Australia's Anti-Dumping and Countervailing Law and Practice: An Analysis of Current Issues Incompatible with Free Trade with China

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This article identifies and analyzes five major issues relating to current antidumping and countervailing laws and practice in Australia. Given the recent conclusion of a free trade agreement between Australia and China, the article proposes to focus on Australia's recent antidumping and countervailing investigations against China. The article discusses whether the Australian laws and practice are consistent with the relevant WTO rules and how they may impact on the promotion of trade liberalization between Australia and China. The article concludes that all of these issues may have created, and would continue to create, trade barriers to Chinese exports to Australia and hence must be dealt with to protect any enhancement of market access to Chinese exports to Australia under the Australia – China free trade initiatives.

1. INTRODUCTION

Australia concluded a Free Trade Agreement (ChAFTA) with China on 17 November 2014 after a 10-year negotiating marathon.[1] Australia highly valued the benefits that the ChAFTA is to bring to the economy of both countries and in particular, the expected enhancement of market access for the countries' goods and services suppliers across a wide variety of industries.[2]

While committing to a freer trade with China, Australia has frequently used anti-dumping and countervailing measures against exports from China in recent years. For example, between 2007 and 2010, Australia only initiated 6 antidumping investigations against China including 2 antidumping and countervailing investigations.[3] From 2011 to 2014, the number of investigations increased significantly to 15 including 8 antidumping investigations, 5 antidumping and countervailing investigations, 1 countervailing investigation and 1 anti-circumvention investigation.[4] In 2014 alone, Australia initiated 5 investigations against China including the first anti-circumvention investigation since the introduction of an anti-circumvention framework in

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[1] Australian Government, Department of Foreign Affairs and Trade, China-Australia Free Trade Agreement, available at: http://www.dfat.gov.au/trade/agreements/chafta/Pages/australia-china-fta.aspx (visited 8 April 2015)

[2] Prime Minister of Australia The Hon Tony Abbott MP and Minister for Trade and Investment The Hon Andrew Robb AO MP, "Landmark China-Australia Free Trade Agreement", joint media release (17 November 2014), available at: http://trademinister.gov.au/releases/Pages/2014/ar_mr_141117.aspx (visited 8 April 2015). For the key outcomes of the ChAFTA, see Australian Government, Department of Foreign Affairs and Trade, China-Australia Free Trade Agreement, Key Outcomes, available at: http://www.dfat.gov.au/trade/agreements/chafta/fact-sheets/Pages/key-outcomes.aspx (visited 8 April 2015)

[3] Australian Government, Anti-Dumping Commission, Initiation Reports, available at: http://www.adcommission.gov.au/notices-reports/initiation/default.asp (visited 8 April 2015) (Initiation Reports)

[4] Initiation Reports, see above n 3.

2012[5]. Further, among the current antidumping and/or countervailing measures resulting from 26 investigations, China is subject to measures resulting from 13 investigations.[6]

Antidumping and countervailing measures have been long and widely recognised as a form of protectionism which counteracts the achievements of trade liberalization.[7] As in the other major jurisdictions such as the US and Canada, the introduction of an antidumping mechanism in Australia in 1906 was intended to afford protection to domestic industries.[8] The ongoing antidumping reforms in Australia also aim to "respond to industry concerns" by strengthening the antidumping system.[9] Accordingly, Australia's increasing use of antidumping and countervailing mechanism to protect its domestic industries seems to be incompatible with its free trade initiatives with China which are aimed at eliminating trade barriers and enhancing market access between the two countries.

The issues relating to Australia's use of antidumping and countervailing measures against China go far beyond its increasing resort to the measures. There are a number of other issues which have made Australia's antidumping and countervailing mechanism even less friendly to China. Very few publications have identified and analyzed these issues and certainly not their contemporary features.[10] This article, therefore, is intended to fill the gap in the literature and to draw the attention of stakeholders to these issues.

The remainder of this article is organized as follows. Section 2 provides an overview of Australia's antidumping and countervailing system. Section 3 discusses five major contemporary issues relating to Australia's antidumping and countervailing law and practice with a focus on investigations against China. These issues relate to[11]:

- the so-called "particular market situation" (PMS), which is discussed in section 3.1;
- the subsidy program associated with the so-called provision of raw materials at prices "less than adequate remuneration" (LTAR), which is discussed in section 3.2;
- calculation of individual dumping margin, which is discussed in section 3.3;
- sampling, which is discussed in section 3.4; and
- the delay of completion of investigations resulting from significant extension of statutory timeframes, which is discussed in section 3.5.

[5] For a brief overview of Australia's anti-circumvention mechanism, see Australian Government, Anti-Dumping Commission, Anti-Circumvention Inquiries, available at http://www.adcommission.gov.au/accessadsystem/anticircumventioninquiries/Pages/default.aspx (visited 8 April 2015).

[6] Australian Government, Anti-Dumping Commission, Dumping Commodities Register – Current Measures, available at http://www.adcommission.gov.au/system/CurrentMeasures.asp (visited 8 April 2015).

[7] See, for example, Mavroidis, P.C., Messerlin, P.A. and Wauters, J.M., *The Law and Economics of Contingent Protection in the WTO* (Cheltenham: Edward Elgar Publishing Limited, 2008) at 7-25 (arguing that anti-dumping is "merely another way of protecting import-competing firms"); Michael, F.J., *Antidumping – How It Works and Who Gets Hurt* (Ann Arbor: University of Michigan Press, 1993) (analyzing the negative economic impacts of antidumping on selected domestic industries and generally why antidumping is a threat to trade liberalization); Horlick, G.N., "How the GATT Became protectionist: An Analysis of the Uruguay Round Draft Final Antidumping Code" (1993)27(5) *Journal of World Trade* 5-17 (discussing various rules of the WTO Antidumping Agreement and how these rules had made the WTO Antidumping Agreement more protectionist than the previous Antidumping Codes concluded in GATT negotiation sessions).

[8] Whitwell, R., *The Application of Anti-Dumping and Countervailing Measures by Australia* (Central Queensland University Press, 1997) at 10.

[9] Minister for Industry, the Hon Ian Macfarlane MP and Parliamentary Secretary to the Minister for Industry, "Levelling the playing field for Australian manufacturers and producers", joint media release, 15 December 2014, available at: http://minister.industry.gov.au/ministers/baldwin/media-releases/levelling-playing-field-australian-manufacturers-and-producers (visited 8 April 2015)

[10] See, for example, Moulis, D. and Gay, P., "The 10 Major Problems with the Anti-Dumping Instrument in Australia" (2005)39(1) *Journal of World Trade* 75-85; Feaver, D. and Wilson, K., "An Evaluation of Australia's Anti-Dumping and Countervailing Law and Policy" (1995)29(5) *Journal of World Trade* 207-237.

[11] Given the space of the article and the complexity of the issue of anti-circumvention, the author does not discuss anti-circumvention in this article but aim to do so in another article.

This section also considers whether the issues may create inconsistencies with relevant WTO rules and how they may impact on the promotion of trade liberalization between China and Australia. Section 4 concludes the article.

2. AN OVERVIEW OF AUSTRALIA'S ANTIDUMPING AND COUNTERVAILING SYSTEM

Australia's antidumping and countervailing system is mainly based on the *Customs Act 1901* (Customs Act) and implementing regulation *Customs Regulations 1926* (Customs Regulation), the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) and implementing regulation *Customs Tariff (Anti-Dumping) Regulation 2013* (Dumping Duty Regulation). The legislation has been amended many times to give effect to the development of the antidumping and countervailing laws resulting from GATT/WTO negotiations. [12]

Australia's antidumping and countervailing investigating authority used to be Australian Customs and Border Protection Service (Australian Customs) which reports to the Minister for Home Affairs. As a result of the antidumping reform in 2012, a new Anti-Dumping Commission (AD Commission) was established to administer the antidumping and countervailing system.[13] The AD Commission is an independent agency and reports to the Minister for Industry and Science with recommendations on whether an antidumping and/or countervailing measure should be imposed.

Australia's antidumping and countervailing investigation procedure has been designed to be the most efficient one worldwide. [14] Once an application for investigation is received, the AD Commission must determine whether to initiate the investigation within 20 days.[15] Within 110 days after the initiation of an investigation, the AD Commission must publish a statement of essential facts (SEF), which sets out the facts on which recommendations to the Minister is to be based, unless an extension has been granted by the Minister. [16] The AD Commission is mandated to complete its investigation and report to the Minister by day 155 after initiation unless the timeframe is extended by the Minister. [17] Once the final report of the AD Commission is received, the Minister must decide whether or not an antidumping and/or countervailing measure is to be imposed within 30 days unless the Minister decides that a longer period is required in special circumstances. [18] However, as will be discussed in section 3.5 below, it has become common in recent investigations that the AD Commission was unable to complete investigations within the statutory timeframe and was granted significant extensions of time.

