substantive international competition laws -	6.3.2
8. The administering authority should take account of the effect of anti-dumping and countervailing measures on Australia's competitive environment.	Conflict between competition and anti-dumping rules, and the Anti-Dumping Authority does not have regard to the *Code* requirements on the lessening competition -	4.3.2
	Extramet Industries competition rules are relevant in dumping cases -	4.3.4

	The difference in competition and anti-dumping laws is only one of degree, and a tendency to integration within a free-trade area -	5.3.2
	Recovery of full cost in anti-dumping actions whereas the standard in US trade practices law is recovery of variable cost only - *Merman v Cockburn Cement*	5.4.4.2.1
	consideration of misleading conduct relevant to anti-dumping case -	5.6.4
	Predatory practices test -	6.4.5
	Object is to encourage competition in a contestable market -	7.3
8. Strengthen the bilateral trading relationships with Korea, so that in those areas where there is trade friction, plan to deal with it in a way other than application of anti-dumping duties.	Removal of import restrictions by Korea as they apply to Australia, in exchange for the abolition of anti-dumping actions by Australia -	4.2.4

9. There needs to be a clearly enunciated government policy on what is proposed to be achieved by the continued imposition of anti-dumping and countervailing measures. This could be made when introducing the next set of legislative amendments into the Parliament..	Public interest criteria are included in the European Community anti-dumping regulations -	4.3.4
	From a consideration of the impact of these measures and the associated policy statements, it is clear that they are intended to be applied in a manner consistent with the national interest. The lack of clarity of what is meant by national interest gives the executive almost unlimited power through the application of ill-defined policy objectives to impose anti-dumping and countervailing measures which may not be in accord with such a criteria -	4.4
10. Access to and encouragement of participation in the policy formation and administrative process needs to given to a wider group of interests. There needs to be a shift away from the domination by the chemicals industry lobby group.	Comments by Braithewaite on the use of alternative international forums when the national governments have been captured by lobby groups, Article 19.2 of the *Subsidies Code 1994* allows for the representations by domestic interested parties who may be adversely affected by the measures to be taken into account, and parliament should be actively involved during the negotiation of treaties -	4.3.3

11. More rigorous approach to the assessment of injury, adopting a high standard for the assessment of material injury such that it effects the viability of the economic entity before anti-dumping or countervailing measures are taken. Apply similar administrative standards to anti-dumping and countervailing cases to those used to obtain a remedy under the *Safeguards Code 1994.*	The *Gruen Report* stipulated a dramatic profit decline -	2.6, 5.2.5
	Protective measures such as anti-dumping and countervailing duties adversely affect global competitiveness -	3.2.6
	Follow the leader approach to market risk aversion with international oligopolies -	3.2.9
	The Minister's statements on the question of profitability in injury findings -	5.3.12
	Measuring injury -	5.3.13
	Profits significant in European final findings -	6.3.1
12. As the requirements to satisfy being an Australian industry can now be satisfied by an applicant having as little as 6% of value added to the production of an industry, there are strong incentives for domestic screw-driver plants to establish behind an anti-dumping barrier. Where it is apparent that this is the objective of the applicant, applying anti-dumping measures are likely to cause trade diversion rather than trade creating outcomes. There is a need to consider the wider aspects of the case, rather than simply applying anti-dumping measures.	The 1994 changes to the *Codes* -	5.3.7
	Summary of developments -	5.3.17
	Harmonisation of origin rules to reduce uncertainty, adverse trade diversion effects -	5.6.6

13. Legislative provisions should include reference to general accounting standards which are now included in Australian Corporations law -	Currency conversion - Ordinary course of trade - Constructed normal value -	5.4.4.1.2 5.4.4.2.1 5.4.4.2.4
14. The *Customs Act 1901* should be brought into line with the *Anti-Dumping Code 1994* so that an export price may be considered unreliable because of association or a compensatory arrangement.	Where the importer and the exporter are related, United States law treats the two as a single entity and uses the price from the importer to the first United States buyer as the export price - Avoidance of arm's length criteria is a desirable outcome -	5.4.3.2.1 5.4.5
15. Exporter's domestic price should be compared with the prices of other domestic sellers, to add confidence to the normal value assessments.	Comment in *Wattmaster Alco* and *Kanthal Australia* - Price lists with discount information may be useful -	5.4.4.1 5.4.5
16. There needs to be a much deeper analysis of the effects of different costing techniques on normal value determination.	There are substantial difficulties in the allocation of overhead expenses in constructed normal value determinations and, in certain cases, the level of profit to be incorporated-	5.4.4.2.4
17. The administering authority should consider the export subsidy equivalent of countervailable domestic subsidies in there analysis of the level of measures to apply.	Both theoretical analysis and the judgements of the Federal Court have been critical of the lack of analysis by the administering authority of the incidence of a countervailable subsidy -	5.5.3 5.5.4 5.5.5

18. It is better to encourage the resolution of countervailing cases through the *GATT/WTO* dispute settlement process rather than through the domestic courts. This would assist in the development of some consistent guidelines for the application of these measures.	The judgements of the Federal Court have tended to follow the European line, and have not been particularly helpful in ascertaining the rules to apply in countervailing cases -	5.5.5
19. The *Anti-Dumping Code 1994* and the *Countervailing Code 1994* should be incorporated directly into Australia's domestic law.	Australian law is unnecessarily complex in this area, and the ultimate appeal body is the *WTO Council* through the appellate body which is governed by the provisions of the *Codes* -	5.6.7 5.6.8 5.7 7.3
20. The dispute settlement procedures of the *WTO*, including trade consultations/negotiations, for both anti-dumping and countervailing actions should be utilised in all cases by Australia at the earliest possible time.	Small countries can gain considerable leverage through the use of formal consultations and legal appeal provisions -	5.6.7 5.6.8 5.7 7.3
21. With the emphasis on cooperation rather than retaliation, the Department of Foreign Affairs and Trade should take a leadership role in negotiations between governments and industry in anti-dumping and countervailing cases..	Trade creation should be the goal of consultative negotiations during and following anti-dumping and countervailing investigations -	7.3

22. Judicial review should in practice be reserved for applicants contesting the failure to initiate cases, and against the level of duty or provisional measures.	Role of domestic courts -	7.3

ABBREVIATIONS

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Anti-dumping Code 1979	Agreement on Implementation of Article VI of the GATT April 12, 1979 GATT Publication 1979 (Eur. Comm. No. L71/80, 90)
Anti-dumping Code 1994	Agreement on Implementation of Article VI of the GATT
APEC	Asia Pacific Economic Cooperation Group
ASEAN	Association of South East Asian Nations
ATS	Australian Treaty Series, Department of Foreign Affairs and Trade Canberra
CER	Australia New Zealand Closer Economic Relations Agreement and Exchange of Letters 1 January 1983 - Australian Treaty Series 1983 No 2
Codes	Anti-dumping and Subsidies Codes jointly
Dispute Settlement Understanding 1994	GATT Multilateral Trade Negotiations (The Uruguay Round): Understanding on Rules and Procedures Governing the Settlement of Disputes [December 15, 1993] 33 ILM 112 (1994)
EC	The European Communities
EEC	The European Economic Community Treaty
GATT	General Agreement on Tariffs and Trade October 30, 1947 (55 UNTS 187) (last revised 1969) (55 UNTS 94)
GATT 94	General Agreement on Tariffs and Trade 1994
GATT/WTO	Marrakesh Agreement 1994; Australian Treaty Series 95 No 8

Ministerial Decision on Dispute Settlement on Dumping and Subsidies	Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade or Part V of the Agreement on Subsidies and Countervailing Measures 1994
NAFTA	The North American Free Trade Agreement 1992
NIFOB	Non-injurious free on board price
Subsidies Code 1979	Agreement on Interpretation of Application of Articles VI, XVI and XXIII of the GATT (Subsidies and Countervailing Duties) April 12, 1979 GATT Publication 1979 (Eur. Comm. No. L71/80, 71)
Subsidies Code 1994	Agreement on Subsidies and Countervailing Measures 1994
Treaty of Rome 1957	EEC Treaty establishing the economic community
UNCTAD	United Nations Conference on Trade and Development

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- *Enichem Anic SRL & Anor v the Anti-Dumping Authority* No G612 of 1991 (unreported).
- *Enichem Anic SRL & Anor v Anti-Dumping Authority & Anor* (Full Federal Court, 30 November 1992).
- *Elliott v The Commonwealth* (1936) 54 CLR 657.
- *re Erta:Commission v Council* [1971] ERC 263; [1971} CMLR 335.
- *Extramet Industries SA v EC Council* Case 358/89 ECR; [1993] 2 CMLR 619.
- *Feltex Reed Rubber v Minister for Industry and Commerce* (1983) 67 FLR at 4.
- *Gill v Watson, Woodward and The Comptroller-General of Customs* NG 146 of 1995 (unreported).
- *GTE (Australia) Pty Ltd v John Joseph Brown* (1986) 14 FCR 309.
- *Hyster Australia Pty Ltd v Anti-Dumping Authority* No N G 476 of 1992 Federal Court (unreported).
- *ICI Australia Operations Pty Limited v Donald Fraser & Ors* (1992) 106 ALR 257; (1992) 34 FCR 564.
- *Irish Country Bacon (Cooked Meats) Limited v Comptroller - General of Customs* (1991) (unreported) order to set-aside by consent.
- *Irish Country Bacon (Cooked Meats) Limited v Comptroller - General of Customs* (1991) 32 FCR 355.
- *Kanthal Australia Pty Limited v Minister for Industry, Technology and Commerce*, Federal Court NSW Nos G259 of 1986 and G564 of 1987 (unreported).
- *Kanthal Australia Pty Ltd v The Minister for Industry Technology and Commerce & Anor* NSW G.281 of 1987.
- *Kanthal Australia Pty Ltd v Minister for Industry, Technology and Commerce* (1987) 14 FCR 90.
- *Koonwarta v Bjelke-Petersen* (1982) 153 CLR 168; (1982) 39 ALR 417; (1982) 56 ALJR 625.
- *Kramer* [1976] ECR 1279.
- *McDowell & Partners Pty Ltd & Another v Button and Another* 79 FLR 166; (1983) 50 ALR 647.
- *Marine Power Australia Pty Limited And Marine Power International Pty Limited v The Comptroller-General Of Customs; Outboard Marine Australia Pty Limited And Yamaha Motor Australia Pty Limited* (1989) 89 ALR 561.

- *Midland Metals Overseas Limited v Comptroller-General of Customs* (1989) 85 ALR 318
- *Midland Metals Overseas Ltd and the Collector of Customs & ors* AAT 23 August 1991.
- *Merman Pty Ltd v Comptroller-General of Customs; The Honourable Minister for Science, Customs and Small Business; Swan Portland Cement Limited and Cockburn Cement Limited* No. WAG 65 of 1988 (unreported)
- *Merman Pty Ltd v Cockburn Cement Ltd and Another* (1988) 84 ALR 521.
- *Metal Manufacturers Limited t/as Mm Cables, Pacific Dunlop Limited T/As Olex Cables & Pirelli Cables Australia Limited v The Comptroller-General of Customs, The Anti-Dumping Authority & Midland Metals Overseas Pte Limited* (unreported) NG 665 of 1993.
- *Minister of Immigration, Local Government and Ethnic Affairs v Teoh* (1995) 128 ALR 353.
- *Minister for Small Business, Construction and Customs, Anti-Dumping Authority, Comptroller-General of Customs v La Doria Di Diodata Ferraiolli SPA* No G428 of 1993 (Unreported Fed No 24/94).
- *Murphyores Inc Pty Ltd v Commonwealth* (1976) 50 ALJR 570.
- *Nott Bros & Co Ltd v Barkley* (1925) 36 CLR 20.
- *Pilkington (Australia) Ltd v Anti-Dumping Authority & ors* Full Federal Court (unreported) 7 April 1995.
- *Powerlift (Nissan) Pty Ltd & Anor v Minister of State for Small Business, Construction and Customs & Ors* (unreported No NG 527 of 1992).
- *Queensland Wire Industries Pty Ltd v BHP* (1989) ATPR 40-925.
- *Rocklea Spinning Mills Pty Ltd v Anti-Dumping Authority* (1995) 29 ALR 401.
- *Sargood Bros v The Commonwealth* (1910) 11 CLR 258; 19 ALR 483.
- *Shiseido Tokyo Hanbai KK v Fijiki Honten* (1994) No 554 NBL.
- *Stainless Tube Mills Pty Limited and others v Comptroller-General of Customs, the Anti-Dumping Authority and the Minister for Small Business, Construction and Customs* Nos G209 of 1992 and G517 of 1992 (unreported).
- *Swan Portland Cement Limited v The Minister for Science, Customs and Small Business* (unreported, Federal Court, Wilcox J, No 461 of 1989, 21 August 1989).

- *Swan Portland Cement and Cockburn Cement v The Comptroller-General of customs; The Minister for Science, Customs and Small Business and John Melville Thompson* (1989) 90 ALR 280; (1989) 25 FCR 523; (1989) 18 ALD 700.
- *Swan Portland Cement Ltd v Minister for Small Business and Customs* (1991) 28 FCR 135; (1991) 22 ALD 446.
- *Re: Swan Portland Cement Limited and Cockburn Cement Limited and: The Minister for Science, Customs and Small Business and the Anti-Dumping Authority* (1991) 88 ALR 196.
- *Tasman Timber Ltd v Minister for Industry and Commerce* (1983) 67 FLR 12.
- *Trade Practices Commission v Australian Iron and Steel Pty Ltd* (1990) 22 FCR 305.
- *Tredex Australia Pty Limited v John Norman Button* (No. ACT G28 of 1986 and ACT G81 of 1987) unreported.
- *Wattie Canneries Limited v Thomas Plunkett Hayes, Comptroller-General of Customs* (1987) 74 ALRC 202.
- *Uebergang v Australian Wheat Board* (1980) 145 CLR 266.
- *Vacuum Oil Co Pty Ltd v Queensland* (1934) 51 CLR 108.
- *Vredelco Food Industries Pte Limited v Anti-Dumping Authority; Christopher Cleland Schacht in his capacity as Minister of State for Science and Small Business; Meadow Lea Foods Limited* No ACT G 12 of 1994 (unreported).
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- *Income Tax (International Agreements) Act 1953*
- *Industries Assistance Commission Act 1973*
- *International Trade Organisations Act No 73 of 1948*
- *Jurisdiction of Courts (Cross-vesting) Act 1987*
- *Navigation Act 1912*
- *New Zealand Commerce Act 1986*
- *Ombudsman Act* 1976
- *Restrictive Trade Practices Act 1965*
- *Statute Law Revision Act 1981*
- *Trade Practices Act 1974*
- *Trade Practices Amendment Act No 81 1977*
- *Trade Practices Legislation Amendment Bill 1992*
- *Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990*
- *United States International Antitrust Enforcement Assistance Act 1994*
- *United States Omnibus Trade and Competitiveness Act of 1988*
- *United States Sherman Act 1890*
- *United States Tariff Act of 1916*
- *United States Tariff Act of 1930*
- *United States Trade Act of 1934*
- *United States Trade Act of 1974*
- *United States Trade Act of 1988*
- *United States Uruguay Round Agreements Act 1994*

TREATIES, AGREEMENTS, CONVENTIONS, PROTOCOLS AND MEMORANDA

- *Agreement between the European Communities and the Government of the United States of 23 September 1991* (OJ L95 of 27 April 1995 as corrected by OJ 134 of 20 June 95)
- *Agreement on Agriculture 1994* - Australian Treaty Series 1995 No 8
- *Agreement on Safeguards 1994* - Australian Treaty Series 1995 No 8
- *Agreement on Subsidies and Countervailing Measures 1994* - Australian Treaty Series 1995 No 8 Annex 1A
- *Agreement on the Implementation of Article VI of GATT 1994* - Australian Treaty Series 1995 No 8 Annex 1A
- *Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* - Australian Treaty Series 1995 No 8
- *Agreement on Rules of Origin 1994* - Australian Treaty Series 1995 No 8
- *Agreement on Trade in Services 1994* - Australian Treaty Series 1995 No 8
- *Agreement on Trade Related Aspects of Intellectual Property Rights 1994* - Australian Treaty Series 1995 No 8
- *Agreement on Trade-Related Investment Measures 1994* - Australian Treaty Series 1995 No 8
- *Australia Japan Agreement on Commerce 1957*
- *Australia Japan Treaty of Cooperation and Friendship 1976*
- *Australia-New Zealand Economic Relations: Australian and New Zealand Prime Ministers' Communique* (20-21 March 1980) Australian Parliamentary Debates House of Representatives 25 March 1980 pp 1129-1131
- *Australia New Zealand Closer Economic Relations Agreement and Exchange of Letters 1 January 1983* - Australian Treaty Series 1983 No 2.
- *Australia New Zealand Closer Economic Relations Agreement -Memorandum of Understanding on Aviation 1992*
- *Australia New Zealand Closer Economic Relations Agreement -Protocol on Services* - Australian Treaty Series 1988 No 20
- *Bogor Declaration*
- *Canada Australia Trade Agreement 1960*
- *Canada-US Free Trade Agreement 1989*

- *Charter of the United Nations*
- *Dispute Settlement Understanding (WTO) 1994* - Australian Treaty Series 1995 No 8
- *Exchange of Notes of 1973* terminating the *United Kingdom Australia Trade Agreement*
- *General Agreement on Tariffs and Trade 1947 (GATT)* 55 UNTS 194
- *GATT Agreement on Implementation of Article VI (1979) - GATT Anti-Dumping Code 1979*
- *GATT Agreement on the Implementation of Article XVI (1979) - Subsidies and Countervailing Measures Code (1979)*
- *International Convention for the Safety of Life at Sea 1960*
- *International Convention on Load Lines 1966*
- *International Monetary Fund Agreement 1947*
- *International Sugar Agreements (ISAs) 1937*
- *International Trade Organisation Draft Charter*
- *Kyoto Convention on Customs Procedures*
- *Marrakesh Agreement establishing the World Trade Organisation 15 April 1994* entering into force on 1 January 1995 Australian Treaty Series 1995 No 8
- *New Zealand Australia Free Trade Agreement*
- *North American Free Trade Agreement 1992*
- *Ottawa Agreement of 1932*
- *Papua New Guinea Australia Trade and Commercial Relations Agreement 1977*
- *Protocol to the Australia Japan Agreement on Commerce to prohibit any trade discrimination 1963*
- *Protocol to the Australian New Zealand Closer Economic Relations Trade Agreement on the Acceleration of the Free Trade in Goods 1988*
- *South Pacific Regional Trade and Economic Cooperation Agreement 1982*
- *Statute of the International Court of Justice 1944*
- *Treaty establishing the European Economic Community (Treaty of Rome)* March 25, 1957 198 UNTS 11
- *United Nations Convention on the Rights of the Child*
- *United States - Australia Air Transport Agreement*
- *Uruguay Round Protocol* - Article 1 of *GATT 1994* (ATS 1995 No 8) incorporates the provisions of *GATT 1947*
- *World Bank Agreement 1947*

- *World Trade Organisation Agreement 1994* - refer *Marrakesh Agreement*

ANTI-DUMPING AUTHORITY REPORTS

Number	Positive/Neg.	Date	Title
1	Yes	Dec-88	**Cement clinker** from **The Republic of Korea**
2	Yes	Feb-89	**Coloured pencils** from **Brazil, Hungary and Poland**
3	No	Mar-89	Review of **Blacklead and "Crayola" brand coloured pencils** from **Brazil**
4	No	Mar-89	Inquiry into **material injury, profit in Normal Values and extended period of time**
5	Yes	June-89	**Self-propelled multi-tyred rollers** from Czechoslovakia
6	Yes	June-89	**Evaporated milk** from **Canada**
7	Yes	June-89	**Low Voltage, Aerial, Bundled, Cross-Linked polyethylene cable** from **The Republic of Korea and Singapore**
8	No	July-89	**Blacklead Pencils** from Brazil

9	No	Aug-89	Review of the Australian Customs Serviced Negative Preliminary Findings: **Force brand outboard motors** from the **USA** and **Yamaha brand high-thrust four-stroke outboard motors** from **Japan**
10	Yes	Sept-89	**Certain outboard motors** from **Belgium, the United States of America and Japan**
11	No	Oct-89	Review of the Australian Customs Service Negative Preliminary Findings: **Woven polyolefin bags** from **The People's Republic of China, Indonesia, The Philippines, Taiwan Province and Thailand**
12	Yes	Nov-89	**Non-woven polypropylene geotextiles** from **Austria**
13	Yes	Dec-89	Revocation Inquiry: **Woven worsted fabrics** from **The People's Republic of China**
14		Dec-89	**Audio tape webs and pancakes** from **the Republic of Korea**
15	Yes	Jan-90	**Sodium tripolyphosphate** from **Belgium, Israel, Japan**, and **Yugoslavia.**
16	Yes	Jan-90	**Cement clinker** from the **Kingdom of Saudi Arabia**

17	Yes	Feb-90	**Bulk brandy** from **France**
18	No	Mar-90	Revocation Inquiry: **Hog bristle paint brushes** from the **People's Republic of China**
19	Yes	May-90	Review of the Australian Customs Service **Negative** Preliminary Finding on **Castors** from **Taiwan Province**
20	Yes	May-90	Review of the Australian Customs Service ***Negative*** Preliminary Finding on **certain transparent film wound dressings** from the **United Sates of America**
21	Yes	May-90	**Cement clinker** from the **Republic of Korea**. Further consideration pursuant to Federal Court Decision.
22	No	July-90	Review of the Australian Customs Service ***negative prima facie*** decision: Subsidisation of **modular process cooling systems** from the **Republic of Ireland**.
23	Yes	Aug-90	**Pasta** from **Italy**
24	Yes	Aug-90	Review of the Australian Customs Service ***Negative*** Preliminary Finding on **woven polypropylene primary carpet backing fabric** from the **Republic of Colombia** and the **United Kingdom.**

25	Yes	Aug-90	**Vibrating wire piezometers/pressure transducers/sensors** from the **United States of America.**
26	Yes	Sept-90	**Certain malleable cast iron pipe fittings** from the **Republic of Korea** and **Taiwan Province** (Measures revoked 26/07/93 - Industry closed down)
27	Yes	Oct-90	**Sorbitol 70 per cent solution** from **France, the Republic of Korea, Thailand, Taiwan Province** and **Mexico**
28	Yes	Nov-90	**Diagnostic reagent strips (for the measurement of blood glucose in whole blood)** from the **United Kingdom** and the **United States of America**
29	**90/9**	Dec-90	Subsidisation of m**odular process cooling systems** from the **Republic of Ireland**. Further consideration pursuant to Federal Court Decision
30	Yes	Jan-91	**Canned ham** from **Denmark,** the **Republic of Ireland** and the **Netherlands**

31	Yes	Jan-91	Review of the Australian Customs Service ***negative*** preliminary finding on **replacement automotive lead-acid storage batteries** from **Indonesia, Republic of Korea, Philippines, Singapore, Malaysia and Taiwan Province**
32	Yes	Jan-91	Review of the Australian Customs Service ***negative*** preliminary finding on **vinyl floor sheeting** from the **United Kingdom**
33	Yes	Jan-91	Review of the Australian Customs Service ***negative*** preliminary finding on subsidisation of **canned ham** from **Denmark, the Republic of Ireland and the Netherlands**
34	Yes	April-91	Review of the Australian Customs Service ***Negative*** Preliminary Finding on **low density polyethylene** from **Italy, Republic of Korea, Sweden, Taiwan Province, Thailand and the Socialist Federal Republic of Yugoslavia**
35	Yes	May-91	Review of the Australian Customs Service ***negative*** preliminary finding on **sodium cyanide** from **Taiwan Province**

36	Yes	May-91	Review of the Australian Customs Service ***negative*** preliminary finding on subsidisation of **Agricultural Ground-Engaging Tools** from the **Federative Republic of Brazil**
37	Yes	May-91	**Automotive lead-acid storage batteries** from **Indonesia, Republic of Korea, The Philippines, Singapore, Malaysia** and **Taiwan Province**
38	Yes	June-91	**Low density polyethylene** from the **Argentine Republic, the Federative Republic of Brazil, Canada, Finland, France, Israel, Japan, the State of Qatar, Singapore and the United States of America**
39	**90/10**	June-91	Subsidisation of **canned ham** from **Denmark, the Republic of Ireland and the Netherlands**
40	Yes	June-91	**Sodium cyanide** from the **Federal Republic of Germany, Italy, Japan, Republic of Korea, United Kingdom and the United States of America**
41	Yes	June-91	Review of the Australian Customs Service ***Negative*** Preliminary Finding on **dry type 500kVA transformers** from the **Republic of Turkey**

42	**91/3**	July-91	**Agricultural Ground-Engaging Tools** from the **Federative Republic of Brazil**
43	Yes	Aug-91	Review of the Australian Customs Service ***negative*** preliminary finding on **dioctyl phthalate** from the **Republic of Korea**
44	**91/1**	Aug-91	**Low density polyethylene** from **Italy, Republic of Korea, Sweden, Taiwan Province, Thailand** and **the Socialist Federal Republic of Yugoslavia**
45	Yes	Sept-91	Review of the Australian Customs Service ***Negative*** Preliminary Finding on **canned peaches** from **Spain, Greece and China** and **canned pears** from **Spain**
46	Yes	Sept-91	**Plaster of Paris bandages** from **the Federal Republic of Germany**
47	**91/7**	Oct-91	**Dioctyl phthalate** from **Belgium, France, the Federal Republic of Germany, the Republic of Korea and Venezuela**
48	Yes	Nov-91	**Cement** from **Japan**
49	Yes	Nov-91	**Pears** from **the People's Republic of China**

50	Yes	Nov-91	Review of the Australian Customs Service ***negative*** preliminary finding on **polyvinyl chloride** from **the Republics of Singapore, Korea, Hungary and Poland**
51	**90/8**	Dec-91	Further consideration of **diagnostic reagent strips (for the measurement of blood glucose in whole blood)** from **the United Kingdom** and **the United States of America**
52	Yes	Dec-91	**Polyvinyl chloride** from the **Argentine Republic, the Federative Republic of Brazil, Israel, Mexico, Taiwan Province** and the **United States of America**
53	Yes	Dec-91	Review of the Australian Customs Service ***negative*** preliminary finding on **certain facsimile papers in rolls** from **Japan**
54	Yes	Dec-91	**Dibutyl phthalate** from the **People's Republic of China and Italy**
55	Yes	Jan-92	**Triethanolamine** from **Federative Republic of Brazil** and the **United States of America**
56	Yes	Jan-92	Review of the Australian Customs Service ***negative*** preliminary finding on **certain glass fibre products** from **Japan** and **Taiwan Province**

57	Yes	Jan-92	**Canned peaches** from **Spain, Greece** and **China** and **canned pears** from **Spain**
58	**91/19**	Feb-92	Review of the Australian Customs Service ***negative*** preliminary finding on **dried egg white** from **Italy**
59	Yes	Feb-92	Review of the Australian Customs Service ***negative*** preliminary finding on l**ow voltage, aerial, bundled, cross linked polyethylene cable** from the **Republic of Korea**
60	Yes	Feb-92	**Fibreglass gun rovings** from the **People's Republic of China**
61	**90/10**	Feb-92	**Canned ham** from **Denmark, the Republic of Ireland and the Netherlands**
62	**91/11**	Mar-92	**Polyvinyl chloride** from the **Republic of Singapore, Korea, Hungary** and **Poland**
63	Yes	Mar-92	Review of the Australian Customs Service ***negative*** preliminary finding on r**aw and blanched peanut kernels** from the **People's Republic of China**
64	Yes	Mar-92	**Glace cherries** from **France** and **Italy**

65	Yes	Mar-92	Review of the Australian Customs Service ***negative*** preliminary findings on **certain stainless steel longitudinally welded tubular products** from **Taiwan Province**
66	**90/7**	Mar-92	**Sorbitol 70 per cent solution** from **Thailand**
67	Yes	Apr-92	**Dried egg white** from the **Netherlands and Sweden**
68	Yes	Apr-92	**Canned tomatoes** from **Italy, Spain, Thailand and the People's Republic of China**
69	**92/4**	Apr-92	Review of the Australian Customs Service ***negative*** preliminary finding on **phthalic anhydride** from **Argentina and Brazil**
70	Yes	May-92	Review of the Australian Customs Service ***negative*** preliminary finding on **Castors** from **Taiwan Province**
71	**91/22**	May-92	**Forklift trucks** from the **United Kingdom.** Set aside by **Federal Court decision - July '93**
72	Yes	May-92	Review of the Australian Customs Service ***negative*** preliminary finding on **sodium silicate** from **Malaysia and the United States of America**

73	**92/1**	May-92	**Certain stainless steel longitudinally welded tubular products** from **Taiwan Province**
74	**92/3**	May-92	Review of the Australian Customs Service ***negative*** preliminary finding on **power transformers (for connection to 110kV and 132kV power systems)** from **Austria**
75	**92/4**	June-92	**Phthalic anhydride** from the **Argentine Republic,** the **Federative Republic of Brazil, Israel** and the **Republic of Korea**
76	**92/6**	June-92	**Electronic ticket issuing machines** from the **United Kingdom**
77	No	June-92	**Tender dumping**
78	No	July-92	Review of the Australian Customs Service ***negative*** preliminary finding on **Clear float glass** from **Malaysia**
79	Yes	Aug-92	**High density polyethylene** from **Italy**, **Japan, Republic of Korea, Saudi Arabia, Singapore, Sweden, Thailand** and the **United States of America**
80	**92/6**	Aug-92	**Electronic ticket validating machines** from the **United Kingdom**

81	**92/8**	Sept-92	**Clear float glass** from **Belgium, Germany, France, Indonesia, Thailand, the Philippines** and the **People's Republic of China**
82	**92/9**	Sept-92	**Polyvinyl chloride (PVC) resin** from **Canada,** the **People's Republic of China, France, Japan, Norway, Romania,** the **Kingdom of Saudi Arabia** and **Thailand**
83	**92/10**	Oct-92	**Expandable polystyrene** from **France, the Republic of Korea,** the **Kingdom of Saudi Arabia, Singapore** and the **United Kingdom**
84	No	Nov-92	Revocation Inquiry: **Canned tomatoes** from **Thailand**
85	**92/14**	Nov-92	Review of the Australian Customs Service ***negative*** preliminary finding on **certain cast iron manhole covers, grates and frames** from **India** and the **People's Republic of China**
86	**92/12**	Dec-92	**Trifluralin technical** from the **United States of America**
87	**92/13**	Dec-92	**Chlorinated paraffin** from **Taiwan Province** and the **United States of America**

88	No	Dec-92	Revocation Inquiry: **Canned peaches** from **Spain, Greece** and the **People's Republic of China** and **canned pears** from the **People's Republic of China**
89	No	Dec-92	Revocation Inquiry: **Automotive lead-acid storage batteries** from **Indonesia, the Republic of Korea, the Philippines, Malaysia** and **Taiwan Province**
90	Yes	Jan-93	Review of the Australian Customs Service ***negative*** preliminary finding on **frozen pork** from **Canada**
91	**92/18**	Feb-93	Review of the Australian Customs Service ***negative*** preliminary finding on **dioctyl phthalate** from **Taiwan Province**
92	**92/19**	Feb-93	Reviw of the Australian Customs Service ***negative*** preliminary finding on **certain self-propelled, multi-tyred rollers** from the **Czech and Slovak Federal Republic**
93	**92/16**	Feb-93	**Triethanolamine** from the **Federal Republic of Germany** and **Mexico**
94	**92/17**	Mar-93	**Certain finished, chrome tanned, bovine leather** from **Brazil** and **India**
95	**92/22**	Mar-93	Review of the Australian Customs Service ***negative*** preliminary finding on **moist towelettes** from **Israel**

96	**92/18**	Apr-93	**Dioctyl phthalate** from **Japan and Taiwan Province**
97	**93/1**	Apr-93	Review of the Australian Customs Service ***negative*** preliminary finding on **certain disposable plastic cutlery** from the **Republic of Korea, Taiwan Province, the People's Republic of China, Hong Kong, Thailand, Malaysia** and **Singapore**
98	**93/2**	Apr-93	Review of the Australian Customs Service ***negative*** preliminary finding on **sodium cyanide** from the **Federal Republic of Germany** **Set aside by Court Action July'93**
99	**93/2**	Apr-93	**Sodium cyanide** from the **United States of America** and **India**
100	**93/1**	May-93	**Certain disposable plastic cutlery** from the **Republic of Korea, the People's Republic of China, Hong Kong, Thailand** and **Malaysia** .
101	**93/5**	June-93	Review of the Australian Customs Service ***negative*** preliminary finding on **edible vegetable oils in retail packs up to and including 6 litres from Singapore** and **Malaysia**

102	**93/3**	June-93	Review of the Australian Customs Service ***negative*** preliminary finding on **canned tuna** from **Thailand** and **Indonesia**. **Confidential report available in the policy and procedures area for staff.**
103	**93/9**	July-93	Review of the Australian Customs Service ***negative*** preliminary finding on **low voltage aerial bundled cable insulated with cross linked polyethylene** from the **Republic of Korea. Confidential report available to staff in the Policy and Procedures area.**
104	**93/6**	July-93	Review of the Australian Customs Service ***negative*** preliminary finding on **certain flat glass products** from **Malaysia, the Republic of Korea, Thailand, the Republic of Indonesia, the People's Republic of China, Belgium** and the **Federal Republic of Germany.**
105	**93/7**	July-93	Review of the Australian Customs Service ***negative*** preliminary finding on **propylene oxide based polyether polyols** from **Belgium, the Netherlands** and the **United States of America.**

106	**93/10**	Aug-93	Review of the Australian Customs Service ***negative*** preliminary finding on **certain cotton yarn from Pakistan**
107	**93/1**	Aug-93	**Certain disposable plastic cutlery** from **Thailand** and the **People's Republic of China**
108	**93/4**	Aug-93	**Polyproylene homopolymer** from the **Republic of Korea**
109	**93/6**	Aug-93	**Clear float glass** from **Thailand**
110	**93/12**	Sept-93	Review of the Australian Customs Service ***negative*** preliminary finding on **gas metal arc welding wire** from **Italy, the Republic of Korea** and **Taiwan**
111	**93/13**	Oct-93	Review of the ***negative*** preliminary finding on **Fibreglass Insect Screening** from the **People's Republic of China.**
112	**93/11**	Nov-93	**Cementitious access floor panels** from the **Republic of South Africa**
113	**93/5**	Nov-93	**Edible vegetable oils** in retail packs up to and including 6 litres from **Singapore** and **Malaysia**

114	No	Nov-93	Review of the Australian Customs Service ***negative prima facie*** decision on **home brewing kits** from the **United Kingdom**
115	**93/14**	Dec-93	**Polyvinyl chloride homopolymer** from **Finland**
116	**93/16**	Jan-94	Review of the Australian Customs Service ***negative*** preliminary finding on **A4 copy paper** from **Austria**
117	**93/15**	Jan-94	**Phthalic anhydride** from **Belgium, India, the Republic of Indonesia and the United Kingdom**
118	**93/17**	Jan-94	Review of the Australian Customs Service ***negative*** prelimanary finding on **formulated trifluralin** from **the Republic of South Africa**
119	**93/16**	Jan-94	**A4 copy paper** from **Brazil, Finland, the Federal Republic of Germany, the Republic of Indonesia, the Republic of South Africa** and the **United States of America.**
120	**93/18**	Feb-94	Review of the Australian Customs Service ***negative*** preliminary finding on **certain motor-run capacitors** from **Italy**

121	No	Feb-94	Review of the Australian Customs Service ***negative prima facie*** decision on **Edam red wax ball cheese** from the **Netherlands**
122	**93/17**	Mar-94	**Formulated trifluralin** from the **Republic of South Africa**
123	No	Mar-94	Revocation inquiry: **Sodium Cyanide** from the **United States of America** and **India**
124	No	May-94	Reconsideration of countervailing and dumping duties applicable to imports of **canned tomatoes** from **Italy**
125	No	May-94	**Formulated trifluralin** from the **Republic of South Africa**
126	**94/1**	May-94	**Fibreglass gun rovings** from the **Republic of China, Taiwan and Venezuela**
127		Jun-94	Review of the Australian Customs Service ***negative*** preliminary finding on **certain fatty acid esters** from **Malaysia, the Netherlands and Singapore**
128		June-94	Review of the Australian Customs Service ***negative*** preliminary finding on **certain clear float glass** from **PT Muliaglass of Indonesia**

129	**94/4**	June-94	Review of the Australian Customs Service ***negative*** preliminary finding on **textured nylon yarn** from **Austria, France, the Federal Republic of Germany, Israel, Italy, the Republic of Korea, Taiwan** and the **United Kingdom**
130	**94/5**	June-94	Review of the Australian Customs Service ***negative*** preliminary finding on **blood collection packs** from **Japan**
131		July-94	Review of the Australian Customs Service ***negative*** preliminary finding on **polyvinyl, chloride homopolymer resins** from the **Republic of Korea**
132	**93/16**	July-94	Reconsideration of dumping duties applicable to **A4 copy paper** from **Brazil**
133	**94/6**	July-94	**Compact discs** from **Taiwan**
134	**94/3**	July-94	**Clear float glass** from **Singapore and Indonesia**
135	**94/4**	July-94	**Textured nylon yarn** from **France**
136	**94/5**	July-94	**Blood collection packs** from the **United States**
137		Sept-94	Revocation inquiry: **Canned tomatoes** from **Italy** and **Thailand**

138		Sept-94	Revocation inquiry: **sodium cyanide** from the **United Kingdom, Italy, Japan** and the **Republic of Korea**
139	**93/17**	Sept-94	Review of the Australian Customs Service ***negative prima facie*** decision on **trifluralin** from **the Republic of South Africa**
140	**94/8**	Nov-94	**Fibreglass gun rovings** from the **Federative Republic of Brazil**
141		Jan-95	Continuation of countervailing duty on **bulk brandy** from **France**
142	**94/11**	Dec-94	**Unsaturated polyester resins** from the **Republic of Korea, Singapore and Taiwan**
143	**94/10**	Jan-95	Certain **disposable plastic cutlery** from **Hong Kong, Thailand and the People's Republic of China**
144		Jan-95	Review of the Australian Customs Service ***negative*** preliminary decision on **sodium cyanide** from the **United States of America**
145		Jun-95	Continuation of countervailing duty on **bulk brandy** from **France :**reconsideration

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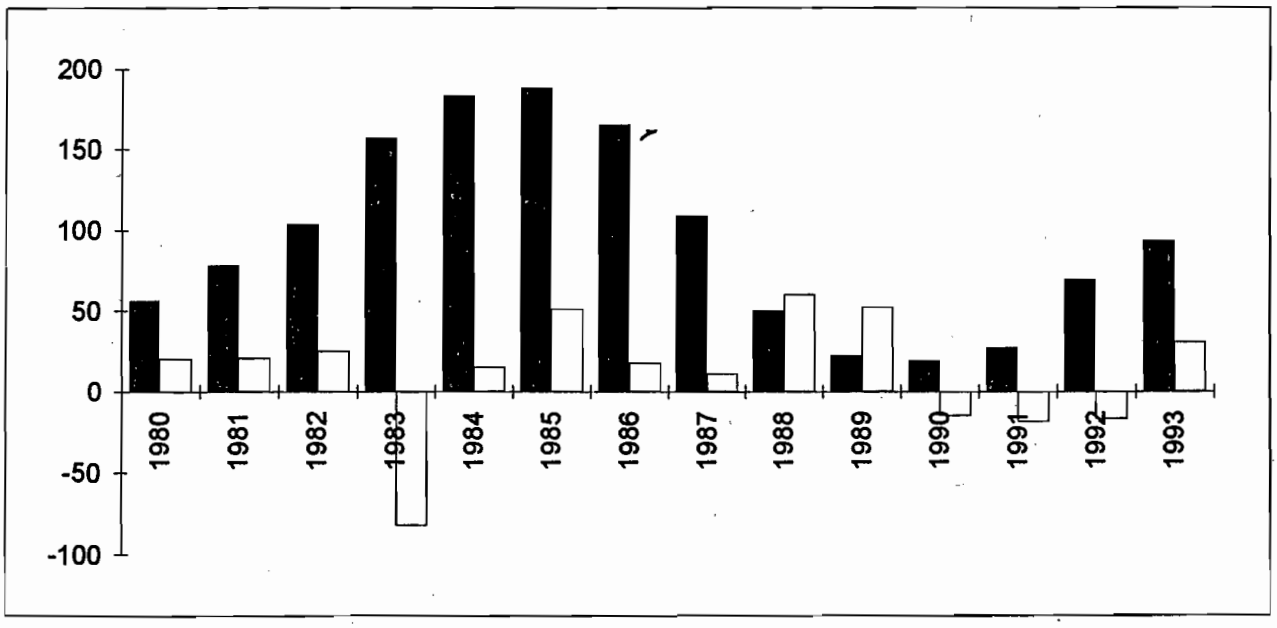
APPENDICES

No.	Name.XLS	Description
2.6	**ST0CFLOW**	**Anti-Dumping Stocks & Flows.**
5.2.4.6 A	**CASELOST**	**Cases won and lost in Federal Court.**
5.2.4.6 B	**OECD3**	**Raw data base of applications.**
	FIN_PRELI	**Gazettals & Undertakings/Positive Preliminary Findings.**
6.3.1 A	**FOR_II**	**Regression analysis initiations: foreign ownership & changed import share.**
6.3.1 B	**INITTEST**	**F test: profile of initiations post-1988.**
6.3.1 C	**INITANAL**	**Regressions of industry factors.**
6.3.2 A	**OECDINTR**	**Regression on level of imports.**
6.3.2 B	**ACSINCNT**	**Analysis of source of import competition.**
6.4.1		**Letters from ACS, ADA & Minister for Trade refusing access to documents.**
6.4.2	**OECDSUM**	**Data base for final analysis.**
6.4.4 A	**INFFFOII INFFORD**	**Details of step-wise regression used to analyse industry factors.**
6.4.4 B	**DUMPING FIRMS**	**Lists corporations and the factors investigated in the industry analysis.**
6.4.4 C	**OEFFCTII**	**Details of country regressions.**
6.4.4 D	**ADCVCTT**	**Discriminatory application of measures.**
6.4.5	**3XNDMSD**	**Predatory dumping analysis.**
	OECD3XNZ	

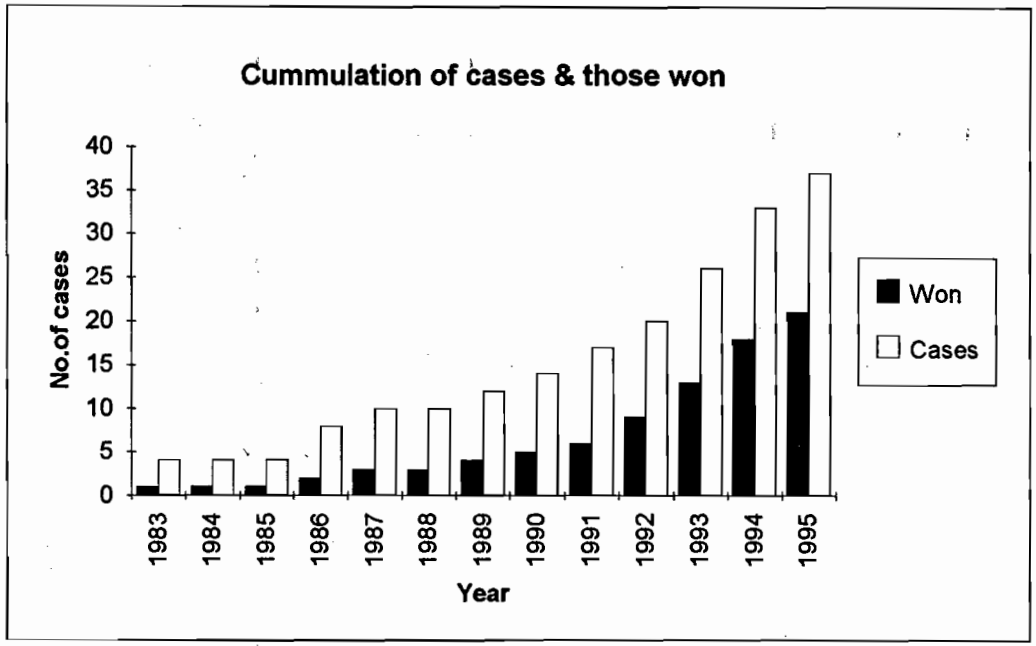
Anti-Dumping and Countervailing Stocks and Flows

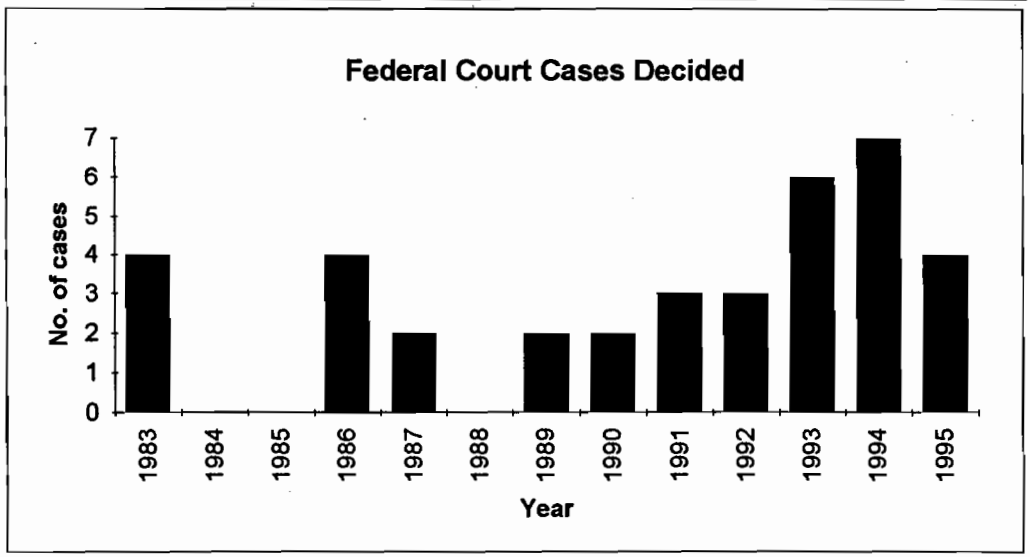
Appendix 2.6

	Outstanding actions	%Change in GDP Manuf*10	New action taken	Old actions revoked	GDP Manufacturing
1979	29	50	25	0	
1980	56	20	28	1	49395
1981	78	20.54	23	1	50409
1982	104	24.75	26	0	51657
1983	157	-82.23	57	4	47409
1984	183	15.02	41	17	48122
1985	188	51.28	18	13	50589
1986	165	17.97	27	50	51498
1987	109	11.07	4	60	52068
1988	50	59.88	7	66	55186
1989	22	52.39	15	43	58077
1990	19	-15.20	5	8	57194
1991	27	-18.92	12	4	56112
1992	69	-17.45	43	1	55133
1993	93	30.54	27	3	56817
1994	na		na	na	
1995	na		na	na	