Interested parties are entitled to apply for a review of certain decisions of the Minister and of the AD Commission relating to dumping and countervailing investigations; such an application must be lodged within 30 days after the decisions are published. [19] The current review body is the Anti-Dumping Review Panel (ADRP) which was established in 2013 replacing the former Trade

[12] See Moulis and Gay, above n 10, at 75-6.
[13] The 2012 reform is known as the Brumby Review as it was headed by former Victorian Premier John Brumby. Brumby's report to the Government is titled "Review into Anti-Dumping Arrangements" and can be accessed at: http://www.adcommission.gov.au/reference-material/documents/Brumby-Anti-Dumping-Review-Final-Report.pdf
[14] See Moulis and Gay, above n 10, at 77.
[15] Section 269TC(2) of the Customs Act.
[16] Section 269TDAA(1) of the Customs Act.
[17] Section 269TEA(1) of the Customs Act.
[18] Section 269TLA(2) of the Customs Act.
[19] Sections 269ZZC & 269 ZZD of the Customs Act.

Measures Review Officer (TMRO) which had operated since 1998. The ADRP has up to 60 days to review the decisions and report to the Minister recommending that the Minister either affirm or revoke the decisions.[20] Once the report of the ADRP is received, the Minister must make final decisions within 30 days unless the Minister decides to extend the period in special circumstances.[21] In addition, an aggrieved party in antidumping and countervailing matters also has the right to resort to judicial review by the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1975*; an application for judicial review must be lodged within 28 days after the relevant decision has been provided to the party.[22]

3. MAJOR CONTEMPORARY ISSUES WITH AUSTRALIA'S ANTIDUMPING AND COUNTERVAILING LAW AND PRACTICE: FOCUSING ON CHINA

As set out in section 1, the article proposes to discuss 5 major contemporary problems with Australia's antidumping and countervailing law and practice. The discussions of the problems below will focus on the antidumping and countervailing investigations against China with a view to analyzing how these problems may impact on the promotion of trade liberalization between Australia and China. This section also considers whether the problems have rendered Australia's antidumping and countervailing law and practice inconsistent with the Agreement on the Implementation of Article VI of the GATT, commonly known as the WTO Antidumping Agreement (AD Agreement) or the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the relevant WTO jurisprudence.

3.1 Particular Market Situation

The issue of PMS arises in the context of the calculation of normal value which is usually the domestic selling price of the goods subject to an investigation in the ordinary course of trade in the exporting countries at issue. For a finding of dumping, the AD Commission must be satisfied that the export price of the subject goods to Australia is lower than the normal value of the goods. Accordingly, the calculation of normal value is essential to the determination of whether dumping has occurred, and if it has, the magnitude of dumping margin and ultimately the antidumping duties to be imposed.

While section 269TAC(1) of the Customs Act requires that normal value should generally be calculated on the basis of the actual selling price of subject goods in the market of exporting countries, section 269TAC(2)(a)(ii) allows the Minister to determine normal value where

> … the situation in the market of the country of export is such that sales in that market are *not suitable* for use in determining [normal value]… (emphasis added)

Where section 269TAC(2)(a)(ii) applies, the Minister will, in accordance with section 269TAC(2)(c) of the Customs Act, determine the cost of production of the goods in the exporting countries, the administrative, selling and general costs associated with the domestic sale of the goods and the profit on that sale for the purpose of determining normal value; this normal value is

[20] Section 269ZZK of the Customs Act.
[21] Section 269ZZM of the Customs Act.
[22] For a discussion of the administrative and judicial review in antidumping and countervailing matters in Australia, see Moulis, D., and Bridges, A., "Administrative and Judicial Review of Anti-dumping Measures in Australia" (2012)7(5) *Global Trade and Customs Journal* 200-210.

known as constructed normal value as it is calculated using constructed method. The Australian laws above find their basis in Article 2.2 of the AD Agreement which provides

> … when, because of the particular market situation … in the domestic market of the exporting country, such sales *do not permit a proper comparison*, the margin of dumping shall be determined by comparison … with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits… (emphasis added)

As will be shown below, the use of constructed normal value usually results in higher dumping margins compared to margins calculated on the basis of the actual domestic selling price of the subject goods.

Determination of "Particular Market Situation"

Australia's antidumping legislation provides no guidance on how the AD Commission should determine whether a PMS exists; nor does the WTO AD Agreement. WTO tribunals have made no decisions on what test should be applied in determining PMS although there is one current WTO case in which the panel is requested to consider this issue. [23] As a result, the AD Commission has a wide discretion in determining whether a PMS exists. In this connection, Australian Customs, the former investigating authority, has contemplated a two-step test under section 269TAC(2)(a)(ii), that is, (1) to identify "the situation in the market that makes sales in that market unsuitable for normal values", and (2) to determine whether "the market situation has rendered domestic selling prices unsuitable for normal values". [24] (Discussion Paper) The Discussion Paper acknowledges that claims of PMS have predominantly targeted on China alleging that domestic selling prices of subject goods in China have been artificially lowered due to influences of the Government of China (GOC) in the relevant market. [25] In the AD Commission's Dumping and Subsidy Manual, the Commission further clarified that

> [i]n investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market. [26]

In a number of recent investigations involving China, Australian Customs and subsequently the AD Commission have found that a PMS existed in China due to the GOC's influence in the relevant market. [27] Most of the investigations concentrated on China's steel and iron industry

[23] See *European Union – Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia*, Request for Consultations by the Russian Federation, WT/DS474/1 (9 January 2014).

[24] See Australian Government, Anti-Dumping Commission, Other publications and documents, "Discussion Paper: Market Situation – s. 269TAC(2)(a)(ii) Guidance - Claims of Government Influence" (2008) at 2, available at: http://www.adcommission.gov.au/reference-material/documents/particularMarketSituation.pdf (visited 10 April 2015). (Discussion Paper)

[25] See above n 24, Discussion Paper, at 1.

[26] See Anti-Dumping Commission, Dumping and Subsidy Manual (December 2013), at 34, available at http://www.adcommission.gov.au/accessadsystem/Documents/DumpingandSubsidyManual-December2013_001.pdf (visited 12 April 2015).

[27] See Australian Customs and Border Protection Service, Certain Hollow Structural Sections Exported from the people's Republic of China, the Public of Korea, Malaysia, Taiwan and the Kingdom of Thailand, Report to the Minister No. 177 (7 June 2012) (REP 177); Australian Customs and Border Protection Service, Aluminium Road Wheels Exported from the People's Republic of China, Report to the Minister No. 181 (12 June 2012) (REP 181); Australian Customs and Border Protection Service, Dumping of Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel Exported from the People's Republic of China, the Republic of Korea, and Taiwan, Report to the Minister No. 190 (30 April 2013) (REP 190); Anti-Dumping Commission, Dumping of Hot Rolled Plate Steel, Exported from the People's Republic of China, Republic of Indonesia, Japan, the Republic of Korea and Taiwan, and Subsidisation of Hot Rolled Plate Steel Exported from the People's Republic of China, Report Number 198 (16 September 2013) (REP 198); Anti-Dumping Commission, Alleged Dumping and

finding that the GOC's influence in the industry, and in particular on the price of primary steel inputs (such as hot rolled coil (HRC)) used for production of final steel products, has rendered the domestic selling price of these steel products unsuitable for the determination of normal value.[28] These investigations involved steel products including hollow structural sections (HSS Investigation), zinc coated steel and aluminium zinc coated steel (Galvanized Steel Investigation) and hot rolled plate steel (Plate Steel Investigation). Further, the investigation into aluminium road wheels exported from China (ARW Investigation) saw a finding of PMS in the Chinese aluminium industry resulting in the domestic selling price of aluminium road wheels not suitable for the determination of normal value.[29] In the ongoing investigation into silicon metal exported from China (Silicon Metal Investigation), a PMS was found to exist in China's silicon industry rendering Chinese domestic price of silicon metal artificially lower than competitive market price.[30] The major factors that the Australian investigating authorities have considered in their findings of PMS fall within the following categories:

- GOC's macroeconomic policies and plans, such as China's National Steel Policy, National and Regional Five-Year Plans, and implementing measures including those aimed at restructuring and revitalizing China's iron and steel industry;[31]
- China's import and export measures, such as import and export tariffs and quotas on coal including coking coal a key raw material in the production of iron[32] or export tax and restrictions on silicon metal[33];
- subsidization, including a number of subsidies allegedly having been provided to the relevant industry entities including upstream entities;[34] and
- GOC's direct influence on input price or input supply, such as low electricity rate for silicon producers and restrictions of energy consumption.[35]

In the view of the Australian investigating authorities, the combined effect of these factors was the creation of a PMS in the relevant Chinese market causing distortions in the domestic selling price of the subject goods.[36]

The GOC has provided numerous submissions in various investigations arguing that there was no PMS in the relevant Chinese market and that the Australian investigating authorities' findings that such a situation existed were baseless. The GOC's arguments are summarized below:

- China is a market economy and as such, the prices of goods, whether it is steel or aluminium or final steel or aluminium products, are set by the market without any of the alleged distortions caused by undue government influences;[37]

Subsidisation of Silicon Metal Exported from the People's Republic of China, Statement of Essential Facts No. 237 (23 February 2015) (SEF 237).

[28] See above n 27, REP 177, REP 190 and REP 198.

[29] See above n 27, REP 181.

[30] See above n 27, SEF 237.

[31] See above n 27, REP 177, at 118-148. In the two subsequent investigations concerning China's iron and steel industry (REP 190 and REP 198), the investigating authorities essentially based on the same factors.

[32] See above n 27, REP 177, at 148-151.

[33] See above n 27, SEF 237, at 52-53.

[34] See above n 27, REP 177, at 153-154; REP 181, at 36-37.

[35] See above n 27, SEF 237, at 53, 57.

[36] See above n 27, REP 177, at 166; REP 181, at 36; REP 190, at 167; REP 198, Appendix 1, at 22; and SEF 237, at 23-24.

[37] See, for example, Investigation into alleged dumping and subsidisation of hollow structural sections exported from the People's Republic of China – Preliminary affirmative determination and "provisional measures" (19 November 2011) at 15-17; Application for Countervailing Duties and Anti-Dumping Duties on Plate Steel from China, Position Paper of the Government of China (January 9, 2013) at 11-12; Dumping & Subsidy Investigation – Stainless Steel Sinks – Comments of

- there was insufficient evidence to support the allegation that the GOC influenced the price of inputs to manufacture or the price of final subject goods so as to make the prices artificially lower than competitive market prices. The existence of government regulations in a market is not sufficient evidence to support a finding of PMS; and the existence of price differences between Chinese market and a third country market is not sufficient evidence for a finding that Chinese prices are artificially low;[38]
- even assuming that the alleged government influences affected the price of raw materials, neither Australian Customs nor the AD Commission had any evidence to establish that such influences actually affected or "flowed through" to the price of the final goods rendering the price unsuitable for comparison with the export price of the final goods; [39] and
- even assuming that the distortion in the price of raw materials actually affected the price of final goods, the comparability between the domestic price of the goods and their export price remains unaffected as the distortion would have affected the two prices in the same way and to the same extent. There was no evidence showing that any alleged distortions in the price of raw materials affected domestic price of final goods only or affected domestic price and export price of final goods un-evenhandedly. [40]

The GOC's arguments sound convincing. First of all, the mere existence of government policies and regulations or other forms of government interventions in a market does not necessarily create a "situation" in the market. As the GOC has pointed out in the investigation into stainless steel sinks exported from China (Sinks Investigation),

> [g]overnment policies and industry regulations are common and necessary in every country and are certainly legitimate and not incompatible with the operation of an undistorted market economy. [41]

In its application for the TMRO review of the HSS Investigation (HSS Review), the GOC submitted that the measures identified by Australian Customs were of exhortative nature and were merely intended to *encourage* activities that tend to increase the efficiency and productivity of, and promote technological advancement and environment protection in, China's iron and steel industry. [42] The TMRO accepted the GOC's submissions and found that a positive finding of PMS cannot be merely based on findings that a government has overarching objectives and policies for the development of an industry while not exercising undue controls over normal business decisions and activities. [43] These policies and regulations were considered by the TMRO as an exercise of ordinary government functions although they may have potential impacts on the

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the Government of China concerning "particular market situation" in PAD 238 (19 December 2014) at 2-3. (Sinks Submission)

[38] See, for example, Investigation concerning hollow structural sections from China – Submission in response to Statement of Essential Facts No. 177 (16 May 2012), at 2-3; Investigation concerning aluminium road wheels from China – Submission in response to Statement of Essential Facts No. 181 (18 May 2012), at 2-3 (ARWs Submission); above n 37, Sinks Submission, at 3-4.

[39] See above n 37.

[40] See, for example, Certain coated steel – Statement of Essential Facts 190 – Submission of the Government of the People's Republic of China (17 April 2013), at 1-4; Alleged dumping and subsidisation of silicon metal from China – Submission of the Government of China concerning SEF 237 (30 March 2015), at 5-6. (Silicon Metal Submission)

[41] See above n 37, Sinks Submission, at 4. Subsequently in a submission in the Silicon Metal Investigation, the GOC set out a list of Australian government measures which may impact on the prices of certain raw materials and inputs for production. See above n 40, Silicon Metal Submission, at 8-12.

[42] See Review under Section 269ZZK of the Customs Act 1901 – Certain Hollow Structural Sections exported from the People's Republic of China, Korea, Malaysia, Taiwan and Thailand (11 October 2012), at 4-8.

[43] See Decision of the Trade Measures Review Officer, Hollow Structural Sections, Review of Decisions to Publish A Dumping Duty Notice and A Countervailing Duty Notice (14 December 2012), paras. 83-94. (HSS Review)

costs of goods.[44] The TMRO further observed that whether government interventions are sufficient to create a PMS depends on the degree of the interventions.[45] In the HSS Review, having considered the GOC's policy documents and implementing measures, the import and export measures and the alleged subsidy programs, the TMRO was not satisfied that the evidence before it had established a degree of government intervention sufficient to create a PMS.[46] In contrast, in its review of the ARW Investigation (ARW Review), the TMRO found that the evidence before it was sufficient to support a finding of PMS.[47] Accordingly, whether government policies and regulations may lead to a PMS rests on the sufficiency of evidence. The main issue with the AD Commission's current practice has to do with sufficiency of evidence. In none of the above-mentioned investigations did the Australian investigating authorities identify a specific Chinese legislation or regulation which regulates pricing in the relevant Chinese market. Rather, almost all of the government policies and regulations identified by the authorities serve legitimate policy purposes and may only have an indirect impact on the price of the subject goods. Unfortunately, neither Australian Customs nor the AD Commission has had objective and positive evidence to show that these measures have actually affected price. A recent example is the ongoing Silicon Metal Investigation. In this investigation, the AD Commission's preliminary finding of PMS predominantly relied on findings made by the Canadian Border Services Agency (CBSA) in an investigation into certain silicon metal from China.[48] However, the evidence before the AD Commission is arguably insufficient to establish that a PMS existed in China's silicon metal market during the period of investigation (POI). This is not only because the CBSA's findings related to a different time period which predates the POI[49] but also because there was no evidence proving that the price of silicon metal in China was artificially lower than competitive market price during the POI. After all of the above-mentioned investigations, it remains unclear what evidentiary standard that the AD Commission is to apply in determining PMS.

Secondly, a finding that the price of raw materials and inputs for production of final goods is artificially lower than competitive market price does not necessarily mean that the price of the final goods is also artificially low. Rather, there must be evidence to establish that the distortions in the price of raw materials and inputs have in fact affected or "flowed through" to the price of final goods. As shown above, in the previous investigations Australian Customs and the AD Commission had no evidence to prove a "flowing through" but simply assumed a "flowing through" had occurred. The issue of "flowing through" is further discussed in section 3.2 below.