Case	Year of Decision	Authority lost	Authority won	No. of Decsions	Year won	Year Dec.	Year Decided	Cumm. Won	Cumm. Cases	Year Decided	Cases
Tasman Timber	1983	1	0	1			1983	1	4	1983	4
Homebush Bay Timbers	1983	1	0	1			1984	1	4	1984	0
Feltex Reidrubber	1983	0	1	1			1985	1	4	1985	0
McDowell and Partners	1983	1	0	1	1	4	1986	2	8	1986	4
Tredex Australia	1986	1	0	1			1987	3	10	1987	2
GTE (Aust)	1986	1	0	1			1988	3	10	1988	0
J Wattie Canneries	1986	0	1	1			1989	4	12	1989	2
Wattmaster Alco	1986	1	0	1	1	4	1990	5	14	1990	2
Kanthal Australia	1987	1	0	1			1991	6	17	1991	3
Wattie Canneries	1987	0	1	1	1	2	1992	9	20	1992	3
Midland Metals	1989	0	1	1			1993	13	26	1993	6
Swan Portland Cement	1989	1	0	1	1	2	1994	18	33	1994	7
Marine Power Australia	1990	0	1	1			1995	21	37	1995	4
Atlas Air Australia	1990	1	0	1	1	2					
Swan Portland Cement	1991	1	0	1							
CA Ford	1991	1	0	1							
Irish Country Bacon	1991	0	1	1	1	3					
ICI Operations	1992	0	1	1							
Enichem Anic	1992	0	1	1							
Enichem Anic	1992	0	1	1	3	3					
Powerlift (Nissan)	1993	1	0	1							
Hyster Australia	1993	1	0	1							
Stainless Tube Mills	1993	0	1	1							
Du Pont	1993	0	1	1	3	5					
La Doria	1994	0	1	1							
CA Ford	1993	0	1	1							
Darling Downs Bacon	1994	0	1	1							
Pilkington (Australia)	1994	1	0	1							
Pilkington	1994	0	0	1							
Heinz Company	1994	0	1	1							
Degussa	1994	1	0	1							
Vredelco Food Industries	1994	0	1	1	5	7					
Pilkington (Australia)	1995	1	0	1							
Rocklea Spinning Mills	1995	0	1	1							
Metal Manufacturers	1995	0	1	1							
Castle Bacon	1995	0	1	1	3	4					


Cummulation of cases & those won
No.of cases
40
35
30
25
20
15
10
5
0
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
Year
Won
Cases


Federal Court Cases Decided
No. of cases
7
6
5
4
3
2
1
0
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
Year

Appendix 5.2.4.6 B

ANTI-DUMPING & COUNTERVAILING CASES 1982-83 TO 1992-93 BASED ON AUSTRALIA'S SUBMISSION TO OECD

COMMODITY	Cntry	T	ACN Date1	I	I_3D	I_4D	ACN Date2	PREL ACT	TRI	Prov Meas	Prov Date	INIT2 Date	ACN Date3	Final ACN	Final Date	TR	FY
Frozen Pork	CAN	D	92/08/19	21	211	2115	92/11/27	T									93
CANNED HAM	DENM	D	85/04/12	21	211	2117	85/12/06	P		Y	85/12/06		86/03/14	G	86/03/13		86
CANNED HAM	DENM	D	90/04/26	21	211	2117	90/08/28	P		Y	90/08/29	90/09/13		T	91/01/29	O	91
CANNED HAM	IRE	D	85/04/12	21	211	2117	85/09/20	U			85/09/13						86
CANNED HAM	IRE	D	90/04/26	21	211	2117	90/08/28	P		Y	90/08/29	90/09/13	91/01/29	G	91/01/29		91
CANNED HAM	NETH	D	88/07/09	21	211	2117	88/09/26	U			88/09/20						89
CANNED HAM	NETH	D	90/05/16	21	211	2117	90/08/28	P		Y	90/08/29	90/09/13	91/01/29	G	91/01/29		91
MILK, EVAPORATED	CAN	D	88/09/23	21	212	2121	89/01/21	P		Y	89/01/22		89/06/20	G	89/06/14		89
ORANGE JUICE, FROZEN CONCENTRATED	BRAZ	D	86/09/10	21	213	2131	86/11/17	P		Y	86/11/17		87/07/09	G	87/07/08		88
ORANGE JUICE, FROZEN CONCENTRATED	BRAZ	D	91/01/29	21	213	2131	91/04/24	T	D	N							91
CANNED PEACHES & CANNED PEARS	CHIN	D	91/02/27	21	213	2131	91/06/27	P		Y	91/06/27	91/07/18		G	91/11/20		92
CANNED PEACHES & CANNED PEARS	CHIN	D	91/02/27	21	213	2131	91/06/27	T	D	Y	91/10/01	91/09/26		G	92/02/19		92
PEANUTS	CHIN	D	91/09/25	21	213	2131	91/12/24	T	L	N		92/03/26		T	92/03/26	I	92
GLACE CHERRIES	*FRAN*	*D*	*91/07/30*	*21*	*213*	2131	*91/11/07*	*P*	*I*	*Y*		*92/03/19*		G			92
CANNED PEACHES	GREE	D	91/02/27	21	213	2131	91/06/27	T	L	Y	91/10/01	91/09/26		T	92/02/19	I	92
CHERRIES IN BRINE	ITAL	D		21	213	2131	84/02/10	P		Y	84/02/10		84/07/02	G	84/06/26		84
GLACE CHERRIES	*ITAL*	*D*	*91/07/30*	*21*	*213*	2131	*91/11/07*	*P*	*I*	*Y*		*92/03/19*		G			92
PECAN NUTS	SAFR	D	85/08/09	21	213	2131	85/10/10	T									86
CANNED PEACHES & CANNED PEARS	SPAI	D	91/02/27	21	213	2131	91/06/27	T	L	Y	91/10/01	91/09/26		T	92/02/19	I	92
CANNED PEACHES & CANNED PEARS	SPAI	D	91/02/27	21	213	2131	91/06/27	T	D	Y	91/10/01	91/09/26		T	92/02/19	I	92
FRUIT, DRIED VINE	USA	D	85/03/08	21	213	2131	85/06/06	P		Y	85/06/06		85/11/29	T	85/11/29		86
ALMONDS	USA	D	86/02/24	21	213	2131	86/06/25	T									86
ASPARAGUS	CAN	D		21	213	2132	83/02/28	P		Y	83/02/28		83/06/20	T	83/06/20		83
CANNED WHOLE TOMATOES	*CHIN*	*D*	*91/08/27*	*21*	*213*	*2132*	*91/12/05*	*P*		*Y*		*92/04/13*		*G*			92
CANNED WHOLE TOMATOES	*ITAL*	*D*	*91/08/27*	*21*	*213*	*2132*	*91/12/05*	*P*		*Y*		*92/04/13*		*G*			92
FROZEN PEAS	NZ	D	86/02/05	21	213	2132	86/08/21	P		Y	86/08/21		88/01/06	G	88/01/06		88
CANNED WHOLE TOMATOES	*SPAI*	*D*	*91/08/27*	*21*	*213*	*2132*	*91/12/05*	*P*		*Y*		*92/04/13*		*T*			92
CANNED WHOLE TOMATOES	*THAI*	*D*	*91/08/27*	*21*	*213*	*2132*	*91/12/05*	*P*		*Y*		*92/04/13*		*T*			92
SOYA BEAN OIL, EPOXIDISED	FGMY	D		21	214	2140	83/05/18	P		N			84/03/02	T	84/03/02		84
SOYA BEAN OIL, EPOXIDISED	NETH	D		21	214	2140	83/05/18	P		N			84/03/02	T	84/03/02		84
DEXTROSE MONOHYDRATE	ASTA	D		21	215	2152	83/08/02	P		N			84/05/24	G	84/05/21		84
DEXTROSE MONOHYDRATE	ITAL	D	84/09/28	21	215	2152	85/03/29	P		Y	85/03/29		85/10/30	G	85/10/21		86
DEXTROSE MONOHYDRATE	SING	D	84/09/28	21	215	2152	85/03/29	P		Y	85/03/29		85/10/30	G	85/10/21		86
DEXTROSE MONOHYDRATE	UK	D		21	215	2152	83/08/02	P		N			84/05/24	G	84/05/21		84
PASTA PRODUCTS	ITAL	D	83/12/23	21	215	2153	84/02/19	P		Y	84/02/19		84/07/27	G	84/07/25		85
PASTA PRODUCTS	ITAL	D	89/11/22	21	215	2153	90/03/26	P		Y	90/03/29	90/04/05		T	90/08/29	I	91
COATING CRUMBS	UK	D		21	215	2153	83/08/12	P		N			84/05/08	G	84/05/03		84
DRIED EGG WHITE	*ITAL*	*D*	*91/08/09*	*21*	*217*	2176	*91/11/18*	*T*		*N*							92
DRIED EGG WHITE	*NETH*	*D*	*91/08/09*	*21*	*217*	2176	*91/11/18*	*P*		*Y*		*92/04/02*		G			92

DRIED EGG WHITE	*SWED*	*D*	*91/08/09*	*21*	*217*	2176	*91/11/18*	*P*		Y		*92/04/02*		T			92
YARNS, NYLON FLAT	ISRA	D		23	234	2343	82/12/08	P		Y	82/12/08		83/10/04	G	83/09/26		84
YARN, TEXTURED POLYESTER	JAP	D		23	234	2343	83/04/11	P		Y	83/04/11		83/05/12	T	83/05/12		83
YARN, TEXTURED POLYESTER	TAIW	D		23	234	2343	83/04/11	P		Y	83/04/11		83/08/18	T	83/08/18		84
YARN, TEXTURED POLYESTER	USA	D		23	234	2343	83/04/11	P		Y	83/04/11		83/08/18	T	83/08/18		84
NYLON (POLYAMIDE) YARN	USA	D	86/03/19	23	234	2343	86/09/03	P		N			87/06/29	T	87/06/29		87
FIRE HOSE	FGMY	D		23	234	2345	82/01/06	P		Y	82/01/27		83/08/02	T	83/08/02		84
YARNS, NYLON (POLYAMIDE TEXTURED)	FRAN	D		23	234	2345	82/05/06	P		Y	82/08/26		83/05/24	U	83/05/16		83
NYLON TYRE CORD FABRIC	RKOR	D		23	234	2345	82/03/03	P		Y	82/02/24		83/01/02	G	82/12/23		83
YARN, COMBED COTTON & POLYESTER YARN	RKOR	D		23	234	2345	82/04/05	P		Y	82/06/25		82/11/04	G	82/11/03		83
YARN, COMBED COTTON & POLYESTER YARN	TAIW	D		23	234	2345	82/04/05	P		Y	82/06/25		82/11/04	G	82/11/03		83
YARNS, NYLON (POLYAMIDE TEXTURED)	TAIW	D		23	234	2345	82/05/06	P		Y	82/08/26		83/11/19	G	83/01/07		83
WOVEN WORSTED CREPE & FLANNEL	CHIN	D		23	234	2346	82/07/27	P		N			83/01/07	T	83/01/07		83
WOVEN WORSTED FABRIC	CHIN	D	86/09/16	23	234	2346	87/04/15	P		Y	87/04/15		88/05/18	G	88/05/18		88
WOVEN POLYESTER WOOL FABRIC	CZEC	D	84/05/28	23	234	2347	84/07/18	T									85
WOVEN FABRIC	ITAL	D		23	234	2347	83/06/03	P		N			83/12/02	T	83/12/02		84
TUFTED NYLON CARPET	BLGM	D	85/09/11	23	235	2352	85/11/27	T									86
WOVEN POLYPROPYLENEPRIMARY CARPET BACKING	COMB	D	90/01/28	23	235	2352	80/05/28	T	L	N							80
WOVEN COATED POLYETHYLENE FABRIC	RKOR	D		23	235	2352	81/08/13	P		Y	81/08/13		82/11/22	G	82/11/11		83
WOVEN POLYPROPYLENEPRIMARY CARPET BACKING	UK	D	90/01/28	23	235	2352	80/05/28	T	I	N							80
TWINE, POLYPROPYLENE BALER	IRE	D		23	235	2355	82/10/06	P		N			83/03/25	T	83/03/25		83
TWINE, POLYPOPYLENE BALER	NZ	D		23	235	2355	82/07/21	P		N			83/03/25	T	83/03/25		83
TWINE, POLYPOPYLENE BALER	PORT	D		23	235	2355	82/07/21	P		N			83/03/25	T	83/03/25		83
TWINE, POLYPOPYLENE BALER	UK	D		23	235	2355	82/07/21	P		N			83/03/25	T	83/03/25		83
POLYPROPYLENE FABRIC	ASTA	D	89/03/17	23	235	2356	89/07/14	P		Y	89/07/15		89/12/13	T	89/12/13	O	90
PLASTER OF PARIS BANDAGES	FGMY	D	91/01/18	23	235	2356	91/05/23	P		Y	91/05/18	91/06/12		G	91/10/23		92
OVERALLS, MALE INDUSTRIAL	CHIN	D		24	245	2451	83/08/12	P		N			84/05/09	G	84/05/04		84
FOOTWEAR	TAIW	D		24	246	2460	83/04/21	P		Y	83/07/07		83/08/02	T	83/02/08		83
TIMBER, SQUARE DRESSED STRUCTURAL SOFTWOOI	NZ	D		25	253	2532	82/08/09	P		N			85/10/28	T	85/10/28		86
FIBREGLASS COATED PLYWOOD SANDWICH PANELS	NZ	D		25	253	2533	82/10/22	P		N			83/04/29	T	83/04/29		83
HARDBOARD PAINTED	SWED	D		25	253	2533	83/09/22	P		N			84/05/15	G	84/05/07		84
PAPER, UNCOATED WOODFREE	BRAZ	D		26	263	2631	82/11/22	P		N			83/05/16	T	83/05/16		83
FACSIMILE & OTHER THERMAL COATED PAPERS	JAP	D	91/06/19	26	263	2631	91/09/27	T	L	N		91/10/24		T	92/01/02	L	92
FACSIMILE & OTHER THERMAL COATED PAPERS	RKOR	D	91/06/19	26	263	2631	91/09/27	T	L	N							92
PAPER, UNCOATED WOODFREE	SAFR	D	85/05/31	26	263	2631	85/08/01	P		Y	85/08/01		86/01/28	U	86/01/08		86
KRAFT LINERBOARD	USA	D		26	263	2631	82/05/20	P		N			24/08/24	T	82/08/24		83
PAPER, UNCOATED WOODFREE	USA	D		26	263	2631	82/11/22	P		N			83/05/16	T	83/05/16		83
KRAFT LINERBOARD	USA	D		26	263	2631	83/06/22	P		N			83/11/21	T	83/11/21		84
FACSIMILE & OTHER THERMAL COATED PAPERS	USA	D	91/06/19	26	263	2631	91/09/27	T	D	N							92
BAGS, WOVEN POLYOLEFIN	CHIN	D		26	263	2632	82/06/06	P		Y	82/06/06		82/10/05	U	82/09/21		83
WOVEN POLYPROPYLENE POLYETHENE SACKS & BAG	CHIN	D	89/04/03	26	263	2632	89/07/28	T									90
WOVEN POLYPROPYLENE POLYETHENE SACKS & BAG	INDO	D	89/04/03	26	263	2632	89/07/28	T									90
BAGS, WOVEN POLYOLEFIN	PHIL	D	84/01/23	26	263	2632	84/03/19	P		Y	84/03/19		84/08/07	T	84/07/08		85
WOVEN POLYPROPYLENE POLYETHENE SACKS & BAG	PHIL	D	89/04/03	26	263	2632	89/07/28	T									90

WOVEN POLYPROPYLENE POLYETHENE SACKS & BAG	TAIW	D	89/04/03	26	263	2632	89/07/28	T										90
BAGS, WOVEN POLYOLEFIN	THAI	D	85/01/14	26	263	2632	85/03/29	T										85
WOVEN POLYPROPYLENE POLYETHENE SACKS & BAG	THAI	D	89/04/03	26	263	2632	89/07/28	T										90
PAPER CUPS, COLD DRINK	CAN	D		26	263	2635	83/10/07	P		Y	83/10/07		84/04/10	T	84/04/10			84
PAPER CUPS, COLD DRINK	USA	D		26	263	2635	83/10/07	P		Y	83/10/07		84/04/10	T	84/04/10			84
EXERCISE BOOKS (& SPIRAL BOUND BOOKS)	INDO	D	91/07/10	26	264	2643	91/10/18	T	I	N								92
NITROGENOUS SUBSTANCES (FERT)	CAN	D		27	275	2751	*82/07/01*	R					83/01/10	G	82/12/17			83
UREA	CAN	D	86/07/15	27	275	2751	86/11/04	P		N			87/10/16	G	87/10/15			88
UREA	MLAY	D	86/07/15	27	275	2751	86/11/04	P		N			87/10/16	G	87/10/15			88
UREA	NZ	D	87/12/31	27	275	2751	88/06/17	P		Y	88/06/17		88/10/28	T	88/10/28			89
UREA	*NZ*	*D*		*27*	*275*	*2751*	*89/01/02*	*P*		*Y*			*89/04/02*	*T*				89
DIAMMONIUM PHOSPHATE (DAP)	PHIL	D	85/11/28	27	275	2751	86/05/28	T										86
NITROGENOUS SUBSTANCES (FERT)	QATA	D		27	275	2751	*82/07/01*	P					83/01/10	G	82/12/17			83
NITROGENOUS SUBSTANCES (FERT)	USA	D		27	275	2751	*82/07/01*	R					83/01/10	G	82/12/17			83
TRIPLE SUPERPHOSPHATE	USA	D		27	275	2751	83/02/14	P		N			83/09/06	G	83/08/25			84
DIAMMONIUM PHOSPHATE	USA	D	85/03/21	27	275	2751	85/07/24	P		Y	85/07/24		85/12/20	G	85/12/19			86
MONAMMONIUM PHOSPHATE	USA	D	85/03/21	27	275	2751	85/07/24	P		Y	85/07/24		85/12/20	G	85/12/19			86
UREA	USA	D	86/07/15	27	275	2751	86/11/04	P		N			87/10/16	G	87/10/15			88
NITROGENOUS SUBSTANCES (FERT)	USSR	D		27	275	2751	*82/07/01*	R					83/01/10	G	82/12/17			83
LOW DENSITY POLYETHYLENE	ARGE	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
PVC RESIN	ARGE	D	91/05/08	27	275	2753	91/08/16	P		Y	91/08/16	91/09/04		T	92/01/24	O		92
PVC HOMOPOLYMER	BLGM	D		27	275	2753	82/09/14	P		Y	82/09/14		83/09/13	G	83/08/31			84
POLYETHYLENE RESIN, LOW DENSITY	BLGM	D		27	275	2753	83/07/07	P		N			83/11/23	T	83/11/23			84
PVC RESIN	BRAZ	D	91/05/08	27	275	2753	91/08/16	P		Y	91/08/16	91/09/04		G	92/01/24			92
LOW DENSITY POLYETHYLENE	BRAZ	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
PVC HOMOPOLYMER	CAN	D		27	275	2753	81/11/17	P		Y	82/01/11		82/11/09	G	82/11/03			83
POLYSTYRENE	CAN	D		27	275	2753	82/06/24	P		Y	82/06/24		82/10/20	T	82/10/20			83
POLYETHYLENE RESIN, LOW DENSITY	CAN	D		27	275	2753	80/05/08	P		Y	82/02/24		82/10/26	U	82/10/14			83
POLYSTYRENE	CAN	D	83/12/30	27	275	2753	84/03/02	P		N			84/07/18	G	84/07/12			85
LOW DENSITY POLYETHYLENE	CAN	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
Polyvinyl Chloride	CAN	D	92/02/05	27	275	2753	92/05/15	P		Y			92/09/24	G				93
Polyvinyl Chloride	CHIN	D	92/02/05	27	275	2753	92/05/15	P		Y			92/09/24	G				93
PVC HOMOPOLYMER	FGMY	D		27	275	2753	83/10/31	P		N			84/04/06	G	84/04/06			84
POLYSTYRENE	FGMY	D	83/12/30	27	275	2753	84/03/02	P		N			84/07/18	G	84/07/12			85
PVC HOMOPOLYMER	FINL	D	85/03/09	27	275	2753	85/10/24	P		Y	85/10/24		86/04/09	G	86/04/01			86
LOW DENSITY POLYETHYLENE	FINL	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
POLYETHYLENE RESIN, LOW DENSITY	FRAN	D		27	275	2753	80/05/08	P		N			83/06/20	T	83/06/20			83
PVC HOMOPOLYMER	FRAN	D		27	275	2753	83/10/31	P		N			84/04/06	G	84/04/04			84
POLYSTYRENE	FRAN	D	83/12/30	27	275	2753	84/03/02	P		N			84/07/18	G	84/07/12			85
LOW DENSITY POLYETHYLENE	FRAN	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
Polyvinyl Chloride	FRAN	D	92/02/05	27	275	2753	92/05/15	P		Y			92/09/24	G				93
Expandable Polystyrene	FRAN	D	92/02/19	27	275	2753	92/05/29	P		Y			92/10/08	T				93
PVC HOMOPOLYMER	HGRY	D		27	275	2753	82/09/14	P		Y	82/09/14		83/11/09	G	83/11/03			84
PVC RESIN	HGRY	D	91/05/08	27	275	2753	91/08/16	T	D	N								92

HIGH DENSITY POLYETHYLENE	HONG	D	91/11/27	27	275	2753	92/03/26	T	O	N								92
High Density Polyethylene	HONG	D	91/11/27	27	275	2753	92/03/27	T										92
PVC HOMOPOLYMER	ISRA	D		27	275	2753	82/09/14	P		Y	82/09/14		83/09/13	G	83/08/31			84
LOW DENSITY POLYETHYLENE	ISRA	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
PVC RESIN	ISRA	D	91/05/08	27	275	2753	91/08/16	P		Y	91/08/16	91/09/04		T	92/01/24	O		92
PVC HOMOPHOLYMER	ITAL	D	84/12/24	27	275	2753	85/04/03	P		Y	85/04/03		86/03/27	T	86/03/27			86
POLYETHYLENE RESIN, LOW DENSITY	ITAL	D	85/01/11	27	275	2753	85/08/14	T										86
URETHANE PREPOLYMERS	ITAL	D	85/09/12	27	275	2753	85/11/29	T										86
LOW DENSITY POLYETHYLENE	ITAL	D	90/09/26	27	275	2753	91/01/31	T	L	Y	91/04/27	91/05/08		G	91/09/18			92
High Density Polyethylene	ITAL	D	91/11/27	27	275	2753	92/03/27	P		Y			92/08/03	T				93
RUBBER MODIFIED POLYPROYLENE	JAP	D	91/02/27	27	275	2753	91/06/27	T	I	N								91
LOW DENSITY POLYETHYLENE	JAP	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
Polyvinyl Chloride	JAP	D	92/02/05	27	275	2753	92/05/15	P		Y			92/09/24	G				93
High Density Polyethylene	JAP	D	91/11/27	27	275	2753	92/03/27	P		Y			92/08/03	T				93
PVC RESIN	MEXI	D	91/05/08	27	275	2753	91/08/16	P		Y	91/08/16	91/09/04		G	92/01/24			92
POLYOLS, PROPYLENE OXIDE BASED POLYETHER	NETH	D		27	275	2753	82/12/08	P		N			83/05/17	T	83/05/17			83
PVC HOMOPOLYMER	NETH	D		27	275	2753	83/10/31	P		N			84/04/06	T	84/04/06			84
POLYOLS, PROPYLENE OXIDE BASED POLYETHER	NETH	D	86/02/24	27	275	2753	86/07/08	T										87
Polyvinyl Chloride	NETH	D	92/02/05	27	275	2753	92/05/15	T										92
Polyvinyl Chloride	NWAY	D	92/02/05	27	275	2753	92/05/15	P		Y			92/09/24	G				93
LIQUID EPOXY RESINS	NZ	D		27	275	2753	81/10/23	P		N			82/12/24	T	82/12/24			83
PVC RESIN	POLA	D	91/05/08	27	275	2753	91/08/16	T	D	N								92
POLYETHYLENE RESIN, LOW DENSITY	QATA	D		27	275	2753	82/06/04	P		N			83/10/17	T	83/10/17			84
POLYETHYLENE RESIN, LOW DENSITY	QATA	D	85/03/01	27	275	2753	85/08/28	P		Y	85/08/28		85/11/08	T	85/11/08			86
POLYETHYLENE, LOW DENSITY	QATA	D	86/08/13	27	275	2753	87/02/09	P		Y	87/02/09		88/03/04	T	88/03/04			88
LOW DENSITY POLYETHYLENE	QATA	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
ABS THERMOPLASTIC COMPOUND	RKOR	D		27	275	2753	82/01/25	P		N			83/04/19	G	83/04/05			83
POLYSTYRENE	RKOR	D		27	275	2753	82/06/24	P		Y	82/06/24		83/05/25	T	83/05/25			83
PVC HOMOPOLYMER	RKOR	D		27	275	2753	83/04/07	P		Y	83/04/07		83/09/13	G	83/08/31			84
PVC RESIN	RKOR	D	83/12/22	27	275	2753	84/02/17	P		N			84/08/06	T	84/08/06			85
POLYSTYRENE	RKOR	D	84/07/31	27	275	2753	85/03/12	T										85
LOW DENSITY POLYETHYLENE	RKOR	D	90/09/26	27	275	2753	91/01/31	T	L	Y	91/04/27	91/05/08		G	91/09/18			92
PVC RESIN	RKOR	D	91/05/08	27	275	2753	91/08/16	T	L	N								92
Expandable Polystyrene	RKOR	D	92/02/19	27	275	2753	92/05/29	P		Y			92/10/08	G				93
High Density Polyethylene	RKOR	D	91/11/27	27	275	2753	92/03/27	P		Y			92/08/03	G				93
PVC HOMOPOLYMER	ROUM	D	86/05/14	27	275	2753	86/08/14	P		Y	86/08/14		87/04/13	T	87/04/13			87
Polyvinyl Chloride	ROUM	D	92/02/05	27	275	2753	92/05/15	P		Y			92/09/24	T				93
High Density Polyethylene	SAUD	D	91/11/27	27	275	2753	92/03/27	P		Y			92/08/03	G				93
Polyvinyl Chloride	SAUD	D	92/02/05	27	275	2753	92/05/15	P		Y			92/09/24	G				93
Expandable Polystyrene	SAUD	D	92/02/19	27	275	2753	92/05/29	P		Y			92/10/08	T				93
LOW DENSITY POLYETHYLENE	SING	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L		92
PVC RESIN	SING	D	91/05/08	27	275	2753	91/08/16	T	D	N								92
Expandable Polystyrene	SING	D	92/02/19	27	275	2753	92/05/29	P		Y			92/10/08	G				93
High Density Polyethylene	SING	D	91/11/27	27	275	2753	92/03/27	P		Y			92/08/03	G				93

PVC HOMOPOLYMER	SPAI	D		27	275	2753	83/10/31	P		N			84/04/06	G	84/04/06		84
LOW DENSITY POLYETHYLENE	SWED	D	90/09/26	27	275	2753	91/01/31	T	L	Y	91/04/27	91/05/08		G	91/09/18		92
Polyvinyl Chloride	SWED	D	92/02/05	27	275	2753	92/05/15	T									92
High Density Polyethylene	SWED	D	91/11/27	27	275	2753	92/03/27	P		Y			92/08/03	T			93
PVC HOMOPOLYMER	TAIW	D		27	275	2753	83/04/09	P		Y	83/04/09		83/09/13	G	83/08/31		84
POLYSTYRENE	TAIW	D	83/12/30	27	275	2753	84/03/02	P		N			84/07/18	T	84/07/18		85
VINYL ACETATE MONOMER	TAIW	D	84/09/06	27	275	2753	84/11/15	P		N			85/03/28	T	85/03/28		85
PVC RESIN	TAIW	D	91/05/08	27	275	2753	91/08/16	P		Y	91/08/16	91/09/04		T	92/01/24	O	92
LOW DENSITY POLYETHYLENE	TAIW	D	90/09/26	27	275	2753	91/01/31	T	L	Y	91/04/27	91/05/08		G	91/09/18		92
Expandable Polystyrene	TAIW	D	92/02/19	27	275	2753	92/05/29	T									92
LOW DENSITY POLYETHYLENE	THAI	D	90/09/26	27	275	2753	91/01/31	T	L	Y	91/04/27	91/05/08		G	91/09/18		92
Polyvinyl Chloride	THAI	D	92/02/05	27	275	2753	92/05/15	P		Y			92/09/24	G			93
High Density Polyethylene	THAI	D	91/11/27	27	275	2753	92/03/27	P		Y			92/08/03	T			93
PVC HOMOPOLYMER	UK	D		27	275	2753	83/10/31	P		N			84/04/06	G	84/04/06		84
VINYL ACETATE MONOMER	UK	D		27	275	2753	83/03/31	P		Y	83/03/31		83/11/30	U	83/11/06		84
POLYMERIC PLASTICISER	UK	D	85/09/13	27	275	2753	85/11/07	T									86
POLYOLS, PROPYLENE OXIDE BASED POLYETHER	UK	D	86/02/24	27	275	2753	86/07/08	T									87
Expandable Polystyrene	UK	D	92/02/19	27	275	2753	92/05/29	P		Y			92/10/08	T			93
POLYETHYLENE RESIN, LOW DENSITY	USA	D		27	275	2753	80/05/08	P		Y	82/02/24		82/02/24	G	82/10/21		83
PVC HOMOPOLYMER	USA	D		27	275	2753	80/05/08	P		Y	82/01/11		81/11/09	G	82/11/03		83
URETHANE PREPOLYMERS	USA	D	85/09/12	27	275	2753	85/11/29	T									86
POLYOLS, PROPYLENE OXIDE BASED POLYETHER	USA	D	86/02/24	27	275	2753	86/07/08	P		Y	86/07/08		86/12/23	T	86/12/23		87
PVC RESIN	USA	D	91/05/08	27	275	2753	91/08/16	P		Y	91/08/16	91/09/04		G	92/01/24		92
LOW DENSITY POLYETHYLENE	USA	D	90/09/26	27	275	2753	91/01/31	P		Y	91/01/31	91/02/13		T	91/07/12	L	92
High Density Polyethylene	USA	D	91/11/27	27	275	2753	92/03/27	P		Y			92/08/03	T			93
HIGH DENSITY POLYETHYLENE	USSR	D	91/11/27	27	275	2753	92/03/26	T	O	N							92
High Density Polyethylene	USSR	D	91/11/27	27	275	2753	92/03/27	T									92
LOW DENSITY POLYETHYLENE	YUGO	D	90/09/26	27	275	2753	91/01/31	T	L	Y	91/04/27	91/05/08		G	91/09/18		92
DICHLOROPHENOXYACETIC ACID	ARGE	D	87/07/17	27	275	2754	87/11/13	T									88
PHTHALIC ANHYDRIDE	ARGE	D	91/10/23	27	275	2754	92/01/31	T	I								92
TRIETHANOLAMINE	BLGM	D		27	275	2754	83/03/01	P		Y	83/03/01		83/05/09	G	83/04/22		83
ETHYLENE GLYCOL MONOBUTYL ETHER	BLGM	D	86/01/28	27	275	2754	86/04/15	P		Y	86/04/15		86/09/29	T	86/09/29		87
LEVAMISOLE HYDROCHLORIDE	BLGM	D	87/12/27	27	275	2754	88/06/21	P		Y	88/06/22		88/11/16	U	88/11/01		89
DIOCTYL PHTHALATE	BLGM	D	91/01/31	27	275	2754	91/06/03	P		Y	91/05/31	91/06/19		G	91/11/27		92
PHTHALIC ANHYDRIDE	BLGM	D	91/10/23	27	275	2754	92/01/31	T	I								92
TRIETHANOLAMINE	BRAZ	D		27	275	2754	82/11/04	P		Y	82/11/04		83/05/09	G	83/04/22		83
ALKYL PHENOL ETHOXYLATES	BRAZ	D		27	275	2754	83/03/14	P		N			83/10/25	T	83/10/25		84
LEVAMISOLE HYDROCHLORIDE	BRAZ	D	87/12/27	27	275	2754	88/06/21	T									88
TRIETHANOLAMINE AND MIXTURES	BRAZ	D	91/05/22	27	275	2754	91/08/30	P		Y	91/08/31	91/09/19		G	92/02/19		92
PHTHALIC ANHYDRIDE	BRAZ	D	91/10/23	27	275	2754	92/01/31	T	I								92
MIXED ETHANOLAMINE	CAN	D		27	275	2754	81/08/28	P		Y	82/02/05		83/01/19	T	83/01/19		83
TRIETHANOLAMINE	CAN	D		27	275	2754	81/08/28	P		Y	82/02/05		83/01/19	T	83/01/19		83
PHENOL	CHIN	D		27	275	2754	82/04/28	P		Y	82/09/10		83/11/19	G	83/01/07		83
SODIUM TRIPOLYPHOSPHATE	CHIN	D		27	275	2754	82/01/06	P		Y	82/01/06		82/09/17	G	82/09/07		83

LEVAMISALE HYDROCHLORIDE	CHIN	D	86/07/15	27	276	2754	86/09/17	T									87
LEVAMISOLE HYDROCHLORIDE	CHIN	D	88/03/31	27	275	2754	88/06/21	P		Y	88/06/22		88/11/16	G	88/11/10		89
DIBUTYL PHTHALATE	CHIN	D	91/05/08	27	275	2754	91/08/14	P		Y	91/08/15	91/09/04		U	92/01/24		92
SODIUM LAURYL ETHER SULPHATE	FGMY	D		27	275	2754	82/09/13	P		N			83/07/22	G	83/06/30		83
TRIETHANOLAMINE	FGMY	D		27	275	2754	81/08/28	P		Y	82/02/05		83/01/19	U	82/12/24		83
ALKYL PHENOL ETHOXYLATES	FGMY	D		27	275	2754	83/03/14	P		N			83/10/25	T	83/10/25		84
PIGMENTS, TITANIUM DIOXIDE	FGMY	D	84/08/07	27	275	2754	84/10/16	T									85
2,4-DICHLOROPHENOXYACETIC DERIVIATIVES	FGMY	D	85/07/22	27	275	2754	85/10/24	P		Y	85/10/24		86/03/13	T	86/03/13		86
LEVAMISOLE HYDROCHLORIDE	FGMY	D	87/12/27	27	275	2754	88/06/21	P		Y	88/06/22		88/11/16	G	88/11/10		89
DIOCTYL PHTHALATE	FGMY	D	91/01/31	27	275	2754	91/06/03	P		Y	91/05/31	91/06/19		G	91/11/27		92
Triethanolamine (85 and 99 per cent pure)	FGMY	D	92/07/17	27	275	2754	92/10/25	P		Y			93/02/26	T			93
MIXED ETHANOLAMINE	FRAN	D		27	275	2754	82/02/05	P		Y	82/02/05		83/01/19	G	83/01/07		83
SORBITOL	FRAN	D		27	275	2754	81/09/09	P		N			82/11/09	G	82/11/03		83
TRIETHANOLAMINE	FRAN	D		27	275	2754	82/02/05	P		Y	82/02/05		83/01/19	G	83/01/07		83
PIGMENTS, FLUSHED	FRAN	D	86/09/22	27	275	2754	87/06/12	T									87
SORBITOL 70% SOLUTION	FRAN	D	90/02/01	27	275	2754	90/06/01	P		Y	90/06/07	90/06/28	90/10/10	G	90/10/25		91
DIOCTYL PHTHALATE	FRAN	D	91/01/31	27	275	2754	91/06/03	P		Y	91/05/31	91/06/19		G	91/11/27		92
Triethanolamine (85 and 99 per cent pure)	FRAN	D	92/07/17	27	275	2754	92/10/25	T						T			93
LEVAMISOLE HYDROCHLORIDE	HONG	D	87/12/27	27	275	2754	88/06/21	P		Y	88/06/22		88/11/16	G	88/11/10		89
LINEAR ALKYLBENZENE SULPHONIC ACID	ISRA	D	86/02/21	27	275	2754	86/12/12	T									87
PHTHALIC ANHYDRIDE	*ISRA*	*D*	*91/10/23*	*27*	*275*	*2754*	*92/01/31*	*P*		*Y*			*92/06/19*	*G*			92
DIBUTYL PHTHALATE	ITAL	D	91/05/08	27	275	2754	91/08/14	P		Y	91/08/15	91/09/04		G	92/01/24		92
SORBITOL	JAP	D		27	275	2754	81/09/09	P		N			82/11/09	G	82/11/03		83
TOLUENE	JAP	D		27	275	2754	82/01/20	P		N			83/05/05	G	83/04/18		83
XYLENE	JAP	D		27	275	2754	82/01/20	P		N			83/05/05	G	83/04/18		83
PARADICHLOROBENZENE	JAP	D		27	275	2754	82/01/06	P		N			82/10/20	T	82/10/20		83
PARADICHLOROBENZENE	JAP	D		27	275	2754	83/03/18	P		N			83/08/10	T	83/08/10		84
Dioctyl Phthalate	JAP	D	92/08/21	27	275	2754	92/11/29	P		Y			93/04/05	T			93
ALKYL PHENOL ETHOXYLATES	MEXI	D		27	275	2754	83/03/14	P		N			83/10/25	T	83/10/25		84
SORBITOL 70% SOLUTION	MEXI	D	90/02/01	27	275	2754	90/06/01	P		Y	90/06/07	90/06/28	90/10/10	G	90/10/25		91
Triethanolamine (85 and 99 per cent pure)	MEXI	D	92/07/17	27	275	2754	92/10/25	P		Y			93/02/26	T			93
STEARIC ACID	MLAY	D	85/01/21	27	275	2754	85/06/28	P		Y	85/06/28		85/11/13	T	85/11/13		86
SODIUM LAURYL ETHER SULPHATE	NETH	D		27	275	2754	82/09/13	P		N			83/07/22	G	83/06/30		83
TRIETHANOLAMINE	NETH	D		27	275	2754	82/11/04	P		Y	82/11/04		83/05/09	G	83/04/22		83
TRIETHANOLAMINE	NZ	D		27	275	2754	82/11/04	P		Y	82/11/04		83/05/09	G	83/04/22		83
Dioctyl Phthalate	POLA	D	92/08/21	27	275	2754	92/11/29	T									93
STEARIC ACID	RKOR	D	85/01/21	27	275	2754	85/06/28	T									85
NORMAL BUTYL ALCOHOL	RKOR	D	85/09/12	27	275	2754	86/05/02	T									86
LINEAR ALKYLBENZENE SULPHONIC ACID	RKOR	D	86/02/21	27	275	2754	86/12/12	T									87
SORBITOL 70% SOLUTION	RKOR	D	90/02/01	27	275	2754	90/06/01	P		Y	90/06/07	90/06/28	90/10/10	T	90/10/25	L	91
PHTHALIC ANHYDRIDE	*RKOR*	*D*	*91/10/23*	*27*	*275*	*2754*	*92/01/31*	*P*		*Y*			*92/06/19*	*G*			92
DIOCTYL PHTHALATE	RKOR	D	91/01/31	27	275	2754	91/06/03	T	D	N		91/08/22		G	91/11/27		92
MONOETHYLENE GLYCOL	SING	D	86/06/13	27	275	2754	86/10/02	T									87
LEVAMISOLE HYDROCHLORIDE	SING	D	87/12/27	27	275	2754	88/06/21	P		Y	88/06/22		88/11/16	G	88/11/10		89

DI-OCTYL PHTHALATE	SWED	D	84/08/22	27	275	2754	85/02/22	P		Y	85/02/22		85/12/09	T	85/12/09		86
LEVAMISOLE HYDROCHLORIDE	SWIT	D	87/12/27	27	275	2754	88/06/21	P		Y	88/06/22		88/11/16	G	88/11/10		89
ALKYL PHENOL ETHOXYLATES	TAIW	D		27	275	2754	83/07/07	P		Y	83/07/07		83/10/25	T	83/10/25		84
PHTHALIC ANHYDRIDE	TAIW	D		27	275	2754	83/05/26	P		Y	83/05/26		84/05/07	T	84/05/07		84
DI-OCTYL PHTHALATE	TAIW	D	84/08/22	27	275	2754	85/02/22	P		Y	85/02/22		86/04/02	T	86/04/02		86
DIETHYLENE GLYCOL	TAIW	D	85/08/23	27	275	2754	85/11/06	P		Y	85/11/06		86/05/02	T	86/05/02		86
LINEAR ALKYLBENZENE SULPHONIC ACID	TAIW	D	86/02/21	27	275	2754	86/12/12	T									87
ETHYLACETATE	TAIW	D	86/09/29	27	275	2754	87/05/04	P		Y	87/05/04		87/12/18	T	87/12/18		88
SORBITOL 70% SOLUTION	TAIW	D	90/02/01	27	275	2754	90/06/01	P		Y	90/06/07	90/06/28	90/10/10	T	90/10/25	L	91
Dioctyl Phthalate	TAIW	D	92/08/21	27	275	2754	92/11/29	P		Y			93/04/05	T			93
SORBITOL 70% SOLUTION	THAI	D	90/02/01	27	275	2754	90/06/01	P		Y	90/06/07	92/02/29	90/10/10	G	90/10/25		92
2,4-DICHLOROPHENOXYACETIC DERIVIATIVES	UK	D	85/07/22	27	275	2754	85/10/24	T									86
TOLUENE	USA	D		27	275	2754	82/11/03	P		Y	82/11/03		83/06/22	G	83/05/23		83
TRIETHANOLAMINE	USA	D		27	275	2754	81/08/28	P		Y	82/02/05		83/01/19	G	83/01/07		83
XYLENE	USA	D		27	275	2754	82/11/03	P		Y	82/11/03		83/06/22	G	83/05/23		83
ETHYLENE GLYCOL MONOETHYL ETHER ACETATE	USA	D		27	275	2754	83/04/13	P		N			83/06/21	T	83/06/21		83
SODIUM TRIPOLYPHOSPHATE	USA	D		27	275	2754	82/01/06	P		Y	82/01/06		82/09/17	G	82/09/07		83
ALKYL PHENOL ETHOXYLATES	USA	D		27	275	2754	83/03/14	P		N			83/10/25	T	83/10/25		84
PROPYLENE GLYCOL	USA	D		27	275	2754	83/02/15	P		N			84/01/10	T	84/01/10		84
PIGMENTS, FLUSHED	USA	D	86/09/22	27	275	2754	87/06/12	T									87
TRIETHANOLAMINE AND MIXTURES	USA	D	91/05/22	27	275	2754	91/08/30	P		Y	91/08/31	91/09/19		G	92/02/19		92
Trifluralin Technical	USA	D	92/04/29	27	276	2754	92/08/07	P		Y			92/12/17	T			93
DIOCTYL PHTHALATE	VENZ	D	91/01/31	27	275	2754	91/06/03	P		Y	91/05/31	91/06/19		G	91/11/27		92
LINEAR ALKYLBENZENE SULPHONIC ACID	YUGO	D	86/02/21	27	275	2754	86/12/12	T									87
PHOSPHORIC ACID	BLGM	D		27	275	2755	83/04/27	P		Y	83/04/27		84/02/17	T	84/02/17		84
SODIUM TRIPOLYPHOSPHATE	BLGM	D	89/06/12	27	275	2755	89/10/10	T									90
PHOSPHORIC ACID	CHIN	D		27	275	2755	82/01/06	P		Y	82/01/06		83/01/19	G	82/12/30		83
SODIUM BICARBONATE	CHIN	D		27	275	2755	83/04/08	U			83/04/08						83
SODIUM CYANIDE	FGMY	D	90/10/10	27	275	2755	91/02/06	P		Y	81/02/07	91/03/06		G	91/07/12		92
Sodium Cyanide (WAS PF No. 92/21)	FGMY	D	92/09/09	27	275	2755	92/12/18	T									93
Sodium Cyanide (WAS PF No. 92/21)	INIA	D	92/09/09	27	275	2755	92/12/18	P		Y			93/05/21	G			93
PHOSPHORIC ACID	ISRA	D		27	275	2755	82/01/06	P		Y	82/01/06		83/01/19	G	82/12/30		83
SODIUM TRIPOLYPHOSPHATE	ISRA	D	89/06/12	27	275	2755	89/10/10	T									90
CHROMIUM SULPHATE	ITAL	D		27	275	2755	81/08/07	P					82/09/17	G	82/09/15		83
SODIUM CYANIDE	ITAL	D	90/10/10	27	275	2755	91/02/06	P		Y	81/02/07	91/03/06		G	91/07/12		92
PHOSPHORIC ACID	JAP	D	84/04/24	27	275	2755	84/06/15	P		N			84/11/29	G	85/11/26		86
SODIUM TRIPOLYPHOSPHATE	JAP	D	89/06/12	27	275	2755	89/10/10	T									90
SODIUM CYANIDE	JAP	D	90/10/10	27	275	2755	91/02/06	P		Y	81/02/07	91/03/06		G	91/07/12		92
SODIUM SILICATE ROCK	MLAY	D	91/11/19	27	275	2755	92/03/04	T	D								92
SULPHURIC ACID	PHIL	D	85/01/16	27	275	2755	85/03/27	T									85
SODIUM CYANIDE	RKOR	D	90/10/10	27	275	2755	91/02/06	P		Y	81/02/07	91/03/06		G	91/07/12		92
SODIUM CYANIDE	TAIW	D	90/10/10	27	275	2755	91/02/06	T	D	N		91/03/15		T	91/05/16	D	91
SODIUM CYANIDE	UK	D	90/10/10	27	275	2755	91/02/06	P		Y	81/02/07	91/03/06		G	91/07/12		92
SODIUM CARBONATE (SODA ASH)	USA	D		27	275	2755	84/01/06	P		N			84/05/25	G	84/05/23		84