Thirdly, a finding that the domestic selling price of final subject goods is artificially low due to GOC's influence on the price of raw materials and inputs for the production of the final goods does not necessarily mean that the domestic price of the final goods is *unsuitable* for comparison with the export price of the goods. As the GOC has argued repeatedly, both section 269TAC(2)(a)(ii) of the Customs Act and Article 2.2 of the AD Agreement are more concerned about whether domestic price of subject goods is *suitable* for comparison with the export price of the goods than about whether a PMS exists.[50] As long as the alleged distortions in the domestic

[44] See above n 43, HSS Review, paras. 85-87.
[45] See above n 43, HSS Review, paras. 85-87.
[46] See above n 43, HSS Review, paras. 96-111.
[47] See Decision of the Trade Measures Review Officer, Aluminium Road Wheels, Review of Decisions to Publish A Dumping Duty Notice and A Countervailing Duty Notice (December 2012), paras. 86-99. (ARWs Review) However, it is worth noting that the evidence before the TMRO in the ARWs Review was quite similar in nature and degree as that in the HSS Review. The different outcome of the two review cases may have to do with the fact that the GOC did not make a submission in the ARWs Review while it did so in the HSS Review.
[48] See above n 27, SEF 237, at 52-58.
[49] See above n 40, Silicon Metal Submission, at 7-12.
[50] See above n 40.

price of the subject goods do not affect its suitability for comparison with the export price of the goods, the AD Commission cannot resort to the constructed method to calculate normal value. This argument has been endorsed by the TMRO in the HSS Review where the TMRO, after considering a number of findings by the Federal Court of Australia, observed that

> there must be a degree of distortion in the market that renders arm's length transactions in the ordinary course of trade *unsuitable* to give a true normal value. [51] (emphasis added)

The TMRO provided a number of examples to illustrate its observation, such as (1) "the imposition of … strict environmental controls on products for sale on the domestic market over and above those imposed in the importing country" which may inflate the domestic price to a higher degree than the export price, and (2) the provision of a subsidy "for goods sold on the domestic market but not applicable to goods for export". [52] Both of the examples suggest that in determining whether a PMS exists and whether domestic price is suitable for comparison with export price, it is essential to analyze whether or not an alleged distortion has affected the two prices even-handedly. In none of the previous investigations did the Australian investigating authorities conduct such an analysis; nor did they have any evidence to show that the alleged GOC influences impacted on the domestic price of subject goods only and not on their export price. However, in the absence of any evidence to the contrary, it seems to be reasonable to assume that both domestic price and export price are affected equally by the GOC influences which do not appear to differentiate between goods for domestic sale and those for export sale. Therefore, the PMS findings of the Australian authorities, which predominantly based on findings of GOC influences in the relevant market, seem to have not applied the correct test contemplated by the Customs Act, the WTO AD Agreement and the TMRO. Nor did the findings seem to be based on evidence showing that domestic prices and export prices of subject goods were affected differently by the GOC influences so that the comparability of the two prices was affected.

In face of the GOC's robust opposition to the treatment of China as having a PMS, the AD Commission appears to have started changing its approach to this issue. In fact, a finding of PMS is just one of the grounds that triggers the use of constructed normal value by which the AD Commission is allowed to determine the cost of production, amongst other price factors. Accordingly, in several recent investigations the AD Commission has resorted to other grounds for the use of constructed normal value. For example, in the Sinks Investigation, the AD Commission did not assess whether a PMS existed in the Chinese deep drawn stainless steel sinks market as it had found an absence of sales of like goods in China that would be relevant for determining normal values and hence constructed normal value could be used. [53] In the investigation into PV modules or panels exported from China (Solar Panels Investigation), where the applicant failed to provide any meaningful evidence in support of its allegation of PMS, the AD Commission attempted to use constructed normal value on the basis that there were insufficient sales of PV products in the ordinary course of trade in the Chinese market during the period of investigation. [54] These examples suggest that the AD Commission may have become more cautious in making a positive decision of PMS and have become more focused on whether there are other grounds that would allow it to use constructed normal value.

[51] See above n 43, HSS Review, para 66.

[52] See above n 43, HSS Review, paras 69-70.

[53] See Anti-Dumping Commission, Alleged Dumping of Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China, and Alleged Subsidisation of Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China, Report NO. 238 (15 February 2015) at 39-41 (REP 238).

[54] See Anti-Dumping Commission, Application for A Dumping Duty Notice, Certain Crystalline Silicon Photovoltaic Modules or Panels Exported from the People's Republic of China, Consideration Report No. 239 (14 May 2014) at 26-27.

Determination of Benchmark Price

The price factor that Australian Customs and the AD Commission have usually used to inflate the normal value of final subject goods, and hence inflating dumping margins, is the price of key raw materials used for the production of the final goods. In almost all of the above-mentioned investigations, the investigating authorities consistently used an external benchmark price to replace the costs of raw materials actually incurred by Chinese exporters for the calculation of a constructed normal value. [55] The use of external benchmarks resulted in an uplift to the actual raw materials costs, hence inflating the constructed normal value. The table below summarizes the benchmarks used and the resultant uplifts in the recent investigations.

Investigation	Benchmark	Uplift
HSS Investigation[56]	a basket benchmark consisting of costs of HRC incurred by exporters in other countries subject to investigation	Uplifts applied to each of the selected exporters
Galvanized Steel Investigation[57]	a benchmark based on HRC prices in Korea and Taiwan	As above
ARWs Investigation[58]	aluminium and alloy prices on London Metal Exchange (LME)	As above
Silicon Metal Investigation[59]	the electricity tariff rate for 'Other Large Industry' as provided by the GOC	As above
Sinks Investigation[60]	MEPS-based average price for 304 stainless steel cold-rolled coil using the monthly reported MEPS North American and European prices alone (excluding the Asian price)	an average uplift of 10% applied to each of the selected exporters

There are a number of problems with the authorities' use of external benchmarks. The first problem concerns whether the use of benchmarks is consistent with the WTO AD Agreement. As the GOC has argued in the HSS Investigation, Article 2.2.1.1 of the AD Agreement requires the use of the actual costs recorded by exporters for the calculation of constructed normal value as long as the costs are recorded in accordance with generally accepted accounting principles in the exporting countries.[61] Accordingly, Article 2.2.1.1 does not allow for consideration of whether the properly recorded costs are competitive market costs. Even assuming that Article 2.2.1.1 allows investigating authorities to replace the actual costs on the ground that they are not competitive market costs, a finding that the Chinese HRC costs were lower than the HRC costs in other countries such as Japan does not mean that the Chinese costs are not competitive costs as the price differences may have well resulted from China's comparative advantages over the other countries.[62] As a matter of fact, during the period of the HSS Investigation, while the Chinese HRC prices were lower than the HRC prices in some countries, they were higher than the HRC prices in other countries. Recently in the Sinks Investigation, the AD Commission found that Chinese cold rolled stainless steel prices did not reflect competitive market prices even though

[55] In the Plate Steel Investigation, the AD Commission used the actual costs data provided by the sole cooperating Chinese exporter to calculate its normal value. See above n 25, REP 198, at 28-30.

[56] See above n 27, REP 177, at 43-62, 257-274.

[57] See above n 27, REP 190, at 60-63.

[58] See above n 27, REP 181, at 36-44, and Appendix B, at 31-36.

[59] See above n 27, SEF 237, at 25-27.

[60] See above n 53, REP 238, at 41-43.

[61] Government of China, Ministry of Commerce, Investigation concerning hollow structural sections from China and other countries, Submission concerning Chinese domestic HRC costs and comparisons with other markets, at 4-5.

[62] See above n 61, at 8-10.

the Chinese prices were only around 2% lower than the prices in Japan.[63] According to these facts, it is hard to see why Chinese prices were not treated as being competitive.

The second problem concerns the Australian investigating authorities' choice of benchmarks. In practice, the authorities' choice of benchmarks is generally based on their analysis and findings in relation to the subsidy program associated with the provision of raw materials at prices "less than adequate remuneration", which will be discussed in section 3.2 below.

Finally, even assuming that the authorities' use of external benchmarks is justified, their application of the benchmarks to "uplift" the raw material costs in constructing normal value but not applying the same uplift to export price may have violated the "fair comparison" rule under the AD Agreement.[64] Article 2.4 of the AD Agreement mandates "fair comparison" between normal value and export price by requiring investigating authorities to make adjustments

> … in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and *any other differences which are also demonstrated to affect price comparability*. (emphasis added)

In *US — Hot-Rolled Steel*, the Appellate Body has ruled that Article 2.4 requires that

> … "allowances" be made for "*any other differences* which are … demonstrated to affect price comparability." There are, therefore, no differences "affect[ing] price comparability" which are precluded, as such, from being the object of an "allowance".[65] (original emphasis and underline added)

Accordingly, it is submitted that as constructed normal value is calculated based on an uplifted raw material costs while export price is based on the actual raw material costs incurred by exporters without the uplift, there is a difference between the constructed normal value and the export price which must be adjusted to allow "fair comparison". Neither Australian Customs nor the AD Commission has considered making such an adjustment in the previous investigations. Without such an adjustment, the Australian investigating authorities may have conducted these investigations inconsistently with Article 2.4 of the AD Agreement and hence have unjustifiably inflated the dumping margins. Further, in review of the Galvanized Steel Investigation, the ADRP observed that

> the situation in the market identified for the purpose of subparagraph 269TAC(2)(a)(ii) does not have to affect the domestic prices differently to the export price. *Adjustments are made under subsections 269TAC(8) and (9) for differences affecting the comparability of the export price and normal value*.[66] (emphasis added)

This observation suggests an approach that the review body would be likely to take on the issue of PMS. It is probably that while a finding of PMS does not have to be based on a finding that any alleged price distortions have affected normal value and export price differently, in the determination of dumping margins adjustments must be made to differences that affect the comparability of constructed normal value and export price. As far as raw material costs are concerned, the AD Commission would, therefore, be required to make adjustments of the difference between constructed normal value and export price arising from the use of "uplifted" surrogate raw material costs in calculating the former but not in determining the latter.

[63] See above n 60; Application for the publication of dumping and/or countervailing duty notices, Certain Deep Drawn Stainless Steel Sinks Exported from China (January 2014), at 56.

[64] For a more comprehensive discussion on this issue, see above n 37, Sinks Submission, at 5-7.

[65] Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001, para. 177.

[66] Decision of the Anti-Dumping Review Panel, Review of Decisions Regarding Dumping Duties and Countervailing Duties for: Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel Exported from the People's Republic of China (15 November 2013) para. 56.

Free Trade with China

The Australian investigating authorities' continuous finding of China as having a PMS seems to be incompatible with Australia's policy goal of free trade with China. The resultant use of surrogate prices in determining dumping margins and consequently the imposition of higher antidumping duties also go against Australia's commitments to reduce trade barriers under the ChAFTA. Further, while a number of WTO member states (such as the US and the EU) still have not treated China as a market economy, Australia has long recognized China's full market economy status.[67] In the process of pushing for the conclusion of the ChAFTA, Australia's Prime Minister Tony Abbott remarked recently in Shanghai that "we now appreciate that most state-owned enterprises have a highly commercial culture. They're not nationalised industries that we used to have in Australia."[68] Accordingly, a finding of China as having a PMS is undoubtedly a significant deviation from Australian government's recognition of China's economy as being market-based and competitive. The issue of PMS becomes even more significant and urgent in the context of paragraph 15 of China's Protocol of Accession to the WTO[69] (Accession Protocol). This paragraph essentially allows an importing WTO member state, in an antidumping investigation, to assume that China has a non-market economy (NME) and hence use surrogate prices to determine normal value unless China can establish that market economy conditions prevail in the relevant industry. However, under paragraph 15(d) of the Accession Protocol, the right to rely on the NME assumption is to expire after 2016.[70] Therefore, it is of immediate importance to China that after the expiry of the NME assumption, the concept of PMS will not be abused by WTO members to continue to treat China as a NME in antidumping investigations.

3.2 Less Than Adequate Remuneration

In Australia's countervailing investigations against China, one of the most significant subsidy programs has been the so-called provision of raw materials at prices LTAR. This program is significant because it has been investigated, and resulted in the imposition of countervailing duties, in every recent countervailing investigation against China.[71] Typically, this alleged subsidy arises from a finding by the Australian investigating authorities that due to GOC influences in the relevant upstream market, Chinese prices of key raw materials used for production of final subject goods are artificially low and as a result Chinese producers of the final goods have received a benefit from the supply of the raw materials at prices LTAR. A finding as such may give rise to a number of concerns.

[67] See, for example, Investigation into alleged dumping and subsidisation of hollow structural sections exported from the People's Republic of China – Chinese Government Questionnaire (17 November 2011) at 6-7.

[68] See, for example, Financial Review, "China Wants to Import Workers under FTA", available at http://www.afr.com/news/policy/foreign-investment/china-wants-to-import-workers-under-fta-20140414-ix570 (visited 16 April 2015).

[69] Protocol on the Accession of the People's Republic of China, WT/L/432 (23 November 2001).

[70] The effect of paragraph 15(d) is contentious as to whether it prohibits an importing member from using surrogate prices in determining normal value of Chinese exports after 2016. See, for example, Miranda, J., "Interpreting Paragraph 15 of China's Protocol of Accession" (2014)9(3) *Global Trade and Customs Journal* 94-103; Stewart, T.P., Fennell, W.A, Bell, S.M. and Birch, N.J., "The Special Case of China: Why the Use of a Special Methodology Remains Applicable to China after 2016" (2014)9(6) *Global Trade and Customs Journal* 272-279.

[71] See above n 27, REP 177 (Program 20), REP 181 (Program 1), REP 198 (Programs 1-4); above n 53, REP 238 (Program 1); Australian Customs and Border Protection Service, Alleged Subsidisation of Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel Exported from the People's Republic of China, Report to the Minister No. 193 (28 June 2013) (REP 193) (Programs 1-3); Australian Customs and Border Protection Service, Certain Aluminium Extrusions Exported to Australia from the People's Republic of China, Report to the Minister No. 148 (15 April 2010) (REP 148) (Program 15).

The first concern relates to the question of what constitutes LTAR. The Australian investigating authorities' approach to this question has been a comparison between the actual costs of raw materials incurred by Chinese exporters and a benchmark price based on the prices of the raw materials in other countries[72] or representative prices from other sources (such as LME and MEPS)[73]. This approach is not consistent with the test contemplated by the TMRO. In the HSS Review, the TMRO, based on its interpretation of relevant WTO jurisprudence, observed that

> … when given its ordinary English meaning s 269TACC(4)(d) requires a determination of the question *whether Chinese producers provided HRC to exporters of HSS for less than adequate recompense or reward for the costs, work or trouble incurred by them in their production of HRC. The section is not concerned with whether or not the prices at which those producers supply HRC are the prices that would prevail in a competitive market unaffected by government intervention*…[74] (emphasis added)

> … the term 'adequate remuneration' in s 269TACC(4)(d) requires *an assessment of the adequacy of the return on investment. This requires a comparison between the cost to make and sell and the price of sale of the goods*…[75] (emphasis added)

Accordingly, the approach to LTAR is not a mere comparison between Chinese raw material prices and third countries' prices or other representative prices; nor should it be a natural result from a finding of GOC interventions in the relevant Chinese upstream market. Rather, it should be decided on the basis of whether the selling prices of raw materials are at levels inadequate to compensate the suppliers of the raw materials for their cost of production. A mere comparison between Chinese prices and selected benchmark prices does not show whether or not the selling prices of the raw materials provide adequate remuneration to the suppliers of the raw materials. In the previous investigations, neither Australian Customs nor the AD Commission has applied the test contemplated by the TMRO; nor did they provide any evidence to show that the raw materials were provided to producers of final goods at prices inadequate to compensate the cost of producing the raw materials.

Secondly, even assuming that the raw materials have been provided at LTAR, the Australian investigating authorities have had no evidence to establish that the distortions in the prices of raw materials have actually affected or "flowed through" to the prices of final subject goods. A finding of "passing through" without objective and positive evidence is not supported by WTO jurisprudence. In *US – Softwood Lumber IV*, the Appellate Body ruled that

> … [w]here the producer of the input is not the same entity as the producer of the processed product, it *cannot be presumed … that the subsidy bestowed on the input passes through to the processed product*. In such case, it is necessary to analyze to what extent subsidies on inputs may be included in the determination of the total amount of subsidies bestowed upon processed products …[76] (emphasis added)

> … *Members must not impose duties to offset an amount of the input subsidy that has not passed through to the countervailed processed products*. It is only the amount by which an indirect subsidy granted to producers of inputs flows through to the processed product … that may be offset through the imposition of countervailing duties …[77] (emphasis added)

The Appellate Body's rulings above have made it clear that analysis and evidence in support of "passing through" is essential to a finding of any benefits having been conferred to producers of final goods due to distortions in input prices and ultimately to the imposition of corresponding

[72] See above n 27, REP 177, at 223-228; REP 198, Appendix 2.2, at 66-67; above n 71, REP 193, at 151-154.
[73] See above n 27, REP 181, Appendix B, at 1-9, 28-36; above n 53, REP 238, at 133-139, 206-219.
[74] See above n 43, HSS Review, para. 272.
[75] See above n 43, HSS Review, para. 273.
[76] Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004, para. 140.
[77] See above n 76, para. 141.

countervailing duties. The failure of the Australian investigating authorities to conduct such an analysis and provide supportive evidence in finding that the alleged provision of raw materials at LTAR constituted a countervailable subsidy is contrary to the Appellate Body's rulings and the relevant provisions of the SCM Agreement that the rulings are based on.