SODIUM STEAROYL 2-LACTYLATE	USA	D		27	276	2755	83/05/16	P		N			83/11/09	T	83/11/09		84
SODIUM CYANIDE	USA	D	90/10/10	27	275	2755	91/02/06	P		Y	81/02/07	91/03/06		T	91/07/12	I	92
Sodium Cyanide (WAS PF No. 92/21)	USA	D	92/09/09	27	275	2755	92/12/18	P		Y			93/05/21	G			93
SODIUM TRIPOLYPHOSPHATE	YUGO	D	89/06/12	27	275	2755	89/10/10	T									90
INDUSTRIAL NITROCELLULOSE	CHIN	D	86/09/29	27	276	2762	87/05/11	T									87
INDUSTRIAL NITROCELLULOSE	FGMY	D	86/09/29	27	276	2762	87/05/11	T									87
INDUSTRIAL NITROCELLULOSE	FRAN	D	86/09/29	27	276	2762	87/05/11	T									87
PAINTS, ARTISTS OIL	UK	D		27	276	2762	82/08/24	P		N			83/02/16	G	83/02/04		83
SILICONE SEALANTS	USA	D	85/10/10	27	276	2762	86/06/06	T									86
SILICONE SEALANTS	USA	D	86/09/29	27	276	2762	87/06/08	T									87
DIAGNOSTIC REAGENT STRIPS	FGMY	D		27	276	2763	84/01/25	P		N			84/08/23	G	84/08/22		85
INFLUENZA VACCINE	FRAN	D	84/03/15	27	276	2763	84/03/23	P		Y	84/03/23		84/07/17	T	84/07/17		85
CAPSULES, EMPTY GELATIN	JAP	D		27	276	2763	83/11/07	P		Y	83/11/07		84/07/02	G	84/06/29		84
DIAGNOSTIC REAGENT STRIPS	UK	D	90/03/12	27	276	2763	90/07/10	P		Y	90/07/10	91/05/29		G	91/12/23		92
TRANSPARENT FILM WOUND DRESSINGS	USA	D	89/10/25	27	276	2763	90/02/22	T	I	N							90
DIAGNOSTIC REAGENT STRIPS	USA	D	90/03/12	27	276	2763	90/07/10	P		Y	90/07/10	91/05/29		G	91/12/23		92
DISHWASING POWDER	BLGM	D		27	276	2765	83/07/04	P		N			83/11/14	T	83/11/14		84
CANDLES, DINING	CHIN	D	84/05/28	27	276	2765	84/10/29	P		N			85/03/27	G	85/03/22		85
LAUNDRY DETERGENT POWDER	HONG	D	83/12/09	27	276	2765	84/01/23	P		Y	84/01/23		84/06/14	T	84/06/14		84
DISHWASING POWDER	ISRA	D		27	276	2765	83/07/04	P		N			83/11/14	T	83/11/14		84
SOAP, TOILET AND LAUNDRY	RKOR	D		27	276	2765	82/06/30	P		Y	82/07/21		83/04/19	G	83/04/05		83
TOOTHPASTE	RKOR	D		27	276	2765	83/07/07	P		Y	83/07/07		84/03/16	U	84/03/06		84
TOOTHPASTE	TAIW	D		27	276	2765	83/07/07	P		Y	83/07/07		84/03/16	T	84/03/16		84
CORRECTION FLUID	FGMY	D		27	276	2768	81/02/23	P		N			82/09/02	T	82/09/02		83
CORRECTION FLUID	SING	D		27	276	2768	81/02/23	P		N			82/09/10	T	82/09/10		83
LEAD STABILISER LUBRICANT SYSTEMS	FGMY	D	85/03/20	27	277	2770	85/06/26	T									85
HYDRAULIC BRAKE FLUID	NETH	D	87/05/21	27	277	2770	87/10/01	T									88
Chlorinated Paraffin	TAIW	D	92/05/13	27	277	2770	92/08/21	P		Y			92/12/24	T			93
HYDRAULIC BRAKE FLUID	UK	D	87/05/21	27	277	2770	87/10/01	T									88
Chlorinated Paraffin	USA	D	92/05/13	27	277	2770	92/08/21	P		Y			92/12/24	T			93
SODIUM SILICATE ROCK	USA	D	91/11/19	27	275	2775	92/03/04	T	D								92
Clear Float Glass	BLGM	D	92/01/31	28	285	2850	92/05/11	P		Y			92/09/16	G			93
Clear Float Glass	CHIN	D	92/01/31	28	285	2850	92/05/11	P		Y			92/09/16	G			93
Clear Float Glass	FGMY	D	92/01/31	28	285	2850	92/05/11	P		Y			92/09/16	G			93
Clear Float Glass	FRAN	D	92/01/31	28	285	2850	92/05/11	P		Y			92/09/16	T			93
Clear Float Glass	INDO	D	92/01/31	28	285	2850	92/05/11	P		Y			92/09/16	G			93
Clear Float Glass	MLAY	D	92/01/31	28	285	2850	92/05/11	T									92
Clear Float Glass	PHIL	D	92/01/31	28	285	2850	92/05/11	P		Y			92/09/16	G			93
TOUGHENED GLASS PANELS	ROUM	D		28	285	2850	82/06/16	P		N			83/05/09	G	83/04/22		83
TOUGHENED GLASS PANELS	SPAI	D		28	285	2850	82/06/16	P		N			83/05/09	G	83/04/22		83
TOUGHENED GLASS PANELS	SPAI	D	84/01/24	28	285	2850	84/06/12	T									84
Clear Float Glass	THAI	D	92/01/31	28	285	2850	92/05/11	P		Y			92/09/16	G			93
TOUGHENED GLASS PANELS	USA	D		28	285	2850	82/06/16	P		N			83/01/10	T	83/01/10		83
CERAMIC TABLEWARE	CHIN	D		28	286	2864	83/06/01	P		N			84/04/17	G	84/04/10		84

CEMENT, PORTLAND	JAP	D	88/05/16	28	287	2871	88/10/21	T										89
BLENDED CEMENTS	*JAP*	*D*	*91/02/22*	*28*	*287*	*2871*	*91/06/21*	*T*										91
PORTLAND CEMENT	JAP	D	91/02/22	28	287	2871	91/06/21	P		N		91/07/18			T	91/11/27	O	92
CEMENT	NZ	D		28	287	2871	83/06/27	P		N			83/12/08		T	83/12/08		84
CEMENT CLINKER	RKOR	D	88/03/02	28	287	2871	88/08/31	P		Y	88/08/31		89/01/11		U	89/01/05		89
CEMENT CLINKER	SAUD	D	89/07/04	28	287	2871	89/11/01	T										90
GLASS FIBRE ROVINGS & CHOPPED STRAND MAT	CHIN	D	91/07/09	*28*	*288*	*2883*	91/10/17	T	D	N		92/03/19				92/03/19	I	92
FIBERGLASS ROVINGS (AND MAT)	JAP	D	91/07/09	*28*	*288*	*2883*	91/10/17	T	D	N					T	92/01/16	D	92
GLASS FIBRE ROVINGS & CHOPPED STRAND MAT	JAP	D	91/07/09	*28*	*288*	*2883*	91/10/17	T	D	N					T	92/01/16	D	92
FIBERGLASS ROVINGS (AND MAT)	TAIW	D	91/07/09	*28*	*288*	*2883*	91/10/17	T	D	N					T	92/01/16	D	92
GLASS FIBRE ROVINGS & CHOPPED STRAND MAT	TAIW	D	91/07/09	*28*	*288*	*2883*	91/10/17	T	D	N					T	92/01/16	L	92
Certain Fibreglass Products	TAIW	D	92/06/17	28	288	2883	92/09/25	T										93
SILICON	CHIN	D	89/07/10	29	288	2884	89/11/07	T	D									90
SILICON	SAFR	D	89/07/10	28	288	2884	89/11/07	T	L									90
IRON & STEEL, COLD ROLLED HOOP, STRIP, SHEET, C(	ARGE	D	86/12/22	29	294	2941	87/05/07	T										87
STEEL SHEET AND COIL GALVANISED	BLGM	D		29	294	2941	81/08/13	P		Y	81/08/17		83/06/06		T	83/06/06		83
STAINLESS STEEL FLAT PRODUCTS	BLGM	D	86/02/17	29	294	2941	86/06/26	T										86
STAINLESS STEEL FLAT PRODUCTS	BLGM	D	87/07/21	29	294	2941	87/09/03	P		N			88/01/05		T	88/01/05		88
IRON & STEEL, COLD ROLLED HOOP, STRIP, SHEET, C(	BRAZ	D	86/12/22	29	294	2941	87/05/07	T										87
STEEL SHEET AND COIL, GALVANISED	FGMY	D		29	294	2941	81/05/07	P		Y	81/07/27		83/06/06		T	83/06/06		83
SPECIAL STEEL BAR PRODUCTS	FGMY	D		29	294	2941	82/10/20	P		Y	83/08/02		84/02/03		G	83/12/29		84
STEEL SHEET AND COIL, COLD ROLLED	FGMY	D	83/12/23	29	294	2941	84/02/08	T										84
STEEL SHEET AND COIL, GALVANISED	FGMY	D	83/12/23	29	294	2941	84/02/08	T										84
STAINLESS STEEL FLAT PRODUCTS	FGMY	D	86/02/17	29	294	2941	86/06/26	T										86
STEEL SHEET AND COIL, COLD ROLLED	FGMY	D	85/04/22	29	294	2941	85/09/12	T										86
STEEL SHEET AND COIL,GALVANISED	FGMY	D	85/04/22	29	294	2941	85/09/12	T										86
STAINLESS STEEL FLAT PRODUCTS	FGMY	D	87/07/21	29	294	2941	87/10/30	P		N			88/01/05		T	88/01/05		88
STEEL SHEET AND COIL GALVANISED	FRAN	D		29	294	2941	81/07/23	P		Y	81/07/27		83/06/06		T	83/06/06		83
STAINLESS STEEL FLAT PRODUCTS	FRAN	D		29	294	2941	82/10/20	P		Y	83/08/02		84/02/03		G	83/12/29		84
STAINLESS STEEL FLAT PRODUCTS	FRAN	D	87/07/21	29	294	2941	87/09/03	P		Y	87/09/03		88/01/05		T	88/01/05		88
STAINLESS STEEL FLAT PRODUCTS	ITAL	D		29	294	2941	82/10/20	P		Y	83/08/02		84/02/03		G	83/12/29		84
STAINLESS STEEL FLAT PRODUCTS	ITAL	D	87/07/21	29	294	2941	87/09/03	P		N			88/01/05		T	88/01/05		88
STAINLESS STEEL PIPES AND TUBES	JAP	D		29	294	2941	81/02/23	P		N			83/06/14		T	83/06/14		83
SPECIAL STEEL BAR PRODUCTS	JAP	D		29	294	2941	82/10/20	P		Y	83/08/02		84/02/03		G	83/12/29		84
STAINLESS STEEL FLAT PRODUCTS	JAP	D		29	294	2941	82/10/20	P		Y	83/08/02		84/02/03		G	83/12/29		84
STEEL SHEET AND COIL, COLD ROLLED	JAP	D	85/04/22	29	294	2941	85/08/12	P		Y	85/08/12		86/06/10		U	86/06/05		86
STEEL SHEET AND COIL,GALVANISED	JAP	D	85/04/22	29	294	2941	85/08/12	P		Y	85/08/12		86/06/10		U	86/06/05		86
STAINLESS STEEL FLAT PRODUCTS	JAP	D	87/07/21	29	294	2941	87/09/03	P		Y	87/09/03		88/01/05		T	88/01/05		88
STEEL BARS, BRIGHT	RKOR	D	85/07/08	29	294	2941	85/09/06	P		Y	85/09/06		86/02/24		T	86/02/24		86
STAINLESS STEEL FLAT PRODUCTS	RKOR	D	86/02/17	29	294	2941	86/06/26	T										86
STAINLESS STEEL FLAT PRODUCTS	RKOR	D	87/07/21	29	294	2941	87/09/03	P		Y	87/09/03		88/01/05		T	88/01/05		88
STEEL BARS, BRIGHT	SAFR	D	85/07/08	29	294	2941	85/09/06	P		Y	85/09/06		86/02/24		T	86/02/24		86
STEEL SHEET AND COIL GALVANISED	SPAI	D		29	294	2941	81/08/13	P		Y	81/08/17		83/06/06		T	83/06/06		83
STAINLESS STEEL FLAT PRODUCTS	SPAI	D	86/02/17	29	294	2941	86/06/26	T										86

STAINLESS STEEL FLAT PRODUCTS	SPAI	D	87/07/21	29	294	2941	87/09/03	P		N			88/01/05	T	88/01/05		88
STAINLESS STEEL FLAT PRODUCTS	SWED	D		29	294	2941	82/10/20	P		Y	83/08/02		84/02/03	T	84/02/03		84
STEEL BARS, BRIGHT	TAIW	D	85/07/08	29	294	2941	85/09/06	P		Y	85/09/06		86/02/24	T	86/02/24		86
STEEL SHEET AND COIL, COLD ROLLED	TAIW	D	85/04/22	29	294	2941	85/08/12	P		Y	85/08/12		86/04/14	T	86/04/14		86
STEEL SHEET AND COIL,GALVANISED	TAIW	D	85/04/22	29	294	2941	85/08/12	P		Y	85/08/12		86/04/14	T	86/04/14		86
STAINLESS STEEL FLAT PRODUCTS	UK	D	86/02/17	29	294	2941	86/06/26	T									86
STAINLESS STEEL FLAT PRODUCTS	UK	D	87/07/21	29	294	2941	87/09/03	P		Y	87/09/03		88/01/05	T	88/01/05		88
Certain Cast Iron Manhole Covers Grates and Frames	CHIN	D	92/05/15	29	294	2942	92/08/23	T									93
Certain Cast Iron Manhole Covers Grates and Frames	INIA	D	92/05/15	29	294	2942	92/08/23	T									93
MALLEABLE CAST IRON PIPE FITTINGS	JAP	D		29	294	2942	83/01/02	P		N			84/02/13	T	84/02/13		84
MALLEABLE CAST IRON PIPE FITTINGS	RKOR	D	90/01/10	29	294	2942	90/05/10	P		Y		90/05/24	90/09/14	G	90/10/19		91
MALLEABLE CAST IRON PIPE FITTINGS	TAIW	D	90/01/10	29	294	2942	90/05/10	P		Y		90/05/24	90/09/14	G	90/10/19		91
STEEL PIPE & FITTINGS, BASALT LINED	FGMY	D	84/06/08	29	294	2945	84/08/07	T									85
STEEL PIPE AND FITTINGS, BASALT LINED	FGMY	D	85/01/09	29	294	2945	85/05/20	T									85
CARBON STEEL PIPE & TUBE, SMALL DIAMETER WELD	JAP	D	83/12/29	29	294	2945	84/03/08	P		Y	84/03/08		84/09/26	G	84/09/24		85
WELDED STEEL PIPE & RECTANGULAR HOLLOW SECT	JAP	D	85/06/18	29	294	2945	85/12/06	P		Y	85/12/06		86/12/15	T	86/12/15		87
STAINLESS STEEL PIPES AND TUBES	NZ	D		29	294	2945	82/06/23	P		N			83/04/15	T	83/04/15		83
STAINLESS STEEL PIPES AND TUBES	RKOR	D		29	294	2945	82/06/02	P		N			83/10/20	T	83/10/20		84
CARBON STEEL PIPE & TUBE, SMALL DIAMETER WELD	RKOR	D	83/12/29	29	294	2945	84/03/08	P		Y	84/03/08		84/09/26	G	84/09/24		85
WELDED STEEL PIPE	RKOR	D	85/06/18	29	294	2945	85/12/06	P		Y	85/12/06		86/12/15	T	86/12/15		87
STAINLESS STEEL WELDED TUBE & PIPE	RKOR	D	91/08/26	29	294	2945	91/12/24	T	D	N							92
CARBON STEEL PIPE & TUBE, SMALL DIAMETER WELD	SAFR	D	83/12/29	29	294	2945	84/03/08	P		Y	84/03/08		84/09/26	G	84/09/24		85
CARBON STEEL PIPE & TUBE, SMALL DIAMETER WELD	SING	D	83/12/29	29	294	2945	84/03/08	P		Y	84/03/08		84/09/26	G	84/09/24		85
CARBON STEEL PIPE & TUBE, SMALL DIAMETER WELD	TAIW	D	83/12/29	29	294	2945	84/03/08	P		Y	84/03/08		84/09/26	G	84/09/24		85
STAINLESS STEEL WELDED TUBE & PIPE	TAIW	D	91/08/26	29	294	2945	91/12/24	P		Y	91/12/25	92/03/26		T	92/03/26	I	92
STAINLESS STEEL WELDED TUBE & PIPE	*TAIW*	*D*	*91/08/26*	*29*	*294*	*2945*	*91/12/24*	*T*									92
CARBON STEEL PIPE, SMALL DIAMETER WELDED	THAI	D	84/06/13	29	294	2945	84/09/12	P		Y	84/09/12		85/02/25	T	85/02/25		85
REFLECTIVE ALUMINIUM FOIL	NZ	D	87/02/09	29	296	2961	88/05/23	T									88
BRASS RODS, EXTRUDED	NZ	D		29	296	2962	82/08/06	P		N			83/05/11	T	83/05/11		83
STEEL JERRICANS	CHIN	D	84/04/18	31	315	3151	84/06/25	T									84
STEEL JERRICANS	USSR	D	84/04/18	31	315	3151	84/06/25	T									84
CABINETS, FIRE RESISTANT	JAP	D		31	315	3152	83/06/27	P		N			83/04/27	G	84/04/19		84
FASTENERS,STAINLESS STEEL	JAP	D		31	316	3153	83/04/21	P		N			83/09/12	T	83/09/12		84
TILES, CHIP COATED METAL ROOFING	NZ	D		31	315	3153	82/09/29	P		N			83/07/22	U	83/06/28		83
SUSPENDED CEILING SYSTEMS	NZ	D		31	316	3153	82/09/16	P		N			83/11/08	U	83/10/17		84
FILES AND RASPS	ASTA	D		31	316	3161	80/12/17	P		N			82/09/08	T	82/09/08		83
FILES AND RASPS	INIA	D		31	316	3161	80/12/17	P		N			82/09/08	G	82/08/25		83
SOUVENIR TEASPOONS & CAKE FORK	NZ	D		31	316	3161	82/08/02	P		N			82/10/18	T	82/10/18		83
ENGINEERS VICES	UK	D	85/05/21	31	316	3161	85/07/10	T									86
CHAINS, ALLOY STEEL	CAN	D	86/12/10	31	316	3162	87/06/23	T									87
CHAINS AND FITTINGS, ALLOY GRADE T STEEL	FGMY	D	84/06/04	31	316	3162	84/09/18	T									85
SUPERMARKET TROLLEYS	FGMY	D	84/05/28	31	316	3162	84/07/18	T									85
CHAINS AND FITTINGS, ALLOY STEEL	FGMY	D	86/12/10	31	316	3162	87/06/23	T									87
CHAINS, ALLOY STEEL	ITAL	D	86/12/10	31	316	3162	87/06/23	T									87

CHAINS AND FITTINGS, ALLOY GRADE T STEEL	SWED	D	84/06/04	31	316	3162	84/09/18	P		Y	84/09/18		85/05/22	G	85/05/14	85
STAINLESS STEEL REPAIR CLAMPS	USA	D	83/12/01	31	316	3162	84/01/16	T								84
RING MECHANISMS FOR LOOSE LEAF BINDERS	ASTA	D	86/05/22	31	316	3168	86/12/15	T								87
GAS METERS	JAP	D	84/08/01	31	316	3168	84/09/26	T								85
BATHS, PORCELAIN ENAMELLED STEEL	NZ	D	85/03/14	31	316	3168	85/08/09	P		Y	85/08/09		85/11/28	U	85/11/21	86
CASTORS	TAIW	D	86/08/11	31	316	3168	87/04/10	T								87
CASTORS	TAIW	D	89/11/20	31	316	3168	90/03/20	T	L							90
CASTORS (result of court action re '90 case)	*TAIW*	*D*	*91/10/09*	*31*	*316*	*3168*	*91/10/09*	*T*								92
GAS METER, DOMESTIC	UK	D		31	316	3168	82/11/15	P		N			83/06/20	T	83/06/20	83
SPARKS PLUGS	FGMY	D		32	323	3233	82/11/30	P		Y	82/11/30		83/06/24	G	83/06/09	83
SPARK PLUGS	FRAN	D	85/12/12	32	323	3233	86/03/03	P		Y	86/03/03		86/07/02	T	86/07/02	87
SPARKS PLUGS	JAP	D		32	323	3233	82/11/30	P		Y	82/11/30		83/06/24	G	83/06/09	83
SPARKS PLUGS	NZ	D		32	323	3233	82/11/30	P		N			84/05/21	G	84/05/17	84
SPARKS PLUGS	USA	D		32	323	3233	82/11/30	P		N			84/05/21	G	84/05/17	84
SPARK PLUGS	YUGO	D	85/12/12	32	323	3233	86/03/03	P		Y	86/03/03		86/07/02	T	86/07/02	87
PAPER, SUBLIMATION TRANSFER PRINTING	FGMY	D	87/05/11	33	334	3341	88/02/16	T								88
PAPER, SUBLIMATION TRANSFER PRINTING	FRAN	D	87/05/11	33	334	3341	88/02/16	T								88
PAPER, SUBLIMATION TRANSFER PRINTING	ITAL	D	87/05/11	33	334	3341	88/02/16	T								88
PAPER, SUBLIMATION TRANSFER PRINTING	TAIW	D	87/05/11	33	334	3341	88/02/16	T								88
PAPER, SUBLIMATION TRANSFER PRINTING	UK	D	87/05/11	33	334	3341	88/02/16	T								88
PAPER, BLACK AND WHITE PHOTOGRAPHIC	USA	D	85/05/29	33	334	3341	85/08/22	T								86
PAPER, SUBLIMATION TRANSFER PRINTING	USA	D	87/05/11	33	334	3341	88/02/16	T								88
DENTAL FURNITURE	FGMY	D	86/07/10	33	334	3343	87/09/02	T								88
DENTAL FURNITURE	JAP	D	86/07/10	33	334	3343	87/09/02	T								88
DENTAL AMALGAM ALLOY CAPSULES	USA	D		33	334	3343	83/08/12	P		N			84/02/29	G	84/02/23	84
DENTAL FURNITURE	USA	D	86/07/10	33	334	3343	87/09/02	P		Y	87/09/02		88/06/27	T	88/06/27	88
HYPODERMIC NEEDLES	USA	D	86/10/02	33	334	3343	87/07/10	P		Y	87/07/10		88/06/22	U	88/06/14	88
VIDEO CASSETTE TAPES	HONG	D	88/05/17	33	335	3351	88/11/30	T								89
VIDEO CASSETTE TAPES	JAP	D	88/05/17	33	335	3351	88/11/30	T								89
AUDIO TAPE JUMBO WEBS & PANCAKES	RKOR	D	87/11/13	33	335	3351	88/05/10	P		Y	88/06/30		88/11/04	G	88/11/04	89
VIDEO CASSETTE TAPES	RKOR	D	88/05/17	33	335	3351	88/11/30	T								89
POWER CAPACITORS, HIGH VOLTAGE	FGMY	D		33	335	3352	83/02/24	P		N			84/02/21	T	84/02/21	84
POWER CAPACITORS, HIGH VOLTAGE	UK	D		33	335	3352	83/02/24	P		N			84/02/21	T	84/02/21	84
ELECTRONIC ISSUING TICKET MACHINES	UK	D	91/12/20	33	335	3352	92/03/27	T	D	N						92
PIEZOMETERS	USA	D	89/12/20	33	334	3352	90/04/19	P		Y	90/04/25	90/06/14		T	90/09/27	L 91
ELECTRIC MOTOR PARTS	CZEC	D	86/10/15	33	335	3353	87/04/22	T								87
ELECTRIC MOTOR PARTS	CZEC	D	88/10/14	33	335	3353	89/02/28	T								89
DISHWASHERS	FGMY	D		33	335	3353	83/03/01	P		N			83/12/29	G	83/12/20	84
ELECTRIC MOTOR PARTS	FGMY	D	86/10/15	33	335	3353	87/04/22	T								87
DISHWASHERS	FRAN	D		33	335	3353	83/03/01	P		N			83/12/29	G	83/12/20	84
CEILING SWEEP FANS	HONG	D		33	335	3353	83/11/01	P		N			84/08/23	G	84/08/20	85
CEILING SWEEP FANS	HONG	D		33	335	3353	83/11/01	P		N			84/08/23	G	84/08/20	85
CEILING SWEEP FANS	HONG	D	86/03/11	33	335	3353	86/06/25	P		T	86/06/25		87/03/03	G	87/03/03	87
PROCESS COOLING SYSTEMS	IRE	D	90/04/25	33	335	3353	90/08/23	T	L	N						91

DISHWASHERS	ITAL	D		33	335	3353	83/03/01	P		N			83/12/29	G	83/12/20		84
WASHING MACHINES	JAP	D		33	335	3353	81/05/14	P		N			83/01/19	G	83/01/07		83
FREEZERS, VERTICAL	JAP	D		33	335	3353	82/12/29	P		Y	83/04/13		83/05/03	T	83/05/03		83
DISHWASHERS	JAP	D		33	335	3353	83/03/01	P		N			84/06/12	G	84/06/07		84
GAS HEATERS	JAP	D	84/01/16	33	335	3353	84/03/16	T									84
GAS HEATERS	JAP	D	84/06/21	33	335	3353	84/10/26	P		N			85/03/11	T	85/03/11		85
MICROWAVE OVENS	JAP	D	85/01/18	33	335	3353	84/03/25	P		Y	84/03/25		85/08/27	G	85/08/26		86
ELECTRIC MOTOR PARTS	NETH	D	86/10/15	33	335	3353	87/04/22	T									87
FREEZERS, CHEST	NZ	D		33	335	3353	*82/03/31*	P					82/09/30	T	82/09/30		83
DISHWASHERS	NZ	D		33	335	3353	83/08/04	P		N			84/02/21	T	84/02/21		84
GAS HEATERS	NZ	D	84/01/16	33	335	3353	84/03/16	T									84
GAS HEATERS	NZ	D	84/06/21	33	335	3353	84/10/26	T									85
DISPLAY REFRIGERATORS, TWO DOOR MEDIUM	NZ	D	84/06/01	33	335	3353	84/08/29	P		N			85/08/09	T	85/08/09		86
WATERBED HEATERS	NZ	D	85/10/01	33	335	3353	86/01/02	P		Y	86/01/02		86/04/14	T	86/04/14		86
ELECTRIC MOTOR PARTS	POLA	D	86/10/15	33	335	3353	87/04/22	T									87
MICROWAVE OVENS	SING	D	85/04/18	33	335	3353	85/07/26	P		Y	85/07/26		85/12/06	T	85/12/06		86
ELECTRIC MOTOR PARTS	TAIW	D	86/10/15	33	335	3353	86/11/21	T									87
ELECTRIC MOTOR PARTS	TAIW	D	87/10/09	33	335	3353	88/04/06	P		N			89/01/13	T	88/12/06		89
PROCESS COOLING SYSTEMS	USA	D	84/02/14	33	335	3353	84/03/30	P		N			84/08/07	T	84/08/07		85
PROCESS COOLING SYSTEMS	USA	D	85/01/07	33	335	3353	85/03/27	T									85
OUTFRONT MOWERS	USA	D	87/02/06	33	336	3353	88/02/15	T									88
PROCESS COOLING SYSTEMS	USA	D	90/04/25	33	335	3353	90/08/23	T	L	N							91
LOW VOLTAGE AERIAL BUNDLED XLPE POWER CABLE	RKOR	D	88/12/08	33	335	3355	89/04/03	T									89
XLPE AERIAL BUNDLED ELECTRIC CABLE	RKOR	D	91/09/02	33	335	3355	91/12/13	T	D	N		92/02/26		T	92/02/26	D	92
LOW VOLTAGE AERIAL BUNDLED XLPE POWER CABLE	SING	D	88/12/08	33	335	3355	89/04/03	T									89
LOW VOLTAGE XLPE AERIAL BUNDLED CABLE	SING	D	91/07/05	33	335	3355	91/08/07	T	O	N							92
BATTERIES, ALKALINE MANGANESE DIOXIDE	BLGM	D		33	335	3356	82/05/21	P		Y	82/05/21		82/11/22	G	82/11/10		83
AUTOMOTIVE LEAD-ACID STORAGE BATTERIES	INDO	D	90/06/28	33	335	3356	90/11/07	T	L	Y	91/01/30	91/02/11		G	91/06/19		91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIES	MLAY	D	90/06/28	33	335	3356	90/11/07	T	L	Y	91/01/30	91/02/11		G	91/06/19		91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIES	PHIL	D	90/06/28	33	335	3356	90/11/07	T	L	Y	91/01/30	91/02/11		G	91/06/19		91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIES	RKOR	D	90/06/28	33	335	3356	90/11/07	T	L	Y	91/01/30	91/02/11		G	91/06/19		91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIES	SING	D	90/06/28	33	335	3356	90/11/07	T	L	Y	91/01/30	91/02/11		T	91/06/19	O	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIES	TAIW	D	90/06/28	33	335	3356	90/11/07	T	L	Y	91/01/30	91/02/11		G	91/06/19		91
LAMPS, ELECTRIC FILAMENT	BLGM	D		33	335	3357	83/05/18	P		Y	83/06/21		84/04/17	G	84/02/09		84
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	BRAZ	D	85/02/13	33	335	3357	85/08/22	P		Y	85/08/22		88/02/11	T	88/02/11		88
TRANSFORMERS, INSTRUMENT	CAN	D		33	335	3357	82/06/23	P		N			83/08/12	T	83/08/12		84
LAMPS, FLUORESCENT DISCHARGE	CAN	D		33	335	3357	83/12/19	P		N			85/09/19	G	85/09/13		86
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	CHIN	D	85/02/13	33	335	3357	85/08/22	P		Y	85/08/22		88/02/11	T	88/02/11		88
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	CZEC	D	85/02/13	33	335	3357	85/08/22	P		Y	85/08/22		88/02/11	T	88/02/11		88
TRANSFORMERS	FGMY	D	84/08/22	33	335	3357	84/10/11	T									85
LAMPS, FLUORESCENT DISCHARGE	FGMY	D	84/09/28	33	335	3357	84/12/10	P		Y	84/12/10		85/09/19	G	85/09/13		86
LAMPS, FLUORESCENT DISCHARGE	FGMY	D	84/09/28	33	335	3357	84/12/10	P		Y	84/12/10		85/09/19	G	85/09/13		86
AIR CIRCUIT BREAKER	FGMY	D	85/07/25	33	335	3357	85/12/16	T									86
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	FGMY	D	85/02/13	33	335	3357	85/08/22	T									86

AIR CIRCUIT BREAKERS	FRAN	D	85/06/18	33	335	3357	85/11/05	P		Y	85/11/05		86/09/26	G	86/09/22	87
LAMPS, FLUORESCENT DISCHARGE	HGRY	D	84/09/28	33	335	3357	84/12/10	P		Y	84/12/10		85/09/19	G	85/09/13	86
AIR CIRCUIT BREAKER	ITAL	D	85/07/25	33	335	3357	85/12/16	P		Y	85/12/16		86/09/26	G	86/09/22	87
LAMPS, ELECTRIC FILAMENT	ITAL	D	86/02/11	33	335	3357	86/04/17	P		Y	86/04/17		86/10/10	T	86/10/10	87
LAMPS, FLUORESCENT DISCHARGE	JAP	D	84/09/28	33	335	3357	84/12/10	P		Y	84/12/10		85/09/19	G	85/09/13	86
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	JAP	D	85/02/13	33	335	3357	85/08/22	T								86
AIR CIRCUIT BREAKERS	JAP	D	85/06/18	33	335	3357	85/11/05	P		Y	85/11/05		86/09/26	G	86/09/22	87
LAMPS, FLUORESCENT DISCHARGE	PHIL	D		33	335	3357	83/12/19	P		N			85/09/19	G	85/09/13	86
AIR CIRCUIT BREAKER	POLA	D	85/07/25	33	335	3357	85/12/16	T								86
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	POLA	D	85/02/13	33	335	3357	85/08/22	P		Y	85/08/22		88/02/11	T	88/02/11	88
TRANSFORMERS, POWER	RKOR	D		33	335	3357	81/11/17	P		Y	82/06/24		84/07/09	G	84/06/29	84
LAMPS, FLUORESCENT DISCHARGE	RKOR	D	84/09/28	33	335	3357	84/12/10	P		Y	84/12/10		85/09/19	G	85/09/13	86
TRANSFORMERS, INSTRUMENT	SPAI	D		33	335	3357	82/06/23	P		N			84/04/19	T	84/04/19	84
TRANSFORMERS, POWER	TAIW	D		33	335	3357	81/11/17	P		Y	82/06/24		84/07/09	G	84/06/29	84
LAMPS, FLUORESCENT DISCHARGE	TAIW	D	84/09/28	33	335	3357	84/12/10	P		Y	84/12/10		85/09/19	G	85/09/13	86
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	TAIW	D	85/02/20	33	335	3357	85/08/22	P		Y	85/08/22		88/02/11	T	88/02/11	88
LAMPS, FLUORESCENT DISCHARGE	THAI	D	84/09/28	33	335	3357	84/12/10	P		Y	84/12/10		85/09/19	G	85/09/13	86
TRANSFORMERS	TURK	D	90/12/05	33	335	3357	91/03/28	T	I	N		91/04/30		T	91/07/04	I 92
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	UK	D	85/02/13	33	335	3357	85/08/22	P		Y	85/08/22		88/02/11	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT TYPE 3 P	USSR	D	85/02/13	33	335	3357	85/08/22	P		Y	85/08/22		88/02/11	T	88/02/11	88
AGRICULTURAL GROUND ENGAGING TOOLS	BRAZ	D	90/10/18	33	336	3361	91/02/22	P		Y	91/02/16	91/03/08		G	91/07/12	92
MULTI-TYRED ROLLERS	CZEC	D	88/08/29	33	336	3362	88/12/22	P		Y	88/12/22		89/05/17	G	89/05/17	89
Self Propelled Multi-Tyred Rollers	CZEC	D	92/08/28	33	336	3362	92/12/06	T								93
FORKLIFT TRUCKS	JAP	D		33	336	3363	80/10/15	P		N			83/01/10	T	83/01/10	83
FORK LIFT TRUCKS	JAP	D	87/11/09	33	336	3363	88/05/06	P		Y	88/05/09		88/10/04	U	88/09/26	89
FORKLIFT TRUCKS (result of Court action re '87 case)	*JAP*	*D*	*91/08/21*	33	336	3363	*91/08/21*	*P*						T		92
YACHT WINCHES AND HANDLES	NZ	D		33	336	3363	83/11/16	P		Y	83/11/16		84/02/20	T	84/02/20	84
CERTAIN FORKLIFT TRUCKS	*UK*	*D*	*91/08/21*	*33*	*336*	*3363*	*91/12/19*	*P*		*Y*		*92/05/08*		*G*		92
WINDLASSES AND CAPSTANS	USA	D		33	336	3363	82/10/27	P		N			83/02/28	T	83/02/28	83
PALLET TRUCKS	USA	D	84/06/07	33	336	3363	84/09/18	U			84/08/31					85
ELECTRIC WINCHES	USA	D	87/02/10	33	336	3363	87/09/16	T								88
CENTRE LATHES	TAIW	D		33	336	3364	84/03/09	P		N			84/10/31	T	84/10/31	85
AIR COMPRESSORS	BLGM	D		33	336	3365	83/07/18	P		N			84/03/23	T	84/03/23	84
PNEUMATIC HOSE COUPLINGS	SWED	D		33	336	3365	83/03/14	P		N			83/04/13	T	83/04/13	83
HAND HACKSAW BLADES	BRAZ	D	85/11/18	33	336	3367	86/06/03	P		Y	86/06/03		86/08/07	U	86/08/02	87
HAND HACKSAW BLADES	NZ	D	85/03/19	33	336	3367	85/08/09	P		Y	85/08/09		86/08/07	U	86/05/19	86
INJECTION MOULDING MACHINES	ASTA	D		33	336	3369	83/01/24	P		Y	83/01/24		83/03/09	T	83/03/09	83
OUTBOARD MOTORS	BLGM	D	89/01/19	33	336	3369	89/05/19	P		Y	89/05/20		89/10/18	U	89/10/13	90
OUTBOARD MOTORS	JAP	D		33	336	3369	82/08/26	P		Y	82/08/26		83/01/19	G	82/12/30	83
INJECTION MOULDING MACHINES	JAP	D		33	336	3369	83/01/24	P		Y	83/01/24		83/07/04	T	83/07/04	84
GEAR BOXES, INDUSTRIAL	JAP	D	85/06/14	33	336	3369	85/09/13	T								86
OUTBOARD MOTORS	JAP	D	89/01/19	33	336	3369	89/05/19	P		Y	89/05/20		89/10/18	U	89/10/13	90
FAAE	NZ	D		33	336	3369	82/01/15	P		N			83/01/19	G	83/01/07	83
SRMKPR	UK	D		33	336	3369	81/12/17	P		N			82/08/24	T	82/08/24	83

GEARED MOTOR DRIVE UNITS	UK	D		33	336	3369	82/07/27	P		N			83/04/22	G	83/03/28	83
OUTBOARD MOTORS	USA	D	84/01/16	33	336	3369	84/05/09	P		Y	84/09/24		85/03/19	G	85/03/13	85
OUTBOARD MOTORS	USA	D	89/01/19	33	336	3369	89/05/19	P		Y	89/05/20		89/10/18	U	89/10/13	90
Certain Finished Chrome Tanned Bovine Leather	ARGE	D	92/07/15	*34*	*345*	*3451*	92/10/23	T								93
Certain Finished Chrome Tanned Bovine Leather	BRAZ	D	92/07/15	*34*	*345*	*3451*	92/10/23	P		Y			93/03/04	T		93
Certain Finished Chrome Tanned Bovine Leather	INIA	D	92/07/15	*34*	*345*	*3451*	92/10/23	P		Y			93/03/04	T		93
CHAMOIS LEATHER	NZ	D	84/07/20	34	345	3451	84/09/20	T								85
Certain Finished Chrome Tanned Bovine Leather	THAI	D	92/07/15	*34*	*345*	*3451*	92/10/23	T								93
PASSENGER CAR TYRES	BRAZ	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/02	88
TYRES, PASSENGER CAR	CHIN	D	84/02/02	34	346	3461	84/04/13	T								84
PASSENGER CAR TYRES	CHIN	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/02	88
TYRES, PASSENGER CAR	CZEC	D	94/02/02	34	346	3461	84/04/13	T								84
PASSENGER CAR TYRES	CZEC	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/02	88
PASSENGER CAR TYRES	FGMY	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/02	88
PASSENGER CAR TYRES	FRAN	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/02	88
TYRES, PASSENGER CAR	JAP	D		34	346	3461	82/09/28	P		N			83/09/05	U	83/04/28	83
TYRES, PASSENGER CAR	NETH	D		34	346	3461	82/09/28	P		Y	82/10/21		83/09/05	U	83/07/11	84
TYRES, PASSENGER CAR	NZ	D		34	346	3461	82/09/28	P		N			83/09/05	U	83/07/11	84
TYRES, PASSENGER CAR	RKOR	D		34	346	3461	82/09/28	P		Y	82/10/21		83/09/05	G	83/08/18	84
PASSENGER CAR TYRES	SPAI	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/02	88
PASSENGER CAR TYRES	TAIW	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/02	88
PASSENGER CAR TYRES	THAI	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/03	88
PASSENGER CAR TYRES	TURK	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/04	88
PASSENGER CAR TYRES	UK	D	86/02/07	34	346	3461	86/07/16	P		Y	86/07/16		88/03/02	T	88/03/05	88
POLYPROPYLENE FILM, BIAXIALLY ORIENTED	JAP	D	84/05/08	34	347	3471	84/07/25	T								85
FILM LAMINATE	USA	D	85/03/20	34	347	3471	85/06/11	P		Y	85/06/11		85/11/17	T	85/11/17	86
PVC SHEET, RIGID THERMOFORMING GRADE, UNPLAS	RKOR	D	87/01/14	34	347	3472	87/08/24	T								88
PVC SHEET, RIGID THERMOFORMING GRADE, UNPLAS	TAIW	D	87/01/14	34	347	3472	87/08/24	P		Y	87/08/24		88/02/25	T	88/02/25	88
VINYL SHEETING	UK	D	90/07/04	34	347	3472	90/11/21	T	L	N		90/11/29		T	91/02/11	L 91
VINYL SHEETING	YUGO	D	90/07/04	34	347	3472	90/11/12	T	L	N						91
TILES, VINYL FLOOR	NWAY	D	85/01/21	34	347	3473	85/04/18	P		Y	85/04/18		2011/85	G	85/11/15	86
Disposable Plastic Cutlery	CHIN	D	92/09/29	34	347	3474	93/01/07	P		Y			93/05/26	G		93
Disposable Plastic Cutlery	HONG	D	92/09/29	34	347	3474	93/01/07	P		Y			93/05/26	T		93
Disposable Plastic Cutlery	MLAY	D	92/09/29	34	347	3474	93/01/07	P		Y			93/05/26	T		93
GLOVES, DISPOSABLE EXAMINATION	NZ	D		34	347	3474	82/02/11	P		Y	82/02/11		83/12/29	G	82/12/17	83
POLYPROPYLENE STRAPPING	NZ	D		34	347	3474	82/09/24	P		N			83/02/14	T	83/02/14	83
Disposable Plastic Cutlery	RKOR	D	92/09/29	34	347	3474	93/01/07	P		Y			93/05/26	T		93
Disposable Plastic Cutlery	SING	D	92/09/29	34	347	3474	93/01/07	T								93
Disposable Plastic Cutlery	TAIW	D	92/09/29	34	347	3474	93/01/07	T								93
Disposable Plastic Cutlery	THAI	D	92/09/29	34	347	3474	93/01/07	P		Y			93/05/26	G		93
FIBREGLASS INSECT SCREENING	USA	D		34	347	3474	82/03/23	P		N			83/07/18	T	83/07/18	84
PAINT BRUSHES	CHIN	D	84/02/07	34	348	3483	84/03/30	P		N			84/10/26	U	84/10/22	85
CARPET SWEEPERS	IRE	D		34	348	3483	82/07/27	P		N			83/02/28	G	83/02/10	83
PENCILS, COLOURED	BRAZ	D	88/06/20	34	348	3486	88/10/18	P		Y	88/10/18			U	89/02/23	89

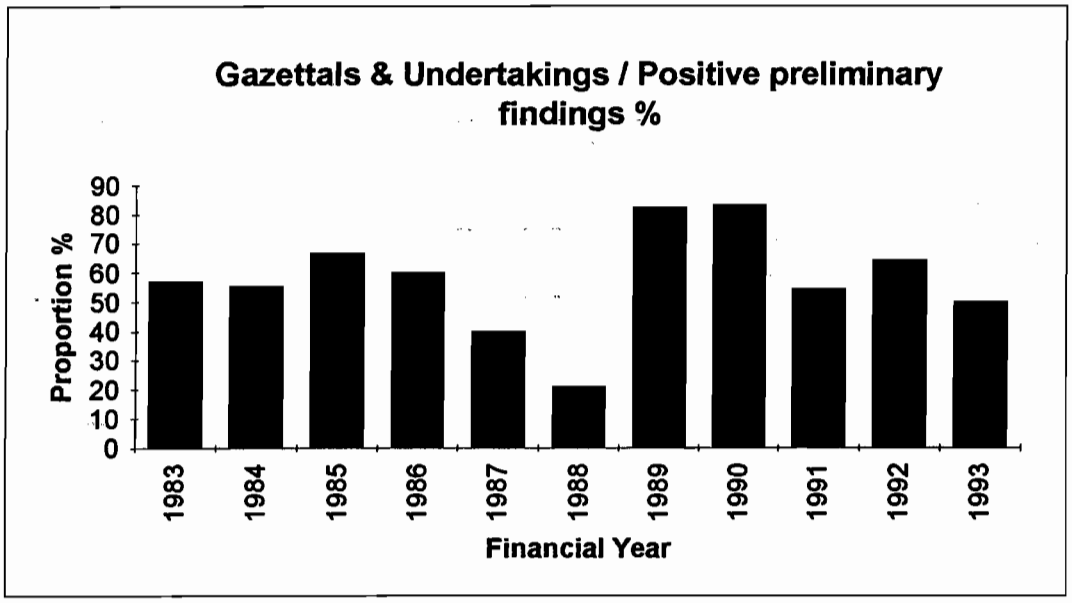
PENCILS, BLACKLEAD	BRAZ	D	88/06/20	34	348	3486	88/10/18	T	I			89/04/17	89/07/28	U	89/08/16		90
PENCILS, COLOURED	HGRY	D	88/06/20	34	348	3486	88/10/18	P		Y	88/10/18			G	89/03/08		89
PENCILS, COLOURED	POLA	D	88/06/20	34	348	3486	88/10/18	P		Y	88/10/18			G	89/03/08		89
Moist Towelettes	ISRA	D	92/09/25	34	348	3487	93/01/03	T									93
Frozen Pork	CAN	S	92/08/19	21	211	2115	92/11/27	T									93
CANNED HAM	DENM	S	90/04/26	21	211	2117	90/08/28	T	O	N		90/01/30		G	91/07/10		92
CANNED HAM	IRE	S	90/04/26	21	211	2117	90/08/28	T	O	N		90/01/30		G	91/07/10		92
CANNED HAM	NETH	S	90/05/16	21	211	2117	90/08/28	T	O	N		90/01/30		G	91/07/10		92
CHEESE	BLGM	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE	BLGM	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE	DENM	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE	FGMY	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE, EDAM	FINL	S	86/09/17	21	212	2123	86/12/23	U			86/12/12						87
CHEESE	FRAN	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE	GREE	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE	IRE	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE	ITAL	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE	NETH	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CHEESE. JARLSBERG	NWAY	S	84/06/20	21	212	2123	84/08/13	P		Y	84/08/13		85/03/26	U	85/03/20		85
CHEESE	UK	S	83/02/17	21	212	2123	83/06/03	P		Y	83/06/24		83/11/25	U	83/11/18		84
CANNED PEACHES & CANNED PEARS	CHIN	S	91/02/27	21	213	2131	91/06/27	T	D	Y	91/10/01	91/09/26		G	91/09/26		92
CANNED PEACHES & CANNED PEARS	CHIN	S	91/02/27	21	213	2131	91/06/27	T	D	Y	91/10/01	91/09/26		T	92/02/19	O	92
GLACE CHERRIES	*FRAN*	*S*	*91/07/30*	*21*	*213*	2131	*91/11/07*	*P*	*I*	*Y*		*92/03/19*		G			92
FRUIT, DRIED VINE	GREE	S	84/06/18	21	213	2131	84/08/06	P		Y	84/08/06		85/04/12	G	85/04/02		85
CURRANTS AND SULTANAS	GREE	S	89/05/23	21	213	2131	89/09/26	T									90
CANNED PEACHES	GREE	S	91/02/27	21	213	2131	91/06/27	T	L	Y	91/10/01	91/09/26		T	92/02/19	I	92
CHERRIES IN BRINE	ITAL	S		21	213	2131	84/07/04	P		Y	84/07/04		85/06/12	U	85/05/21		85
GLACE CHERRIES	*ITAL*	*S*	*91/07/30*	*21*	*213*	2131	*91/11/07*	*P*	*I*	*Y*		*92/03/19*		G			92
CANNED PEACHES & CANNED PEARS	SPAI	S	91/02/27	21	213	2131	91/06/27	T	L	Y	91/10/01	91/09/26		G	91/09/26		92
CANNED PEACHES & CANNED PEARS	SPAI	S	91/02/27	21	213	2131	91/06/27	T	L	Y	91/10/01	91/09/26		T	92/02/19	I	92
CANNED WHOLE TOMATOES	CHIN	S	91/08/27	21	213	*2132*	91/12/05	T	D	N							92
CANNED WHOLE TOMATOES	*ITAL*	*S*	*91/08/27*	*21*	*213*	*2132*	*91/12/05*	*P*		*Y*		*92/04/13*		*G*			92
FROZEN PEAS	NZ	S	86/02/05	21	213	2132	86/08/21	P		Y	86/08/21		88/01/06	U	87/12/31		88
CANNED WHOLE TOMATOES	*SPAI*	*S*	*91/08/27*	*21*	*213*	*2132*	*91/12/05*	*P*		*Y*		*92/04/13*		*G*			92
CANNED WHOLE TOMATOES	*THAI*	*S*	*91/08/27*	*21*	*213*	*2132*	*91/12/05*	*P*		*Y*		*92/04/13*		*G*			92
PASTA PRODUCTS	ITAL	S	89/11/22	21	215	2153	90/03/26	T	I	N							90
DRIED EGG WHITE	ITAL	S	91/08/09	21	217	2176	91/11/18	T	D	N		91/12/11		N	92/02/04	I	92
DRIED EGG WHITE	*NETH*	*S*	*91/08/09*	*21*	*217*	2176	*91/11/18*	*P*		*Y*		*92/04/02*		*G*			92
BRANDY	FRAN	S		21	218	2188	84/02/23	P		Y	84/02/23		84/07/26	U	84/07/24		85
BRANDY	FRAN	S	89/07/03	21	218	2188	89/10/17	P		Y	89/10/18	89/10/28	90/02/26	G	90/02/26		90
WOVEN POLYPROPYLENEPRIMARY CARPET BACKING	COMB	S	90/01/28	23	235	2352	80/05/28	T	I	N							80
TIMBER, SQUARE DRESSED STRUCTURAL SOFTWOOI	NZ	S		25	253	2532	82/11/03	P		N			83/10/28	T	83/10/28		84
SODIUM TRIPOLYPHOSPHATE	ISRA	S	89/06/12	27	275	2755	89/10/10	T									90
Clear Float Glass	MLAY	S	92/01/31	28	285	2850	92/05/11	T									92

Clear Float Glass	THAI	S	92/01/31	28	285	2850	92/05/11	T									92
IRON & STEEL, COLD ROLLED HOOP, STRIP, SHEET, C(	ARGE	S	86/12/22	29	294	2941	87/05/07	T									87
IRON & STEEL, COLD ROLLED HOOP, STRIP, SHEET, C(	BRAZ	S	86/12/22	29	294	2941	87/05/07	P		Y	87/05/07		88/01/22	T	88/01/22		88
MALLEABLE CAST IRON PIPE FITTINGS	RKOR	S	90/01/10	29	294	2942	90/05/10	T	O								90
MALLEABLE CAST IRON PIPE FITTINGS	TAIW	S	90/01/10	29	294	2942	90/05/10	T	O								90
STAINLESS STEEL TUBING	NZ	S	84/08/31	29	294	2945	85/08/09	P		Y	85/08/09		86/01/07	U	86/06/20		86
TILES, CHIP COATED METAL ROOFING	NZ	S		31	315	3153	82/10/19	P		N			83/07/22	U	83/06/28		83
FREIGHT CONTAINERS, MECHANICALLY REFRIGERATE	NZ	S		31	316	3168	83/06/24	P		N			83/10/24	T	83/10/24		84
BATHS, PORCELAIN ENAMELLED STEEL	NZ	S	85/03/14	31	316	3168	85/08/09	P		Y	85/08/09		85/11/28	U	85/11/21		86
WATERBED HEATERS	NZ	S	85/10/01	33	335	3353	86/01/02	P		Y	86/01/02		86/04/14	T	86/04/14		86
DISPLAY REFRIGERATORS, TWO DOOR MEDIUM	NZ	S	84/12/20	33	335	3353	85/08/09	P		Y	85/08/09		86/03/06	U	86/02/28		86
AUTOMOTIVE LEAD-ACID STORAGE BATTERIES	MLAY	S	90/06/28	33	335	3356	90/11/07	T	I	N		90/11/28		T	91/02/11	I	91
TRANSFORMERS	TURK	S	90/12/05	33	335	3357	91/03/28	T	D	N		91/04/30		T	91/07/04	D	92
AGRICULTURAL GROUND ENGAGING TOOLS	BRAZ	S	91/10/18	33	336	3361	91/02/22	T	D	N		91/03/15		T	91/05/16	D	91
HAND HACKSAW BLADES	BRAZ	S	85/11/18	33	336	3367	86/06/03	P		Y	86/06/03		86/08/07	U	86/08/02		87
HAND HACKSAW BLADES	NZ	S	85/03/19	33	336	3367	85/08/09	P		Y	85/08/09		86/08/07	U	86/05/19		86
Certain Finished Chrome Tanned Bovine Leather	ARGE	S	92/07/15	*34*	*345*	*3451*	92/10/23	T									93
Certain Finished Chrome Tanned Bovine Leather	BRAZ	S	92/07/15	*34*	*345*	*3451*	92/10/23	T									93
Certain Finished Chrome Tanned Bovine Leather	INIA	S	92/07/15	*34*	*345*	*3451*	92/10/23	T									93
MOTOR CYCLE GARMENTS, WAXED COTTON	RKOR	D	84/09/24	24	245	2452	85/01/02	P		Y	85/01/02		85/04/30	T	85/04/30		85
PHTHALIC ANHYDRIDE	BRAZ	D	84/10/31	27	275	2754	85/01/04	P		Y	85/01/04		85/09/18	G	85/09/13		86
PHTHALIC ANHYDRIDE	ISRA	D	84/10/31	27	275	2754	85/01/04	P		Y	85/01/04		85/09/18	G	85/09/13		86
DI-OCTYL PHTHALATE	RKOR	D	84/09/10	27	275	2754	84/12/20	P		Y	84/12/10		85/12/09	G	85/12/05		86
PHTHALIC ANHYDRIDE	TAIW	D	84/10/31	27	275	2754	85/01/04	P		Y	85/01/04		85/09/18	G	85/09/13		86
TRUCKS, BATTERY OPERATED WORK (STOCKPICKER!	USA	D	84/10/18	33	336	3363	85/01/21	U			85/01/15						85

Appendix 5.2.4.6 B

Gazettals & Undertakings / Preliminary Findings

Fin_Year	(G+U)/PP	Gazettal	Undertake	PPF	G+U	Reversals
1983	57	48	8	98	56	
1984	55	37	15	94	52	
1985	67	16	4	30	20	
1986	60	22	8	50	30	
1987	40	4	2	15	6	
1988	21	6	2	38	8	
1989	82	10	4	17	14	
1990	83	1	4	6	5	
1991	55	6	0	11	6	5
1992	64	35	1	56	36	13
1993	50	22	0	44	22	



Appendix 6.3.1 A

Complaints Initiated by Industry and Foreign Ownership and Increased Import Share

FY1984to93

Regression of ASIC codes (other than 23,24 & 32) such that Complaints=f(Foreign Ownership)+(Increased Import Share)

	1	3	7
Industry ASIC 2 Digit	**Complaints Initiated FY1984to93**	**Foreign Owned % Turnover 1986-87**	**Increase Import Share %**
21	61	27.9	0.4
25	0	10	0.2
26	16	14.4	-0.7
27	168	60.6	-4.2
28	19	18.8	1.1
29	38	38.5	6.4
31	17	14.7	2
33	74	39.6	2.7
34	73	28	0.9
23	*9*	*20.2*	*0.6*
24	*1*	*7.5*	*3.9*
32	*14*	*58.9*	*2*
	490	*32*	*1.3*

Regression Statistics

Multiple R	0.981308
R Square	0.962966
Adjusted R	0.948152
Standard E	12.43476
Observatio	8

Analysis of Variance

	df	*m of Squares*	*Mean Square*	*F*	*Significance F*
Regressior	2	20102.76	10051.38	65.00556	0.000264
Residual	5	773.1168	154.6234		
Total	7	20875.88			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	-19.4246	9.381125	-2.0706	0.077148	-43.5395	4.690332
27.9	2.723342	0.277955	9.797792	2.45E-05	2.008838	3.437846
0.4	-6.1031	1.588552	-3.84192	0.006359	-10.1866	-2.0196

Observation	*Predicted Y*	*Residuals*
1	6.588224	-6.58822
2	24.06372	-8.06372
3	171.243	-3.24296
4	25.06085	-6.06085
5	46.36427	-8.36427
6	8.402357	8.597643
7	71.94141	2.058592
8	51.33621	21.66379

Percentile	*61*
6.25	0
18.75	16
31.25	17
43.75	19
56.25	38
68.75	73
81.25	74
93.75	168

Correlation

	Column 1	*Column 2*	*Column 3*
Column 1	1		
Column 2	0.921565	1	
Column 3	-0.504491	-0.19121	1

Sources: Industry Commission Annual Reports; Australian Bureau of StatisticsCat.No.5322.0

Appendix 6.3.1 B

Dumping Industry Data Test for Significant Difference (other than 23,24&32)

(between pre and post FY1988)

Industry SITC	Industry Description	Complaints Initiated FY1984to93	Complaints Initiated FY1984to88	Complaints Initiated FY1989to93
21	Food&Beverages	61	10	51
25	Wood&Furniture	0	0	0
26	Paper&Products	16	2	14
27	Chemical&Petrols	168	63	105
28	Non-Metallic	19	4	15
29	Basic Metal	38	31	7
31	Fabricated Metal	17	9	8
33	Other Machines	74	60	14
34	Misc.Manufactures	73	15	58
23	Textiles	9	3	6
24	Clothing&Footwear	1	1	0
32	Transport	14	2	12
	Total Manufacturing	490	200	290

pre post fy 1988

F-Test: Two-Sample for Variances

	Variable 1	*Variable 2*
Mean	21.55555556	30.2222222
Variance	596.7777778	1187.44444
Observations	9	9
df	8	8
F	1.989759821	
P(F<=f) one-tail	0.175055298	
F Critical one-tail	2.58934918	

Source: Industry Commission Annual Report

Dumping Industry Data - primary analysis of initiations Appendix 6.3.1 C

Industry SITC	Industry Descriptio	1 Complaint Initiated FY1984to9	2 Concent-ration % 1989-90	3 Foreign Owned % Turnover 1986-87	4 Effective Protection 1987-88	5 Turnover $'000 M 1987-88	6 R&D Spending $M 1986-87	7 Increase Import Share %
21	Food&Bev	61	18	27.9	6	27.1	55	0.4
25	Wood&Fur	0	12	10	18	7	6	0.2
26	Paper&Pro	16	36	14.4	14	12	9	-0.7
27	Chemical&	168	40	60.6	13	12.9	119	-4.2
28	Non-Metall	19	53	18.8	4	6	15	1.1
29	Basic Meta	38	58	38.5	9	16.4	65	6.4
31	Fabricated	17	16	14.7	22	10.1	22	2
33	Other Mac	74	11	39.6	22	13.1	240	2.7
34	Misc.Manu	73	20	28	27	7.2	16	0.9
23	Textiles	9	20	20.2	68	3.9	6.5	0.6
24	Clothing&F	1	21	7.5	173	4.7	6.5	3.9
32	Transport	14	45	58.9	44	12.9	127	2
	Total Manu	490	10	32	19	133.9	686	1.3

Correlation

	Column 1	*Column 2*	*Column 3*	*Column 4*	*Column 5*	*Column 6*	*Column 7*
Column 1	1						
Column 2	0.065609	1					
Column 3	0.921565	0.267478	1				
Column 4	0.05437	-0.6603	-0.07738	1			
Column 5	0.236568	-0.04391	0.307882	-0.4331	1		
Column 6	0.549559	-0.18431	0.673886	0.155279	0.256814	1	
Column 7	-0.50449	0.16636	-0.19121	-0.00394	0.095243	0.069972	1

Test of relationship between initiations and changes in effective protection rates

on Statistics

Multiple R	0.05437
R Square	0.002956
Adjusted R	-0.13948
Standard E	54.65419
Observatio	9

ls of Variance

	df	*m of Squares*	*Mean Square*	*F*	*Significance F*
Regressior	1	61.99393	61.99393	0.020754	0.889511
Residual	7	20909.56	2987.08		
Total	8	20971.56			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	46.46401	41.13891	1.129442	0.291437	-50.814	143.742
x1	0.354251	2.459008	0.144063	0.889014	-5.46038	6.168877

INITIATIONS x 2 DIGIT ASIC x COUNTRY FY 1983 TO 1993 x TRADE VOLUME 1987-88

Appendix 6.3.2 A

Count of I		Imports	Exports	Alll Trade	Ratio Initiations	1982-83 Imports	1992-93 Imports$A	Ratio Imports%
Cntry	Grand tota	A$Million	A$Million	A$Million	/Imports	A$Million	A$Million	FY93/83
Grand tota	646	37734	34903	72637		19742	53435	
NZ	40	1733	2165	3898		*0*	*0*	
ARGE	8	64	75	139	13	6	76	468
ASTA	5	157	18	175	3	55	226	152
BLGM	21	320	367	687	7	125	512	151
BRAZ	23	298	100	398	8	155	329	78
CAN	18	863	701	1564	2	435	984	84
CHIN	33	850	1281	2131	4	279	2557	339
COMB	2	*3*	*5*	8	67	*8*	*11*	51
CZEC	8	41	68	109	20	20	43	79
DENM	4	190	90	280	2	78	274	130
FGMY	47	2918	1075	3993	2	1299	3383	96
FINL	3	293	79	372	1	108	416	142
FRAN	31	892	981	1873	3	455	1481	120
GREE	5	50	75	125	10	19	51	99
HGRY	4	*28*	*6*	34	14	*26*	30	43
HONG	8	845	1977	2822	1	485	796	61
INDO	5	588	562	1150	1	561	1305	86
INIA	6	228	505	733	3	142	362	94
IRE	7	202	7	209	3	97	255	97
ISRA	12	123	61	184	10	58	173	110
ITAL	29	1329	1092	2421	2	538	1349	93
JAP	54	7817	10655	18472	1	4506	11139	91
MEXI	4	65	54	119	6	30	90	111
MLAY	8	591	652	1243	1	214	974	168
NETH	16	596	626	1222	3	304	624	76
NWAY	3	168	29	197	2	34	124	135
PHIL	7	127	257	384	6	84	177	78
POLA	6	27	200	227	22	10	23	85
PORT	1	47	46	93	2	20	63	116
QATA	5	*20*	*16*	36	25	*13*	22	63
RKOR	44	1020	1768	2788	4	293	1696	214
ROUM	3	23	123	146	13	58	8	5
SAFR	5	99	153	252	5	85	192	83
SAUD	4	419	266	685	1	977	812	31
SING	14	898	1173	2071	2	600	1509	93
SPAI	14	190	280	470	7	65	218	124

ln(Initiations)=f (Imports(Dumping sources only))

Regression Statistics

Multiple R	0.593253
R Square	0.351949
Adjusted R	0.336878
Standard E	0.877068
Observatio	45

Analysis of Variance

	df	*m of Squares*	*Mean Square*	*F*	*Significance F*
Regression	1	17.9641	17.9641	23.35278	1.75E-05
Residual	43	33.07771	0.769249		
Total	44	51.04181			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	1.815293	0.145517	12.47475	4.79E-16	1.52183	2.108757
x1	0.000368	7.62E-05	4.832471	1.67E-05	0.000215	0.000522

Initiations=f(Imports+Exports+Change Imports)

	Column 1	*Column 2*	*Column 3*	*Column 4*
Column 1	1			
Column 2	0.802273	1		
Column 3	0.697512	0.885734	1	
Column 4	0.123774	-0.036562	-0.028634	1

Regression Statistics

Multiple R	0.797936
R Square	0.636702
Adjusted R	0.619402
Standard E	9.653871
Observatio	45

Analysis of Variance

	df	*m of Squares*	*Mean Square*	*F*	*Significance F*
Regression	2	6860.028	3430.014	36.80382	5.83E-10
Residual	42	3914.283	93.19722		
Total	44	10774.31			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	8.355814	1.603823	5.209937	4.81E-06	5.119168	11.59246
x1	0.007719	0.001765	4.373546	7.39E-05	0.004157	0.01128
x2	-0.000609	0.001785	-0.341432	0.734404	-0.004212	0.002993

SWED	9	777	121	898	1	278	1013	135
SWIT	1	544	307	851	0	197	721	135
TAIW	48	1744	1381	3125	3	649	2213	126
THAI	17	631	316	947	3	89	756	314
TURK	3	33	191	224	9	4	39	360
UK	28	3012	1775	4787	1	1467	3395	86
USA	62	8531	4655	13186	1	4766	13004	101
USSR	5	22	632	654	23	12	4	12
VENZ	1	1	11	12	100	24	4	6
YUGO	5	50	91	141	10	14	2	5
BULG	0	*2*	*0*	2	0			
MORR	0	*10*	*4*	14	0			
ALG	0	*0*	*29*	29	0			
LIBY	0	0	*15*	15	0			
EGYPT	0	2	311	313	0			
IVORY	0	*2*	*0*	2	0			
GHANA	0	*1*	*2*	3	0			
BAHA	0	*5*	*1*	6	0			
ANTIL	0	*2*	*2*	4	0			
TRIN	0	*0*	*5*	5	0			
ECUAD	0	*4*	*2*	5	0			
PERU	0	*4*	*18*	22	0			
CHILE	0	*17*	*12*	29	0			
IRAQ	0	0	178	178	0			
KUWAIT	0	121	80	201	0			
OUAEM	0	*120*	*98*	218	0			
OMAN	0	10	55	65	0			
IRAN	0	17	380	397	0			
PAK	0	65	101	166	0			
BRUVEI	0	28	14	42	0			
PNG	0	109	745	854				
UNSPEC	0	663	1374	2037				
TOTAL		38917	38329	77245				

Initiation/Imports (All sources other than NZ&PNG)

Regression Statistics

Multiple R	0.802273
R Square	0.643641
Adjusted R	0.637985
Standard E	8.77982
Observatio	65

Analysis of Variance

	df	Sum of Sq	Mean Squa	F	Significance F
Regression	1	8771.384	8771.384	113.7881	9.49E-16
Residual	63	4856.37	77.08524		
Total	64	13627.75			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	5.323542	1.171791	4.543081	2.51E-05	2.981903	7.665182
x1	0.007864	0.000737	10.66715	7.79E-16	0.006391	0.009337

Initiation/Exports (All sources other than NZ&PNG)

Regression Statistics

Multiple R	0.697512
R Square	0.486522
Adjusted R	0.478372
Standard E	10.53908
Observatio	65

Analysis of Variance

	df	*m of Squares*	*Mean Square*	*F*	*Significance F*
Regression	1	6630.208	6630.208	59.69279	1.08E-10
Residual	63	6997.546	111.0722		
Total	64	13627.75			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	***Upper 95%***
Intercept	6.059684	1.400301	4.327416	5.4E-05	3.261405	8.857963
x1	0.006963	0.000901	7.726111	9.8E-11	0.005162	0.008764

Initiations/Imports (Dumping sources other than NZ)

Regression Statistics

Multiple R	0.797304
R Square	0.635694
Adjusted R	0.627222
Standard E	9.554188
Observatio	45

Analysis of Variance

	df	Sum of Sq	Mean Squa	F	Significance F
Regression	1	6849.163	6849.163	75.0326	5.59E-11
Residual	43	3925.148	91.2825		
Total	44	10774.31			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	8.327695	1.585168	5.253509	4.16E-06	5.130901	11.52449
x1	0.007189	0.00083	8.662136	4.61E-11	0.005515	0.008862

Initiations/Exports (Dumping sources other than NZ)

Regression Statistics

Multiple R	0.686474
R Square	0.471247
Adjusted R	0.45895
Standard E	11.51031
Observatio	45

Analysis of Variance

	df	*m of Squares*	*Mean Square*	*F*	*Significance F*
Regression	1	5077.36	5077.36	38.32339	1.93E-07
Residual	43	5696.951	132.4872		
Total	44	10774.31			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	***Upper 95%***
Intercept	9.500006	1.886626	5.035449	8.58E-06	5.695265	13.30475
x1	0.00626	0.001011	6.190589	1.77E-07	0.004221	0.0083

Appendix 6.3.2 B

INITIATIONS x COUNTRY FY1983 TO 1993 & IMPORTS x SOURCE

Country or Group	1982-93 No.Cases	1987-88 Imports A$million	1982-93 Cases %	1987-88 Imports %	%Ratio %Cases/ %Imports
All countries	***631***	***37844***	***100.00***	***100.00***	
Developed countries	**356**	**29149**	**56.42**	**77.02**	**73.25**
Eastern Europe	**23**	**125**	**3.65**	**0.33**	**1103.53**
Developing countries	**252**	**8570**	**39.94**	**22.65**	**176.35**
(including NICs)	140	4063	22.19	10.74	206.66
Newly industrialized countries	112	4507	17.75	11.91	149.04
Developed countries	**356**	**29149**	**56.42**	**77.02**	73.25
Austria	6	156	0.95	0.41	230.67
Belgium-Luxembourg	22	320	3.49	0.85	412.33
Canada	11	863	1.74	2.28	76.45
Denmark	4	190	0.63	0.50	126.26
Finland	5	293	0.79	0.77	102.35
France	27	892	4.28	2.36	181.54
Germany	46	2918	7.29	7.71	94.55
Greece	5	50	0.79	0.13	599.75
Ireland	7	201	1.11	0.53	208.87
Israel	10	123	1.58	0.33	487.60
Italy	29	1329	4.60	3.51	130.87
Japan	46	7817	7.29	20.66	35.29
Norway	3	168	0.48	0.44	107.10
Netherlands	17	596	2.69	1.57	171.07
Portugal	1	47	0.16	0.12	127.61
South Africa	8	99	1.27	0.26	484.64
Spain	11	190	1.74	0.50	347.22
Sweden	9	777	1.43	2.05	69.47
Switzerland	1	544	0.16	1.44	11.02
Turkey	3	33	0.48	0.09	545.22
United Kingdom	29	3012	4.60	7.96	57.74
United States	56	8531	8.87	22.54	39.37
Eastern Europe	**23**	**125**	**3.65**	**0.33**	1103.53
Czechoslovakia	8	41	1.27	0.11	1170.24
Hungary	4	12	0.63	0.03	1999.15
Poland	6	27	0.95	0.07	1332.77
Romania	2	23	0.32	0.06	521.52
USSR	3	22	0.48	0.06	817.84
Developing Countries	**140**	**4063**	**22.19**	**10.74**	206.66
Argentina	8	64	1.27	0.17	749.68
Brazil	24	298	3.80	0.79	483.02
China	32	850	5.07	2.25	225.79
Colombo	2	28	0.32	0.07	428.39
India	6	228	0.95	0.60	157.83
Indonesia	11	588	1.74	1.55	112.20
Malaysia	12	591	1.90	1.56	121.78
Mexico	4	65	0.63	0.17	369.07
Pakistan	1	65	0.16	0.17	92.27
Philippines	7	127	1.11	0.34	330.57
Qatar	3	58	0.48	0.15	310.21
Saudi Arabia	4	419	0.63	1.11	57.26
Thailand	20	631	3.17	1.67	190.09
Venezuela	1	1	0.16	0.00	5997.46
Yugoslavia	5	50	0.79	0.13	599.75
Newly Industrialized countries	**112**	**4507**	**17.75**	**11.91**	149.04
Hongkong	9	845	1.43	2.23	63.88
Korea	41	1020	6.50	2.70	241.07
Singapore	17	898	2.69	2.37	113.54
Taiwan	45	1744	7.13	4.61	154.75
Excluded					
New Zealand	33	1733	5.23	4.58	
Total	664	39577	105.2298	104.5793	

APPENDIX
6.4.1

MINISTER FOR TRADE

PARLIAMENT HOUSE
CANBERRA ACT 2600

- 8 AUG 1994

Rec'd 15/8

Mr Richard Whitwell
PO Box 10
AINSLIE ACT 2602

Dear Mr Whitwell

Thank you for your letters dated 10 May and 5 July 1994 concerning special access under the Archives Act. I apologise for the delay in replying.

In accordance with the request to the Department of Foreign Affairs and Trade under Section 56(2) Archives Act attached to your letter of 10 May, I have had the Department examine your request.

The Department will be replying directly to you, but it has concluded that in view of the nature of issues involved it is not appropriate for you to have access to the full records requested. You could, however, have access to unrestricted GATT documents relating to anti-dumping and countervailing issues.

In addition you might find it useful to discuss with Departmental officers Australia's activities in the GATT Code Committees and Australia's responses to anti-dumping and countervailing duty actions by other countries. In the light of those discussions, it would be clearer what particular information might be available to you for the purposes of your thesis. If you would like to follow this up, you could contact Mr R. Arnott, GATT Section, Trade Negotiations and Organisations Division, in the Department of Foreign Affairs and Trade (261 2139).

Yours sincerely

Production Note:
Signature removed prior to publication.

Bob McMullan

Telephone: (06) 277 7420 Facsimile: (06) 273 4128

MINUTE PAPER
CENTRAL OFFICE

Chief Executive Officer

cc DCEO(D)
ND(Commercial)
M(Dumping)

ACCESS TO INFORMATION ON ANTI-DUMPING AND COUNTERVAILING ACTIONS

As you are aware I am currently on study leave, approved and funded by the ACS, to complete a PhD Thesis on 'A Review of the Australian Law Relating to Anti-Dumping and Countervailing Measures and their Application'.

In order to determine and analyse the factors influencing the incidence of anti-dumping and countervailing applications and to measure the effect of duty impositions, it is necessary for me to have access to details of the relevant variables. Attached is an outline of the theoretical constructs. It is also necessary for me to have access to information on recent developments in the GATT forum.

Much of this information required for my research for the preparation of the thesis is of a confidential nature. You will see from the attached submissions on this matter that I have been attempting to go through a formal process to achieve some right of access. My first approach was as a Commonwealth Public Servant and Customs Officer requesting access at an administrative level, knowing that as an employee I would be subject to all of the confidentiality requirements of a public officer. In April this year my request was refused by both the Dumping Branch and the Anti-Dumping Authority on the basis of confidentiality and lack of resources to oversee my activities.

There may be some preconception by the areas involved that confidential material may be inadvertently released. Given my experience in handling such matters, and my involvement in defending Customs from exposure of such information for private commercial advantage, I consider that this risk is minimal. The question of the resources for supervision should also be minimal as it will only require examination of factual tabular material used in the calculations.

Following this refusal I applied to the Minister for access under the special provisions of the Archives Act. It has now been two and a half months since that application was lodged and as yet there has been no substantive reply. My conclusion at this stage is that there must be some continued reluctance on the part of the relative administrators to allow me access under the strict confidentiality provisions that apply. My next option is to embark on a formal challenge to the Federal Court and to the Ombudsman. I am however reluctant to do this because my personal view is that this course of action is completely unnecessary and inflammatory from a public view point. I also have an obligation to the Commonwealth and to the University to pursue this academic endeavour. My obligation to the Commonwealth is also premised by the national public interest aspect of this inquiry.

I think that some reasoned and considered negotiated resolution of this matter would be in the interest of the Department, the University and myself. I would therefore like to discuss this dilemma with you to see if we can resolve it in a less formal manner.

R. Whitwell
27 July 1994

AUSTRALIAN CUSTOMS SERVICE

Reply to the Comptroller-General

Quote

CUSTOMS HOUSE
5-11 Constitution Avenue
CANBERRA ACT 2601
Phone (06) 275 6666

18 May 1994

Mr Richard Whitwell
PO Box 10
AINSLIE ACT 2602

Dear Mr Whitwell

Thank you for your letters of 10 May 1994 to Senator the Hon Chris Schacht, Minister for Small Business, Customs and Construction, and Senator the Hon Peter Cook Minister for Industry, Science and Technology, requesting access to documentation under the Archives Act.

The matter you have raised is being examined and you will receive a response as soon as possible.

Yours sincerely

Production Note:
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(T M HILL)
Ministerial Liaison Officer

Richard Whitwell
PO Box 10
AINSLIE ACT 2602

10 May 1994

To Minister for Trade
for Industry, Science & Technology
for Small Business, Customs & Construction

Dear Minister

PhD THESIS ON NATIONAL INTEREST PROVISIONS OF ANTIDUMPING AND SUBSIDY LAW

Attached is a copy of my thesis proposal on the above subject. One of the reasons for the grant a full-time scholarship by the Australian Customs Service to complete the thesis, was the relevance of the topic to the Australian Customs Service and to the Commonwealth generally. In refining some of the concepts generated in the study, it would be useful to have special access to certain Commonwealth records.

I wrote to both the Antidumping Authority and the Dumping component of the Australian Customs Service seeking access to information held within those areas. Attached is a copy of the correspondence. You will see from the letters to the agencies the request was supported by my immediate supervisor, Professor Cutbush-Sabine.

The rejection of my request by the two agencies has led to this formal application for access under Section 56(2) of the Archives Act. Copies are attached of the required formal application, and the relevant legislative extracts.

I consider that my research fulfils the requirements of Archives Regulation 9(2)(d). It is research for the purposes of preparing a work for publication. It is likely to make a substantial contribution to the assessment of an important economic area of Commonwealth Government policy. There are records relevant to the thesis within your agency.

Examples of the way in which I wish to use the material include:

looking at the accounting information contained in questionnaires and related material to ascertain the reliability in terms of compliance with accounting standards;

ascertaining whether there are any interindustry differences in the methods of assessment;

looking at variations in the manner in which normal value calculations are made;

analysing some of the arguments put forward by Australia and other GATT signatories in relation to matters coming before the relevant GATT committee;

looking at Australia's response to antidumping and subsidy actions taken by other countries.

There have been a number of research publications which have relied upon information obtained by way of special access. The supervisory requirements in this case would be minimal. The attached resume illustrates my experience in handling and analysing of information of a business and confidential nature.

Your assistance with this request would be appreciated

Yours faithfully

Production Note:
Signature removed prior to publication.

Richard Whitwell

THE DEPARTMENT OF
THE PRIME MINISTER AND CABINET

CANBERRA, A.C.T. 2600

TELEPHONE: (06) 271 5111
FACSIMILE: (06) 271 5414

Mr Richard Whitwell
PO Box 10
AINSLIE ACT 2602

Dear Mr Whitwell

I refer to our telephone conversation earlier today about the special access provisions of the Archives Act. As discussed, I have enclosed a couple of copies of the special access application form and brochures produced by the Australian Archives about special access.

You should send your completed application to the agency which is responsible for the records you are seeking under special access (if there is more than one agency involved you will have to apply to all of them). As I mentioned, the more information you can provide about your research proposal, the easier it is for the relevant Commonwealth agencies to reach a decision about your application. If you require any further information about special access I suggest you contact the Australian Archives Access and Client Services Section.

Yours sincerely

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Wendy Southern
Access and Administrative Review Section

10 May 1994

Anti-Dumping Authority

GPO Box 9839, Canberra, ACT 2601

CNCC Offices, Building 5, Level 3,
51 Allara Street, Canberra.

Telephone: (06) 276 2458
Facsimile: (06) 276 1747

Mr R Whitwell
PO Box 10
Ainslie ACT 2602

Dear Mr Whitwell

Thank you for your letter of 14 April 1994 regarding access by you to confidential information held by the Authority to assist in the preparation of a PhD thesis.

Section 33 of the *Anti-Dumping Authority Act 1988* places severe limitations on the Authority in terms of providing access to confidential information held by it. The only possible exception in your case might be subsection (e) which permits the Authority to supply such information to "an officer of the Australian Customs Service designated by the Comptroller [the Comptroller General of Customs]". It is my understanding that the Comptroller has only designated officers employed in the Dumping Component of Customs under this subsection.

Even if the Comptroller were to designate you as an officer who could be given access to confidential information held by the Authority, I would still have difficulty in agreeing to your request. The Authority is a small organisation which, as you will be aware, works in the main to statutory deadlines. The task of overseeing your activities could be quite onerous and we simply do not have the resources available to undertake time-consuming activities relating to the needs of one individual.

I therefore reluctantly advise that the Authority is unable to accommodate your request on this matter.

Yours sincerely

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J T McGuire
Executive Director
9 May, 1994

Richard Whitwell
PO Box 10
AINSLIE ACT 2602

14 April 1994

Mr Jock McGuire
Executive Director of the Anti-Dumping Authority
GPO Box 9839
CANBERRA ACT 2601

Dear Mr McGuire

RE: PhD THESIS ON NATIONAL INTEREST PROVISIONS OF ANTI-DUMPING LAW

I have attached a copy of a letter which was misdirected. The letter is self explanatory and requests your assistance with providing me with some data relating to anti-dumping activities in Australia.

If you would like to contact me about this I am on 247 9554 and if not at that number when you call you may leave a message on the answering machine.

Regards

Production Note:
Signature removed prior to publication.

Richard Whitwell

Richard Whitwell
PO Box 10
AINSLIE ACT 2602

24 March 1994

Mr Jock McGuire
Executive Director of the Anti-Dumping Authority
GPO Box 9839
CANBERRA ACT 2601

Dear Mr McGuire

RE: PhD THESIS ON NATIONAL INTEREST PROVISIONS OF ANTI-DUMPING LAW

I have attached a copy of a letter to the Manager, Dumping in the Australian Customs Service, requesting access to confidential information on anti-dumping enquiries in order that I may improve the factual analysis aspects of my thesis. The letter is self explanatory and I would like to ask you whether you would be prepared to provide similar access to me.

Currently I am employed by the Australian Customs Service at the Director level and I am on a 12 months scholarship with the Australian Customs Service to complete the substantive part of the above thesis. My supervisor is Associate Professor Cutbush-Sabine from the University of Technology in Sydney, Law School and my co-supervisor is Professor Lowenfeld of the New York University.

I would like to talk to you about my thesis topic if you felt that it was appropriate to do so.

Regards

Richard Whitwell

AUSTRALIAN CUSTOMS SERVICE

Reply to the Comptroller-General

Quote:

CUSTOMS HOUSE
5-11 Constitution Avenue
Canberra ACT 2601
Phone (06) 2756666

bg94-039

Mr Richard Whitwell
PO Box 10
AINSLIE ACT 2602

Dear Richard

I refer to your letter of 24 March seeking information from Customs confidential files as part of the research for you PhD Thesis.

It is my understanding that section 16 of the *Customs Administration Act* provides that access can be given to information given to Customs in-confidence to persons who are to use that information for particular purposes, and it would appear to me that the purpose for which you intend to use information does not fall within the range of prescribed purposes. It would seem to me therefore that it would not be possible for the information to be released under section 16 of the *Customs Act*.

I am unaware of any other provision which might be specific to your particular purposes - ie, the release of information to an officer in order to facilitate that officers study in an area that is of general interest to the host department. I have checked with the Human Resources Development area and they were unable to offer me any assistance as to an appropriate basis for the release of this information. If you believe there is a basis for the release of the information then it would seem that the matter is one that you should take up with the Human Resources Development area in the first instance.

Irrespective of any response from the Human Resources Development area I have some problem with the proposition that an officer within Customs be required to confirm that the non-confidential summary of facts obtained from commercial in-cofidence information is an accurate summary of those facts. Clearly, this would demand that all the data you use is examined and compared with any summary of it and your final thesis in order to make the assessment demanded by your supervisor. I could perceive this becoming a quite onerous task, particularly were there any controversy as to the officers conclusions as to whether or not the non-confidential summary was accurate.

Accordingly, even if there were a basis for the release of information, I would need to know more details of the basis of the verification exercise and at whose cost it is undertaken.

Regards

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Brian Gallagher
Manager
Dumping

18 April 1994

275-6078

Richard Whitwell
PO Box 10
AINSLIE ACT 2602

24 March 1994

The Manager
Dumping
Australian Customs Service
5 Constitution Avenue
CANBERRA CITY ACT 2601

Dear Sir

RE PhD THESIS ON NATIONAL INTEREST PROVISIONS OF ANTI DUMPING LAW

I had discussions with my supervisor this week on the contents of my thesis topic.

One of the matters raised related to the reliance on confidential information within the thesis. Associate Professor Cutbush-Sabine indicated that it was quite acceptable to rely on confidential information where necessary in the thesis topic, subject to the observance of the confidential provisions of the Customs Administration Act and the Crimes Act.

She is prepared to accept qualified conclusions based on confidential information provided that a third party within the organisation is prepared to confirm that the non confidential summary of the facts is accurate.

In view of the interest both to the Department and to the community generally, I think it would be useful if there was some reliance in the thesis on information provided by parties, and complainants particularly. I will be also asking the Anti Dumping Authority whether they will allow access to their files as an employee of the Department on the same basis of preservation of confidentiality.

I would like your response to this when you have had time to consider the matter.

Regards

Richard Whitwell

Appendix 6.4.2

ANTI-DUMPING & COUNTERVAILING CASES 1982-83 TO 1992-93 BASED ON AUSTRALIA'S SUBMISSION TO OECD - Includes all prliminary findings within the period.