Finally, it is questionable whether the external benchmarks used by the Australian investigating authorities in the previous investigations are appropriate. In each of the investigations, the GOC has argued against the authorities' choice of benchmarks.[78] For example, in the HSS Investigation, it is unclear why the HRC prices in countries such as Taiwan and Malaysia could be regarded as representing competitive Chinese HRC prices where (1) the market conditions in China and these other countries were significantly different, (2) the Chinese steel market had a substantial connection with the international market, and (3) the Chinese HRC prices were similar to HRC prices in many other competitive markets.[79] In the recently completed Sinks Investigation, the AD Commission established a benchmark based on monthly reported MEPS North American and European prices (excluding the Asian price) for 304 stainless steel cold-rolled coil.[80] The Asian price was excluded because the AD Commission took the view that the prices in the entire Asian region had been "contaminated" by the allegedly distorted Chinese prices. The AD Commission's choice of the benchmark was questioned by GWA Group Limited, an Australian listed producer of kitchen and bathroom products and an importer of stainless steel sinks. Specifically, GWA submitted that

- the benchmark included costs of raw materials not used in the production of stainless steel sinks, which costs were more expensive, resulting in an inflation of the benchmark; and
- the use of International, European and North American averages does not reasonably reflect competitive market costs associated with the production of the subject goods in China.[81]

The AD Commission did not accept GWA's submissions above without providing an explanation as to why the submissions were not accepted. The AD Commission should have at least assessed whether the benchmark was in fact inflated, and if so by what amount, so as to ensure the benchmark does not include irrelevant costs. Further, the AD Commission would need to justify its exclusion of the 304 stainless steel cold-rolled coil prices in the entire Asian region instead of merely excluding the Chinese prices. Of course, the fundamental question remains to be whether the Chinese prices were in fact LTAR.

Free Trade with China

The Australian investigating authorities' investigation into the subsidy associated with alleged provision of raw materials at LTAR and imposition of countervailing duties as a result is not in harmony with Australia's free trade initiatives with China. Essentially, it denies that China has a competitive market for raw materials such as HRC and aluminium and hence China's full market economy status. As discussed in section 3.1 above, the issue relating to market economy status is of great sensitivity to China. Further, it artificially creates a countervailable subsidy which is not

[78] See, for example, above n 61; above n 38, ARWs Submission; above n 37, Sinks Submission; above n 40, Silicon Metal Submission.

[79] See above n 61.

[80] See above n 53, REP 238, at 206-219.

[81] See GWA Group Limited, Supplementary Submission regarding Use of Stainless Steel Benchmark Prices for the Purpose of Constructing Normal Values (18 December 2014), available at http://www.adcommission.gov.au/cases/documents/090-Submission-Importer-GWAGroupLimited.pdf (visited 17 April 2015).

supported by sufficient evidence and hence import barriers in the form of countervailing duties to goods exported from China to Australia. The duties may be further inflated by the use of unjustified external benchmarks.

3.3 Individual Dumping Margin

Australia's antidumping mechanism envisages three types of exporters whose dumping margins are calculated in different ways. The first type includes exporters who are selected or sampled by the Australian investigating authorities to participate in an investigation. Sampling may occur when there are a large number of exporters from a particular exporting country subject to an investigation. Sampling is discussed in section 3.4 below. Where sampling is applied, the investigating authorities calculate an individual dumping margin for each of the selected exporters as long as they are cooperative to the satisfaction of the authorities.[82] The second type includes exporters who are not sampled but are willing to participate in an investigation. These voluntary participants are known as residual exporters for whom a residual dumping rate, based on the dumping margins of the selected exporters, is calculated.[83] The third type consists of all uncooperative exporters whose dumping margin is calculated based on best information available.[84] Usually, an exporter willing to participate in an investigation would be keen to have an individual dumping margin calculated for it rather than to receive a residual dumping margin. This is especially so when the exporter believes it has not engaged in dumping or its dumping margin is insignificant. These ways of calculating dumping margins for different types of exporters in Australia appear to be consistent with those contemplated by the WTO AD Agreement.[85]

The Issue relating to Individual Dumping Margin in Power Transformers

In practice, the calculation of individual dumping margins has not become a notable issue in Australia until the recently completed investigation into power transformers exported from a number of countries including China[86] (Power Transformers Investigation). In that investigation, the AD Commission refused to calculate an individual dumping margin for TBEA Shenyang Transformer Group Co. Ltd (TBEA), a Chinese manufacturer and exporter of power transformers. TBEA was a cooperative exporter who submitted a complete response to the AD Commission's exporter questionnaire.[87] However, the AD Commission found that TBEA was not eligible for an individual dumping margin as it did not export the subject goods to Australia during the period of investigation (POI).[88] The AD Commission's finding was based on its observation that the *date of sale* should be determined by the physical shipment of the subject goods from China to Australia

[82] Section 269TACB of the Customs Act.
[83] Section 269TACAB(2) of the Customs Act.
[84] Section 269TACAB(1) of the Customs Act.
[85] See Czako, J., Human, J., and Miranda, J., *A Handbook on Anti-Dumping Investigations* (Cambridge University Press, 2003) at 60.
[86] Anti-Dumping Commission, Public Record for Investigation - Case 219, Power Transformers Exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam, available at http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR219.aspx (visited 20 April 2015).
[87] Anti-Dumping Commission, Exporter Questionnaire, Power Transformers, Response by TBEA Shenyang Transformer Group Co. Ltd (9 September 2013), available at http://www.adcommission.gov.au/cases/Documents/046-Questionnaire-Exporter-TBEAShenyangTransformerGroupCoLtd.pdf (visited 20 April 2015).
[88] Anti-Dumping Commission, Issues Paper 2014/01, Power Transformers Exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam (27 May 2014) at 4, available at http://www.adcommission.gvo.au/cases/Documents/102-Report-Issespaperforpowertransformers20141.pdf (visited 20 April 2015). (Issue Paper)

and not by the date when the relevant sale contract was entered into.[89] In response to the AD Commission's findings, TBEA made several submissions arguing that (1) the date of sale should be the date of the relevant sale contracts when the material terms of trade were agreed; and (2) the AD Commission should have determined that dumping occurred when the relevant sale contracts were concluded.[90] The AD Commission's findings also led to serious concerns of the GOC. In two submissions on this issue, the GOC contended that (1) the AD Commission's refusal to calculate an individual dumping rate for TBEA is contrary to its obligations under the WTO AD Agreement[91]; and (2) the AD Commission's interpretation of "date of sale" is not consistent with its own practice as set out in the Dumping and Subsidy Manual and in other investigations[92]. Despite these submissions, the AD Commission maintained its position on this issue and consequently did not calculate an individual dumping rate for TBEA. As a result, TBEA was subject to a residual dumping rate which was calculated based on the positive and non-negligible dumping margins of cooperative exporters and was higher than the individual dumping margins calculated for a number of other cooperative exporters.[93]

The AD Commission's refusal to calculate an individual dumping margin for TBEA is problematic. Article 6.10 of the AD Agreement states

> The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples…
>
> 6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

In *EC – Fasteners*, the Appellate Body confirmed that the general rule relating to calculation of individual dumping margin under Article 6.10 is mandatory and that the only exceptions to it are where sampling has been conducted by investigating authorities or an exporter or producer is

[89] See above n 88.

[90] Investigation into Alleged Dumping of Power Transformers Exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam, Submission by TBEA Shenyang Transformer Group Co. Ltd (12 May 2014), available at http://www.adcommission.gov.au/cases/Documents/100-140513TBEAPublic.pdf (visited 20 April 2015) (TBEA May Submission); Investigation into Alleged Dumping of Power Transformers Exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam, Submission by TBEA Shenyang Transformer Group Co. Ltd (10 June 2014), available at http://www.adcommission.gov.au/cases/Documents/114-Submission-Exporter-HuntandHuntLawyersonbehalfofTBEAShenyangTransformerGroupCoLtd.pdf (visited 20 April 2015).

[91] Ministry of Commerce of the People's Republic of China, Investigation into Alleged Dumping of Power Transformers Exported to Australia from the PRC – the GOC's Position Paper (24 June 2014), available at http://www.adcommission.gov.au/cases/Documents/125-Submission-Foreigngovenment-ChineseGovernment.pdf (visited 20 April 2015).

[92] Ministry of Commerce of the People's Republic of China, GOC's Supplemental Comments to the TBEA Issue in the Power Transformer AD Investigation – Policy and Practice concerning "date of sale" (7 July 2014), available at http://www.adcommission.gov.au/cases/Documents/126-Submission-ForeignGovernment-ChineseGovernment.pdf (visited 20 April 2015).