COMMODITY	Cntry	T	I	I_3D	I_4D	ACN Date2	PREL ACT	Final ACN	Final Date	FY
NYLON TYRE CORD FABRIC	RKOR	D	23	234	2345	82/03/03	P	G	82/12/23	83
YARN, COMBED COTTON & POLYESTER YARN	RKOR	D	23	234	2345	82/04/05	P	G	82/11/03	83
YARN, COMBED COTTON & POLYESTER YARN	TAIW	D	23	234	2345	82/04/05	P	G	82/11/03	83
YARNS, NYLON (POLYAMIDE TEXTURED)	TAIW	D	23	234	2345	82/05/06	P	G	83/01/07	83
WOVEN COATED POLYETHYLENE FABRIC	RKOR	D	23	235	2352	81/08/13	P	G	82/11/11	83
NITROGENOUS SUBSTANCES (FERT)	QATA	D	27	275	2751	*82/07/01*	P	G	82/12/17	83
PVC HOMOPOLYMER	CAN	D	27	275	2753	81/11/17	P	G	82/11/03	83
ABS THERMOPLASTIC COMPOUND	RKOR	D	27	275	2753	82/01/25	P	G	83/04/05	83
POLYETHYLENE RESIN, LOW DENSITY	USA	D	27	275	2753	80/05/08	P	G	82/10/21	83
PVC HOMOPOLYMER	USA	D	27	275	2753	80/05/08	P	G	82/11/03	83
TRIETHANOLAMINE	BLGM	D	27	275	2754	83/03/01	P	G	83/04/22	83
TRIETHANOLAMINE	BRAZ	D	27	275	2754	82/11/04	P	G	83/04/22	83
PHENOL	CHIN	D	27	275	2754	82/04/28	P	G	83/01/07	83
SODIUM TRIPOLYPHOSPHATE	CHIN	D	27	275	2754	82/01/06	P	G	82/09/07	83
SODIUM LAURYL ETHER SULPHATE	FGMY	D	27	275	2754	82/09/13	P	G	83/06/30	83
MIXED ETHANOLAMINE	FRAN	D	27	275	2754	82/02/05	P	G	83/01/07	83
SORBITOL	FRAN	D	27	275	2754	81/09/09	P	G	82/11/03	83
TRIETHANOLAMINE	FRAN	D	27	275	2754	82/02/05	P	G	83/01/07	83
SORBITOL	JAP	D	27	275	2754	81/09/09	P	G	82/11/03	83
TOLUENE	JAP	D	27	275	2754	82/01/20	P	G	83/04/18	83
XYLENE	JAP	D	27	275	2754	82/01/20	P	G	83/04/18	83
SODIUM LAURYL ETHER SULPHATE	NETH	D	27	275	2754	82/09/13	P	G	83/06/30	83
TRIETHANOLAMINE	NETH	D	27	275	2754	82/11/04	P	G	83/04/22	83
TRIETHANOLAMINE	NZ	D	27	275	2754	82/11/04	P	G	83/04/22	83
TOLUENE	USA	D	27	275	2754	82/11/03	P	G	83/05/23	83
TRIETHANOLAMINE	USA	D	27	275	2754	81/08/28	P	G	83/01/07	83
XYLENE	USA	D	27	275	2754	82/11/03	P	G	83/05/23	83
SODIUM TRIPOLYPHOSPHATE	USA	D	27	275	2754	82/01/06	P	G	82/09/07	83
PHOSPHORIC ACID	CHIN	D	27	275	2755	82/01/06	P	G	82/12/30	83
PHOSPHORIC ACID	ISRA	D	27	275	2755	82/01/06	P	G	82/12/30	83
CHROMIUM SULPHATE	ITAL	D	27	275	2755	81/08/07	P	G	82/09/15	83
PAINTS, ARTISTS OIL	UK	D	27	276	2762	82/08/24	P	G	83/02/04	83
SOAP, TOILET AND LAUNDRY	RKOR	D	27	276	2765	82/06/30	P	G	83/04/05	83
TOUGHENED GLASS PANELS	ROUM	D	28	285	2850	82/06/16	P	G	83/04/22	83
TOUGHENED GLASS PANELS	SPAI	D	28	285	2850	82/06/16	P	G	83/04/22	83
FILES AND RASPS	INIA	D	31	316	3161	80/12/17	P	G	82/08/25	83
SPARKS PLUGS	FGMY	D	32	323	3233	82/11/30	P	G	83/06/09	83
SPARKS PLUGS	JAP	D	32	323	3233	82/11/30	P	G	83/06/09	83
WASHING MACHINES	JAP	D	33	335	3353	81/05/14	P	G	83/01/07	83
BATTERIES, ALKALINE MANGANESE DIOXIDE	BLGM	D	33	335	3356	82/05/21	P	G	82/11/10	83
OUTBOARD MOTORS	JAP	D	33	336	3369	82/08/26	P	G	82/12/30	83
FAAE	NZ	D	33	336	3369	82/01/15	P	G	83/01/07	83
GEARED MOTOR DRIVE UNITS	UK	D	33	336	3369	82/07/27	P	G	83/03/28	83
GLOVES, DISPOSABLE EXAMINATION	NZ	D	34	347	3474	82/02/11	P	G	82/12/17	83
CARPET SWEEPERS	IRE	D	34	348	3483	82/07/27	P	G	83/02/10	83
ASPARAGUS	CAN	D	21	213	2132	83/02/28	P	T	83/06/20	83
YARN, TEXTURED POLYESTER	JAP	D	23	234	2343	83/04/11	P	T	83/05/12	83
WOVEN WORSTED CREPE & FLANNEL	CHIN	D	23	234	2346	82/07/27	P	T	83/01/07	83
TWINE, POLYPROPYLENE BALER	IRE	D	23	235	2355	82/10/06	P	T	83/03/25	83
TWINE, POLYPOPYLENE BALER	NZ	D	23	235	2355	82/07/21	P	T	83/03/25	83
TWINE, POLYPOPYLENE BALER	PORT	D	23	235	2355	82/07/21	P	T	83/03/25	83
TWINE, POLYPOPYLENE BALER	UK	D	23	235	2355	82/07/21	P	T	83/03/25	83
FOOTWEAR	TAIW	D	24	246	2460	83/04/21	P	T	83/02/08	83
FIBREGLASS COATED PLYWOOD SANDWICH	NZ	D	25	253	2533	82/10/22	P	T	83/04/29	83
PAPER, UNCOATED WOODFREE	BRAZ	D	26	263	2631	82/11/22	P	T	83/05/16	83
KRAFT LINERBOARD	USA	D	26	263	2631	82/05/20	P	T	82/08/24	83
PAPER, UNCOATED WOODFREE	USA	D	26	263	2631	82/11/22	P	T	83/05/16	83
POLYSTYRENE	CAN	D	27	275	2753	82/06/24	P	T	82/10/20	83
POLYETHYLENE RESIN, LOW DENSITY	FRAN	D	27	275	2753	80/05/08	P	T	83/06/20	83

POLYOLS, PROPYLENE OXIDE BASED POLYET	NETH	D	27	275	2753	82/12/08	P	T	83/05/17	83
LIQUID EPOXY RESINS	NZ	D	27	275	2753	81/10/23	P	T	82/12/24	83
POLYSTYRENE	RKOR	D	27	275	2753	82/06/24	P	T	83/05/25	83
MIXED ETHANOLAMINE	CAN	D	27	275	2754	81/08/28	P	T	83/01/19	83
TRIETHANOLAMINE	CAN	D	27	275	2754	81/08/28	P	T	83/01/19	83
PARADICHLOROBENZENE	JAP	D	27	275	2754	82/01/06	P	T	82/10/20	83
ETHYLENE GLYCOL MONOETHYL ETHER ACE	USA	D	27	275	2754	83/04/13	P	T	83/06/21	83
CORRECTION FLUID	FGMY	D	27	276	2768	81/02/23	P	T	82/09/02	83
CORRECTION FLUID	SING	D	27	276	2768	81/02/23	P	T	82/09/10	83
TOUGHENED GLASS PANELS	USA	D	28	285	2850	82/06/16	P	T	83/01/10	83
STEEL SHEET AND COIL GALVANISED	BLGM	D	29	294	2941	81/08/13	P	T	83/06/06	83
STEEL SHEET AND COIL, GALVANISED	FGMY	D	29	294	2941	81/05/07	P	T	83/06/06	83
STEEL SHEET AND COIL GALVANISED	FRAN	D	29	294	2941	81/07/23	P	T	83/06/06	83
STAINLESS STEEL PIPES AND TUBES	JAP	D	29	294	2941	81/02/23	P	T	83/06/14	83
STEEL SHEET AND COIL GALVANISED	SPAI	D	29	294	2941	81/08/13	P	T	83/06/06	83
STAINLESS STEEL PIPES AND TUBES	NZ	D	29	294	2945	82/06/23	P	T	83/04/15	83
BRASS RODS, EXTRUDED	NZ	D	29	296	2962	82/08/06	P	T	83/05/11	83
FILES AND RASPS	ASTA	D	31	316	3161	80/12/17	P	T	82/09/08	83
SOUVENIR TEASPOONS & CAKE FORK	NZ	D	31	316	3161	82/08/02	P	T	82/10/18	83
GAS METER, DOMESTIC	UK	D	31	316	3168	82/11/15	P	T	83/06/20	83
FREEZERS, VERTICAL	JAP	D	33	335	3353	82/12/29	P	T	83/05/03	83
FREEZERS, CHEST	NZ	D	33	335	3353	*82/03/31*	P	T	82/09/30	83
FORKLIFT TRUCKS	JAP	D	33	336	3363	80/10/15	P	T	83/01/10	83
WINDLASSES AND CAPSTANS	USA	D	33	336	3363	82/10/27	P	T	83/02/28	83
PNEUMATIC HOSE COUPLINGS	SWED	D	33	336	3365	83/03/14	P	T	83/04/13	83
INJECTION MOULDING MACHINES	ASTA	D	33	336	3369	83/01/24	P	T	83/03/09	83
SRMKPR	UK	D	33	336	3369	81/12/17	P	T	82/08/24	83
POLYPROPYLENE STRAPPING	NZ	D	34	347	3474	82/09/24	P	T	83/02/14	83
YARNS, NYLON (POLYAMIDE TEXTURED)	FRAN	D	23	234	2345	82/05/06	P	U	83/05/16	83
BAGS, WOVEN POLYOLEFIN	CHIN	D	26	263	2632	82/06/06	P	U	82/09/21	83
POLYETHYLENE RESIN, LOW DENSITY	CAN	D	27	275	2753	80/05/08	P	U	82/10/14	83
TRIETHANOLAMINE	FGMY	D	27	275	2754	81/08/28	P	U	82/12/24	83
TILES, CHIP COATED METAL ROOFING	NZ	D	31	315	3153	82/09/29	P	U	83/06/28	83
TILES, CHIP COATED METAL ROOFING	NZ	S	31	315	3153	82/10/19	P	U	83/06/28	83
TYRES, PASSENGER CAR	JAP	D	34	346	3461	82/09/28	P	U	83/04/28	83
NITROGENOUS SUBSTANCES (FERT)	CAN	D	27	275	2751	*82/07/01*	R	G	82/12/17	83
NITROGENOUS SUBSTANCES (FERT)	USA	D	27	275	2751	*82/07/01*	R	G	82/12/17	83
NITROGENOUS SUBSTANCES (FERT)	USSR	D	27	275	2751	*82/07/01*	R	G	82/12/17	83
SODIUM BICARBONATE	CHIN	D	27	275	2755	83/04/08	U	O		83
CHERRIES IN BRINE	ITAL	D	21	213	2131	84/02/10	P	G	84/06/26	84
DEXTROSE MONOHYDRATE	ASTA	D	21	215	2152	83/08/02	P	G	84/05/21	84
DEXTROSE MONOHYDRATE	UK	D	21	215	2152	83/08/02	P	G	84/05/21	84
COATING CRUMBS	UK	D	21	215	2153	83/08/12	P	G	84/05/03	84
YARNS, NYLON FLAT	ISRA	D	23	234	2343	82/12/08	P	G	83/09/26	84
OVERALLS, MALE INDUSTRIAL	CHIN	D	24	245	2451	83/08/12	P	G	84/05/04	84
HARDBOARD PAINTED	SWED	D	25	253	2533	83/09/22	P	G	84/05/07	84
TRIPLE SUPERPHOSPHATE	USA	D	27	275	2751	83/02/14	P	G	83/08/25	84
PVC HOMOPOLYMER	BLGM	D	27	275	2753	82/09/14	P	G	83/08/31	84
PVC HOMOPOLYMER	FGMY	D	27	275	2753	83/10/31	P	G	84/04/06	84
PVC HOMOPOLYMER	FRAN	D	27	275	2753	83/10/31	P	G	84/04/04	84
PVC HOMOPOLYMER	HGRY	D	27	275	2753	82/09/14	P	G	83/11/03	84
PVC HOMOPOLYMER	ISRA	D	27	275	2753	82/09/14	P	G	83/08/31	84
PVC HOMOPOLYMER	RKOR	D	27	275	2753	83/04/07	P	G	83/08/31	84
PVC HOMOPOLYMER	SPAI	D	27	275	2753	83/10/31	P	G	84/04/06	84
PVC HOMOPOLYMER	TAIW	D	27	275	2753	83/04/09	P	G	83/08/31	84
PVC HOMOPOLYMER	UK	D	27	275	2753	83/10/31	P	G	84/04/06	84
SODIUM CARBONATE (SODA ASH)	USA	D	27	275	2755	84/01/06	P	G	84/05/23	84
CAPSULES, EMPTY GELATIN	JAP	D	27	276	2763	83/11/07	P	G	84/06/29	84
CERAMIC TABLEWARE	CHIN	D	28	286	2864	83/06/01	P	G	84/04/10	84
SPECIAL STEEL BAR PRODUCTS	FGMY	D	29	294	2941	82/10/20	P	G	83/12/29	84
STAINLESS STEEL FLAT PRODUCTS	FRAN	D	29	294	2941	82/10/20	P	G	83/12/29	84
STAINLESS STEEL FLAT PRODUCTS	ITAL	D	29	294	2941	82/10/20	P	G	83/12/29	84
SPECIAL STEEL BAR PRODUCTS	JAP	D	29	294	2941	82/10/20	P	G	83/12/29	84
STAINLESS STEEL FLAT PRODUCTS	JAP	D	29	294	2941	82/10/20	P	G	83/12/29	84
CABINETS, FIRE RESISTANT	JAP	D	31	315	3152	83/06/27	P	G	84/04/19	84
SPARKS PLUGS	NZ	D	32	323	3233	82/11/30	P	G	84/05/17	84

SPARKS PLUGS	USA	D	32	323	3233	82/11/30	P	G	84/05/17	84
DENTAL AMALGAM ALLOY CAPSULES	USA	D	33	334	3343	83/08/12	P	G	84/02/23	84
DISHWASHERS	FGMY	D	33	335	3353	83/03/01	P	G	83/12/20	84
DISHWASHERS	FRAN	D	33	335	3353	83/03/01	P	G	83/12/20	84
DISHWASHERS	ITAL	D	33	335	3353	83/03/01	P	G	83/12/20	84
DISHWASHERS	JAP	D	33	335	3353	83/03/01	P	G	84/06/07	84
LAMPS, ELECTRIC FILAMENT	BLGM	D	33	335	3357	83/05/18	P	G	84/02/09	84
TRANSFORMERS, POWER	RKOR	D	33	335	3357	81/11/17	P	G	84/06/29	84
TRANSFORMERS, POWER	TAIW	D	33	335	3357	81/11/17	P	G	84/06/29	84
TYRES, PASSENGER CAR	RKOR	D	34	346	3461	82/09/28	P	G	83/08/18	84
SOYA BEAN OIL, EPOXIDISED	FGMY	D	21	214	2140	83/05/18	P	T	84/03/02	84
SOYA BEAN OIL, EPOXIDISED	NETH	D	21	214	2140	83/05/18	P	T	84/03/02	84
YARN, TEXTURED POLYESTER	TAIW	D	23	234	2343	83/04/11	P	T	83/08/18	84
YARN, TEXTURED POLYESTER	USA	D	23	234	2343	83/04/11	P	T	83/08/18	84
FIRE HOSE	FGMY	D	23	234	2345	82/01/06	P	T	83/08/02	84
WOVEN FABRIC	ITAL	D	23	234	2347	83/06/03	P	T	83/12/02	84
TIMBER, SQUARE DRESSED STRUCTURAL SO	NZ	S	25	253	2532	82/11/03	P	T	83/10/28	84
KRAFT LINERBOARD	USA	D	26	263	2631	83/06/22	P	T	83/11/21	84
PAPER CUPS, COLD DRINK	CAN	D	26	263	2635	83/10/07	P	T	84/04/10	84
PAPER CUPS, COLD DRINK	USA	D	26	263	2635	83/10/07	P	T	84/04/10	84
POLYETHYLENE RESIN, LOW DENSITY	BLGM	D	27	275	2753	83/07/07	P	T	83/11/23	84
PVC HOMOPOLYMER	NETH	D	27	275	2753	83/10/31	P	T	84/04/06	84
POLYETHYLENE RESIN, LOW DENSITY	QATA	D	27	275	2753	82/06/04	P	T	83/10/17	84
ALKYL PHENOL ETHOXYLATES	BRAZ	D	27	275	2754	83/03/14	P	T	83/10/25	84
ALKYL PHENOL ETHOXYLATES	FGMY	D	27	275	2754	83/03/14	P	T	83/10/25	84
PARADICHLOROBENZENE	JAP	D	27	275	2754	83/03/18	P	T	83/08/10	84
ALKYL PHENOL ETHOXYLATES	MEXI	D	27	275	2754	83/03/14	P	T	83/10/25	84
ALKYL PHENOL ETHOXYLATES	TAIW	D	27	275	2754	83/07/07	P	T	83/10/25	84
PHTHALIC ANHYDRIDE	TAIW	D	27	275	2754	83/05/26	P	T	84/05/07	84
ALKYL PHENOL ETHOXYLATES	USA	D	27	275	2754	83/03/14	P	T	83/10/25	84
PROPYLENE GLYCOL	USA	D	27	275	2754	83/02/15	P	T	84/01/10	84
PHOSPHORIC ACID	BLGM	D	27	275	2755	83/04/27	P	T	84/02/17	84
SODIUM STEAROYL 2-LACTYLATE	USA	D	27	276	2755	83/05/16	P	T	83/11/09	84
DISHWASING POWDER	BLGM	D	27	276	2765	83/07/04	P	T	83/11/14	84
LAUNDRY DETERGENT POWDER	HONG	D	27	276	2765	84/01/23	P	T	84/06/14	84
DISHWASING POWDER	ISRA	D	27	276	2765	83/07/04	P	T	83/11/14	84
TOOTHPASTE	TAIW	D	27	276	2765	83/07/07	P	T	84/03/16	84
CEMENT	NZ	D	28	287	2871	83/06/27	P	T	83/12/08	84
STAINLESS STEEL FLAT PRODUCTS	SWED	D	29	294	2941	82/10/20	P	T	84/02/03	84
MALLEABLE CAST IRON PIPE FITTINGS	JAP	D	29	294	2942	83/01/02	P	T	84/02/13	84
STAINLESS STEEL PIPES AND TUBES	RKOR	D	29	294	2945	82/06/02	P	T	83/10/20	84
FASTENERS,STAINLESS STEEL	JAP	D	31	316	3153	83/04/21	P	T	83/09/12	84
FREIGHT CONTAINERS, MECHANICALLY REFR	NZ	S	31	316	3168	83/06/24	P	T	83/10/24	84
POWER CAPACITORS, HIGH VOLTAGE	FGMY	D	33	335	3352	83/02/24	P	T	84/02/21	84
POWER CAPACITORS, HIGH VOLTAGE	UK	D	33	335	3352	83/02/24	P	T	84/02/21	84
DISHWASHERS	NZ	D	33	335	3353	83/08/04	P	T	84/02/21	84
TRANSFORMERS, INSTRUMENT	CAN	D	33	335	3357	82/06/23	P	T	83/08/12	84
TRANSFORMERS, INSTRUMENT	SPAI	D	33	335	3357	82/06/23	P	T	84/04/19	84
YACHT WINCHES AND HANDLES	NZ	D	33	336	3363	83/11/16	P	T	84/02/20	84
AIR COMPRESSORS	BLGM	D	33	336	3365	83/07/18	P	T	84/03/23	84
INJECTION MOULDING MACHINES	JAP	D	33	336	3369	83/01/24	P	T	83/07/04	84
FIBREGLASS INSECT SCREENING	USA	D	34	347	3474	82/03/23	P	T	83/07/18	84
CHEESE	BLGM	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	BLGM	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	DENM	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	FGMY	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	FRAN	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	GREE	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	IRE	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	ITAL	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	NETH	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	UK	S	21	212	2123	83/06/03	P	U	83/11/18	84
VINYL ACETATE MONOMER	UK	D	27	275	2753	83/03/31	P	U	83/11/06	84
TOOTHPASTE	RKOR	D	27	276	2765	83/07/07	P	U	84/03/06	84
SUSPENDED CEILING SYSTEMS	NZ	D	31	316	3153	82/09/16	P	U	83/10/17	84
TYRES, PASSENGER CAR	NETH	D	34	346	3461	82/09/28	P	U	83/07/11	84

TYRES, PASSENGER CAR	NZ	D	34	346	3461	82/09/28	P	U	83/07/11	84
TOUGHENED GLASS PANELS	SPAI	D	28	285	2850	84/06/12	T	O		84
STEEL SHEET AND COIL, COLD ROLLED	FGMY	D	29	294	2941	84/02/08	T	O		84
STEEL SHEET AND COIL, GALVANISED	FGMY	D	29	294	2941	84/02/08	T	O		84
STEEL JERRICANS	CHIN	D	31	315	3151	84/06/25	T	O		84
STEEL JERRICANS	USSR	D	31	315	3151	84/06/25	T	O		84
STAINLESS STEEL REPAIR CLAMPS	USA	D	31	316	3162	84/01/16	T	O		84
GAS HEATERS	JAP	D	33	335	3353	84/03/16	T	O		84
GAS HEATERS	NZ	D	33	335	3353	84/03/16	T	O		84
TYRES, PASSENGER CAR	CHIN	D	34	346	3461	84/04/13	T	O		84
TYRES, PASSENGER CAR	CZEC	D	34	346	3461	84/04/13	T	O		84
FRUIT, DRIED VINE	GREE	S	21	213	2131	84/08/06	P	G	85/04/02	85
PASTA PRODUCTS	ITAL	D	21	215	2153	84/02/19	P	G	84/07/25	85
POLYSTYRENE	CAN	D	27	275	2753	84/03/02	P	G	84/07/12	85
POLYSTYRENE	FGMY	D	27	275	2753	84/03/02	P	G	84/07/12	85
POLYSTYRENE	FRAN	D	27	275	2753	84/03/02	P	G	84/07/12	85
DIAGNOSTIC REAGENT STRIPS	FGMY	D	27	276	2763	84/01/25	P	G	84/08/22	85
CANDLES, DINING	CHIN	D	27	276	2765	84/10/29	P	G	85/03/22	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETI	JAP	D	29	294	2945	84/03/08	P	G	84/09/24	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETI	RKOR	D	29	294	2945	84/03/08	P	G	84/09/24	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETI	SAFR	D	29	294	2945	84/03/08	P	G	84/09/24	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETI	SING	D	29	294	2945	84/03/08	P	G	84/09/24	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETI	TAIW	D	29	294	2945	84/03/08	P	G	84/09/24	85
CHAINS AND FITTINGS, ALLOY GRADE T STEE	SWED	D	31	316	3162	84/09/18	P	G	85/05/14	85
CEILING SWEEP FANS	HONG	D	33	335	3353	83/11/01	P	G	84/08/20	85
CEILING SWEEP FANS	HONG	D	33	335	3353	83/11/01	P	G	84/08/20	85
OUTBOARD MOTORS	USA	D	33	336	3369	84/05/09	P	G	85/03/13	85
MOTOR CYCLE GARMENTS, WAXED COTTON	RKOR	D	24	245	2452	85/01/02	P	T	85/04/30	85
BAGS, WOVEN POLYOLEFIN	PHIL	D	26	263	2632	84/03/19	P	T	84/07/08	85
PVC RESIN	RKOR	D	27	275	2753	84/02/17	P	T	84/08/06	85
POLYSTYRENE	TAIW	D	27	275	2753	84/03/02	P	T	84/07/18	85
VINYL ACETATE MONOMER	TAIW	D	27	275	2753	84/11/15	P	T	85/03/28	85
INFLUENZA VACCINE	FRAN	D	27	276	2763	84/03/23	P	T	84/07/17	85
CARBON STEEL PIPE, SMALL DIAMETER WELI	THAI	D	29	294	2945	84/09/12	P	T	85/02/25	85
GAS HEATERS	JAP	D	33	335	3353	84/10/26	P	T	85/03/11	85
PROCESS COOLING SYSTEMS	USA	D	33	335	3353	84/03/30	P	T	84/08/07	85
CENTRE LATHES	TAIW	D	33	336	3364	84/03/09	P	T	84/10/31	85
CHEESE. JARLSBERG	NWAY	S	21	212	2123	84/08/13	P	U	85/03/20	85
CHERRIES IN BRINE	ITAL	S	21	213	2131	84/07/04	P	U	85/05/21	85
BRANDY	FRAN	S	21	218	2188	84/02/23	P	U	84/07/24	85
PAINT BRUSHES	CHIN	D	34	348	3483	84/03/30	P	U	84/10/22	85
WOVEN POLYESTER WOOL FABRIC	CZEC	D	23	234	2347	84/07/18	T	O		85
BAGS, WOVEN POLYOLEFIN	THAI	D	26	263	2632	85/03/29	T	O		85
POLYSTYRENE	RKOR	D	27	275	2753	85/03/12	T	O		85
PIGMENTS, TITANIUM DIOXIDE	FGMY	D	27	275	2754	84/10/16	T	O		85
STEARIC ACID	RKOR	D	27	275	2754	85/06/28	T	O		85
SULPHURIC ACID	PHIL	D	27	275	2755	85/03/27	T	O		85
LEAD STABILISER LUBRICANT SYSTEMS	FGMY	D	27	277	2770	85/06/26	T	O		85
STEEL PIPE & FITTINGS, BASALT LINED	FGMY	D	29	294	2945	84/08/07	T	O		85
STEEL PIPE AND FITTINGS, BASALT LINED	FGMY	D	29	294	2945	85/05/20	T	O		85
CHAINS AND FITTINGS, ALLOY GRADE T STEE	FGMY	D	31	316	3162	84/09/18	T	O		85
SUPERMARKET TROLLEYS	FGMY	D	31	316	3162	84/07/18	T	O		85
GAS METERS	JAP	D	31	316	3168	84/09/26	T	O		85
GAS HEATERS	NZ	D	33	335	3353	84/10/26	T	O		85
PROCESS COOLING SYSTEMS	USA	D	33	335	3353	85/03/27	T	O		85
TRANSFORMERS	FGMY	D	33	335	3357	84/10/11	T	O		85
CHAMOIS LEATHER	NZ	D	34	345	3451	84/09/20	T	O		85
POLYPROPYLENE FILM, BIAXIALLY ORIENTED	JAP	D	34	347	3471	84/07/25	T	O		85
PALLET TRUCKS	USA	D	33	336	3363	84/09/18	U	O		85
TRUCKS, BATTERY OPERATED WORK (STOCK	USA	D	33	336	3363	85/01/21	U	O		85
CANNED HAM	DENM	D	21	211	2117	85/12/06	P	G	86/03/13	86
DEXTROSE MONOHYDRATE	ITAL	D	21	215	2152	85/03/29	P	G	85/10/21	86
DEXTROSE MONOHYDRATE	SING	D	21	215	2152	85/03/29	P	G	85/10/21	86
DIAMMONIUM PHOSPHATE	USA	D	27	275	2751	85/07/24	P	G	85/12/19	86
MONAMMONIUM PHOSPHATE	USA	D	27	275	2751	85/07/24	P	G	85/12/19	86
PVC HOMOPOLYMER	FINL	D	27	275	2753	85/10/24	P	G	86/04/01	86

PHTHALIC ANHYDRIDE	BRAZ	D	27	275	2754	85/01/04	P	G	85/09/13	86
PHTHALIC ANHYDRIDE	ISRA	D	27	275	2754	85/01/04	P	G	85/09/13	86
DI-OCTYL PHTHALATE	RKOR	D	27	275	2754	84/12/20	P	G	85/12/05	86
PHTHALIC ANHYDRIDE	TAIW	D	27	275	2754	85/01/04	P	G	85/09/13	86
PHOSPHORIC ACID	JAP	D	27	275	2755	84/06/15	P	G	85/11/26	86
MICROWAVE OVENS	JAP	D	33	335	3353	84/03/25	P	G	85/08/26	86
LAMPS, FLUORESCENT DISCHARGE	CAN	D	33	335	3357	83/12/19	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	FGMY	D	33	335	3357	84/12/10	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	FGMY	D	33	335	3357	84/12/10	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	HGRY	D	33	335	3357	84/12/10	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	JAP	D	33	335	3357	84/12/10	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	PHIL	D	33	335	3357	83/12/19	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	RKOR	D	33	335	3357	84/12/10	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	TAIW	D	33	335	3357	84/12/10	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	THAI	D	33	335	3357	84/12/10	P	G	85/09/13	86
TILES, VINYL FLOOR	NWAY	D	34	347	3473	85/04/18	P	G	85/11/15	86
FRUIT, DRIED VINE	USA	D	21	213	2131	85/06/06	P	T	85/11/29	86
TIMBER, SQUARE DRESSED STRUCTURAL SO	NZ	D	25	253	2532	82/08/09	P	T	85/10/28	86
PVC HOMOPHOLYMER	ITAL	D	27	275	2753	85/04/03	P	T	86/03/27	86
POLYETHYLENE RESIN, LOW DENSITY	QATA	D	27	275	2753	85/08/28	P	T	85/11/08	86
2,4-DICHLOROPHENOXYACETIC DERIVIATIVES	FGMY	D	27	275	2754	85/10/24	P	T	86/03/13	86
STEARIC ACID	MLAY	D	27	275	2754	85/06/28	P	T	85/11/13	86
DI-OCTYL PHTHALATE	SWED	D	27	275	2754	85/02/22	P	T	85/12/09	86
DI-OCTYL PHTHALATE	TAIW	D	27	275	2754	85/02/22	P	T	86/04/02	86
DIETHYLENE GLYCOL	TAIW	D	27	275	2754	85/11/06	P	T	86/05/02	86
STEEL BARS, BRIGHT	RKOR	D	29	294	2941	85/09/06	P	T	86/02/24	86
STEEL BARS, BRIGHT	SAFR	D	29	294	2941	85/09/06	P	T	86/02/24	86
STEEL BARS, BRIGHT	TAIW	D	29	294	2941	85/09/06	P	T	86/02/24	86
STEEL SHEET AND COIL, COLD ROLLED	TAIW	D	29	294	2941	85/08/12	P	T	86/04/14	86
STEEL SHEET AND COIL,GALVANISED	TAIW	D	29	294	2941	85/08/12	P	T	86/04/14	86
DISPLAY REFRIGERATORS, TWO DOOR MEDI	NZ	D	33	335	3353	84/08/29	P	T	85/08/09	86
WATERBED HEATERS	NZ	D	33	335	3353	86/01/02	P	T	86/04/14	86
WATERBED HEATERS	NZ	S	33	335	3353	86/01/02	P	T	86/04/14	86
MICROWAVE OVENS	SING	D	33	335	3353	85/07/26	P	T	85/12/06	86
FILM LAMINATE	USA	D	34	347	3471	85/06/11	P	T	85/11/17	86
PAPER, UNCOATED WOODFREE	SAFR	D	26	263	2631	85/08/01	P	U	86/01/08	86
STEEL SHEET AND COIL, COLD ROLLED	JAP	D	29	294	2941	85/08/12	P	U	86/06/05	86
STEEL SHEET AND COIL,GALVANISED	JAP	D	29	294	2941	85/08/12	P	U	86/06/05	86
STAINLESS STEEL TUBING	NZ	S	29	294	2945	85/08/09	P	U	86/06/20	86
BATHS, PORCELAIN ENAMELLED STEEL	NZ	D	31	316	3168	85/08/09	P	U	85/11/21	86
BATHS, PORCELAIN ENAMELLED STEEL	NZ	S	31	316	3168	85/08/09	P	U	85/11/21	86
DISPLAY REFRIGERATORS, TWO DOOR MEDI	NZ	S	33	335	3353	85/08/09	P	U	86/02/28	86
HAND HACKSAW BLADES	NZ	D	33	336	3367	85/08/09	P	U	86/05/19	86
HAND HACKSAW BLADES	NZ	S	33	336	3367	85/08/09	P	U	86/05/19	86
PECAN NUTS	SAFR	D	21	213	2131	85/10/10	T	O		86
ALMONDS	USA	D	21	213	2131	86/06/25	T	O		86
TUFTED NYLON CARPET	BLGM	D	23	235	2352	85/11/27	T	O		86
DIAMMONIUM PHOSPHATE (DAP)	PHIL	D	27	275	2751	86/05/28	T	O		86
POLYETHYLENE RESIN, LOW DENSITY	ITAL	D	27	275	2753	85/08/14	T	O		86
URETHANE PREPOLYMERS	ITAL	D	27	275	2753	85/11/29	T	O		86
POLYMERIC PLASTICISER	UK	D	27	275	2753	85/11/07	T	O		86
URETHANE PREPOLYMERS	USA	D	27	275	2753	85/11/29	T	O		86
NORMAL BUTYL ALCOHOL	RKOR	D	27	275	2754	86/05/02	T	O		86
2,4-DICHLOROPHENOXYACETIC DERIVIATIVES	UK	D	27	275	2754	85/10/24	T	O		86
SILICONE SEALANTS	USA	D	27	276	2762	86/06/06	T	O		86
STAINLESS STEEL FLAT PRODUCTS	BLGM	D	29	294	2941	86/06/26	T	O		86
STAINLESS STEEL FLAT PRODUCTS	FGMY	D	29	294	2941	86/06/26	T	O		86
STEEL SHEET AND COIL, COLD ROLLED	FGMY	D	29	294	2941	85/09/12	T	O		86
STEEL SHEET AND COIL,GALVANISED	FGMY	D	29	294	2941	85/09/12	T	O		86
STAINLESS STEEL FLAT PRODUCTS	RKOR	D	29	294	2941	86/06/26	T	O		86
STAINLESS STEEL FLAT PRODUCTS	SPAI	D	29	294	2941	86/06/26	T	O		86
STAINLESS STEEL FLAT PRODUCTS	UK	D	29	294	2941	86/06/26	T	O		86
ENGINEERS VICES	UK	D	31	316	3161	85/07/10	T	O		86
PAPER, BLACK AND WHITE PHOTOGRAPHIC	USA	D	33	334	3341	85/08/22	T	O		86
AIR CIRCUIT BREAKER	FGMY	D	33	335	3357	85/12/16	T	O		86
ELECTRIC MOTORS ALTERNATING CURRENT	FGMY	D	33	335	3357	85/08/22	T	O		86

ELECTRIC MOTORS ALTERNATING CURRENT	JAP	D	33	335	3357	85/08/22	T	O		86
AIR CIRCUIT BREAKER	POLA	D	33	335	3357	85/12/16	T	O		86
GEAR BOXES, INDUSTRIAL	JAP	D	33	336	3369	85/09/13	T	O		86
CANNED HAM	IRE	D	21	211	2117	85/09/20	U	O		86
CEILING SWEEP FANS	HONG	D	33	335	3353	86/06/25	P	G	87/03/03	87
AIR CIRCUIT BREAKERS	FRAN	D	33	335	3357	85/11/05	P	G	86/09/22	87
AIR CIRCUIT BREAKER	ITAL	D	33	335	3357	85/12/16	P	G	86/09/22	87
AIR CIRCUIT BREAKERS	JAP	D	33	335	3357	85/11/05	P	G	86/09/22	87
NYLON (POLYAMIDE) YARN	USA	D	23	234	2343	86/09/03	P	T	87/06/29	87
PVC HOMOPOLYMER	ROUM	D	27	275	2753	86/08/14	P	T	87/04/13	87
POLYOLS, PROPYLENE OXIDE BASED POLYE1	USA	D	27	275	2753	86/07/08	P	T	86/12/23	87
ETHYLENE GLYCOL MONOBUTYL ETHER	BLGM	D	27	275	2754	86/04/15	P	T	86/09/29	87
WELDED STEEL PIPE & RECTANGULAR HOLL(	JAP	D	29	294	2945	85/12/06	P	T	86/12/15	87
WELDED STEEL PIPE	RKOR	D	29	294	2945	85/12/06	P	T	86/12/15	87
SPARK PLUGS	FRAN	D	32	323	3233	86/03/03	P	T	86/07/02	87
SPARK PLUGS	YUGO	D	32	323	3233	86/03/03	P	T	86/07/02	87
LAMPS, ELECTRIC FILAMENT	ITAL	D	33	335	3357	86/04/17	P	T	86/10/10	87
HAND HACKSAW BLADES	BRAZ	D	33	336	3367	86/06/03	P	U	86/08/02	87
HAND HACKSAW BLADES	BRAZ	S	33	336	3367	86/06/03	P	U	86/08/02	87
POLYOLS, PROPYLENE OXIDE BASED POLYE1	NETH	D	27	275	2753	86/07/08	T	O		87
POLYOLS, PROPYLENE OXIDE BASED POLYE1	UK	D	27	275	2753	86/07/08	T	O		87
LEVAMISALE HYDROCHLORIDE	CHIN	D	27	276	2754	86/09/17	T	O		87
PIGMENTS, FLUSHED	FRAN	D	27	275	2754	87/06/12	T	O		87
LINEAR ALKYLBENZENE SULPHONIC ACID	ISRA	D	27	275	2754	86/12/12	T	O		87
LINEAR ALKYLBENZENE SULPHONIC ACID	RKOR	D	27	275	2754	86/12/12	T	O		87
MONOETHYLENE GLYCOL	SING	D	27	275	2754	86/10/02	T	O		87
LINEAR ALKYLBENZENE SULPHONIC ACID	TAIW	D	27	275	2754	86/12/12	T	O		87
PIGMENTS, FLUSHED	USA	D	27	275	2754	87/06/12	T	O		87
LINEAR ALKYLBENZENE SULPHONIC ACID	YUGO	D	27	275	2754	86/12/12	T	O		87
INDUSTRIAL NITROCELLULOSE	CHIN	D	27	276	2762	87/05/11	T	O		87
INDUSTRIAL NITROCELLULOSE	FGMY	D	27	276	2762	87/05/11	T	O		87
INDUSTRIAL NITROCELLULOSE	FRAN	D	27	276	2762	87/05/11	T	O		87
SILICONE SEALANTS	USA	D	27	276	2762	87/06/08	T	O		87
IRON & STEEL, COLD ROLLED HOOP, STRIP, S	ARGE	D	29	294	2941	87/05/07	T	O		87
IRON & STEEL, COLD ROLLED HOOP, STRIP, S	ARGE	S	29	294	2941	87/05/07	T	O		87
IRON & STEEL, COLD ROLLED HOOP, STRIP, S	BRAZ	D	29	294	2941	87/05/07	T	O		87
CHAINS, ALLOY STEEL	CAN	D	31	316	3162	87/06/23	T	O		87
CHAINS AND FITTINGS, ALLOY STEEL	FGMY	D	31	316	3162	87/06/23	T	O		87
CHAINS, ALLOY STEEL	ITAL	D	31	316	3162	87/06/23	T	O		87
RING MECHANISMS FOR LOOSE LEAF BINDER	ASTA	D	31	316	3168	86/12/15	T	O		87
CASTORS	TAIW	D	31	316	3168	87/04/10	T	O		87
ELECTRIC MOTOR PARTS	CZEC	D	33	335	3353	87/04/22	T	O		87
ELECTRIC MOTOR PARTS	FGMY	D	33	335	3353	87/04/22	T	O		87
ELECTRIC MOTOR PARTS	NETH	D	33	335	3353	87/04/22	T	O		87
ELECTRIC MOTOR PARTS	POLA	D	33	335	3353	87/04/22	T	O		87
ELECTRIC MOTOR PARTS	TAIW	D	33	335	3353	86/11/21	T	O		87
CHEESE, EDAM	FINL	S	21	212	2123	86/12/23	U	O		87
ORANGE JUICE, FROZEN CONCENTRATED	BRAZ	D	21	213	2131	86/11/17	P	G	87/07/08	88
FROZEN PEAS	NZ	D	21	213	2132	86/08/21	P	G	88/01/06	88
WOVEN WORSTED FABRIC	CHIN	D	23	234	2346	87/04/15	P	G	88/05/18	88
UREA	CAN	D	27	275	2751	86/11/04	P	G	87/10/15	88
UREA	MLAY	D	27	275	2751	86/11/04	P	G	87/10/15	88
UREA	USA	D	27	275	2751	86/11/04	P	G	87/10/15	88
POLYETHYLENE, LOW DENSITY	QATA	D	27	275	2753	87/02/09	P	T	88/03/04	88
ETHYLACETATE	TAIW	D	27	275	2754	87/05/04	P	T	87/12/18	88
STAINLESS STEEL FLAT PRODUCTS	BLGM	D	29	294	2941	87/09/03	P	T	88/01/05	88
IRON & STEEL, COLD ROLLED HOOP, STRIP, S	BRAZ	S	29	294	2941	87/05/07	P	T	88/01/22	88
STAINLESS STEEL FLAT PRODUCTS	FGMY	D	29	294	2941	87/10/30	P	T	88/01/05	88
STAINLESS STEEL FLAT PRODUCTS	FRAN	D	29	294	2941	87/09/03	P	T	88/01/05	88
STAINLESS STEEL FLAT PRODUCTS	ITAL	D	29	294	2941	87/09/03	P	T	88/01/05	88
STAINLESS STEEL FLAT PRODUCTS	JAP	D	29	294	2941	87/09/03	P	T	88/01/05	88
STAINLESS STEEL FLAT PRODUCTS	RKOR	D	29	294	2941	87/09/03	P	T	88/01/05	88
STAINLESS STEEL FLAT PRODUCTS	SPAI	D	29	294	2941	87/09/03	P	T	88/01/05	88
STAINLESS STEEL FLAT PRODUCTS	UK	D	29	294	2941	87/09/03	P	T	88/01/05	88
DENTAL FURNITURE	USA	D	33	334	3343	87/09/02	P	T	88/06/27	88
ELECTRIC MOTORS ALTERNATING CURRENT	BRAZ	D	33	335	3357	85/08/22	P	T	88/02/11	88

ELECTRIC MOTORS ALTERNATING CURRENT	CHIN	D	33	335	3357	85/08/22	P	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT	CZEC	D	33	335	3357	85/08/22	P	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT	POLA	D	33	335	3357	85/08/22	P	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT	TAIW	D	33	335	3357	85/08/22	P	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT	UK	D	33	335	3357	85/08/22	P	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT	USSR	D	33	335	3357	85/08/22	P	T	88/02/11	88
PASSENGER CAR TYRES	BRAZ	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	CHIN	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	CZEC	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	FGMY	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	FRAN	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	SPAI	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	TAIW	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	THAI	D	34	346	3461	86/07/16	P	T	88/03/03	88
PASSENGER CAR TYRES	TURK	D	34	346	3461	86/07/16	P	T	88/03/04	88
PASSENGER CAR TYRES	UK	D	34	346	3461	86/07/16	P	T	88/03/05	88
PVC SHEET, RIGID THERMOFORMING GRADE,	TAIW	D	34	347	3472	87/08/24	P	T	88/02/25	88
FROZEN PEAS	NZ	S	21	213	2132	86/08/21	P	U	87/12/31	88
HYPODERMIC NEEDLES	USA	D	33	334	3343	87/07/10	P	U	88/06/14	88
DICHLOROPHENOXYACETIC ACID	ARGE	D	27	275	2754	87/11/13	T	O		88
LEVAMISOLE HYDROCHLORIDE	BRAZ	D	27	275	2754	88/06/21	T	O		88
HYDRAULIC BRAKE FLUID	NETH	D	27	277	2770	87/10/01	T	O		88
HYDRAULIC BRAKE FLUID	UK	D	27	277	2770	87/10/01	T	O		88
REFLECTIVE ALUMINIUM FOIL	NZ	D	29	296	2961	88/05/23	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	FGMY	D	33	334	3341	88/02/16	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	FRAN	D	33	334	3341	88/02/16	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	ITAL	D	33	334	3341	88/02/16	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	TAIW	D	33	334	3341	88/02/16	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	UK	D	33	334	3341	88/02/16	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	USA	D	33	334	3341	88/02/16	T	O		88
DENTAL FURNITURE	FGMY	D	33	334	3343	87/09/02	T	O		88
DENTAL FURNITURE	JAP	D	33	334	3343	87/09/02	T	O		88
OUTFRONT MOWERS	USA	D	33	336	3353	88/02/15	T	O		88
ELECTRIC WINCHES	USA	D	33	336	3363	87/09/16	T	O		88
PVC SHEET, RIGID THERMOFORMING GRADE,	RKOR	D	34	347	3472	87/08/24	T	O		88
MILK, EVAPORATED	CAN	D	21	212	2121	89/01/21	P	G	89/06/14	89
LEVAMISOLE HYDROCHLORIDE	CHIN	D	27	275	2754	88/06/21	P	G	88/11/10	89
LEVAMISOLE HYDROCHLORIDE	FGMY	D	27	275	2754	88/06/21	P	G	88/11/10	89
LEVAMISOLE HYDROCHLORIDE	HONG	D	27	275	2754	88/06/21	P	G	88/11/10	89
LEVAMISOLE HYDROCHLORIDE	SING	D	27	275	2754	88/06/21	P	G	88/11/10	89
LEVAMISOLE HYDROCHLORIDE	SWIT	D	27	275	2754	88/06/21	P	G	88/11/10	89
AUDIO TAPE JUMBO WEBS & PANCAKES	RKOR	D	33	335	3351	88/05/10	P	G	88/11/04	89
MULTI-TYRED ROLLERS	CZEC	D	33	336	3362	88/12/22	P	G	89/05/17	89
PENCILS, COLOURED	HGRY	D	34	348	3486	88/10/18	P	G	89/03/08	89
PENCILS, COLOURED	POLA	D	34	348	3486	88/10/18	P	G	89/03/08	89
UREA	NZ	D	27	275	2751	88/06/17	P	T	88/10/28	89
UREA	*NZ*	*D*	*27*	*275*	*2751*	*89/01/02*	*P*	*T*	*89/04/02*	89
ELECTRIC MOTOR PARTS	TAIW	D	33	335	3353	88/04/06	P	T	88/12/06	89
LEVAMISOLE HYDROCHLORIDE	BLGM	D	27	275	2754	88/06/21	P	U	88/11/01	89
CEMENT CLINKER	RKOR	D	28	287	2871	88/08/31	P	U	89/01/05	89
FORK LIFT TRUCKS	JAP	D	33	336	3363	88/05/06	P	U	88/09/26	89
PENCILS, COLOURED	BRAZ	D	34	348	3486	88/10/18	P	U	89/02/23	89
CEMENT, PORTLAND	JAP	D	28	287	2871	88/10/21	T	O		89
VIDEO CASSETTE TAPES	HONG	D	33	335	3351	88/11/30	T	O		89
VIDEO CASSETTE TAPES	JAP	D	33	335	3351	88/11/30	T	O		89
VIDEO CASSETTE TAPES	RKOR	D	33	335	3351	88/11/30	T	O		89
ELECTRIC MOTOR PARTS	CZEC	D	33	335	3353	89/02/28	T	O		89
LOW VOLTAGE AERIAL BUNDLED XLPE POWE	RKOR	D	33	335	3355	89/04/03	T	O		89
LOW VOLTAGE AERIAL BUNDLED XLPE POWE	SING	D	33	335	3355	89/04/03	T	O		89
CANNED HAM	NETH	D	21	211	2117	88/09/26	U	O		89
BRANDY	FRAN	S	21	218	2188	89/10/17	P	G	90/02/26	90
POLYPROPYLENE FABRIC	ASTA	D	23	235	2356	89/07/14	P	T	89/12/13	90
OUTBOARD MOTORS	BLGM	D	33	336	3369	89/05/19	P	U	89/10/13	90
OUTBOARD MOTORS	JAP	D	33	336	3369	89/05/19	P	U	89/10/13	90
OUTBOARD MOTORS	USA	D	33	336	3369	89/05/19	P	U	89/10/13	90
CURRANTS AND SULTANAS	GREE	S	21	213	2131	89/09/26	T	O		90

PASTA PRODUCTS	ITAL	S	21	215	2153	90/03/26	T	O		90
WOVEN POLYPROPYLENE POLYETHENE SAC	CHIN	D	26	263	2632	89/07/28	T	O		90
WOVEN POLYPROPYLENE POLYETHENE SAC	INDO	D	26	263	2632	89/07/28	T	O		90
WOVEN POLYPROPYLENE POLYETHENE SAC	PHIL	D	26	263	2632	89/07/28	T	O		90
WOVEN POLYPROPYLENE POLYETHENE SAC	TAIW	D	26	263	2632	89/07/28	T	O		90
WOVEN POLYPROPYLENE POLYETHENE SAC	THAI	D	26	263	2632	89/07/28	T	O		90
SODIUM TRIPOLYPHOSPHATE	BLGM	D	27	275	2755	89/10/10	T	O		90
SODIUM TRIPOLYPHOSPHATE	ISRA	D	27	275	2755	89/10/10	T	O		90
SODIUM TRIPOLYPHOSPHATE	ISRA	S	27	275	2755	89/10/10	T	O		90
SODIUM TRIPOLYPHOSPHATE	JAP	D	27	275	2755	89/10/10	T	O		90
SODIUM TRIPOLYPHOSPHATE	YUGO	D	27	275	2755	89/10/10	T	O		90
TRANSPARENT FILM WOUND DRESSINGS	USA	D	27	276	2763	90/02/22	T	O		90
CEMENT CLINKER	SAUD	D	28	287	2871	89/11/01	T	O		90
SILICON	CHIN	D	29	288	2884	89/11/07	T	O		90
SILICON	SAFR	D	28	288	2884	89/11/07	T	O		90
MALLEABLE CAST IRON PIPE FITTINGS	RKOR	S	29	294	2942	90/05/10	T	O		90
MALLEABLE CAST IRON PIPE FITTINGS	TAIW	S	29	294	2942	90/05/10	T	O		90
CASTORS	TAIW	D	31	316	3168	90/03/20	T	O		90
PENCILS, BLACKLEAD	BRAZ	D	34	348	3486	88/10/18	T	U	89/08/16	90
CANNED HAM	IRE	D	21	211	2117	90/08/28	P	G	91/01/29	91
CANNED HAM	NETH	D	21	211	2117	90/08/28	P	G	91/01/29	91
SORBITOL 70% SOLUTION	FRAN	D	27	275	2754	90/06/01	P	G	90/10/25	91
SORBITOL 70% SOLUTION	MEXI	D	27	275	2754	90/06/01	P	G	90/10/25	91
MALLEABLE CAST IRON PIPE FITTINGS	RKOR	D	29	294	2942	90/05/10	P	G	90/10/19	91
MALLEABLE CAST IRON PIPE FITTINGS	TAIW	D	29	294	2942	90/05/10	P	G	90/10/19	91
CANNED HAM	DENM	D	21	211	2117	90/08/28	P	T	91/01/29	91
PASTA PRODUCTS	ITAL	D	21	215	2153	90/03/26	P	T	90/08/29	91
SORBITOL 70% SOLUTION	RKOR	D	27	275	2754	90/06/01	P	T	90/10/25	91
SORBITOL 70% SOLUTION	TAIW	D	27	275	2754	90/06/01	P	T	90/10/25	91
PIEZOMETERS	USA	D	33	334	3352	90/04/19	P	T	90/09/27	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	INDO	D	33	335	3356	90/11/07	T	G	91/06/19	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	MLAY	D	33	335	3356	90/11/07	T	G	91/06/19	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	PHIL	D	33	335	3356	90/11/07	T	G	91/06/19	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	RKOR	D	33	335	3356	90/11/07	T	G	91/06/19	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	TAIW	D	33	335	3356	90/11/07	T	G	91/06/19	91
ORANGE JUICE, FROZEN CONCENTRATED	BRAZ	D	21	213	2131	91/04/24	T	O		91
RUBBER MODIFIED POLYPROYLENE	JAP	D	27	275	2753	91/06/27	T	O		91
BLENDED CEMENTS	*JAP*	*D*	*28*	*287*	*2871*	*91/06/21*	*T*	O		91
PROCESS COOLING SYSTEMS	IRE	D	33	335	3353	90/08/23	T	O		91
PROCESS COOLING SYSTEMS	USA	D	33	335	3353	90/08/23	T	O		91
VINYL SHEETING	YUGO	D	34	347	3472	90/11/12	T	O		91
SODIUM CYANIDE	TAIW	D	27	275	2755	91/02/06	T	T	91/05/16	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	MLAY	S	33	335	3356	90/11/07	T	T	91/02/11	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	SING	D	33	335	3356	90/11/07	T	T	91/06/19	91
AGRICULTURAL GROUND ENGAGING TOOLS	BRAZ	S	33	336	3361	91/02/22	T	T	91/05/16	91
VINYL SHEETING	UK	D	34	347	3472	90/11/21	T	T	91/02/11	91
CANNED PEACHES & CANNED PEARS	CHIN	D	21	213	2131	91/06/27	P	G	91/11/20	92
GLACE CHERRIES	*FRAN*	*D*	*21*	*213*	2131	*91/11/07*	*P*	G	92/04/09	92
GLACE CHERRIES	*FRAN*	*S*	*21*	*213*	2131	*91/11/07*	*P*	G	92/04/09	92
GLACE CHERRIES	*ITAL*	*D*	*21*	*213*	2131	*91/11/07*	*P*	G	92/04/09	92
GLACE CHERRIES	*ITAL*	*S*	*21*	*213*	2131	*91/11/07*	*P*	G	92/04/09	92
CANNED WHOLE TOMATOES	*CHIN*	*D*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
CANNED WHOLE TOMATOES	*ITAL*	*D*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
CANNED WHOLE TOMATOES	*ITAL*	*S*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
CANNED WHOLE TOMATOES	*SPAI*	*S*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
CANNED WHOLE TOMATOES	*THAI*	*S*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
DRIED EGG WHITE	*NETH*	*D*	*21*	*217*	2176	*91/11/18*	*P*	G	92/05/07	92
DRIED EGG WHITE	*NETH*	*S*	*21*	*217*	2176	*91/11/18*	*P*	G	92/05/07	92
PLASTER OF PARIS BANDAGES	FGMY	D	23	235	2356	91/05/23	P	G	91/10/23	92
PVC RESIN	BRAZ	D	27	275	2753	91/08/16	P	G	92/01/24	92
PVC RESIN	MEXI	D	27	275	2753	91/08/16	P	G	92/01/24	92
PVC RESIN	USA	D	27	275	2753	91/08/16	P	G	92/01/24	92
DIOCTYL PHTHALATE	BLGM	D	27	275	2754	91/06/03	P	G	91/11/27	92
TRIETHANOLAMINE AND MIXTURES	BRAZ	D	27	275	2754	91/08/30	P	G	92/02/19	92
DIOCTYL PHTHALATE	FGMY	D	27	275	2754	91/06/03	P	G	91/11/27	92
DIOCTYL PHTHALATE	FRAN	D	27	275	2754	91/06/03	P	G	91/11/27	92

PHTHALIC ANHYDRIDE	*ISRA*	*D*	*27*	*275*	*2754*	*92/01/31*	*P*	*G*		92
DIBUTYL PHTHALATE	ITAL	D	27	275	2754	91/08/14	P	G	92/01/24	92
PHTHALIC ANHYDRIDE	*RKOR*	*D*	*27*	*275*	*2754*	*92/01/31*	*P*	*G*	92/06/19	92
SORBITOL 70% SOLUTION	THAI	D	27	275	2754	90/06/01	P	G	90/10/25	92
TRIETHANOLAMINE AND MIXTURES	USA	D	27	275	2754	91/08/30	P	G	92/02/19	92
DIOCTYL PHTHALATE	VENZ	D	27	275	2754	91/06/03	P	G	91/11/27	92
SODIUM CYANIDE	FGMY	D	27	275	2755	91/02/06	P	G	91/07/12	92
SODIUM CYANIDE	ITAL	D	27	275	2755	91/02/06	P	G	91/07/12	92
SODIUM CYANIDE	JAP	D	27	275	2755	91/02/06	P	G	91/07/12	92
SODIUM CYANIDE	RKOR	D	27	275	2755	91/02/06	P	G	91/07/12	92
SODIUM CYANIDE	UK	D	27	275	2755	91/02/06	P	G	91/07/12	92
DIAGNOSTIC REAGENT STRIPS	UK	D	27	276	2763	90/07/10	P	G	91/12/23	92
DIAGNOSTIC REAGENT STRIPS	USA	D	27	276	2763	90/07/10	P	G	91/12/23	92
AGRICULTURAL GROUND ENGAGING TOOLS	BRAZ	D	33	336	3361	91/02/22	P	G	91/07/12	92
CERTAIN FORKLIFT TRUCKS	*UK*	*D*	*33*	*336*	*3363*	*91/12/19*	*P*	*G*		92
CANNED WHOLE TOMATOES	*SPAI*	*D*	*21*	*213*	*2132*	*91/12/05*	*P*	*T*	92/04/30	92
CANNED WHOLE TOMATOES	*THAI*	*D*	*21*	*213*	*2132*	*91/12/05*	*P*	*T*	92/04/30	92
DRIED EGG WHITE	*SWED*	*D*	*21*	*217*	2176	*91/11/18*	*P*	T	92/05/07	92
LOW DENSITY POLYETHYLENE	ARGE	D	27	275	2753	91/01/31	P	T	91/07/12	92
PVC RESIN	ARGE	D	27	275	2753	91/08/16	P	T	92/01/24	92
LOW DENSITY POLYETHYLENE	BRAZ	D	27	275	2753	91/01/31	P	T	91/07/12	92
LOW DENSITY POLYETHYLENE	CAN	D	27	275	2753	91/01/31	P	T	91/07/12	92
LOW DENSITY POLYETHYLENE	FINL	D	27	275	2753	91/01/31	P	T	91/07/12	92
LOW DENSITY POLYETHYLENE	FRAN	D	27	275	2753	91/01/31	P	T	91/07/12	92
LOW DENSITY POLYETHYLENE	ISRA	D	27	275	2753	91/01/31	P	T	91/07/12	92
PVC RESIN	ISRA	D	27	275	2753	91/08/16	P	T	92/01/24	92
LOW DENSITY POLYETHYLENE	JAP	D	27	275	2753	91/01/31	P	T	91/07/12	92
LOW DENSITY POLYETHYLENE	QATA	D	27	275	2753	91/01/31	P	T	91/07/12	92
LOW DENSITY POLYETHYLENE	SING	D	27	275	2753	91/01/31	P	T	91/07/12	92
PVC RESIN	TAIW	D	27	275	2753	91/08/16	P	T	92/01/24	92
LOW DENSITY POLYETHYLENE	USA	D	27	275	2753	91/01/31	P	T	91/07/12	92
SODIUM CYANIDE	USA	D	27	275	2755	91/02/06	P	T	91/07/12	92
PORTLAND CEMENT	JAP	D	28	287	2871	91/06/21	P	T	91/11/27	92
STAINLESS STEEL WELDED TUBE & PIPE	TAIW	D	29	294	2945	91/12/24	P	T	92/03/26	92
FORKLIFT TRUCKS (result of Court action re '87	*JAP*	*D*	33	336	3363	*91/08/21*	*P*	T	93/02/17	92
DIBUTYL PHTHALATE	CHIN	D	27	275	2754	91/08/14	P	U	92/01/24	92
CANNED HAM	DENM	S	21	211	2117	90/08/28	T	G	91/07/10	92
CANNED HAM	IRE	S	21	211	2117	90/08/28	T	G	91/07/10	92
CANNED HAM	NETH	S	21	211	2117	90/08/28	T	G	91/07/10	92
CANNED PEACHES & CANNED PEARS	CHIN	D	21	213	2131	91/06/27	T	G	92/02/19	92
CANNED PEACHES & CANNED PEARS	CHIN	S	21	213	2131	91/06/27	T	G	91/09/26	92
CANNED PEACHES & CANNED PEARS	SPAI	S	21	213	2131	91/06/27	T	G	91/09/26	92
LOW DENSITY POLYETHYLENE	ITAL	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	RKOR	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	SWED	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	TAIW	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	THAI	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	YUGO	D	27	275	2753	91/01/31	T	G	91/09/18	92
DIOCTYL PHTHALATE	RKOR	D	27	275	2754	91/06/03	T	G	91/11/27	92
DRIED EGG WHITE	ITAL	S	21	217	2176	91/11/18	T	N	92/02/04	92
CANNED WHOLE TOMATOES	CHIN	S	21	213	*2132*	91/12/05	T	O		92
DRIED EGG WHITE	*ITAL*	*D*	*21*	*217*	2176	*91/11/18*	*T*	O		92
FACSIMILE & OTHER THERMAL COATED PAPE	RKOR	D	26	263	2631	91/09/27	T	O		92
FACSIMILE & OTHER THERMAL COATED PAPE	USA	D	26	263	2631	91/09/27	T	O		92
EXERCISE BOOKS (& SPIRAL BOUND BOOKS)	INDO	D	26	264	2643	91/10/18	T	O		92
PVC RESIN	HGRY	D	27	275	2753	91/08/16	T	O		92
HIGH DENSITY POLYETHYLENE	HONG	D	27	275	2753	92/03/26	T	O		92
High Density Polyethylene	HONG	D	27	275	2753	92/03/27	T	O		92
Polyvinyl Chloride	NETH	D	27	275	2753	92/05/15	T	O		92
PVC RESIN	POLA	D	27	275	2753	91/08/16	T	O		92
PVC RESIN	RKOR	D	27	275	2753	91/08/16	T	O		92
PVC RESIN	SING	D	27	275	2753	91/08/16	T	O		92
Polyvinyl Chloride	SWED	D	27	275	2753	92/05/15	T	O		92
Expandable Polystyrene	TAIW	D	27	275	2753	92/05/29	T	O		92
HIGH DENSITY POLYETHYLENE	USSR	D	27	275	2753	92/03/26	T	O		92
High Density Polyethylene	USSR	D	27	275	2753	92/03/27	T	O		92

PHTHALIC ANHYDRIDE	ARGE	D	27	275	2754	92/01/31	T	O		92
PHTHALIC ANHYDRIDE	BLGM	D	27	275	2754	92/01/31	T	O		92
PHTHALIC ANHYDRIDE	BRAZ	D	27	275	2754	92/01/31	T	O		92
SODIUM SILICATE ROCK	MLAY	D	27	275	2755	92/03/04	T	O		92
SODIUM SILICATE ROCK	USA	D	27	275	2775	92/03/04	T	O		92
Clear Float Glass	MLAY	D	28	285	2850	92/05/11	T	O		92
Clear Float Glass	MLAY	S	28	285	2850	92/05/11	T	O		92
Clear Float Glass	THAI	S	28	285	2850	92/05/11	T	O		92
STAINLESS STEEL WELDED TUBE & PIPE	RKOR	D	29	294	2945	91/12/24	T	O		92
STAINLESS STEEL WELDED TUBE & PIPE	*TAIW*	*D*	*29*	*294*	*2945*	*91/12/24*	*T*	O		92
CASTORS (result of court action re '90 case)	*TAIW*	*D*	*31*	*316*	*3168*	*91/10/09*	*T*	O		92
ELECTRONIC ISSUING TICKET MACHINES	UK	D	33	335	3352	92/03/27	T	O		92
LOW VOLTAGE XLPE AERIAL BUNDLED CABLE	SING	D	33	335	3355	91/08/07	T	O		92
PEANUTS	CHIN	D	21	213	2131	91/12/24	T	T	92/03/26	92
CANNED PEACHES & CANNED PEARS	CHIN	S	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES	GREE	D	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES	GREE	S	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES & CANNED PEARS	SPAI	D	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES & CANNED PEARS	SPAI	D	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES & CANNED PEARS	SPAI	S	21	213	2131	91/06/27	T	T	92/02/19	92
FACSIMILE & OTHER THERMAL COATED PAPE	JAP	D	26	263	2631	91/09/27	T	T	92/01/02	92
GLASS FIBRE ROVINGS & CHOPPED STRAND	CHIN	D	*28*	*288*	*2883*	91/10/17	T	T	92/03/19	92
FIBERGLASS ROVINGS (AND MAT)	JAP	D	*28*	*288*	*2883*	91/10/17	T	T	92/01/16	92
GLASS FIBRE ROVINGS & CHOPPED STRAND	JAP	D	*28*	*288*	*2883*	91/10/17	T	T	92/01/16	92
FIBERGLASS ROVINGS (AND MAT)	TAIW	D	*28*	*288*	*2883*	91/10/17	T	T	92/01/16	92
GLASS FIBRE ROVINGS & CHOPPED STRAND	TAIW	D	*28*	*288*	*2883*	91/10/17	T	T	92/01/16	92
XLPE AERIAL BUNDLED ELECTRIC CABLE	RKOR	D	33	335	3355	91/12/13	T	T	92/02/26	92
TRANSFORMERS	TURK	D	33	335	3357	91/03/28	T	T	91/07/04	92
TRANSFORMERS	TURK	S	33	335	3357	91/03/28	T	T	91/07/04	92
Polyvinyl Chloride	CAN	D	27	275	2753	92/05/15	P	G	92/09/24	93
Polyvinyl Chloride	CHIN	D	27	275	2753	92/05/15	P	G	92/09/24	93
Polyvinyl Chloride	FRAN	D	27	275	2753	92/05/15	P	G	92/09/24	93
Polyvinyl Chloride	JAP	D	27	275	2753	92/05/15	P	G	92/09/24	93
Polyvinyl Chloride	NWAY	D	27	275	2753	92/05/15	P	G	92/09/24	93
Expandable Polystyrene	RKOR	D	27	275	2753	92/05/29	P	G	92/10/08	93
High Density Polyethylene	RKOR	D	27	275	2753	92/03/27	P	G	92/08/03	93
High Density Polyethylene	SAUD	D	27	275	2753	92/03/27	P	G	92/08/03	93
Polyvinyl Chloride	SAUD	D	27	275	2753	92/05/15	P	G	92/09/24	93
Expandable Polystyrene	SING	D	27	275	2753	92/05/29	P	G	92/10/08	93
High Density Polyethylene	SING	D	27	275	2753	92/03/27	P	G	92/08/03	93
Polyvinyl Chloride	THAI	D	27	275	2753	92/05/15	P	G	92/09/24	93
Sodium Cyanide (WAS PF No. 92/21)	INIA	D	27	275	2755	92/12/18	P	G	93/05/21	93
Sodium Cyanide (WAS PF No. 92/21)	USA	D	27	275	2755	92/12/18	P	G	93/05/21	93
Clear Float Glass	BLGM	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	CHIN	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	FGMY	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	INDO	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	PHIL	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	THAI	D	28	285	2850	92/05/11	P	G	92/09/16	93
Disposable Plastic Cutlery	CHIN	D	34	347	3474	93/01/07	P	G	93/05/26	93
Disposable Plastic Cutlery	THAI	D	34	347	3474	93/01/07	P	G	93/05/26	93
Expandable Polystyrene	FRAN	D	27	275	2753	92/05/29	P	T	92/10/08	93
High Density Polyethylene	ITAL	D	27	275	2753	92/03/27	P	T	92/08/03	93
High Density Polyethylene	JAP	D	27	275	2753	92/03/27	P	T	92/08/03	93
Polyvinyl Chloride	ROUM	D	27	275	2753	92/05/15	P	T	92/09/24	93
Expandable Polystyrene	SAUD	D	27	275	2753	92/05/29	P	T	92/10/08	93
High Density Polyethylene	SWED	D	27	275	2753	92/03/27	P	T	92/08/03	93
High Density Polyethylene	THAI	D	27	275	2753	92/03/27	P	T	92/08/03	93
Expandable Polystyrene	UK	D	27	275	2753	92/05/29	P	T	92/10/08	93
High Density Polyethylene	USA	D	27	275	2753	92/03/27	P	T	92/08/03	93
Triethanolamine (85 and 99 per cent pure)	FGMY	D	27	275	2754	92/10/25	P	T	93/02/26	93
Dioctyl Phthalate	JAP	D	27	275	2754	92/11/29	P	T	93/04/05	93
Triethanolamine (85 and 99 per cent pure)	MEXI	D	27	275	2754	92/10/25	P	T	93/02/26	93
Dioctyl Phthalate	TAIW	D	27	275	2754	92/11/29	P	T	93/04/05	93
Trifluralin Technical	USA	D	27	276	2754	92/08/07	P	T	92/12/17	93
Chlorinated Paraffin	TAIW	D	27	277	2770	92/08/21	P	T	92/12/24	93

Chlorinated Paraffin	USA	D	27	277	2770	92/08/21	P	T	92/12/24	93
Clear Float Glass	FRAN	D	28	285	2850	92/05/11	P	T	92/09/16	93
Certain Finished Chrome Tanned Bovine Leather	BRAZ	D	*34*	*345*	*3451*	92/10/23	P	T	93/03/04	93
Certain Finished Chrome Tanned Bovine Leather	INIA	D	*34*	*345*	*3451*	92/10/23	P	T	93/03/04	93
Disposable Plastic Cutlery	HONG	D	34	347	3474	93/01/07	P	T	93/05/26	93
Disposable Plastic Cutlery	MLAY	D	34	347	3474	93/01/07	P	T	93/05/26	93
Disposable Plastic Cutlery	RKOR	D	34	347	3474	93/01/07	P	T	93/05/26	93
Frozen Pork	CAN	D	21	211	2115	92/11/27	T	O		93
Frozen Pork	CAN	S	21	211	2115	92/11/27	T	O		93
Dioctyl Phthalate	POLA	D	27	275	2754	92/11/29	T	O		93
Sodium Cyanide (WAS PF No. 92/21)	FGMY	D	27	275	2755	92/12/18	T	O		93
Certain Fibreglass Products	TAIW	D	28	288	2883	92/09/25	T	O		93
Certain Cast Iron Manhole Covers Grates and Fran	CHIN	D	29	294	2942	92/08/23	T	O		93
Certain Cast Iron Manhole Covers Grates and Fran	INIA	D	29	294	2942	92/08/23	T	O		93
Self Propelled Multi-Tyred Rollers	CZEC	D	33	336	3362	92/12/06	T	O		93
Certain Finished Chrome Tanned Bovine Leather	ARGE	D	*34*	*345*	*3451*	92/10/23	T	O		93
Certain Finished Chrome Tanned Bovine Leather	ARGE	S	*34*	*345*	*3451*	92/10/23	T	O		93
Certain Finished Chrome Tanned Bovine Leather	BRAZ	S	*34*	*345*	*3451*	92/10/23	T	O		93
Certain Finished Chrome Tanned Bovine Leather	INIA	S	*34*	*345*	*3451*	92/10/23	T	O		93
Certain Finished Chrome Tanned Bovine Leather	THAI	D	*34*	*345*	*3451*	92/10/23	T	O		93
Disposable Plastic Cutlery	SING	D	34	347	3474	93/01/07	T	O		93
Disposable Plastic Cutlery	TAIW	D	34	347	3474	93/01/07	T	O		93
Moist Towelettes	ISRA	D	34	348	3487	93/01/03	T	O		93
Triethanolamine (85 and 99 per cent pure)	FRAN	D	27	275	2754	92/10/25	T	T	93/02/25	93

Dumping Industry Data - Positive Final Findings FY1983 to 93

APPENDIX 6.4.4 A

Industry SITC	Industry Descriptic	1a Positive Finding FY1982to	3 Foreign Owned % Turnover 1986-87	5 Turnover $'000 M 1987-88	6 R&D Spending $M 1986-87	7 Increase Import Share %	9 Intra-industry Trade Ind 1987-1988
21	Food&Bev	46	27.9	27.1	55	0.4	37.5
25	Wood&Fur	1	10	7	6	0.2	70.6
26	Paper&Prc	2	14.4	12	9	-0.7	17.2
27	Chemical&	117	60.6	12.9	119	-4.2	53.3
28	Non-Metall	10	18.8	6	15	1.1	22.7
29	Basic Meta	15	38.5	16.4	65	6.4	19.1
31	Fabricated	8	14.7	10.1	22	2	32
33	Other Mac	44	39.6	13.1	240	2.7	19.5
34	Misc.Manu	15	28	7.2	16	0.9	30.6
23	Textiles	8	20.2	3.9	6.5	0.6	84.4
24	Clothing&F	1	7.5	4.7	6.5	3.9	13.2
32	Transport	10	58.9	12.9	127	2	33
	Total Manu	277	32	133.9	686	1.3	

Correlation

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Column 1	1					
Column 2	0.884008	1				
Column 3	0.340592	0.307882	1			
Column 4	0.569078	0.673886	0.256814	1		
Column 5	-0.56249	-0.19121	0.095243	0.069972	1	
Column 6	0.278409	0.001993	-0.11274	-0.17699	-0.51959	1

sion Statistics

Multiple R	0.987586
R Square	0.975327
Adjusted R	0.934205
Standard E	9.495916
Observatic	9

s of Variance

	df	m of Squares	Mean Square	F	ignificance F
Regressior	5	10693.48	2138.697	23.71786	0.012868
Residual	3	270.5172	90.17241		
Total	8	10964			

	Coefficients	tandard Error	t Statistic	P-value	Lower 95%	Upper 95%
Intercept	-31.7808	12.40799	-2.56132	0.033578	-71.2686	7.707025
x1	1.565761	0.306	5.116866	0.000911	0.591931	2.53959
x2	0.860633	0.553061	1.556127	0.158289	-0.89946	2.620722
x3	0.057097	0.062197	0.918002	0.385458	-0.14084	0.255034
x4	-5.21971	1.457867	-3.58037	0.007184	-9.85929	-0.58012
x5	0.222001	0.221955	1.000208	0.346499	-0.48436	0.92836

Complainant A	Complainant B	Type	Commodity	Com-modity Code	Industry Code	SITC 2 digit	Country Code	Date Definitive Duties Recom-mended
Castle		D	Canned Ham	16024100	21	1	NETH	30/01/91
Nestle		D	Full Cream Evaporated Milk	04029100	21	2	CAN	01/06/89
Ardmona	SPC	D	Canned Pears	20084000	21	5	CHIN	21/11/91
Ardmona	SPC	D	Canned Peaches	20087000	21	5	CHIN	20/02/92
Edgell	ARDM/SPC	D	Canned Whole Tomatoes	20021000	21	5	CHIN	30/04/92
Big Sister	Allowrie	D	Glace Cherries	20060000	21	5	FRAN	9/04/92
Ardmona	SPC	D	Canned Peaches	20087000	21	5	GREE	20/02/92
Big Sister	Allowrie	D	Glace Cherries	20060000	21	5	ITAL	9/04/92
Edgell	ARDM/SPC	D	Canned Whole Tomatoes 2002/1/9	2002	21	5	ITAL	30/04/92
Daffodil		D	Edible Vegetable Oils 15/179/149/079/129	15	21	42	MLAY	24/11/93
Daffodil		D	Edible Vegetable Oils 15/179/149/079/129	15	21	42	SING	24/11/93
Castle		D	Canned Ham	16024100	21	1	IRE	30/01/91
Smith & Nephew		D	Plaster of Paris Bandages	30059090	23	54	FGMY	24/10/91
APPM	APM	D	A4 Cut Ream Copy Paper	48235900	26	64	BRAZ	16/02/94
		D	A4 Cut Ream Copy Paper	48235900	26	64	FGMY	16/02/94
		D	A4 Cut Ream Copy Paper	48235900	26	64	FINL	3/02/94
		D	A4 Cut Ream Copy Paper	48235900	26	64	INDO	3/02/94
		D	A4 Cut Ream Copy Paper	48235900	26	64	SAFR	16/02/94
		D	A4 Cut Ream Copy Paper	48235900	26	64	USA	16/02/94
ICI		D	Triethanolamine and Mixtures	29221300	27	51	BRAZ	20/02/92
ICI		D	Triethanolamine and Mixtures	29221300	27	51	FGMY	29/04/93
ICI		D	Sorbitol 70% Solution	29054400	27	51	FRAN	10/10/90
ICI		D	Triethanolamine and Mixtures	29221300	27	51	MEXI	29/04/93
ICI		D	Sorbitol 70% Solution	29054400	27	51	MEXI	10/10/90
ICI		D	Sorbitol 70% Solution	29054400	27	51	THAI	10/10/90
Nufarm Ltd		D	Trifluralin Technical	29214310	27	51	USA	17/12/92
ICI		D	Triethanolamine and Mixtures	29221300	27	51	USA	20/02/92
ICI/AGR	Minproc	D	Sodium Cyanide (FC set aside 19/09/94)	28371100	27	52	FGMY	24/06/91
ICI/AGR	Minproc	D	Sodium Cyanide	28371100	27	52	INIA	21/05/93
ICI/AGR	Minproc	D	Sodium Cyanide	28371100	27	52	ITAL	18/07/91

ICI/AGR	Minproc	D	Sodium Cyanide	28371100	27	52	JAP	18/07/91
ICI/AGR	Minproc	D	Sodium Cyanide	28371100	27	52	RKOR	18/07/91
ICI/AGR	Minproc	D	Sodium Cyanide	28371100	27	52	UK	18/07/91
ICI/AGR	Minproc	D	Sodium Cyanide	28371100	27	52	USA	21/05/93
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	BRAZ	23/01/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	CAN	22/10/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	CHIN	22/10/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	FRAN	22/10/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	JAP	22/10/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	MEXI	23/01/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	NWAY	22/10/92
Hoechst	Compol	D	High Density Polyethylene	39012000	27	57	RKOR	3/09/92
Chemplex	BASF	D	Expandable Polystyrene	39031100	27	57	RKOR	4/11/92
ICI/Shell	Hoechst	D	Polypropylene Homopolymer	39021000	27	57	RKOR	29/09/93
Hoechst	Compol	D	High Density Polyethylene	39012000	27	57	SAUD	3/09/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	SAUD	22/10/92
Hoechst	Compol	D	High Density Polyethylene	39012000	27	57	SING	3/09/92
Chemplex	BASF	D	Expandable Polystyrene	39031100	27	57	SING	4/11/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	THAI	22/10/92
ICI	BFG	D	Polyvinyl Chloride	39041000	27	57	USA	23/01/92
ICI		D	Di-Octyl Phthalate	29173200	27	59	BLGM	28/11/91
ICI		D	Di-Butyl Phthalate	29173100	27	59	CHIN	23/01/92
ICI		D	Di-Octyl Phthalate	29173200	27	59	FGMY	28/11/91
ICI		D	Di-Octyl Phthalate	29173200	27	59	FRAN	28/11/91
ICI		D	Phthalic Anhydride	29173500	27	59	INDO	4/02/94
ICI		D	Phthalic Anhydride	29173500	27	59	INIA	16/02/94
ICI		D	Phthalic Anhydride	29173500	27	59	ISRA	16/07/92
ICI		D	Di-Butyl Phthalate	29173100	27	59	ITAL	23/01/92
ICI		D	Di-Octyl Phthalate	29173200	27	59	JAP	13/05/93
ICI		D	Di-Octyl Phthalate	29173200	27	59	RKOR	28/11/91
ICI		D	Phthalic Anhydride	29173500	27	59	RKOR	16/07/92
ICI		D	Di-Octyl Phthalate	29173200	27	59	TAIW	13/05/93
Bayer		D	Diagnostic Reagent Strips	38220000	27	59	UK	12/12/91
ICI		D	Phthalic Anhydride	29173500	27	59	UK	16/02/94
Bayer		D	Diagnostic Reagent Strips	38220000	27	59	USA	12/12/91
ICI		D	Di-Octyl Phthalate	29173200	27	59	VENZ	28/11/91

Pilkington		D	Clear Float Glass	70052900	28	66	BLGM	4/11/92
Pilkington		D	Clear Float Glass	70052900	28	66	CHIN	4/11/92
Piklington		D	Clear Float Glass	70052900	28	66	FGMY	4/11/92
Pilkington		D	Clear Float Glass	70052900	28	66	INDO	4/11/92
Pilkington		D	Clear Float Glass	70052900	28	66	PHIL	4/11/92
ACI Fibreglass		D	Gun Rovings	70191000	28	66	RKOR	25/05/94
Blue Circle	Cockburn	D	Cement Clinker	25231000	28	66	RKOR	30/12/88
ACI Fibreglass		D	Gun Rovings	70191000	28	66	TAIW	25/05/94
Pilkington		D	Clear Float Glass	70052900	28	66	THAI	4/11/92
BTR		D	Certain Malleable Cast Iron Pipe Fittings	73071900	29	67	RKOR	14/09/90
BTR		D	Certain Malleable Cast Iron Pipe Fittings	73071900	29	67	TAIW	14/09/90
Tate		D	Cementitious Access Floor Panels	73089000	31	69	SAFR	8/11/93
OMA		D	Outboard Motors	84072100	32	71	BLGM	29/09/89
OMA		D	Outboard Motors	84072100	32	71	JAP	29/09/89
OMA		D	Outboard Motors	84072100	32	71	USA	29/09/89
Clark		D	Certain Forklift Trucks (FC set aside 17/2/93)	84272000	32	74	JAP	26/09/88
Clark		D	Certain Forklift Trucks (FC set aside 17/2/93)	84272000	32	74	UK	08/05/92
Anders	Connor	D	Agricultural Ground Engaging Tools	84329000	33	72	BRAZ	18/07/91
Pac Dun		D	Replacement Automotive Lead-Acid Batteries	85071000	33	77	INDO	18/07/91
Pac Dun		D	Replacement Automotive Lead-Acid Batteries	85071000	33	77	MLAY	18/07/91
Pac Dun		D	Replacement Automotive Lead-Acid Batteries	85071000	33	77	PHIL	18/07/91
Pac Dun		D	Replacement Automotive Lead-Acid Batteries	85071000	33	77	RKOR	18/07/91
Pac Dun		D	Replacement Automotive Lead-Acid Batteries	85071000	33	77	TAIW	18/07/91
Bow Tutt		D	Self Propelled Multi-Tyred Rollers	84294000	33	78	CZEC	02/04/89
ISIS	Ransford	D	Disposable Plastic Cutlery	39241000	34	69	CHIN	13/04/93
Wallace	Leu	D	Disposable Plastic Cutlery	39241000	34	69	THAI	14/07/93
Staedtler	Esselte	D	Blacklead Pencils	96091000	34	89	BRAZ	2/08/89
Staedtler	Essetle	D	Coloured Pencils	96091000	34	89	BRAZ	15/02/89
Staedtler	Essetle	D	Coloured Pencils	96091000	34	89	HGRY	15/02/89
Staedtler	Essetle	D	Coloured Pencils	96091000	34	89	POLA	15/02/89

Date of Effect of Revocation	Action	ADA Report No.	Country 2 SITC Exports to Aust. t*	Country 2 SITC Imports fr Aust. t*	Country Total Exports to Aust. t*	Country Total Imports fr Aust. t*	Country 2 SITC Exports to World. t*	Country Total Exports to World. t*	Australian 2 SITC Exports to World. t*	Australian Total Exports to World. t*	World 2 SITC Exports t*	World Total Exports t*	Direct Foreign Owner 4 ASIC
	D	30	4313	7846	721331	625433	5741017	139918858	2686545	38046311	33021451	2613379323	12.3
14/06/92	D	6	25158	362	681288	657799	185560	125300177	700313	38046311	24553443	2613379323	63.7
	D	49	20042	679	1703519	1354225	2065539	84940062	602009	38046311	33491545	2613379323	5.8
	D	57	20042	679	1703519	1354225	2065539	84940062	602009	38046311	33491545	2613379323	5.8
	D	68/124	20042	679	1703519	1354225	2065539	84940062	602009	38046311	33491545	2613379323	56.1
	D	64	1317	7761	1127712	696168	3143889	231451969	602009	38046311	33491545	2613379323	5.8
	D	57	9687	178	38852	32334	1246218	9842028	602009	38046311	33491545	2613379323	5.8
	D	64	11255	2306	965910	711703	3321899	164694065	602009	38046311	33491545	2613379323	5.8
11/06/93	D	68/124	11255	2306	965910	711703	3321899	164694065	602009	38046311	33491545	2613379323	56.1
	D	113	31286	2	711636	813808			2393	38046311	5107995	2613379323	53.3
	D	113	5435	445	1096699	1210211	170903	63474183	2393	38046311	5107995	2613379323	53.3
	D	30	1109	30	207353	12215	1748806	28330912	2686545	38046311	33021451	2613379323	12.3
	D	46	125572	3452	2408285	752531	7461155	429643001	286824	38046311	44970741	2613379323	67.3
	D&U	119	24031	20	227279	172747	772656	36206774	174723	38046311	60079212	2613379323	50.1
	D	119	104186	86	2408285	752531	8995267	429643001	174723	38046311	60079212	2613379323	50.1
	D&U	119	132665	3	262324	104838	6290147	23515299	174723	38046311	60079212	2613379323	50.1
	U	119	17244	1253	923453	1230684	340817	33966997	174723	38046311	60079212	2613379323	50.1
	D	119	10595	44	109884	218768			174723	38046311	60079212	2613379323	50.1
	D	119	169071	906	9745928	3500685	6337663	420812074	174723	38046311	60079212	2613379323	50.1
	D	55	4464	11	227279	172747	834788	36206774	36178	38046311	64322765	2613379323	63.5
	D	93	53800	378	2408285	752531	11258785	429643001	36178	38046311	64322765	2613379323	
	D	27	52040	606	1127712	696168	6377768	231451969	36178	38046311	64322765	2613379323	63.5
	D	93	1643	25	62731	70555	732569	27207067	36178	38046311	64322765	2613379323	
	D	27	1643	25	62731	70555	732569	27207067	36178	38046311	64322765	2613379323	63.5
	D	27&66	1214	1148	526864	655066	119277	28329342	36178	38046311	64322765	2613379323	63.5
	D	86					10993254	420812074	36178	38046311	64322765	2613379323	
	D	55	250280	949	9745928	3500685	10993254	420812074	36178	38046311	64322765	2613379323	63.5
24/06/91	D	40	22270	979	2408285	752531	3366945	429643001	138341	38046311	20253245	2613379323	62.5
/03/94	D	99/123	947	821	235556	596720			138341	38046311	20253245	2613379323	62.5
6/10/94	D	40	2587	1024	965910	711703	485788	164694065	138341	38046311	20253245	2613379323	62.5

6/10/94	D	40	30960	19287	7417499	10111291	1188145	339490420	138341	38046311	20253245	2613379323	62.5
6/10/94	D	40	2106	8793	1114370	2398493	151764	76631515	138341	38046311	20253245	2613379323	62.5
6/10/94	D	40	19781	2858	2659486	1536098	2079533	190099009	138341	38046311	20253245	2613379323	62.5
/03/94	D	99/123	58309	26207	9745928	3500685	4119211	420812074	138341	38046311	20253245	2613379323	62.5
	D	52	1877	96	227279	172747	416013	36206774	128141	38046311	43227027	2613379323	78.4
	D	82	5522	19	681288	657799	1166276	125300177	128141	38046311	43227027	2613379323	78.4
	D	82	156	2837	1703519	1354225	130114	84940062	128141	38046311	43227027	2613379323	78.4
	D	82	23284	104	1127712	696168	4237352	231451969	128141	38046311	43227027	2613379323	78.4
	D	82	41218	395	7417499	10111291	3433154	339490420	128141	38046311	43227027	2613379323	78.4
	D	52	7	50	62731	70555	325435	27207067	128141	38046311	43227027	2613379323	78.4
	D	82	1871	0	205689	73644	444104	35138036	128141	38046311	43227027	2613379323	78.4
	D	79	11737	2818	1114370	2398493	1630795	76631515	128141	38046311	43227027	2613379323	78.4
	D	83	11737	2818	1114370	2398493	1630795	76631515	128141	38046311	43227027	2613379323	78.4
	D	108	11737	2818	1114370	2398493	1630795	76631515	128141	38046311	43227027	2613379323	78.4
	D	79	3949	11	526708	220625			128141	38046311	43227027	2613379323	78.4
	D	82	3949	11	526708	220625			128141	38046311	43227027	2613379323	78.4
	D	79	5627	8629	1096699	1210211	848775	63474183	128141	38046311	43227027	2613379323	78.4
	D	83	5627	8629	1096699	1210211	848775	63474183	128141	38046311	43227027	2613379323	78.4
	D	82	2115	3195	526864	655066	125504	28329342	128141	38046311	43227027	2613379323	78.4
	D	52	132833	1183	9745928	3500685	7177735	420812074	128141	38046311	43227027	2613379323	78.4
	D	47	14042	212	347725	477631	1785346	12241398	147670	38046311	35088919	2613379323	63.5
	U	54	5393	794	1703519	1354225	504910	84940062	147670	38046311	35088919	2613379323	63.5
	D	47	62414	3996	2408285	752531	7553212	429643001	147670	38046311	35088919	2613379323	63.5
	D	47	24375	932	1127712	104838	4184739	231451969	147670	38046311	35088919	2613379323	63.5
	U	117	1442	7607	923453	1230684	39169	33966997	147670	38046311	35088919	2613379323	63.5
	D	117	519	717	235556	596720			147670	38046311	35088919	2613379323	63.5
	D	75	740	496	115249	43855	7901	13082256	147670	38046311	35088919	2613379323	63.5
	D	54	3580	313	965910	711703	1507741	164694065	147670	38046311	35088919	2613379323	63.5
	D	96	26788	14957	7417499	10111291	2277247	339490420	147670	38046311	35088919	2613379323	
	D	47	4289	2944	1114370	2398493	191654	76631515	147670	38046311	35088919	2613379323	63.5
	D	75	4289	2944	1114370	2398493	191654	76631515	147670	38046311	35088919	2613379323	63.5
	D	96	3878	1902	1535700	1735643			147670	38046311	35088919	2613379323	
	D	51					3683080	190099009	147670	38046311	35088919	2613379323	
	D	117	80135	1322	2659486	1536098	3683080	190099009	147670	38046311	35088919	2613379323	63.5
	D	51					6363465	420812074	147670	38046311	35088919	2613379323	
	D	47	0	1	2604	15462	55086	14007365	147670	38046311	35088919	2613379323	63.5

	D	81	34938	14854	347725	477631	10441921	122411398	350410	38046311	53025918	2613379323	22.8
	D	81	44917	1995	1703519	1354225	1708796	84940062	350410	38046311	53025918	2613379323	22.8
	D	81	46630	3025	2408285	752531	6781641	429643001	350410	38046311	53025918	2613379323	22.8
	D	81	10613	7571	923453	1239684	360883	33966997	350410	38046311	53025918	2613379323	22.8
	D	81	3359	2768	117953	388656	58240	9824314	350410	38046311	53025918	2613379323	22.8
	U	126					598873	76631515	350410	38046311	53025918	2613379323	22.8
?	U	1	9543	5320	1114370	2398493	598873	76631515	350410	38046311	53025918	2613379323	19.5
	D	126							350410	38046311	53025918	2613379323	22.8
	D	81/109	31064	11519	526864	655066	1191209	28329342	350410	38046311	53025918	2613379323	22.8
26/07/93	D	26	70521	66419	1114370	2398493	4549436	76631515	855606	38046311	78724143	2613379323	36
26/07/93	D	26	16996	139180	1535700	1735643			855606	38046311	78724143	2613379323	36
	D	112	3485	1475	109894	218768			367819	38046311	62936836	2613379323	7.9
?	U	10	3692	14969	347725	477631	889181	122411398	331871	38046311	80236918	2613379323	11
?	D & U	10	220167	52598	7417499	10111291	12443765	339490420	331871	38046311	80236918	2613379323	11
?	U	10	383979	16424	9745928	3500685	17949724	420812074	331871	38046311	80236918	2613379323	11
26/09/88	U	A141					20450726	339490420	374501	38046311	128334526	2613379323	11
8/05/92	D	71	151083	20623	2659486	1536098	8033189	190099009	374501	38046311	128334526	2613379323	11
	D	42	3056	456	227279	172747	722491	36206774	344239	38046311	108486820	2613379323	16.4
	D	37	18229	9720	923453	1230684	335850	33966997	358113	38046311	168409081	2613379323	50.6
	D	37	27242	12172	711636	813808			358113	38046311	168409081	2613379323	50.6
	D	37	10095	3717	117953	388656	361015	9824314	358113	38046311	168409081	2613379323	50.6
	D	37	42011	2584	1114370	2398493	10713749	76631515	358113	38046311	168409081	2613379323	50.6
	D	37	97559	9334	1535700	1735643			358113	38046311	168409081	2613379323	50.6
2/04/92	D	5	70	12	29536	16575			548848	38046311	326629072	2613379323	28.9
	D	100	53741	5102	1703519	1354225	7949688	84940062	386651	38046311	73165829	2613379323	23.8
	U	100	10195	10400	526864	655066	1776588	28329342	386651	38046311	73165829	2613379323	23.8
?/06/94	U	8	1923	752	227279	172747	4777459	36206774	386651	38046311	73165829	2613379323	40.2
23/02/92	U	2	1923	752	227279	172747	477459	36206774	386651	38046311	73165829	2613379323	40.2
8/03/92	D	2	174	233	21128	11660	234942	10705095	386651	38046311	73165829	2613379323	40.2
8/03/92	D	2	163	15	19153	8260	226034	13164543	386651	38046311	73165829	2613379323	40.2

Exchange Rate. t-2	Exchange Rate. t-1	Exchange Rate. t	Exchange Rate. t+1	Effective rate of protection % t-1	Effective rate of protection % t+1	in Exchange Rates((t-1)-(t-2))/(t-2)%	Relative Competiveness Australia	Relative Competiveness other country	Difference in Relative Competitiveness	Intra-industry trade	Changes in effective rates of protection %	Dumping Margin %	Australian Production Value t-1
1.724	1.511	1.308	1.3	8	8	-12.35	5.59	3.25	2.34	70.94	0		
0.918	0.94	1.02			10	2.40	1.96	0.16	1.80	2.84	#VALUE!		
3.743	4.038	4.129	3.957	19	16	7.88	1.23	1.90	-0.66	6.55	-3		
3.743	4.038	4.129	3.957	19	16	7.88	1.23	1.90	-0.66	6.55	-3		
3.743	4.038	4.129	3.957	11	12	7.88	1.23	1.90	-0.66	6.55	1		
4.573	3.947	3.939	3.793	19	16	-13.69	1.23	1.06	0.17	29.02	-3		
126.1	132.8	141		19	16	5.31	1.23	9.88	-8.65	3.61	-3		
1001	873.1	872.7	1014	19	16	-12.78	1.23	1.57	-0.34	34.01	-3		
1001	873.1	872.7	1014	19	16	-12.78	1.23	1.57	-0.34	34.01	-3		
2.072	1.797	1.814	N/A	16	13	-13.27	0.03	#DIV/0!	#DIV/0!	0.01	-3		
1.237	1.131	1.089	N/A	16	13	-8.57	0.03	1.38	-1.35	15.14	-3		
0.535	0.515	0.478	0.458	8	8	-3.74	5.59	4.89	0.70	5.27	0		
1.339	1.16	1.153	1.113	20	16	-13.37	0.44	1.01	-0.57	5.35	-4		
1815			N/A	22	14	-100.00	0.20	0.93	-0.73	0.17	-8		
1.153	1.113	1.175	N/A	22	14	-3.47	0.20	0.91	-0.71	0.16	-8		
3.219			N/A	22	14	-100.00	0.20	11.64	-11.44	0.00	-8		
1504			N/A	22	14	-100.00	0.20	0.44	-0.24	13.55	-8		
2.122			N/A	22	14	-100.00	0.20	#DIV/0!	#DIV/0!	0.83	-8		
0.76	0.688	0.677	N/A	22	14	-9.47	0.20	0.66	-0.46	1.07	-8		
27.78	185	1815		4	3	565.95	0.04	0.94	-0.90	0.49	-1		
1.16	1.153	1.113	1.175	4	3	-0.60	0.04	1.06	-1.03	1.40	-1		
5.212	4.573	3.947	3.939	4	4	-12.26	0.04	1.12	-1.08	2.30	0		
2.273	2.311			4	3	1.67	0.04	1.09	-1.06	3.00	-1		
1.861	2.071	2.273		4	4	11.28	0.04	1.09	-1.06	3.00	0		
21.59	20.36	19.56	19.2	4	4	-5.70	0.04	0.17	-0.13	97.21	0		
0.773	0.76	0.688	0.677	17	14	-1.68	0.04	1.06	-1.02	#DIV/0!	-3		
0.793	0.773	0.76	0.688	4	3	-2.52	0.04	1.06	-1.02	0.76	-1		
1.528	1.339	1.16	1.144	6	4	-12.37	0.47	1.01	-0.54	8.42	-2		
4.25	2.942	2.232	2.139	5	4	-30.78	0.47	#DIV/0!	#DIV/0!	92.87	-1		
1001	873.1	872.7	1014	6	4	-12.78	0.47	0.38	0.09	56.72	-2		