[93] Anti-Dumping Commission, Power Transformers Exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam, Report No. 219 (2 December 2014) at 31, 63 (REP 219), available at http://www.adcommission.gov.au/cases/Documents/100-140513TBEAPublic.pdf (visited 20 April 2015).

unknown to or unidentifiable by the authorities.[94] Accordingly, in the Power Transformers Investigation where sampling was not conducted, the AD Commission is obligated to calculate an individual dumping margin for TBEA who was a known and cooperative exporter under investigation. It is hard to see how the AD Commission's refusal to calculate an individual dumping margin for TBEA can be justified under the WTO rules above. Further, on the issue regarding the date of sale, it is arguable that the date of the contracts relating to TBEA's export sales of power transformers to Australia is relevant to the determination of whether TBEA exported power transformers to Australia during the POI. Under Article 11.1 of the AD Agreement, the imposition of antidumping duties is aimed at counteracting "dumping which is causing injury". In the Power Transformers Investigation, it can be argued that injury had been caused at the time that TBEA entered into the sale contracts with the Australian importers during the POI although the physical shipment occurred later after the POI. As submitted by TBEA, all material terms of its sales, including the volume and prices of power transformers, were finalized by these contracts.[95] It follows that if there were any impacts of TBEA's export of power transformers to Australia on the market share and selling price of Australian manufacturers of power transformers, such impacts would have arisen from TBEA's conclusion of the contracts with Australian importers to sell power transformers, not from the actual shipment of the power transformers. Therefore, it seems to be more reasonable for the AD Commission to consider that TBEA had sales of the subject goods to Australia during the POI and hence is entitled to an individual dumping margin.

The Issue relating to Accelerated Review in Power Transformers

In the Power Transformers Investigation, a closely connected issue was if TBEA was not eligible for an individual dumping margin, whether it was entitled to an accelerated review as a new exporter? The AD Commission suggested that TBEA was not eligible for an accelerated review either.[96] In this regard, section 269ZE of the Customs Act allows a "new exporter" to apply for an accelerated review of a dumping or countervailing notice which affects the exporter as long as the exporter is not related to an exporter already subject to the duty. Section 269T defines "new exporter" as an exporter who does not export subject goods during the period between the commencement of a POI and the publication of a SEF. TBEA was not eligible for an accelerated review because it had physical shipment of power transformers to Australia after the POI but before the publication of the SEF.

The law and practice relating to accelerated review in Australia seem to be inconsistent with the relevant WTO rules. Article 9.5 of the AD Agreement provides

> If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.…

In *Mexico – Rice AD Measures*, the Appellate Body ruled that an investigating authority must carry out an accelerated review for an applicant exporter that

[94] Appellate Body Report, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/AB/R, adopted 28 July 2011, paras. 315-327.
[95] See above n 90, TBEA May Submission.
[96] See above n 88, Issue Paper.

(i) did not export the subject merchandise to the importing Member during the period of investigation, and (ii) demonstrated that it was not related to a foreign producer or exporter already subject to anti-dumping duties. [97]

Accordingly, the key problem with the Australian law and practice lies in the definition of "new exporter" which includes a longer period than the period contemplated under the WTO rules to disqualify an exporter from being a "new exporter". In the Power Transformers Investigation, the POI nominated by the AD Commission was July 2010 to June 2013. [98] However, the SEF was published on 18 September 2014 after a number of extensions from the original publication date 18 November 2013. [99] Therefore, even though TBEA exported power transformers to Australia after the POI, it was still not a "new exporter" as its exports were before the publication of the SEF; this is so even if the SEF publication were not delayed. However, according to the WTO rules, the AD Commission would be obligated to carry out an accelerated review for TBEA as it did not export power transformers to Australia during the POI. This issue of WTO-consistency goes beyond this individual investigation. Since there is generally a gap period between a POI and the publication of a SEF, this issue may well arise in every investigation as an exporter having no export of subject goods to Australia during a POI may still not be eligible for an accelerated review. Moreover, the issue may become increasingly significant given the substantial extensions of the publication of SEFs in recent and ongoing investigations (which is discussed in section 3.5 below). In the Power Transformers Investigation, the combined effect of the AD Commission's application of the Australian laws in determining whether TBEA was eligible for an individual dumping margin or for an accelerated review was to completely deny an individual treatment for TBEA during the original investigation process. Again, this could well be a general WTO-consistency issue not specific to the Power Transformers Investigation. Such a denial clearly goes against the general WTO rule that all known and cooperative exporters should be entitled to an individual dumping margin, whether it is calculated under Article 6.10 or Article 9.5 of the AD Agreement.

Free Trade with China

The issue relating to individual dumping margin applies to all countries exporting goods to Australia and should not be regarded as a concern merely to China. However, in the context of the trade liberalization initiatives between Australia and China, the Australian law and practice as exemplified by the Power Transformers Investigation would be likely to create, rather than eliminate, trade barriers against Chinese exports to Australia. As shown above, the denial of an individual treatment of a known and cooperative Chinese exporter may result in the finding of dumping or the imposition of a higher dumping duty whereas no dumping or lower dumping duty would have been found if individual dumping margin is calculated for the exporter.

3.4 Sampling

Sampling is a process in which investigating authorities select a number of exporters from an exporting country subject to an investigation to participate in the investigation. As noted in

[97] Appellate Body Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice*, WT/DS295/AB/R, adopted 20 December 2005, para. 321.

[98] See above n 93, REP 219, at 11.

[99] Anti-Dumping Commission, Power Transformers Exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam, Statement of Essential Facts No. 219 (18 September 2014) at 7-8 (SEF 219), available at http://www.adcommission.gov.au/cases/Documents/156-SEF-Other-SEFNo219.pdf (visited 20 April 2015).

section 3.3 above, Article 6.10 of the AD Agreement allows sampling when it is impracticable for investigating authorities to determine an individual dumping margin for each known exporter due to the large number of exporters, producers, importers or types of products involved. Article 6.10 contemplates two ways of selecting samples, one based on information statistically valid and "available to the authorities at the time of the selection" and the other on "the largest percentage of the volume of the exports from the country in question which can reasonably be investigated." Under Article 6.10.1, samples "shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned." Article 9.4 further provides that if sampling is applied, the dumping margin for un-selected exporters must not exceed the weighted average dumping margin established for selected exporters, and any *de minimis* margins and margins calculated for un-cooperative exporters must be disregarded. These WTO sampling rules are implemented in Australia through sections 269TACAA and 269TACAB of the Customs Act.

In practice, sampling has not been used often in Australia until recent investigations. The Dumping and Subsidy Manual sets out two approaches that the AD Commission may take to select samples including (1) preliminary information request (PIR) and (2) known data concerning export volumes.[100] Under the PIR, the AD Commission provides a brief exporter questionnaire to all identified exporters and invite them to respond to some preliminary questions contemplated in the questionnaire. These preliminary questions normally relate to basic information about the exporters, their businesses, production and export of subject goods, their upstream suppliers etc. The information provided by the exporters is then used for sampling. The PIR has been the most used approach to sampling.[101] In contrast, if the "known data" approach is used, the AD Commission does not request preliminary information from all identified exporters but determines samples based on the volume of exports of subject goods to Australia. For example, in the Solar Panels Investigation, the AD Commission selected 4 Chinese exporters who were considered to be the largest exporters of the subject goods to Australia.[102] As far as the calculation of dumping margins is concerned, the use of the PIR method for sampling will result in the calculation of an individual dumping margin for each of the selected exporters provided that they continue to cooperate, a residual dumping rate for all of the un-selected but cooperative exporters, and a single dumping margin for all un-cooperative exporters.[103] Under the "known data" approach, the only difference is that while individual margins will be determined for selected exporters, all other exporters will be treated as residual exporters and hence subject to a residual rate.[104] Australia's sampling practice seems to be consistent with the WTO rules.

However, in the Sinks Investigation, the AD Commission deviated from the sampling practice described above. In that investigation, the AD Commission requested 17 Chinese exporters to provide a response to the full exporter questionnaire and subsequently selected only 3 exporters for further investigation after all of the responses had been provided.[105] As a consequence, only the 3 selected exporters were given an individual treatment whereas the other 14 cooperative

[100] See above n 26, Dumping and Subsidy Manual, at 117-119.

[101] See, for example, Anti-Dumping Commission, Investigation 217, Alleged Dumping of Prepared or Preserved Tomatoes Exported from Italy, Sampling Report (Tomato Sampling Report), available at http://www.adcommission.gov.au/cases/documents/018-OtherReport-ExporterSamplingReport.pdf (visited 20 April 2015).