113.6	104.3	95.2	85.81	6	4	-8.19	0.47	0.45	0.02	76.77	-2
538	554	578.1	541.2	6	4	2.97	0.47	0.26	0.21	38.65	-2
0.493	0.403	0.406	0.455	6	4	-18.26	0.47	1.41	-0.94	25.25	-2
0.773	0.76	0.688	0.677	5	4	-1.68	0.47	1.26	-0.79	62.02	-1
27.78	185	1815		29	29	565.95	0.20	0.69	-0.49	9.73	0
0.897	0.879	0.873	0.9	29	24	-2.01	0.20	0.56	-0.36	0.69	-5
4.038	4.129	3.957	3.892	29	24	2.25	0.20	0.09	0.11	10.42	-5
3.947	3.939	3.793	3.991	29	24	-0.20	0.20	1.11	-0.90	0.89	-5
104.3	95.2	85.81	75.8	29	24	-8.72	0.20	0.61	-0.41	1.90	-5
2.071	2.273	2.311		29	29	9.75	0.20	0.72	-0.52	24.56	0
4.98	4.806			29	24	-3.49	0.20	0.76	-0.56	0.00	-5
554	578.1	541.2	546.8	29	24	4.35	0.20	1.29	-1.08	38.72	-5
554	578.1	541.2	546.8	29	24	4.35	0.20	1.29	-1.08	38.72	-5
578.1	541.2	546.8	N/A	29	20	-6.38	0.20	1.29	-1.08	38.72	-9
2.92	2.833			29	24	-2.98	0.20	#DIV/0!	#DIV/0!	0.56	-5
2.92	2.833			29	24	-2.98	0.20	#DIV/0!	#DIV/0!	0.56	-5
1.345	1.237	1.131	1.089	29	24	-8.03	0.20	0.81	-0.60	78.94	-5
1.345	1.237	1.131	1.089	29	24	-8.03	0.20	0.81	-0.60	78.94	-5
19.56	19.2	17.56	17.14	29	24	-1.84	0.20	0.27	-0.06	79.66	-5
0.793	0.773	0.76	0.688	29	29	-2.52	0.20	1.03	-0.83	1.77	0
28.62	26.34	25.1		4	3	-7.97	0.29	10.86	-10.57	2.97	-1
3.743	4.038	4.129	3.957	4	3	7.88	0.29	0.44	-0.15	25.67	-1
1.339	1.16	1.153	1.113	4	3	-13.37	0.29	1.31	-1.02	12.03	-1
4.573	3.947	3.939	3.793	4	3	-13.69	0.29	1.35	-1.06	7.37	-1
1505			N/A	3	3	-100.00	0.29	0.09	0.20	31.87	0
20.18			N/A	3	3	-100.00	0.29	#DIV/0!	#DIV/0!	83.98	0
1.674	1.79			4	3	6.93	0.29	0.04	0.24	80.26	-1
1001	873.1	872.7	1014	4	3	-12.78	0.29	0.68	-0.39	16.08	-1
104.3	95.2	85.81	75.8	4	3	-8.72	0.29	0.50	-0.21	71.66	-1
538	554	578.1	541.2	4	3	2.97	0.29	0.19	0.10	81.40	-1
554	578.1	541.2	546.8	4	3	4.35	0.29	0.19	0.10	81.40	-1
20.96	19.56	17.48	18.05	4	3	-6.68	0.29	#DIV/0!	#DIV/0!	65.81	-1
0.493	0.403	0.406	0.455	4	3	-18.26	0.29	1.44	-1.15	#DIV/0!	-1
0.406	0.455	0.458	N/A	3	3	12.07	0.29	1.44	-1.15	3.25	0
0.793	0.773	0.76	0.688	4	3	-2.52	0.29	1.13	-0.84	#DIV/0!	-1
32.01	40.43	47.23		4	3	26.30	0.29	0.29	0.00	0.00	-1

23.89	23.77	22.83	24.23	4	4	-0.50	0.45	4.20	-3.75	59.66	0
4.038	4.129	3.957	3.892	4	4	2.25	0.45	0.99	-0.54	8.51	0
1.16	1.153	1.113	1.175	4	4	-0.60	0.45	0.78	-0.32	12.18	0
1479	1505			4	4	1.76	0.45	0.52	-0.07	83.27	0
20.19	20.07			4	4	-0.59	0.45	0.29	0.16	90.35	0
578.1	541.1	546.8	N/A	14	10	-6.40	0.45	0.39	0.07	#DIV/0!	-4
591.5	581.7	585.7	538	0	0	-1.66	0.45	0.39	0.07	71.59	0
19.56	17.48	18.05	N/A	14	10	-10.63	0.45	#DIV/0!	#DIV/0!	#DIV/0!	-4
19.56	19.2	17.56	17.14	4	4	-1.84	0.45	2.07	-1.62	54.10	0
585.7	538	554	578.1	19	16	-8.14	0.75	1.97	-1.22	97.00	-3
24.11	20.75	20.96	19.56	19	16	-13.94	0.75	#DIV/0!	#DIV/0!	21.77	-3
2.122			N/A	11	9	-100.00	0.40	#DIV/0!	#DIV/0!	59.48	-2
23.91	32.05	28.11	23.89		23	34.04	0.28	0.24	0.05	39.57	23
105.5	101.7	113.6	104.3		23	-3.60	0.28	1.19	-0.91	38.57	23
0.757	0.856	0.793	0.773		23	13.08	0.28	1.39	-1.11	8.20	23
108.4	105.5	101.7	113.6		32	-2.68	0.20	1.23	-1.03	#DIV/0!	32
0.493	0.403	0.406	0.455	23	20	-18.26	0.20	0.86	-0.66	24.02	-3
27.78	185	1815		3	3	565.95	0.22	0.48	-0.26	25.97	0
1419	1479	1505		32	22	4.23	0.15	0.15	-0.01	69.56	-10
2.127	2.127	2.006		32	22	0.00	0.15	#DIV/0!	#DIV/0!	61.76	-10
18.08	20.19	20.07		32	22	11.67	0.15	0.57	-0.42	53.82	-10
538	554	578.1	541.2	32	22	2.97	0.15	2.17	-2.02	11.59	-10
20.75	20.96	19.56	17.48	32	22	1.01	0.15	#DIV/0!	#DIV/0!	17.46	-10
		11.56	12.96		9	#DIV/0!	0.12	#DIV/0!	#DIV/0!	29.27	9
4.038	4.129	3.957	3.892	17	13	2.25	0.36	3.34	-2.98	17.34	-4
19.2	17.52	17.14	N/A	17	11	-8.75	0.36	2.24	-1.88	99.00	-6
	1.223	27.78	185		12	#DIV/0!	0.36	4.71	-4.35	56.22	12
		1.223	27.78		13	#DIV/0!	0.36	0.47	-0.11	56.22	13
		43.03	48.02		13	#DIV/0!	0.36	0.78	-0.42	85.50	13
		737	4277		13	#DIV/0!	0.36	0.61	-0.25	16.85	13

Like Imports Value t-2	Like Imports Value t-1	Australian Domestic Sales t-2	Australian Domestic Sales t-1	Segment Result t-1	Segment Result t+1	Segment Sales t-1	Segment Sales t+1	Segment Assets t-1	Segment Assets t+1	Country Tariff % t-1	Total No. Non-Tariff Barriers in Countryt-1	Product Subsidy Benefits in Countryt-1

APPENDIX 6.4.4 B2

COMPANIES RECEIVING DUMPING RELIEF 1988-89 TO 1993-94

Industry	Start FY	End FY	Company	Domestic Related Company	Overseas Related Company
21	90-91	92-93	Castle P/L		
21	90-91	92-93	Big Sister Foods Limited	Petersville Ltd	
21				Adsteam Ltd	
21				Pacific Dunlop Ltd	
21	90-91	92-93	Allowrie Foods Australia Ltd	Adsteam Ltd	
21	90-91	92-93	Edgell	Petersville Ltd	
21				Adsteam Ltd	
21				Pacific Dunlop Ltd	
21	92-93	94-95	Daffodil Food Products P/L	Goodman Fielder Ltd 51%	
21	90-91	92-93	Ardmona Friuit Company Coop Ltd		
21	90-91	92-93	SPC Limited		
21	90-91	92-93	Victorian Egg Marketing Board		
21	90-91	92-93	Good Foods Australia Ltd	Goodman Fielder Ltd 70%	
21	88-89	90-91	B.Seppelt & Sons Ltd	SA Brewing Holdings Ltd 100%	
21	88-89	90-91	Tolley Scott & Fielder Ltd	SA Brewing Holdings Ltd 100%	
21	88-89	90-91	BLR Hardy Ltd		
21	88-89	90-91	Loxton Coop		
21	88-89	90-91	Penfolds Wines		
21	88-89	90-91	United Distiller's Group		Guiness PLC UK 100%
21	87-88	89-90	Nestle Australia Ltd		Nestle SA Switzerland 100%
23	90-91	92-93	Smith & Nephew		Smith & Nephew PLC UK 100%
26	92-93	94-95	Australian Pulp & Paper Mills Ltd	Amcor Ltd !00%	
26	92-93	94-95	Australian Paper Manufacturers Ltd	Amcor Ltd !00%	
27	91-92	93-94	Chemplex Sales (Aust) P/L	Consolidated Press Holdings 100%	
27	89-90	91-92	AGR	Westfarmers Ltd	
27				Benon P/L - AIDC 100%	
27				Coogee Chemicals P/L	
27	89-90	91-92	Minproc Chemicals P/L	Minproc Holdings Ltd 100%	
27	91-92	93-94	BASF Australia Ltd		BASF Germany GMBH 100%
27	91-92	94-95	Hoechst Australia Ltd		Hoechst Germany GMBH 100%

APPENDIX 6.4.4 B2

COMPANIES RECEIVING DUMPING RELIEF 1988-89 TO 1993-94

Industry	Start FY	End FY	Company	Domestic Related Company	Overseas Related Company
27	91-92	93-94	Commercial Polymers P/L	Mobil Oil Australia Ltd 50%	Mobil 1OO%
27				Esso Australia Ltd 50%	Exxon Corp USA 100%
27	89-90	94-95	ICI Ltd		ICI Limited UK 62%
27	92-93	94-95	Shell		Shell 100%
27	89-90	94-95	BF Goodrich Chemical Ltd		BF Goodrich Company USA 100%
28	87-88	89-90	Blue Circle Southern Cement Ltd	Boral Ltd 100%	
28	87-88	89-90	Pioneer International Ltd		
28	87-88	89-90	Adelaide Brighton Cement Ltd		
28	87-88	89-90	Cockburn Cement Ltd		Rugby Portland Cement Co Ltd UK 100%
28	91-92	93-94	Pilkington Australia Ltd		Pilkington PLC UK 100%
29	89-90	91-92	BTR Engineering Australia Ltd	BTR Nylex Ltd ?	BTR PLC UK 100%
31	92-93	94-95	Tate Access Floors Australia P/L		Carter Holt Harvey Ltd NZ 100%
32	90-91	92-93	Clark Equipment P/L	Interlift P/L 100%	
32	88-89	90-91	Outboard Marine		Outboaord Marine Corp USA 100%
33	89-90	91-92	Pacific Dunlop Ltd		
33	90-91	92-93	E Anders & Sons P/L	SBS Rural Ltd 100%	
33	90-91	92-93	Connor Shea Napier	Hodge Industries 100%	
33	87-88	89-90	Bowater Tutt Industries P/L	Bowater Tutt Bryant UK 100%	
34	91-92	93-94	Isis Corporation P/L		
34	91-92	93-94	Rainsfords P/L		
34	91-92	93-94	LJ Wallace		
34	91-92	93-94	LEU Plastics Ltd		
34	88-89	90-91			JS Staedtler GMBH Germany
34	88-89	90-91			Esselte Business Systems USA

0 **Appendix 6.4.4 C**

Final Positive Findings x C 0

x Country x Imports 0 **Regression - Pos.Final.Find. = f (Imports + Increased Imports)**

Count of Cntry Imports 0

Cntry	Grand tota	$A Million	Imports	+/-'sion Statistics
NZ	16	1733	1.50%	
ASTA	1	157	0.13%	Multiple R 0.798967
BLGM	10	320	0.29%	R Square 0.638348
BRAZ	10	298	-0.16%	Adjusted R 0.619314
CAN	8	863	-0.34%	Standard E 4.073143
CHIN	18	850	3.01%	Observatic 41
CZEC	1	41	-0.02%	
DENM	3	190	0.10%	*s of Variance*
FGMY	15	2918	-0.28%	
FINL	2	293	0.20%	
FRAN	17	892	0.40%	
GREE	4	50	0.00%	
HGRY	3	28	0.05%	
HONG	3	845	-0.96%	
INDO	2	588	-0.38%	
INIA	2	228	-0.04%	
IRE	5	202	-0.02%	
ISRA	5	123	0.02%	
ITAL	16	1329	-0.20%	
JAP	23	7817	-1.97%	
MEXI	2	65	0.01%	
MLAY	2	591	0.65%	
NWAY	3	168	0.05%	
NETH	8	596	-0.35%	
PHIL	3	127	-0.09%	
POLA	1	27	-0.01%	
QATA	1	20	-0.18%	
RKOR	22	1020	1.50%	
ROUM	1	23	-0.25%	
SAFR	2	99	-0.07%	
SAUD	2	419	-3.12%	
SING	5	898	-0.22%	
SPAI	4	190	0.07%	
SWED	3	777	0.43%	
SWIT	1	544	0.31%	
TAIW	10	1744	0.73%	
THAI	7	631	0.86%	
UK	9	3012	-1.03%	
USA	23	8531	-0.03%	
USSR	1	22	-0.05%	
VENZ	1	1	0.01%	
YUGO	1	50	-0.06%	
Grand tota	277		0.52%	
			0.00%	

	df	*m of Squares*	*Mean Square*	*F*	*ignificance F*
Regressior	2	1112.781	556.3903	33.53669	4.05E-09
Residual	38	630.4388	16.5905		
Total	40	1743.22			

	Coefficients	*tandard Error*	*t Statistic*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	3.709157	0.718246	5.164185	7.01E-06	2.255143	5.16317
x1	0.002943	0.000368	7.998114	7.95E-10	0.002198	0.003688
x2	275.833	76.69263	3.596604	0.000876	120.5769	431.0892

Correlation

	Column 1	*Column 2*	*Column 3*
Column 1	1		
Column 2	0.717801	1	
Column 3	0.171863	-0.23562	1

APPENDIX 6.4.4 D

Positive Anti-Dumping and Countervailing Measures x Country x Financial Year 1982-83 to 1992-93

Count of C FY Cntry	83	84	85	86	87	88	89	91	90	92	93	Grand total
ASTA	0	1	0	0	0	0	0	0	0	0	0	1
BLGM	2	4	0	0	0	0	1	0	1	1	1	10
BRAZ	1	0	0	1	2	1	1	0	1	3	0	10
CAN	3	0	1	1	0	1	1	0	0	0	1	8
CHIN	5	2	2	0	0	1	1	0	0	4	3	18
CZEC	0	0	0	0	0	0	1	0	0	0	0	1
DENM	0	1	0	1	0	0	0	0	0	1	0	3
FGMY	3	4	2	1	0	0	1	0	0	3	1	15
FINL	0	0	0	1	1	0	0	0	0	0	0	2
FRAN	4	4	2	0	1	0	0	1	1	3	1	17
GDR	0	0	0	1	0	0	0	0	0	0	0	1
GREE	0	1	1	0	0	0	0	0	0	2	0	4
HGRY	0	1	0	1	0	0	1	0	0	0	0	3
HONG	0	0	1	0	1	0	1	0	0	0	0	3
INDO	0	0	0	0	0	0	0	1	0	0	1	2
INIA	1	0	0	0	0	0	0	0	0	0	1	2
IRE	1	1	0	1	0	0	0	1	0	1	0	5
ISRA	1	2	0	1	0	0	0	0	0	1	0	5
ITAL	1	4	2	1	1	0	0	0	0	7	0	16
JAP	7	5	1	5	1	0	1	0	1	1	1	23
MEXI	0	0	0	0	0	0	0	1	0	1	0	2
MLAY	0	0	0	0	0	1	0	1	0	0	0	2
NWAY	0	0	1	1	0	0	0	0	0	0	1	3
NETH	2	2	0	0	0	0	1	1	0	2	0	8
NZ	5	3	0	6	0	2	0	0	0	0	0	16
PHIL	0	0	0	1	0	0	0	1	0	0	1	3
POLA	0	0	0	0	0	0	1	0	0	0	0	1
QATA	1	0	0	0	0	0	0	0	0	0	0	1
RKOR	5	4	1	2	0	0	2	2	0	4	2	22
ROUM	1	0	0	0	0	0	0	0	0	0	0	1

Positive Anti-Dumping and Countervailing Measures x Country x Financial Year 1982-83 to 1992-93

SAFR	0	0	1	1	0	0	0	0	0	0	0	2
SAUD	0	0	0	0	0	0	0	0	0	0	2	2
SING	0	0	1	1	0	0	1	0	0	0	2	5
SPAI	1	1	0	0	0	0	0	0	0	2	0	4
SWED	0	1	1	0	0	0	0	0	0	1	0	3
SWIT	0	0	0	0	0	0	1	0	0	0	0	1
TAIW	2	2	1	2	0	0	0	2	0	1	0	10
THAI	0	0	0	1	0	0	0	0	0	3	3	7
UK	2	5	0	0	0	0	0	0	0	2	0	9
USA	7	4	3	2	0	2	0	0	1	3	1	23
USSR	1	0	0	0	0	0	0	0	0	0	0	1
VENZ	0	0	0	0	0	0	0	0	0	1	0	1
YUGO	0	0	0	0	0	0	0	0	0	1	0	1
Grand tota	56	52	21	32	7	8	15	11	5	48	22	277

Domestic Market Share OECD3XNZ & ICStats 1982-83 to 1992-93

APPENDIX 6.4.5

Count of F I_4D	Final ACN G	O	T	U	Grand tota	G+U	Sales 1987-88	Imports	Duty	Exports	% DMS	
2115	0	2	0	0	2	0	4924	37	0	3408	98	
2117	6	0	1	2	9	8	854	2	0	16	100	
2121	1	0	0	0	1	1	1668	0	0	11	100	
2123	0	1	0	11	12	11	854	82	1	191	89	
2131	11	4	8	1	24	12	758	70	3	131	90	
2132	5	1	3	0	9	5	758	140	5	61	83	
2140	0	0	2	0	2	0	558	121	1	39	81	
2152	4	0	0	0	4	4	218	9	1	46	95	
2153	2	1	1	0	4	2	782	28	1	68	96	
2176	2	1	2	0	5	2	2569	175	4	753	91	
2188	1	0	0	1	2	2	803	49	22	97	91	
2343	1	0	4	0	5	1	229	439	8	7	33	tcf
2345	4	0	1	1	6	5	316	570	27	14	34	tcf
2346	1	0	1	0	2	1	140	35	3	3	78	
2347	0	1	1	0	2	0	197	72	5	5	71	
2352	1	4	0	0	5	1	624	112	8	24	83	
2355	0	0	3	0	3	0	46	27	3	1	60	tcf
2356	1	0	1	0	2	1	381	271	13	34	55	tcf
2451	1	0	0	0	1	1	442	60	25	6	84	
2452	0	0	1	0	1	0	203	51	25	5	72	
2460	0	0	1	0	1	0	720	286	119	11	64	
2533	1	0	0	0	1	1	743	79	7	9	90	
2631	0	2	5	1	8	1	1757	1215	90	76	56	O
2632	0	6	1	1	8	1	165	66	6	1	69	
2635	0	0	2	0	2	0	618	77	9	22	87	
2643	0	1	0	0	1	0	833	69	12	12	91	
2751	10	1	0	0	11	10	1028	136	7	9	88	
2753	38	19	37	2	96	40	1755	531	50	149	73	
2754	39	18	27	3	87	42	876	1323	21	111	36	Nat.>=4
2755	12	9	4	1	26	13	946	619	13	152	56	Nat,>=4
2762	1	5	0	0	6	1	1017	69	8	24	93	

2763	4	1	1	0	6	4	1578	638	12	167	68
2765	2	0	4	1	7	3	1009	91	7	28	91
2768	0	0	2	0	2	0	471	353	16	51	53 N
2770	0	3	2	0	5	0	1162	982	49	976	15 N
2850	8	4	2	0	14	8	875	266	25	40	74
2864	1	0	0	0	1	1	121	131	20	9	43 O
2871	0	3	1	1	5	1	802	6	0	4	99
2883	0	1	5	0	6	0	125	36	4	10	74
2884	0	2	0	0	2	0	209	40	4	15	82
2941	5	12	20	2	39	7	6137	645	40	505	89
2942	2	4	1	0	7	2	316	9	1	9	97
2945	5	4	5	0	14	5	628	287	33	48	64
3151	0	2	0	0	2	0	1186	26	3	17	98
3152	1	0	0	0	1	1	287	35	6	4	87
3153	0	0	1	0	1	0	1696	97	11	274	93
3161	1	1	1	0	3	1	128	196	19	20	33 O
3162	1	6	0	0	7	1	857	109	12	21	87
3168	0	5	1	0	6	0	1266	442	46	57	71
3233	3	0	2	0	5	3	493	194	19	11	69
3341	0	7	0	0	7	0	283	766	34	208	9 N
3343	1	2	1	1	5	2	273	897	23	171	10 O
3351	1	3	0	0	4	1	304	1019	70	70	18 O
3352	0	1	3	0	4	0	1796	3763	152	228	29 N
3353	9	11	5	0	25	9	1597	781	110	98	63 Line
3355	0	3	1	0	4	0	785	95	13	27	88
3356	6	0	2	0	8	6	207	87	17	10	65
3357	15	5	12	0	32	15	1927	1281	153	164	55 Nat.>=4
3361	1	0	1	0	2	1	467	311	11	55	56 O
3362	1	1	0	0	2	1	98	491	44	24	12 O
3363	1	1	3	3	8	4	484	278	51	42	57 Nat.>=4
3364	0	0	1	0	1	0	242	509	16	22	30 N
3365	0	0	2	0	2	0	369	335	36	34	47 N
3367	0	0	0	2	2	2	344	283	39	28	50 O
3369	3	1	3	3	10	6	1802	2399	163	230	38 Nat.>=4
3451	0	5	2	0	7	0	535	148	12	170	70
3461	1	2	10	2	15	3	751	470	73	28	57 O

3471	0	1	1	0	2	0	1440	226	23	34	85
3472	0	2	2	0	4	0	144	51	9	4	70
3473	1	0	0	0	1	1	144	51	9	4	70
3474	2	2	4	0	8	2	3325	938	106	82	76
3483	1	0	0	1	2	2	94	23	4	2	77
3486	2	0	0	2	4	4	57	87	12	4	35 O
3487	0	1	0	0	1	0	168	124	7	10	55 N
Grand tota	220	177	206	37	641	257					
Subsidy					-23						
DMS=<60					-519						
Negative					-62						
Nations>3					-6						
Total					31	5					
TCF					-22						
Total					9	1					

Appendix 6.4.5

ANTI-DUMPING & COUNTERVAILING CASES 1982-83 TO 1992-93 BASED ON AUSTRALIA'S SUBMISSION TO OECD - Includes all prliminary findings within the period. (Excluding New Zealand)

COMMODITY	Cntry	T	I	I_3D	I_4D	ACN Date2	PREL ACT	Final ACN	Final Date	FY
CANNED HAM	DENM	D	21	211	2117	85/12/06	P	G	86/03/13	86
CANNED HAM	IRE	D	21	211	2117	90/08/28	P	G	91/01/29	91
CANNED HAM	NETH	D	21	211	2117	90/08/28	P	G	91/01/29	91
MILK, EVAPORATED	CAN	D	21	212	2121	89/01/21	P	G	89/06/14	89
ORANGE JUICE, FROZEN CONCENTRATED	BRAZ	D	21	213	2131	86/11/17	P	G	87/07/08	88
CANNED PEACHES & CANNED PEARS	CHIN	D	21	213	2131	91/06/27	P	G	91/11/20	92
GLACE CHERRIES	*FRAN*	*D*	*21*	*213*	2131	*91/11/07*	*P*	G	92/04/09	92
CHERRIES IN BRINE	ITAL	D	21	213	2131	84/02/10	P	G	84/06/26	84
GLACE CHERRIES	*ITAL*	*D*	*21*	*213*	2131	*91/11/07*	*P*	G	92/04/09	92
CANNED PEACHES & CANNED PEARS	CHIN	D	21	213	2131	91/06/27	T	G	92/02/19	92
CANNED WHOLE TOMATOES	*CHIN*	*D*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
CANNED WHOLE TOMATOES	*ITAL*	*D*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
DEXTROSE MONOHYDRATE	ASTA	D	21	215	2152	83/08/02	P	G	84/05/21	84
DEXTROSE MONOHYDRATE	ITAL	D	21	215	2152	85/03/29	P	G	85/10/21	86
DEXTROSE MONOHYDRATE	SING	D	21	215	2152	85/03/29	P	G	85/10/21	86
DEXTROSE MONOHYDRATE	UK	D	21	215	2152	83/08/02	P	G	84/05/21	84
PASTA PRODUCTS	ITAL	D	21	215	2153	84/02/19	P	G	84/07/25	85
COATING CRUMBS	UK	D	21	215	2153	83/08/12	P	G	84/05/03	84
DRIED EGG WHITE	*NETH*	*D*	*21*	*217*	2176	*91/11/18*	*P*	G	92/05/07	92
YARNS, NYLON FLAT	ISRA	D	23	234	2343	82/12/08	P	G	83/09/26	84
NYLON TYRE CORD FABRIC	RKOR	D	23	234	2345	82/03/03	P	G	82/12/23	83
YARN, COMBED COTTON & POLYESTER YARN	RKOR	D	23	234	2345	82/04/05	P	G	82/11/03	83
YARN, COMBED COTTON & POLYESTER YARN	TAIW	D	23	234	2345	82/04/05	P	G	82/11/03	83
YARNS, NYLON (POLYAMIDE TEXTURED)	TAIW	D	23	234	2345	82/05/06	P	G	83/01/07	83
WOVEN WORSTED FABRIC	CHIN	D	23	234	2346	87/04/15	P	G	88/05/18	88
WOVEN COATED POLYETHYLENE FABRIC	RKOR	D	23	235	2352	81/08/13	P	G	82/11/11	83
PLASTER OF PARIS BANDAGES	FGMY	D	23	235	2356	91/05/23	P	G	91/10/23	92
OVERALLS, MALE INDUSTRIAL	CHIN	D	24	245	2451	83/08/12	P	G	84/05/04	84
HARDBOARD PAINTED	SWED	D	25	253	2533	83/09/22	P	G	84/05/07	84
UREA	CAN	D	27	275	2751	86/11/04	P	G	87/10/15	88
UREA	MLAY	D	27	275	2751	86/11/04	P	G	87/10/15	88
NITROGENOUS SUBSTANCES (FERT)	QATA	D	27	275	2751	*82/07/01*	P	G	82/12/17	83
TRIPLE SUPERPHOSPHATE	USA	D	27	275	2751	83/02/14	P	G	83/08/25	84
DIAMMONIUM PHOSPHATE	USA	D	27	275	2751	85/07/24	P	G	85/12/19	86
MONAMMONIUM PHOSPHATE	USA	D	27	275	2751	85/07/24	P	G	85/12/19	86
UREA	USA	D	27	275	2751	86/11/04	P	G	87/10/15	88
NITROGENOUS SUBSTANCES (FERT)	CAN	D	27	275	2751	*82/07/01*	R	G	82/12/17	83
NITROGENOUS SUBSTANCES (FERT)	USA	D	27	275	2751	*82/07/01*	R	G	82/12/17	83
NITROGENOUS SUBSTANCES (FERT)	USSR	D	27	275	2751	*82/07/01*	R	G	82/12/17	83
PVC HOMOPOLYMER	BLGM	D	27	275	2753	82/09/14	P	G	83/08/31	84
PVC RESIN	BRAZ	D	27	275	2753	91/08/16	P	G	92/01/24	92
PVC HOMOPOLYMER	CAN	D	27	275	2753	81/11/17	P	G	82/11/03	83
POLYSTYRENE	CAN	D	27	275	2753	84/03/02	P	G	84/07/12	85
Polyvinyl Chloride	CAN	D	27	275	2753	92/05/15	P	G	92/09/24	93
Polyvinyl Chloride	CHIN	D	27	275	2753	92/05/15	P	G	92/09/24	93
PVC HOMOPOLYMER	FGMY	D	27	275	2753	83/10/31	P	G	84/04/06	84
POLYSTYRENE	FGMY	D	27	275	2753	84/03/02	P	G	84/07/12	85
PVC HOMOPOLYMER	FINL	D	27	275	2753	85/10/24	P	G	86/04/01	86
PVC HOMOPOLYMER	FRAN	D	27	275	2753	83/10/31	P	G	84/04/04	84
POLYSTYRENE	FRAN	D	27	275	2753	84/03/02	P	G	84/07/12	85
Polyvinyl Chloride	FRAN	D	27	275	2753	92/05/15	P	G	92/09/24	93
PVC HOMOPOLYMER	HGRY	D	27	275	2753	82/09/14	P	G	83/11/03	84
PVC HOMOPOLYMER	ISRA	D	27	275	2753	82/09/14	P	G	83/08/31	84
Polyvinyl Chloride	JAP	D	27	275	2753	92/05/15	P	G	92/09/24	93
PVC RESIN	MEXI	D	27	275	2753	91/08/16	P	G	92/01/24	92
Polyvinyl Chloride	NWAY	D	27	275	2753	92/05/15	P	G	92/09/24	93
ABS THERMOPLASTIC COMPOUND	RKOR	D	27	275	2753	82/01/25	P	G	83/04/05	83
PVC HOMOPOLYMER	RKOR	D	27	275	2753	83/04/07	P	G	83/08/31	84
Expandable Polystyrene	RKOR	D	27	275	2753	92/05/29	P	G	92/10/08	93

High Density Polyethylene	RKOR	D	27	275	2753	92/03/27	P	G	92/08/03	93
High Density Polyethylene	SAUD	D	27	275	2753	92/03/27	P	G	92/08/03	93
Polyvinyl Chloride	SAUD	D	27	275	2753	92/05/15	P	G	92/09/24	93
Expandable Polystyrene	SING	D	27	275	2753	92/05/29	P	G	92/10/08	93
High Density Polyethylene	SING	D	27	275	2753	92/03/27	P	G	92/08/03	93
PVC HOMOPOLYMER	SPAI	D	27	275	2753	83/10/31	P	G	84/04/06	84
PVC HOMOPOLYMER	TAIW	D	27	275	2753	83/04/09	P	G	83/08/31	84
Polyvinyl Chloride	THAI	D	27	275	2753	92/05/15	P	G	92/09/24	93
PVC HOMOPOLYMER	UK	D	27	275	2753	83/10/31	P	G	84/04/06	84
POLYETHYLENE RESIN, LOW DENSITY	USA	D	27	275	2753	80/05/08	P	G	82/10/21	83
PVC HOMOPOLYMER	USA	D	27	275	2753	80/05/08	P	G	82/11/03	83
PVC RESIN	USA	D	27	275	2753	91/08/16	P	G	92/01/24	92
LOW DENSITY POLYETHYLENE	ITAL	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	RKOR	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	SWED	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	TAIW	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	THAI	D	27	275	2753	91/01/31	T	G	91/09/18	92
LOW DENSITY POLYETHYLENE	YUGO	D	27	275	2753	91/01/31	T	G	91/09/18	92
TRIETHANOLAMINE	BLGM	D	27	275	2754	83/03/01	P	G	83/04/22	83
DIOCTYL PHTHALATE	BLGM	D	27	275	2754	91/06/03	P	G	91/11/27	92
TRIETHANOLAMINE	BRAZ	D	27	275	2754	82/11/04	P	G	83/04/22	83
PHTHALIC ANHYDRIDE	BRAZ	D	27	275	2754	85/01/04	P	G	85/09/13	86
TRIETHANOLAMINE AND MIXTURES	BRAZ	D	27	275	2754	91/08/30	P	G	92/02/19	92
PHENOL	CHIN	D	27	275	2754	82/04/28	P	G	83/01/07	83
SODIUM TRIPOLYPHOSPHATE	CHIN	D	27	275	2754	82/01/06	P	G	82/09/07	83
LEVAMISOLE HYDROCHLORIDE	CHIN	D	27	275	2754	88/06/21	P	G	88/11/10	89
SODIUM LAURYL ETHER SULPHATE	FGMY	D	27	275	2754	82/09/13	P	G	83/06/30	83
LEVAMISOLE HYDROCHLORIDE	FGMY	D	27	275	2754	88/06/21	P	G	88/11/10	89
DIOCTYL PHTHALATE	FGMY	D	27	275	2754	91/06/03	P	G	91/11/27	92
MIXED ETHANOLAMINE	FRAN	D	27	275	2754	82/02/05	P	G	83/01/07	83
SORBITOL	FRAN	D	27	275	2754	81/09/09	P	G	82/11/03	83
TRIETHANOLAMINE	FRAN	D	27	275	2754	82/02/05	P	G	83/01/07	83
SORBITOL 70% SOLUTION	FRAN	D	27	275	2754	90/06/01	P	G	90/10/25	91
DIOCTYL PHTHALATE	FRAN	D	27	275	2754	91/06/03	P	G	91/11/27	92
LEVAMISOLE HYDROCHLORIDE	HONG	D	27	275	2754	88/06/21	P	G	88/11/10	89
PHTHALIC ANHYDRIDE	ISRA	D	27	275	2754	85/01/04	P	G	85/09/13	86
PHTHALIC ANHYDRIDE	*ISRA*	*D*	*27*	*275*	*2754*	*92/01/31*	*P*	*G*		92
DIBUTYL PHTHALATE	ITAL	D	27	275	2754	91/08/14	P	G	92/01/24	92
SORBITOL	JAP	D	27	275	2754	81/09/09	P	G	82/11/03	83
TOLUENE	JAP	D	27	275	2754	82/01/20	P	G	83/04/18	83
XYLENE	JAP	D	27	275	2754	82/01/20	P	G	83/04/18	83
SORBITOL 70% SOLUTION	MEXI	D	27	275	2754	90/06/01	P	G	90/10/25	91
SODIUM LAURYL ETHER SULPHATE	NETH	D	27	275	2754	82/09/13	P	G	83/06/30	83
TRIETHANOLAMINE	NETH	D	27	275	2754	82/11/04	P	G	83/04/22	83
DI-OCTYL PHTHALATE	RKOR	D	27	275	2754	84/12/20	P	G	85/12/05	86
PHTHALIC ANHYDRIDE	*RKOR*	*D*	*27*	*275*	*2754*	*92/01/31*	*P*	*G*	92/06/19	92
LEVAMISOLE HYDROCHLORIDE	SING	D	27	275	2754	88/06/21	P	G	88/11/10	89
LEVAMISOLE HYDROCHLORIDE	SWIT	D	27	275	2754	88/06/21	P	G	88/11/10	89
PHTHALIC ANHYDRIDE	TAIW	D	27	275	2754	85/01/04	P	G	85/09/13	86
SORBITOL 70% SOLUTION	THAI	D	27	275	2754	90/06/01	P	G	90/10/25	92
TOLUENE	USA	D	27	275	2754	82/11/03	P	G	83/05/23	83
TRIETHANOLAMINE	USA	D	27	275	2754	81/08/28	P	G	83/01/07	83
XYLENE	USA	D	27	275	2754	82/11/03	P	G	83/05/23	83
SODIUM TRIPOLYPHOSPHATE	USA	D	27	275	2754	82/01/06	P	G	82/09/07	83
TRIETHANOLAMINE AND MIXTURES	USA	D	27	275	2754	91/08/30	P	G	92/02/19	92
DIOCTYL PHTHALATE	VENZ	D	27	275	2754	91/06/03	P	G	91/11/27	92
DIOCTYL PHTHALATE	RKOR	D	27	275	2754	91/06/03	T	G	91/11/27	92
PHOSPHORIC ACID	CHIN	D	27	275	2755	82/01/06	P	G	82/12/30	83
SODIUM CYANIDE	FGMY	D	27	275	2755	91/02/06	P	G	91/07/12	92
Sodium Cyanide (WAS PF No. 92/21)	INIA	D	27	275	2755	92/12/18	P	G	93/05/21	93
PHOSPHORIC ACID	ISRA	D	27	275	2755	82/01/06	P	G	82/12/30	83
CHROMIUM SULPHATE	ITAL	D	27	275	2755	81/08/07	P	G	82/09/15	83
SODIUM CYANIDE	ITAL	D	27	275	2755	91/02/06	P	G	91/07/12	92
PHOSPHORIC ACID	JAP	D	27	275	2755	84/06/15	P	G	85/11/26	86
SODIUM CYANIDE	JAP	D	27	275	2755	91/02/06	P	G	91/07/12	92
SODIUM CYANIDE	RKOR	D	27	275	2755	91/02/06	P	G	91/07/12	92

SODIUM CYANIDE	UK	D	27	275	2755	91/02/06	P	G	91/07/12	92
SODIUM CARBONATE (SODA ASH)	USA	D	27	275	2755	84/01/06	P	G	84/05/23	84
Sodium Cyanide (WAS PF No. 92/21)	USA	D	27	275	2755	92/12/18	P	G	93/05/21	93
PAINTS, ARTISTS OIL	UK	D	27	276	2762	82/08/24	P	G	83/02/04	83
DIAGNOSTIC REAGENT STRIPS	FGMY	D	27	276	2763	84/01/25	P	G	84/08/22	85
CAPSULES, EMPTY GELATIN	JAP	D	27	276	2763	83/11/07	P	G	84/06/29	84
DIAGNOSTIC REAGENT STRIPS	UK	D	27	276	2763	90/07/10	P	G	91/12/23	92
DIAGNOSTIC REAGENT STRIPS	USA	D	27	276	2763	90/07/10	P	G	91/12/23	92
CANDLES, DINING	CHIN	D	27	276	2765	84/10/29	P	G	85/03/22	85
SOAP, TOILET AND LAUNDRY	RKOR	D	27	276	2765	82/06/30	P	G	83/04/05	83
Clear Float Glass	BLGM	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	CHIN	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	FGMY	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	INDO	D	28	285	2850	92/05/11	P	G	92/09/16	93
Clear Float Glass	PHIL	D	28	285	2850	92/05/11	P	G	92/09/16	93
TOUGHENED GLASS PANELS	ROUM	D	28	285	2850	82/06/16	P	G	83/04/22	83
TOUGHENED GLASS PANELS	SPAI	D	28	285	2850	82/06/16	P	G	83/04/22	83
Clear Float Glass	THAI	D	28	285	2850	92/05/11	P	G	92/09/16	93
CERAMIC TABLEWARE	CHIN	D	28	286	2864	83/06/01	P	G	84/04/10	84
SPECIAL STEEL BAR PRODUCTS	FGMY	D	29	294	2941	82/10/20	P	G	83/12/29	84
STAINLESS STEEL FLAT PRODUCTS	FRAN	D	29	294	2941	82/10/20	P	G	83/12/29	84
STAINLESS STEEL FLAT PRODUCTS	ITAL	D	29	294	2941	82/10/20	P	G	83/12/29	84
SPECIAL STEEL BAR PRODUCTS	JAP	D	29	294	2941	82/10/20	P	G	83/12/29	84
STAINLESS STEEL FLAT PRODUCTS	JAP	D	29	294	2941	82/10/20	P	G	83/12/29	84
MALLEABLE CAST IRON PIPE FITTINGS	RKOR	D	29	294	2942	90/05/10	P	G	90/10/19	91
MALLEABLE CAST IRON PIPE FITTINGS	TAIW	D	29	294	2942	90/05/10	P	G	90/10/19	91
CARBON STEEL PIPE & TUBE, SMALL DIAMETE	JAP	D	29	294	2945	84/03/08	P	G	84/09/24	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETE	RKOR	D	29	294	2945	84/03/08	P	G	84/09/24	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETE	SAFR	D	29	294	2945	84/03/08	P	G	84/09/24	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETE	SING	D	29	294	2945	84/03/08	P	G	84/09/24	85
CARBON STEEL PIPE & TUBE, SMALL DIAMETE	TAIW	D	29	294	2945	84/03/08	P	G	84/09/24	85
CABINETS, FIRE RESISTANT	JAP	D	31	315	3152	83/06/27	P	G	84/04/19	84
FILES AND RASPS	INIA	D	31	316	3161	80/12/17	P	G	82/08/25	83
CHAINS AND FITTINGS, ALLOY GRADE T STEE	SWED	D	31	316	3162	84/09/18	P	G	85/05/14	85
SPARKS PLUGS	FGMY	D	32	323	3233	82/11/30	P	G	83/06/09	83
SPARKS PLUGS	JAP	D	32	323	3233	82/11/30	P	G	83/06/09	83
SPARKS PLUGS	USA	D	32	323	3233	82/11/30	P	G	84/05/17	84
DENTAL AMALGAM ALLOY CAPSULES	USA	D	33	334	3343	83/08/12	P	G	84/02/23	84
AUDIO TAPE JUMBO WEBS & PANCAKES	RKOR	D	33	335	3351	88/05/10	P	G	88/11/04	89
DISHWASHERS	FGMY	D	33	335	3353	83/03/01	P	G	83/12/20	84
DISHWASHERS	FRAN	D	33	335	3353	83/03/01	P	G	83/12/20	84
CEILING SWEEP FANS	HONG	D	33	335	3353	83/11/01	P	G	84/08/20	85
CEILING SWEEP FANS	HONG	D	33	335	3353	83/11/01	P	G	84/08/20	85
CEILING SWEEP FANS	HONG	D	33	335	3353	86/06/25	P	G	87/03/03	87
DISHWASHERS	ITAL	D	33	335	3353	83/03/01	P	G	83/12/20	84
WASHING MACHINES	JAP	D	33	335	3353	81/05/14	P	G	83/01/07	83
DISHWASHERS	JAP	D	33	335	3353	83/03/01	P	G	84/06/07	84
MICROWAVE OVENS	JAP	D	33	335	3353	84/03/25	P	G	85/08/26	86
BATTERIES, ALKALINE MANGANESE DIOXIDE	BLGM	D	33	335	3356	82/05/21	P	G	82/11/10	83
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	INDO	D	33	335	3356	90/11/07	T	G	91/06/19	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	MLAY	D	33	335	3356	90/11/07	T	G	91/06/19	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	PHIL	D	33	335	3356	90/11/07	T	G	91/06/19	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	RKOR	D	33	335	3356	90/11/07	T	G	91/06/19	91
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	TAIW	D	33	335	3356	90/11/07	T	G	91/06/19	91
LAMPS, ELECTRIC FILAMENT	BLGM	D	33	335	3357	83/05/18	P	G	84/02/09	84
LAMPS, FLUORESCENT DISCHARGE	CAN	D	33	335	3357	83/12/19	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	FGMY	D	33	335	3357	84/12/10	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	FGMY	D	33	335	3357	84/12/10	P	G	85/09/13	86
AIR CIRCUIT BREAKERS	FRAN	D	33	335	3357	85/11/05	P	G	86/09/22	87
LAMPS, FLUORESCENT DISCHARGE	HGRY	D	33	335	3357	84/12/10	P	G	85/09/13	86
AIR CIRCUIT BREAKER	ITAL	D	33	335	3357	85/12/16	P	G	86/09/22	87
LAMPS, FLUORESCENT DISCHARGE	JAP	D	33	335	3357	84/12/10	P	G	85/09/13	86
AIR CIRCUIT BREAKERS	JAP	D	33	335	3357	85/11/05	P	G	86/09/22	87
LAMPS, FLUORESCENT DISCHARGE	PHIL	D	33	335	3357	83/12/19	P	G	85/09/13	86
TRANSFORMERS, POWER	RKOR	D	33	335	3357	81/11/17	P	G	84/06/29	84
LAMPS, FLUORESCENT DISCHARGE	RKOR	D	33	335	3357	84/12/10	P	G	85/09/13	86

TRANSFORMERS, POWER	TAIW	D	33	335	3357	81/11/17	P	G	84/06/29	84
LAMPS, FLUORESCENT DISCHARGE	TAIW	D	33	335	3357	84/12/10	P	G	85/09/13	86
LAMPS, FLUORESCENT DISCHARGE	THAI	D	33	335	3357	84/12/10	P	G	85/09/13	86
AGRICULTURAL GROUND ENGAGING TOOLS	BRAZ	D	33	336	3361	91/02/22	P	G	91/07/12	92
MULTI-TYRED ROLLERS	CZEC	D	33	336	3362	88/12/22	P	G	89/05/17	89
CERTAIN FORKLIFT TRUCKS	*UK*	*D*	*33*	*336*	*3363*	*91/12/19*	*P*	*G*		92
OUTBOARD MOTORS	JAP	D	33	336	3369	82/08/26	P	G	82/12/30	83
GEARED MOTOR DRIVE UNITS	UK	D	33	336	3369	82/07/27	P	G	83/03/28	83
OUTBOARD MOTORS	USA	D	33	336	3369	84/05/09	P	G	85/03/13	85
TYRES, PASSENGER CAR	RKOR	D	34	346	3461	82/09/28	P	G	83/08/18	84
TILES, VINYL FLOOR	NWAY	D	34	347	3473	85/04/18	P	G	85/11/15	86
Disposable Plastic Cutlery	CHIN	D	34	347	3474	93/01/07	P	G	93/05/26	93
Disposable Plastic Cutlery	THAI	D	34	347	3474	93/01/07	P	G	93/05/26	93
CARPET SWEEPERS	IRE	D	34	348	3483	82/07/27	P	G	83/02/10	83
PENCILS, COLOURED	HGRY	D	34	348	3486	88/10/18	P	G	89/03/08	89
PENCILS, COLOURED	POLA	D	34	348	3486	88/10/18	P	G	89/03/08	89
Frozen Pork	CAN	D	21	211	2115	92/11/27	T	O		93
CANNED HAM	IRE	D	21	211	2117	85/09/20	U	O		86
CANNED HAM	NETH	D	21	211	2117	88/09/26	U	O		89
ORANGE JUICE, FROZEN CONCENTRATED	BRAZ	D	21	213	2131	91/04/24	T	O		91
PECAN NUTS	SAFR	D	21	213	2131	85/10/10	T	O		86
ALMONDS	USA	D	21	213	2131	86/06/25	T	O		86
DRIED EGG WHITE	*ITAL*	*D*	*21*	*217*	2176	*91/11/18*	*T*	O		92
WOVEN POLYESTER WOOL FABRIC	CZEC	D	23	234	2347	84/07/18	T	O		85
TUFTED NYLON CARPET	BLGM	D	23	235	2352	85/11/27	T	O		86
WOVEN POLYPROPYLENEPRIMARY CARPET I	COMB	D	23	235	2352	80/05/28	T	O		80
WOVEN POLYPROPYLENEPRIMARY CARPET I	UK	D	23	235	2352	80/05/28	T	O		80
FACSIMILE & OTHER THERMAL COATED PAPE	RKOR	D	26	263	2631	91/09/27	T	O		92
FACSIMILE & OTHER THERMAL COATED PAPE	USA	D	26	263	2631	91/09/27	T	O		92
WOVEN POLYPROPYLENE POLYETHENE SAC	CHIN	D	26	263	2632	89/07/28	T	O		90
WOVEN POLYPROPYLENE POLYETHENE SAC	INDO	D	26	263	2632	89/07/28	T	O		90
WOVEN POLYPROPYLENE POLYETHENE SAC	PHIL	D	26	263	2632	89/07/28	T	O		90
WOVEN POLYPROPYLENE POLYETHENE SAC	TAIW	D	26	263	2632	89/07/28	T	O		90
BAGS, WOVEN POLYOLEFIN	THAI	D	26	263	2632	85/03/29	T	O		85
WOVEN POLYPROPYLENE POLYETHENE SAC	THAI	D	26	263	2632	89/07/28	T	O		90
EXERCISE BOOKS (& SPIRAL BOUND BOOKS)	INDO	D	26	264	2643	91/10/18	T	O		92
DIAMMONIUM PHOSPHATE (DAP)	PHIL	D	27	275	2751	86/05/28	T	O		86
PVC RESIN	HGRY	D	27	275	2753	91/08/16	T	O		92
HIGH DENSITY POLYETHYLENE	HONG	D	27	275	2753	92/03/26	T	O		92
High Density Polyethylene	HONG	D	27	275	2753	92/03/27	T	O		92
POLYETHYLENE RESIN, LOW DENSITY	ITAL	D	27	275	2753	85/08/14	T	O		86
URETHANE PREPOLYMERS	ITAL	D	27	275	2753	85/11/29	T	O		86
RUBBER MODIFIED POLYPROYLENE	JAP	D	27	275	2753	91/06/27	T	O		91
POLYOLS, PROPYLENE OXIDE BASED POLYET	NETH	D	27	275	2753	86/07/08	T	O		87
Polyvinyl Chloride	NETH	D	27	275	2753	92/05/15	T	O		92
PVC RESIN	POLA	D	27	275	2753	91/08/16	T	O		92
POLYSTYRENE	RKOR	D	27	275	2753	85/03/12	T	O		85
PVC RESIN	RKOR	D	27	275	2753	91/08/16	T	O		92
PVC RESIN	SING	D	27	275	2753	91/08/16	T	O		92
Polyvinyl Chloride	SWED	D	27	275	2753	92/05/15	T	O		92
Expandable Polystyrene	TAIW	D	27	275	2753	92/05/29	T	O		92
POLYMERIC PLASTICISER	UK	D	27	275	2753	85/11/07	T	O		86
POLYOLS, PROPYLENE OXIDE BASED POLYET	UK	D	27	275	2753	86/07/08	T	O		87
URETHANE PREPOLYMERS	USA	D	27	275	2753	85/11/29	T	O		86
HIGH DENSITY POLYETHYLENE	USSR	D	27	275	2753	92/03/26	T	O		92
High Density Polyethylene	USSR	D	27	275	2753	92/03/27	T	O		92
DICHLOROPHENOXYACETIC ACID	ARGE	D	27	275	2754	87/11/13	T	O		88
PHTHALIC ANHYDRIDE	ARGE	D	27	275	2754	92/01/31	T	O		92
PHTHALIC ANHYDRIDE	BLGM	D	27	275	2754	92/01/31	T	O		92
LEVAMISOLE HYDROCHLORIDE	BRAZ	D	27	275	2754	88/06/21	T	O		88
PHTHALIC ANHYDRIDE	BRAZ	D	27	275	2754	92/01/31	T	O		92
LEVAMISALE HYDROCHLORIDE	CHIN	D	27	276	2754	86/09/17	T	O		87
PIGMENTS, TITANIUM DIOXIDE	FGMY	D	27	275	2754	84/10/16	T	O		85
PIGMENTS, FLUSHED	FRAN	D	27	275	2754	87/06/12	T	O		87
LINEAR ALKYLBENZENE SULPHONIC ACID	ISRA	D	27	275	2754	86/12/12	T	O		87
Dioctyl Phthalate	POLA	D	27	275	2754	92/11/29	T	O		93

STEARIC ACID	RKOR	D	27	275	2754	85/06/28	T	O	85
NORMAL BUTYL ALCOHOL	RKOR	D	27	275	2754	86/05/02	T	O	86
LINEAR ALKYLBENZENE SULPHONIC ACID	RKOR	D	27	275	2754	86/12/12	T	O	87
MONOETHYLENE GLYCOL	SING	D	27	275	2754	86/10/02	T	O	87
LINEAR ALKYLBENZENE SULPHONIC ACID	TAIW	D	27	275	2754	86/12/12	T	O	87
2,4-DICHLOROPHENOXYACETIC DERIVIATIVES	UK	D	27	275	2754	85/10/24	T	O	86
PIGMENTS, FLUSHED	USA	D	27	275	2754	87/06/12	T	O	87
LINEAR ALKYLBENZENE SULPHONIC ACID	YUGO	D	27	275	2754	86/12/12	T	O	87
SODIUM TRIPOLYPHOSPHATE	BLGM	D	27	275	2755	89/10/10	T	O	90
Sodium Cyanide (WAS PF No. 92/21)	FGMY	D	27	275	2755	92/12/18	T	O	93
SODIUM TRIPOLYPHOSPHATE	ISRA	D	27	275	2755	89/10/10	T	O	90
SODIUM TRIPOLYPHOSPHATE	JAP	D	27	275	2755	89/10/10	T	O	90
SODIUM SILICATE ROCK	MLAY	D	27	275	2755	92/03/04	T	O	92
SULPHURIC ACID	PHIL	D	27	275	2755	85/03/27	T	O	85
SODIUM TRIPOLYPHOSPHATE	YUGO	D	27	275	2755	89/10/10	T	O	90
SODIUM SILICATE ROCK	USA	D	27	275	2755	92/03/04	T	O	92
SODIUM BICARBONATE	CHIN	D	27	275	2755	83/04/08	U	O	83
INDUSTRIAL NITROCELLULOSE	CHIN	D	27	276	2762	87/05/11	T	O	87
INDUSTRIAL NITROCELLULOSE	FGMY	D	27	276	2762	87/05/11	T	O	87
INDUSTRIAL NITROCELLULOSE	FRAN	D	27	276	2762	87/05/11	T	O	87
SILICONE SEALANTS	USA	D	27	276	2762	86/06/06	T	O	86
SILICONE SEALANTS	USA	D	27	276	2762	87/06/08	T	O	87
TRANSPARENT FILM WOUND DRESSINGS	USA	D	27	276	2763	90/02/22	T	O	90
LEAD STABILISER LUBRICANT SYSTEMS	FGMY	D	27	277	2770	85/06/26	T	O	85
HYDRAULIC BRAKE FLUID	NETH	D	27	277	2770	87/10/01	T	O	88
HYDRAULIC BRAKE FLUID	UK	D	27	277	2770	87/10/01	T	O	88
Clear Float Glass	MLAY	D	28	285	2850	92/05/11	T	O	92
TOUGHENED GLASS PANELS	SPAI	D	28	285	2850	84/06/12	T	O	84
CEMENT, PORTLAND	JAP	D	28	287	2871	88/10/21	T	O	89
BLENDED CEMENTS	*JAP*	*D*	*28*	*287*	*2871*	*91/06/21*	*T*	O	91
CEMENT CLINKER	SAUD	D	28	287	2871	89/11/01	T	O	90
Certain Fibreglass Products	TAIW	D	28	288	2883	92/09/25	T	O	93
SILICON	CHIN	D	29	288	2884	89/11/07	T	O	90
SILICON	SAFR	D	28	288	2884	89/11/07	T	O	90
IRON & STEEL, COLD ROLLED HOOP, STRIP, S	ARGE	D	29	294	2941	87/05/07	T	O	87
STAINLESS STEEL FLAT PRODUCTS	BLGM	D	29	294	2941	86/06/26	T	O	86
IRON & STEEL, COLD ROLLED HOOP, STRIP, S	BRAZ	D	29	294	2941	87/05/07	T	O	87
STEEL SHEET AND COIL, COLD ROLLED	FGMY	D	29	294	2941	84/02/08	T	O	84
STEEL SHEET AND COIL, GALVANISED	FGMY	D	29	294	2941	84/02/08	T	O	84
STAINLESS STEEL FLAT PRODUCTS	FGMY	D	29	294	2941	86/06/26	T	O	86
STEEL SHEET AND COIL, COLD ROLLED	FGMY	D	29	294	2941	85/09/12	T	O	86
STEEL SHEET AND COIL,GALVANISED	FGMY	D	29	294	2941	85/09/12	T	O	86
STAINLESS STEEL FLAT PRODUCTS	RKOR	D	29	294	2941	86/06/26	T	O	86
STAINLESS STEEL FLAT PRODUCTS	SPAI	D	29	294	2941	86/06/26	T	O	86
STAINLESS STEEL FLAT PRODUCTS	UK	D	29	294	2941	86/06/26	T	O	86
Certain Cast Iron Manhole Covers Grates and Fran	CHIN	D	29	294	2942	92/08/23	T	O	93
Certain Cast Iron Manhole Covers Grates and Fran	INIA	D	29	294	2942	92/08/23	T	O	93
STEEL PIPE & FITTINGS, BASALT LINED	FGMY	D	29	294	2945	84/08/07	T	O	85
STEEL PIPE AND FITTINGS, BASALT LINED	FGMY	D	29	294	2945	85/05/20	T	O	85
STAINLESS STEEL WELDED TUBE & PIPE	RKOR	D	29	294	2945	91/12/24	T	O	92
STAINLESS STEEL WELDED TUBE & PIPE	*TAIW*	*D*	*29*	*294*	*2945*	*91/12/24*	*T*	O	92
STEEL JERRICANS	CHIN	D	31	315	3151	84/06/25	T	O	84
STEEL JERRICANS	USSR	D	31	315	3151	84/06/25	T	O	84
ENGINEERS VICES	UK	D	31	316	3161	85/07/10	T	O	86
CHAINS, ALLOY STEEL	CAN	D	31	316	3162	87/06/23	T	O	87
CHAINS AND FITTINGS, ALLOY GRADE T STEE	FGMY	D	31	316	3162	84/09/18	T	O	85
SUPERMARKET TROLLEYS	FGMY	D	31	316	3162	84/07/18	T	O	85
CHAINS AND FITTINGS, ALLOY STEEL	FGMY	D	31	316	3162	87/06/23	T	O	87
CHAINS, ALLOY STEEL	ITAL	D	31	316	3162	87/06/23	T	O	87
STAINLESS STEEL REPAIR CLAMPS	USA	D	31	316	3162	84/01/16	T	O	84
RING MECHANISMS FOR LOOSE LEAF BINDER	ASTA	D	31	316	3168	86/12/15	T	O	87
GAS METERS	JAP	D	31	316	3168	84/09/26	T	O	85
CASTORS	TAIW	D	31	316	3168	87/04/10	T	O	87
CASTORS	TAIW	D	31	316	3168	90/03/20	T	O	90
CASTORS (result of court action re '90 case)	*TAIW*	*D*	*31*	*316*	*3168*	*91/10/09*	*T*	O	92
PAPER, SUBLIMATION TRANSFER PRINTING	FGMY	D	33	334	3341	88/02/16	T	O	88

PAPER, SUBLIMATION TRANSFER PRINTING	FRAN	D	33	334	3341	88/02/16	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	ITAL	D	33	334	3341	88/02/16	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	TAIW	D	33	334	3341	88/02/16	T	O		88
PAPER, SUBLIMATION TRANSFER PRINTING	UK	D	33	334	3341	88/02/16	T	O		88
PAPER, BLACK AND WHITE PHOTOGRAPHIC	USA	D	33	334	3341	85/08/22	T	O		86
PAPER, SUBLIMATION TRANSFER PRINTING	USA	D	33	334	3341	88/02/16	T	O		88
DENTAL FURNITURE	FGMY	D	33	334	3343	87/09/02	T	O		88
DENTAL FURNITURE	JAP	D	33	334	3343	87/09/02	T	O		88
VIDEO CASSETTE TAPES	HONG	D	33	335	3351	88/11/30	T	O		89
VIDEO CASSETTE TAPES	JAP	D	33	335	3351	88/11/30	T	O		89
VIDEO CASSETTE TAPES	RKOR	D	33	335	3351	88/11/30	T	O		89
ELECTRONIC ISSUING TICKET MACHINES	UK	D	33	335	3352	92/03/27	T	O		92
ELECTRIC MOTOR PARTS	CZEC	D	33	335	3353	87/04/22	T	O		87
ELECTRIC MOTOR PARTS	CZEC	D	33	335	3353	89/02/28	T	O		89
ELECTRIC MOTOR PARTS	FGMY	D	33	335	3353	87/04/22	T	O		87
PROCESS COOLING SYSTEMS	IRE	D	33	335	3353	90/08/23	T	O		91
GAS HEATERS	JAP	D	33	335	3353	84/03/16	T	O		84
ELECTRIC MOTOR PARTS	NETH	D	33	335	3353	87/04/22	T	O		87
ELECTRIC MOTOR PARTS	POLA	D	33	335	3353	87/04/22	T	O		87
ELECTRIC MOTOR PARTS	TAIW	D	33	335	3353	86/11/21	T	O		87
PROCESS COOLING SYSTEMS	USA	D	33	335	3353	85/03/27	T	O		85
PROCESS COOLING SYSTEMS	USA	D	33	335	3353	90/08/23	T	O		91
OUTFRONT MOWERS	USA	D	33	336	3353	88/02/15	T	O		88
LOW VOLTAGE AERIAL BUNDLED XLPE POWE	RKOR	D	33	335	3355	89/04/03	T	O		89
LOW VOLTAGE AERIAL BUNDLED XLPE POWE	SING	D	33	335	3355	89/04/03	T	O		89
LOW VOLTAGE XLPE AERIAL BUNDLED CABLE	SING	D	33	335	3355	91/08/07	T	O		92
TRANSFORMERS	FGMY	D	33	335	3357	84/10/11	T	O		85
AIR CIRCUIT BREAKER	FGMY	D	33	335	3357	85/12/16	T	O		86
ELECTRIC MOTORS ALTERNATING CURRENT	FGMY	D	33	335	3357	85/08/22	T	O		86
ELECTRIC MOTORS ALTERNATING CURRENT	JAP	D	33	335	3357	85/08/22	T	O		86
AIR CIRCUIT BREAKER	POLA	D	33	335	3357	85/12/16	T	O		86
Self Propelled Multi-Tyred Rollers	CZEC	D	33	336	3362	92/12/06	T	O		93
ELECTRIC WINCHES	USA	D	33	336	3363	87/09/16	T	O		88
PALLET TRUCKS	USA	D	33	336	3363	84/09/18	U	O		85
TRUCKS, BATTERY OPERATED WORK (STOCK	USA	D	33	336	3363	85/01/21	U	O		85
GEAR BOXES, INDUSTRIAL	JAP	D	33	336	3369	85/09/13	T	O		86
Certain Finished Chrome Tanned Bovine Leather	ARGE	D	*34*	*345*	*3451*	92/10/23	T	O		93
Certain Finished Chrome Tanned Bovine Leather	THAI	D	*34*	*345*	*3451*	92/10/23	T	O		93
TYRES, PASSENGER CAR	CHIN	D	34	346	3461	84/04/13	T	O		84
TYRES, PASSENGER CAR	CZEC	D	34	346	3461	84/04/13	T	O		84
POLYPROPYLENE FILM, BIAXIALLY ORIENTED	JAP	D	34	347	3471	84/07/25	T	O		85
PVC SHEET, RIGID THERMOFORMING GRADE,	RKOR	D	34	347	3472	87/08/24	T	O		88
VINYL SHEETING	YUGO	D	34	347	3472	90/11/12	T	O		91
Disposable Plastic Cutlery	SING	D	34	347	3474	93/01/07	T	O		93
Disposable Plastic Cutlery	TAIW	D	34	347	3474	93/01/07	T	O		93
Moist Towelettes	ISRA	D	34	348	3487	93/01/03	T	O		93
CANNED HAM	DENM	D	21	211	2117	90/08/28	P	T	91/01/29	91
FRUIT, DRIED VINE	USA	D	21	213	2131	85/06/06	P	T	85/11/29	86
PEANUTS	CHIN	D	21	213	2131	91/12/24	T	T	92/03/26	92
CANNED PEACHES	GREE	D	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES & CANNED PEARS	SPAI	D	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES & CANNED PEARS	SPAI	D	21	213	2131	91/06/27	T	T	92/02/19	92
ASPARAGUS	CAN	D	21	213	2132	83/02/28	P	T	83/06/20	83
CANNED WHOLE TOMATOES	*SPAI*	*D*	*21*	*213*	*2132*	*91/12/05*	*P*	*T*	92/04/30	92
CANNED WHOLE TOMATOES	*THAI*	*D*	*21*	*213*	*2132*	*91/12/05*	*P*	*T*	92/04/30	92
SOYA BEAN OIL, EPOXIDISED	FGMY	D	21	214	2140	83/05/18	P	T	84/03/02	84
SOYA BEAN OIL, EPOXIDISED	NETH	D	21	214	2140	83/05/18	P	T	84/03/02	84
PASTA PRODUCTS	ITAL	D	21	215	2153	90/03/26	P	T	90/08/29	91
DRIED EGG WHITE	*SWED*	*D*	*21*	*217*	2176	*91/11/18*	*P*	T	92/05/07	92
YARN, TEXTURED POLYESTER	JAP	D	23	234	2343	83/04/11	P	T	83/05/12	83
YARN, TEXTURED POLYESTER	TAIW	D	23	234	2343	83/04/11	P	T	83/08/18	84
YARN, TEXTURED POLYESTER	USA	D	23	234	2343	83/04/11	P	T	83/08/18	84
NYLON (POLYAMIDE) YARN	USA	D	23	234	2343	86/09/03	P	T	87/06/29	87
FIRE HOSE	FGMY	D	23	234	2345	82/01/06	P	T	83/08/02	84
WOVEN WORSTED CREPE & FLANNEL	CHIN	D	23	234	2346	82/07/27	P	T	83/01/07	83
WOVEN FABRIC	ITAL	D	23	234	2347	83/06/03	P	T	83/12/02	84

TWINE, POLYPROPYLENE BALER	IRE	D	23	235	2355	82/10/06	P	T	83/03/25	83
TWINE, POLYPOPYLENE BALER	PORT	D	23	235	2355	82/07/21	P	T	83/03/25	83
TWINE, POLYPOPYLENE BALER	UK	D	23	235	2355	82/07/21	P	T	83/03/25	83
POLYPROPYLENE FABRIC	ASTA	D	23	235	2356	89/07/14	P	T	89/12/13	90
MOTOR CYCLE GARMENTS, WAXED COTTON	RKOR	D	24	245	2452	85/01/02	P	T	85/04/30	85
FOOTWEAR	TAIW	D	24	246	2460	83/04/21	P	T	83/02/08	83
PAPER, UNCOATED WOODFREE	BRAZ	D	26	263	2631	82/11/22	P	T	83/05/16	83
KRAFT LINERBOARD	USA	D	26	263	2631	82/05/20	P	T	82/08/24	83
PAPER, UNCOATED WOODFREE	USA	D	26	263	2631	82/11/22	P	T	83/05/16	83
KRAFT LINERBOARD	USA	D	26	263	2631	83/06/22	P	T	83/11/21	84
FACSIMILE & OTHER THERMAL COATED PAPE	JAP	D	26	263	2631	91/09/27	T	T	92/01/02	92
BAGS, WOVEN POLYOLEFIN	PHIL	D	26	263	2632	84/03/19	P	T	84/07/08	85
PAPER CUPS, COLD DRINK	CAN	D	26	263	2635	83/10/07	P	T	84/04/10	84
PAPER CUPS, COLD DRINK	USA	D	26	263	2635	83/10/07	P	T	84/04/10	84
LOW DENSITY POLYETHYLENE	ARGE	D	27	275	2753	91/01/31	P	T	91/07/12	92
PVC RESIN	ARGE	D	27	275	2753	91/08/16	P	T	92/01/24	92
POLYETHYLENE RESIN, LOW DENSITY	BLGM	D	27	275	2753	83/07/07	P	T	83/11/23	84
LOW DENSITY POLYETHYLENE	BRAZ	D	27	275	2753	91/01/31	P	T	91/07/12	92
POLYSTYRENE	CAN	D	27	275	2753	82/06/24	P	T	82/10/20	83
LOW DENSITY POLYETHYLENE	CAN	D	27	275	2753	91/01/31	P	T	91/07/12	92
LOW DENSITY POLYETHYLENE	FINL	D	27	275	2753	91/01/31	P	T	91/07/12	92
POLYETHYLENE RESIN, LOW DENSITY	FRAN	D	27	275	2753	80/05/08	P	T	83/06/20	83
LOW DENSITY POLYETHYLENE	FRAN	D	27	275	2753	91/01/31	P	T	91/07/12	92
Expandable Polystyrene	FRAN	D	27	275	2753	92/05/29	P	T	92/10/08	93
LOW DENSITY POLYETHYLENE	ISRA	D	27	275	2753	91/01/31	P	T	91/07/12	92
PVC RESIN	ISRA	D	27	275	2753	91/08/16	P	T	92/01/24	92
PVC HOMOPHOLYMER	ITAL	D	27	275	2753	85/04/03	P	T	86/03/27	86
High Density Polyethylene	ITAL	D	27	275	2753	92/03/27	P	T	92/08/03	93
LOW DENSITY POLYETHYLENE	JAP	D	27	275	2753	91/01/31	P	T	91/07/12	92
High Density Polyethylene	JAP	D	27	275	2753	92/03/27	P	T	92/08/03	93
POLYOLS, PROPYLENE OXIDE BASED POLYET	NETH	D	27	275	2753	82/12/08	P	T	83/05/17	83
PVC HOMOPOLYMER	NETH	D	27	275	2753	83/10/31	P	T	84/04/06	84
POLYETHYLENE RESIN, LOW DENSITY	QATA	D	27	275	2753	82/06/04	P	T	83/10/17	84
POLYETHYLENE RESIN, LOW DENSITY	QATA	D	27	275	2753	85/08/28	P	T	85/11/08	86
POLYETHYLENE, LOW DENSITY	QATA	D	27	275	2753	87/02/09	P	T	88/03/04	88
LOW DENSITY POLYETHYLENE	QATA	D	27	275	2753	91/01/31	P	T	91/07/12	92
POLYSTYRENE	RKOR	D	27	275	2753	82/06/24	P	T	83/05/25	83
PVC RESIN	RKOR	D	27	275	2753	84/02/17	P	T	84/08/06	85
PVC HOMOPOLYMER	ROUM	D	27	275	2753	86/08/14	P	T	87/04/13	87
Polyvinyl Chloride	ROUM	D	27	275	2753	92/05/15	P	T	92/09/24	93
Expandable Polystyrene	SAUD	D	27	275	2753	92/05/29	P	T	92/10/08	93
LOW DENSITY POLYETHYLENE	SING	D	27	275	2753	91/01/31	P	T	91/07/12	92
High Density Polyethylene	SWED	D	27	275	2753	92/03/27	P	T	92/08/03	93
POLYSTYRENE	TAIW	D	27	275	2753	84/03/02	P	T	84/07/18	85
VINYL ACETATE MONOMER	TAIW	D	27	275	2753	84/11/15	P	T	85/03/28	85
PVC RESIN	TAIW	D	27	275	2753	91/08/16	P	T	92/01/24	92
High Density Polyethylene	THAI	D	27	275	2753	92/03/27	P	T	92/08/03	93
Expandable Polystyrene	UK	D	27	275	2753	92/05/29	P	T	92/10/08	93
POLYOLS, PROPYLENE OXIDE BASED POLYET	USA	D	27	275	2753	86/07/08	P	T	86/12/23	87
LOW DENSITY POLYETHYLENE	USA	D	27	275	2753	91/01/31	P	T	91/07/12	92
High Density Polyethylene	USA	D	27	275	2753	92/03/27	P	T	92/08/03	93
ETHYLENE GLYCOL MONOBUTYL ETHER	BLGM	D	27	275	2754	86/04/15	P	T	86/09/29	87
ALKYL PHENOL ETHOXYLATES	BRAZ	D	27	275	2754	83/03/14	P	T	83/10/25	84
MIXED ETHANOLAMINE	CAN	D	27	275	2754	81/08/28	P	T	83/01/19	83
TRIETHANOLAMINE	CAN	D	27	275	2754	81/08/28	P	T	83/01/19	83
ALKYL PHENOL ETHOXYLATES	FGMY	D	27	275	2754	83/03/14	P	T	83/10/25	84
2,4-DICHLOROPHENOXYACETIC DERIVIATIVES	FGMY	D	27	275	2754	85/10/24	P	T	86/03/13	86
Triethanolamine (85 and 99 per cent pure)	FGMY	D	27	275	2754	92/10/25	P	T	93/02/26	93
PARADICHLOROBENZENE	JAP	D	27	275	2754	82/01/06	P	T	82/10/20	83
PARADICHLOROBENZENE	JAP	D	27	275	2754	83/03/18	P	T	83/08/10	84
Dioctyl Phthalate	JAP	D	27	275	2754	92/11/29	P	T	93/04/05	93
ALKYL PHENOL ETHOXYLATES	MEXI	D	27	275	2754	83/03/14	P	T	83/10/25	84
Triethanolamine (85 and 99 per cent pure)	MEXI	D	27	275	2754	92/10/25	P	T	93/02/26	93
STEARIC ACID	MLAY	D	27	275	2754	85/06/28	P	T	85/11/13	86
SORBITOL 70% SOLUTION	RKOR	D	27	275	2754	90/06/01	P	T	90/10/25	91
DI-OCTYL PHTHALATE	SWED	D	27	275	2754	85/02/22	P	T	85/12/09	86

ALKYL PHENOL ETHOXYLATES	TAIW	D	27	275	2754	83/07/07	P	T	83/10/25	84
PHTHALIC ANHYDRIDE	TAIW	D	27	275	2754	83/05/26	P	T	84/05/07	84
DI-OCTYL PHTHALATE	TAIW	D	27	275	2754	85/02/22	P	T	86/04/02	86
DIETHYLENE GLYCOL	TAIW	D	27	275	2754	85/11/06	P	T	86/05/02	86
ETHYLACETATE	TAIW	D	27	275	2754	87/05/04	P	T	87/12/18	88
SORBITOL 70% SOLUTION	TAIW	D	27	275	2754	90/06/01	P	T	90/10/25	91
Dioctyl Phthalate	TAIW	D	27	275	2754	92/11/29	P	T	93/04/05	93
ETHYLENE GLYCOL MONOETHYL ETHER ACE	USA	D	27	275	2754	83/04/13	P	T	83/06/21	83
ALKYL PHENOL ETHOXYLATES	USA	D	27	275	2754	83/03/14	P	T	83/10/25	84
PROPYLENE GLYCOL	USA	D	27	275	2754	83/02/15	P	T	84/01/10	84
Trifluralin Technical	USA	D	27	276	2754	92/08/07	P	T	92/12/17	93
Triethanolamine (85 and 99 per cent pure)	FRAN	D	27	275	2754	92/10/25	T	T	93/02/25	93
PHOSPHORIC ACID	BLGM	D	27	275	2755	83/04/27	P	T	84/02/17	84
SODIUM CYANIDE	USA	D	27	275	2755	91/02/06	P	T	91/07/12	92
SODIUM STEAROYL 2-LACTYLATE	USA	D	27	276	2755	83/05/16	P	T	83/11/09	84
SODIUM CYANIDE	TAIW	D	27	275	2755	91/02/06	T	T	91/05/16	91
INFLUENZA VACCINE	FRAN	D	27	276	2763	84/03/23	P	T	84/07/17	85
DISHWASING POWDER	BLGM	D	27	276	2765	83/07/04	P	T	83/11/14	84
LAUNDRY DETERGENT POWDER	HONG	D	27	276	2765	84/01/23	P	T	84/06/14	84
DISHWASING POWDER	ISRA	D	27	276	2765	83/07/04	P	T	83/11/14	84
TOOTHPASTE	TAIW	D	27	276	2765	83/07/07	P	T	84/03/16	84
CORRECTION FLUID	FGMY	D	27	276	2768	81/02/23	P	T	82/09/02	83
CORRECTION FLUID	SING	D	27	276	2768	81/02/23	P	T	82/09/10	83
Chlorinated Paraffin	TAIW	D	27	277	2770	92/08/21	P	T	92/12/24	93
Chlorinated Paraffin	USA	D	27	277	2770	92/08/21	P	T	92/12/24	93
Clear Float Glass	FRAN	D	28	285	2850	92/05/11	P	T	92/09/16	93
TOUGHENED GLASS PANELS	USA	D	28	285	2850	82/06/16	P	T	83/01/10	83
PORTLAND CEMENT	JAP	D	28	287	2871	91/06/21	P	T	91/11/27	92
GLASS FIBRE ROVINGS & CHOPPED STRAND	CHIN	D	*28*	*288*	*2883*	91/10/17	T	T	92/03/19	92
FIBERGLASS ROVINGS (AND MAT)	JAP	D	*28*	*288*	*2883*	91/10/17	T	T	92/01/16	92
GLASS FIBRE ROVINGS & CHOPPED STRAND	JAP	D	*28*	*288*	*2883*	91/10/17	T	T	92/01/16	92
FIBERGLASS ROVINGS (AND MAT)	TAIW	D	*28*	*288*	*2883*	91/10/17	T	T	92/01/16	92
GLASS FIBRE ROVINGS & CHOPPED STRAND	TAIW	D	*28*	*288*	*2883*	91/10/17	T	T	92/01/16	92
STEEL SHEET AND COIL GALVANISED	BLGM	D	29	294	2941	81/08/13	P	T	83/06/06	83
STAINLESS STEEL FLAT PRODUCTS	BLGM	D	29	294	2941	87/09/03	P	T	88/01/05	88
STEEL SHEET AND COIL, GALVANISED	FGMY	D	29	294	2941	81/05/07	P	T	83/06/06	83
STAINLESS STEEL FLAT PRODUCTS	FGMY	D	29	294	2941	87/10/30	P	T	88/01/05	88
STEEL SHEET AND COIL GALVANISED	FRAN	D	29	294	2941	81/07/23	P	T	83/06/06	83
STAINLESS STEEL FLAT PRODUCTS	FRAN	D	29	294	2941	87/09/03	P	T	88/01/05	88
STAINLESS STEEL FLAT PRODUCTS	ITAL	D	29	294	2941	87/09/03	P	T	88/01/05	88
STAINLESS STEEL PIPES AND TUBES	JAP	D	29	294	2941	81/02/23	P	T	83/06/14	83
STAINLESS STEEL FLAT PRODUCTS	JAP	D	29	294	2941	87/09/03	P	T	88/01/05	88
STEEL BARS, BRIGHT	RKOR	D	29	294	2941	85/09/06	P	T	86/02/24	86
STAINLESS STEEL FLAT PRODUCTS	RKOR	D	29	294	2941	87/09/03	P	T	88/01/05	88
STEEL BARS, BRIGHT	SAFR	D	29	294	2941	85/09/06	P	T	86/02/24	86
STEEL SHEET AND COIL GALVANISED	SPAI	D	29	294	2941	81/08/13	P	T	83/06/06	83
STAINLESS STEEL FLAT PRODUCTS	SPAI	D	29	294	2941	87/09/03	P	T	88/01/05	88
STAINLESS STEEL FLAT PRODUCTS	SWED	D	29	294	2941	82/10/20	P	T	84/02/03	84
STEEL BARS, BRIGHT	TAIW	D	29	294	2941	85/09/06	P	T	86/02/24	86
STEEL SHEET AND COIL, COLD ROLLED	TAIW	D	29	294	2941	85/08/12	P	T	86/04/14	86
STEEL SHEET AND COIL,GALVANISED	TAIW	D	29	294	2941	85/08/12	P	T	86/04/14	86
STAINLESS STEEL FLAT PRODUCTS	UK	D	29	294	2941	87/09/03	P	T	88/01/05	88
MALLEABLE CAST IRON PIPE FITTINGS	JAP	D	29	294	2942	83/01/02	P	T	84/02/13	84
WELDED STEEL PIPE & RECTANGULAR HOLL	JAP	D	29	294	2945	85/12/06	P	T	86/12/15	87
STAINLESS STEEL PIPES AND TUBES	RKOR	D	29	294	2945	82/06/02	P	T	83/10/20	84
WELDED STEEL PIPE	RKOR	D	29	294	2945	85/12/06	P	T	86/12/15	87
STAINLESS STEEL WELDED TUBE & PIPE	TAIW	D	29	294	2945	91/12/24	P	T	92/03/26	92
CARBON STEEL PIPE, SMALL DIAMETER WELI	THAI	D	29	294	2945	84/09/12	P	T	85/02/25	85
FASTENERS,STAINLESS STEEL	JAP	D	31	316	3153	83/04/21	P	T	83/09/12	84
FILES AND RASPS	ASTA	D	31	316	3161	80/12/17	P	T	82/09/08	83
GAS METER, DOMESTIC	UK	D	31	316	3168	82/11/15	P	T	83/06/20	83
SPARK PLUGS	FRAN	D	32	323	3233	86/03/03	P	T	86/07/02	87
SPARK PLUGS	YUGO	D	32	323	3233	86/03/03	P	T	86/07/02	87
DENTAL FURNITURE	USA	D	33	334	3343	87/09/02	P	T	88/06/27	88
POWER CAPACITORS, HIGH VOLTAGE	FGMY	D	33	335	3352	83/02/24	P	T	84/02/21	84
POWER CAPACITORS, HIGH VOLTAGE	UK	D	33	335	3352	83/02/24	P	T	84/02/21	84

PIEZOMETERS	USA	D	33	334	3352	90/04/19	P	T	90/09/27	91
FREEZERS, VERTICAL	JAP	D	33	335	3353	82/12/29	P	T	83/05/03	83
GAS HEATERS	JAP	D	33	335	3353	84/10/26	P	T	85/03/11	85
MICROWAVE OVENS	SING	D	33	335	3353	85/07/26	P	T	85/12/06	86
ELECTRIC MOTOR PARTS	TAIW	D	33	335	3353	88/04/06	P	T	88/12/06	89
PROCESS COOLING SYSTEMS	USA	D	33	335	3353	84/03/30	P	T	84/08/07	85
XLPE AERIAL BUNDLED ELECTRIC CABLE	RKOR	D	33	335	3355	91/12/13	T	T	92/02/26	92
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	SING	D	33	335	3356	90/11/07	T	T	91/06/19	91
ELECTRIC MOTORS ALTERNATING CURRENT	BRAZ	D	33	335	3357	85/08/22	P	T	88/02/11	88
TRANSFORMERS, INSTRUMENT	CAN	D	33	335	3357	82/06/23	P	T	83/08/12	84
ELECTRIC MOTORS ALTERNATING CURRENT	CHIN	D	33	335	3357	85/08/22	P	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT	CZEC	D	33	335	3357	85/08/22	P	T	88/02/11	88
LAMPS, ELECTRIC FILAMENT	ITAL	D	33	335	3357	86/04/17	P	T	86/10/10	87
ELECTRIC MOTORS ALTERNATING CURRENT	POLA	D	33	335	3357	85/08/22	P	T	88/02/11	88
TRANSFORMERS, INSTRUMENT	SPAI	D	33	335	3357	82/06/23	P	T	84/04/19	84
ELECTRIC MOTORS ALTERNATING CURRENT	TAIW	D	33	335	3357	85/08/22	P	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT	UK	D	33	335	3357	85/08/22	P	T	88/02/11	88
ELECTRIC MOTORS ALTERNATING CURRENT	USSR	D	33	335	3357	85/08/22	P	T	88/02/11	88
TRANSFORMERS	TURK	D	33	335	3357	91/03/28	T	T	91/07/04	92
FORKLIFT TRUCKS	JAP	D	33	336	3363	80/10/15	P	T	83/01/10	83
FORKLIFT TRUCKS (result of Court action re '87	*JAP*	*D*	33	336	3363	*91/08/21*	*P*	T	93/02/17	92
WINDLASSES AND CAPSTANS	USA	D	33	336	3363	82/10/27	P	T	83/02/28	83
CENTRE LATHES	TAIW	D	33	336	3364	84/03/09	P	T	84/10/31	85
AIR COMPRESSORS	BLGM	D	33	336	3365	83/07/18	P	T	84/03/23	84
PNEUMATIC HOSE COUPLINGS	SWED	D	33	336	3365	83/03/14	P	T	83/04/13	83
INJECTION MOULDING MACHINES	ASTA	D	33	336	3369	83/01/24	P	T	83/03/09	83
INJECTION MOULDING MACHINES	JAP	D	33	336	3369	83/01/24	P	T	83/07/04	84
SRMKPR	UK	D	33	336	3369	81/12/17	P	T	82/08/24	83
Certain Finished Chrome Tanned Bovine Leather	BRAZ	D	*34*	*345*	*3451*	92/10/23	P	T	93/03/04	93
Certain Finished Chrome Tanned Bovine Leather	INIA	D	*34*	*345*	*3451*	92/10/23	P	T	93/03/04	93
PASSENGER CAR TYRES	BRAZ	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	CHIN	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	CZEC	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	FGMY	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	FRAN	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	SPAI	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	TAIW	D	34	346	3461	86/07/16	P	T	88/03/02	88
PASSENGER CAR TYRES	THAI	D	34	346	3461	86/07/16	P	T	88/03/03	88
PASSENGER CAR TYRES	TURK	D	34	346	3461	86/07/16	P	T	88/03/04	88
PASSENGER CAR TYRES	UK	D	34	346	3461	86/07/16	P	T	88/03/05	88
FILM LAMINATE	USA	D	34	347	3471	85/06/11	P	T	85/11/17	86
PVC SHEET, RIGID THERMOFORMING GRADE,	TAIW	D	34	347	3472	87/08/24	P	T	88/02/25	88
VINYL SHEETING	UK	D	34	347	3472	90/11/21	T	T	91/02/11	91
Disposable Plastic Cutlery	HONG	D	34	347	3474	93/01/07	P	T	93/05/26	93
Disposable Plastic Cutlery	MLAY	D	34	347	3474	93/01/07	P	T	93/05/26	93
Disposable Plastic Cutlery	RKOR	D	34	347	3474	93/01/07	P	T	93/05/26	93
FIBREGLASS INSECT SCREENING	USA	D	34	347	3474	82/03/23	P	T	83/07/18	84
YARNS, NYLON (POLYAMIDE TEXTURED)	FRAN	D	23	234	2345	82/05/06	P	U	83/05/16	83
PAPER, UNCOATED WOODFREE	SAFR	D	26	263	2631	85/08/01	P	U	86/01/08	86
BAGS, WOVEN POLYOLEFIN	CHIN	D	26	263	2632	82/06/06	P	U	82/09/21	83
POLYETHYLENE RESIN, LOW DENSITY	CAN	D	27	275	2753	80/05/08	P	U	82/10/14	83
VINYL ACETATE MONOMER	UK	D	27	275	2753	83/03/31	P	U	83/11/06	84
LEVAMISOLE HYDROCHLORIDE	BLGM	D	27	275	2754	88/06/21	P	U	88/11/01	89
DIBUTYL PHTHALATE	CHIN	D	27	275	2754	91/08/14	P	U	92/01/24	92
TRIETHANOLAMINE	FGMY	D	27	275	2754	81/08/28	P	U	82/12/24	83
TOOTHPASTE	RKOR	D	27	276	2765	83/07/07	P	U	84/03/06	84
CEMENT CLINKER	RKOR	D	28	287	2871	88/08/31	P	U	89/01/05	89
STEEL SHEET AND COIL, COLD ROLLED	JAP	D	29	294	2941	85/08/12	P	U	86/06/05	86
STEEL SHEET AND COIL,GALVANISED	JAP	D	29	294	2941	85/08/12	P	U	86/06/05	86
HYPODERMIC NEEDLES	USA	D	33	334	3343	87/07/10	P	U	88/06/14	88
FORK LIFT TRUCKS	JAP	D	33	336	3363	88/05/06	P	U	88/09/26	89
HAND HACKSAW BLADES	BRAZ	D	33	336	3367	86/06/03	P	U	86/08/02	87
OUTBOARD MOTORS	BLGM	D	33	336	3369	89/05/19	P	U	89/10/13	90
OUTBOARD MOTORS	JAP	D	33	336	3369	89/05/19	P	U	89/10/13	90
OUTBOARD MOTORS	USA	D	33	336	3369	89/05/19	P	U	89/10/13	90
TYRES, PASSENGER CAR	JAP	D	34	346	3461	82/09/28	P	U	83/04/28	83

TYRES, PASSENGER CAR	NETH	D	34	346	3461	82/09/28	P	U	83/07/11	84
PAINT BRUSHES	CHIN	D	34	348	3483	84/03/30	P	U	84/10/22	85
PENCILS, COLOURED	BRAZ	D	34	348	3486	88/10/18	P	U	89/02/23	89
PENCILS, BLACKLEAD	BRAZ	D	34	348	3486	88/10/18	T	U	89/08/16	90
CANNED HAM	DENM	S	21	211	2117	90/08/28	T	G	91/07/10	92
CANNED HAM	IRE	S	21	211	2117	90/08/28	T	G	91/07/10	92
CANNED HAM	NETH	S	21	211	2117	90/08/28	T	G	91/07/10	92
GLACE CHERRIES	*FRAN*	*S*	*21*	*213*	2131	*91/11/07*	*P*	G	92/04/09	92
FRUIT, DRIED VINE	GREE	S	21	213	2131	84/08/06	P	G	85/04/02	85
GLACE CHERRIES	*ITAL*	*S*	*21*	*213*	2131	*91/11/07*	*P*	G	92/04/09	92
CANNED PEACHES & CANNED PEARS	CHIN	S	21	213	2131	91/06/27	T	G	91/09/26	92
CANNED PEACHES & CANNED PEARS	SPAI	S	21	213	2131	91/06/27	T	G	91/09/26	92
CANNED WHOLE TOMATOES	*ITAL*	*S*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
CANNED WHOLE TOMATOES	*SPAI*	*S*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
CANNED WHOLE TOMATOES	*THAI*	*S*	*21*	*213*	*2132*	*91/12/05*	*P*	*G*	92/04/30	92
DRIED EGG WHITE	*NETH*	*S*	*21*	*217*	2176	*91/11/18*	*P*	G	92/05/07	92
BRANDY	FRAN	S	21	218	2188	89/10/17	P	G	90/02/26	90
DRIED EGG WHITE	ITAL	S	21	217	2176	91/11/18	T	N	92/02/04	92
Frozen Pork	CAN	S	21	211	2115	92/11/27	T	O		93
CHEESE, EDAM	FINL	S	21	212	2123	86/12/23	U	O		87
CURRANTS AND SULTANAS	GREE	S	21	213	2131	89/09/26	T	O		90
CANNED WHOLE TOMATOES	CHIN	S	21	213	*2132*	91/12/05	T	O		92
PASTA PRODUCTS	ITAL	S	21	215	2153	90/03/26	T	O		90
WOVEN POLYPROPYLENEPRIMARY CARPET I	COMB	S	23	235	2352	80/05/28	T	O		80
SODIUM TRIPOLYPHOSPHATE	ISRA	S	27	275	2755	89/10/10	T	O		90
Clear Float Glass	MLAY	S	28	285	2850	92/05/11	T	O		92
Clear Float Glass	THAI	S	28	285	2850	92/05/11	T	O		92
IRON & STEEL, COLD ROLLED HOOP, STRIP, S	ARGE	S	29	294	2941	87/05/07	T	O		87
MALLEABLE CAST IRON PIPE FITTINGS	RKOR	S	29	294	2942	90/05/10	T	O		90
MALLEABLE CAST IRON PIPE FITTINGS	TAIW	S	29	294	2942	90/05/10	T	O		90
Certain Finished Chrome Tanned Bovine Leather	ARGE	S	*34*	*345*	*3451*	92/10/23	T	O		93
Certain Finished Chrome Tanned Bovine Leather	BRAZ	S	*34*	*345*	*3451*	92/10/23	T	O		93
Certain Finished Chrome Tanned Bovine Leather	INIA	S	*34*	*345*	*3451*	92/10/23	T	O		93
CANNED PEACHES & CANNED PEARS	CHIN	S	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES	GREE	S	21	213	2131	91/06/27	T	T	92/02/19	92
CANNED PEACHES & CANNED PEARS	SPAI	S	21	213	2131	91/06/27	T	T	92/02/19	92
IRON & STEEL, COLD ROLLED HOOP, STRIP, S	BRAZ	S	29	294	2941	87/05/07	P	T	88/01/22	88
AUTOMOTIVE LEAD-ACID STORAGE BATTERIE	MLAY	S	33	335	3356	90/11/07	T	T	91/02/11	91
TRANSFORMERS	TURK	S	33	335	3357	91/03/28	T	T	91/07/04	92
AGRICULTURAL GROUND ENGAGING TOOLS	BRAZ	S	33	336	3361	91/02/22	T	T	91/05/16	91
CHEESE	BLGM	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	BLGM	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	DENM	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	FGMY	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	FRAN	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	GREE	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	IRE	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	ITAL	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE	NETH	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHEESE. JARLSBERG	NWAY	S	21	212	2123	84/08/13	P	U	85/03/20	85
CHEESE	UK	S	21	212	2123	83/06/03	P	U	83/11/18	84
CHERRIES IN BRINE	ITAL	S	21	213	2131	84/07/04	P	U	85/05/21	85
BRANDY	FRAN	S	21	218	2188	84/02/23	P	U	84/07/24	85
HAND HACKSAW BLADES	BRAZ	S	33	336	3367	86/06/03	P	U	86/08/02	87