[102] Anti-Dumping Commission, Investigation 239, Alleged Dumping of Certain Crystalline Silicon Photovoltaic Modules or Panels Exported from the People's Republic of China, Exporter Sampling (Solar Panels Sampling Report), available at http://www.adcommission.gov.au/cases/documents/039-Notice-Exportersamplingnotification.pdf (visited 20 April 2015).

[103] See above n 101, Tomato Sampling Report.

[104] See above n 102, Solar Panels Sampling Report.

[105] Anti-Dumping Commission, Investigation 238, Alleged Dumping and Subsidisation of Deep Drawn Stainless Steel Sinks Exported from the People's Republic of China, Sampling Report, available at http://www.adcommission.gov.au/cases/documents/030-Report-Sampingreport.pdf (visited 20 April 2015).

exporters were given a residual rate (with un-cooperative exporters subject to a much higher dumping rate).[106] Although the AD Commission's approach to sampling in the Sinks Investigation does not seem to violate the relevant WTO rules, it may give rise to at least three issues. First, the use of this approach may impose undue administrative and financial burdens on exporters who have expended on preparation and submission of responses to the full exporter questionnaire. As the PIR approach would suggest, a response to full exporter questionnaire is unnecessary for the purpose of sampling. Second, the approach creates uncertainties to exporters. Having been requested to respond to a full exporter questionnaire, the exporters would naturally expect to continue to participate in the investigation and ultimately to receive an individual dumping margin. Third, the approach gives the AD Commission the chance to use the responses from all of the exporters to determine who should be sampled. This may result in sampling to be based on the AD Commission's estimate of the dumping margins for all of the exporters and consequently sampling of exporters who have the highest estimated margins. Therefore, this approach would give room for the AD Commission to use sampling to inflate dumping margins for residual exporters.

Free Trade with China

As the issue relating to individual dumping margin, the issue of sampling also has a general application to all exporting countries to Australia and hence is not specific to China. Given the limited resource and capacity of the AD Commission and the increasing number of investigations, it is expected that sampling may be more frequently used in future investigations. China is one of the countries who generally has a large number of exporters in various industries. To promote free trade with China, it would be important for Australia to ensure that sampling does not create unnecessary burdens and uncertainties to Chinese exporters and is not used as a means to achieve higher dumping duties.

3.5 Extension of Statutory Timeframes

As set out in section 2, there are a number of statutory timeframes which apply to different stages of an antidumping or countervailing investigation in Australia. While the Customs Act explicitly authorizes the Minister to grant an extension to most of the timeframes, extensions are certainly not considered or expected to be a general practice. Contrary to that expectation, in 13 recently completed or initiated investigations, the AD Commission has consistently failed to meet various statutory deadlines. The major failures include, in all of the 13 investigations:

- the AD Commission has not managed to complete its consideration of applications filed by Australian industries within 20 days. Instead, the AD Commission has allowed applicants to provide additional information to overcome deficiencies in the applications, thereby re-starting the 20-day time limit from the day on which the additional information was submitted;
- the AD Commission requested and obtained significant extensions of the publication of SEFs beyond the 110-day timeframe, with the shortest extension being 50 days and the longest extension 304 days; and

[106] See above n 102, Solar Panels Sampling Report; above n 53, REP 238.

- as a result of the extensions of publication of SEFs, the AD Commission has consistently and significantly delayed completion of investigations beyond the 155-day timeframe.

In contrast, the AD Commission has become stricter on granting extensions for exporters to respond to exporter questionnaires. In the 13 investigations, the longest extension that the AD Commission has granted for exporters to respond to exporter questionnaires was 21 days. Such extensions are remarkably short given the significant extensions that the AD Commission has allowed for Australian industries to amend applications and for itself to complete investigations. The table in Appendix A sets out the extensions described above.

There are at least two issues with the AD Commission's consistent failure to complete investigations within the statutory timeframes. First, Article 5.10 of the WTO AD Agreement requires that an investigation be completed within 1 year which can be extended to a maximum of 18 months only in special circumstances. However, as shown in the table, in two of the five recently completed investigations, the AD Commission did not complete the investigations within 1 year. Notably, in the Power Transformers Investigation, the AD Commission extended the date for the publication of a SEF 4 times and used 416 days to complete the investigation. In most of the ongoing investigations, there is a high likelihood that the AD Commission will not be able to complete investigations within 1 year. Accordingly, it seems to have become a common practice of the AD Commission to take more than a year to complete investigations rather than to do so only in special circumstances. The current short of resources and capacity of the AD Commission has been a general and ongoing problem and should not be considered to be a special circumstance. It is, therefore, questionable whether the AD Commission's practice can be justified under the AD Agreement. Second, the significant extensions may have created considerable uncertainties to exporters and have significantly impacted on their business. This is especially so in investigations where preliminary measures are imposed. Provisional measures may be imposed by the AD Commission at any time after 60 days of the initiation of an investigation.[107] The longer an investigation lasts, the longer an exporter is to be subject to provisional measures, causing difficulties for exporters to export subject goods to Australia.

Free Trade with China

As shown in the table, all of the exporting countries and their exporters subject to investigations have suffered from the rampant extensions and delays in recent antidumping and countervailing investigations in Australia. Given the frequency of China's involvement in investigations and the large number of Chinese exporters in the relevant industries, the impact of the extensions and delays on Chinese exporters is significant. Having an ongoing free trade initiative with China, Australia should take steps to ensure its antidumping and countervailing system is as efficient as it is designed to be, and does not create undue uncertainties and difficulties that would undermine the enhancement of market access that Australia has committed and China would reasonably expect.

4. CONCLUSION

[107] Section 269TD of the Customs Act.

As one of the few protectionist instruments authorized under the WTO, antidumping and countervailing measures, typically in the form of import duties, have the effect of undermining the outcomes of trade liberalization. For at least a decade, Australia has had an overarching policy goal to promote free trade with China which culminated in the conclusion of the ChAFTA last November. Ironically, only 40 days after the conclusion of the ChAFTA Australia announced another round of reforms of its antidumping system with an aim to serving the interest of (frustrating) Australian industries by strengthening the system and imposing tougher rules on exporters. The major issues relating to Australia's current antidumping and countervailing law and practice discussed in the article have given risen to serious concerns to China. If these issues are not dealt with, they would be likely to become significant obstacles to the promotion of trade liberalization between China and Australia. The conflict between the two policy objectives – trade liberalization with major trading partners and protection of vulnerable domestic industries – is probably an issue with every jurisdiction. In coping with the conflict, "Australia must take care it does not jeopardise its higher goal of free trade with China for the sake of short term protectionism". [108]

[108] Percival, A., "Australia's Irrational Approach to Trade with China", Corrs Chambers Westgarth (13 December 2012), available at http://www.corrs.com.au/thinking/insights/australia-s-irrational-approach-to-trade-with-china/ (visited 22 April 2015).

Appendix A

Extensions of Statutory Timeframes – 13 Recent Investigations

	Investigation	Application	Initiation	Extension of Exporter Questionnaire (Min / Max)	SEF – scheduled date(s)	SEF – publication	Final Report	Assessment of application	Total extension of SEF	Total days of Investigation
Recently completed Investigations										
1.	Deep Drawn Stainless Steel Sinks (China)[109]	31 January 2014	18 March 2014	11 / 19 days	**Original**: 7 July 2014 **1st extension**: 5 October 2014 **2nd extension**: 5 January 2015	23 December 2014	19 February 2015	47 days	170 days	348 days
2.	Quenched and Tempered Steel Plate (Finland, Japan and Sweden)[110]	20 November 2013	8 January 2014	14 / 21 days	**Original**: 28 April 2014 **1st extension**: 28 July 2014 **2nd extension**: 27 August 2014	27 August 2014	5 November 2014	50 days	122 days	302 days
3.	Hot Rolled Structural Steel Sections (Japan, Korea, Taiwan and Thailand)[111]	26 August 2013	24 October 2013	7 / 21 days	**Original**: 11 February 2014 **1st extension**: 12 May 2014 **2nd extension**: 17 July 2014	18 July 2014	31 October 2014	60 days	158 days	373 days

[109] Anti-Dumping Commission, Public Record for Investigation - Case 238, Deep Drawn Stainless Steel Sinks Exported from China, available at http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR238.aspx (visited 22 April 2015).

[110] Anti-Dumping Commission, Public Record for Investigation - Case 234, Quenched and Tempered Steel Plate Exported from Finland, Japan and Sweden, available at http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR234.aspx (visited 22 April 2015).

[111] Anti-Dumping Commission, Public Record for Investigation - Case 223, Hot Rolled Structural Steel Sections Exported from Japan, Korea, Taiwan and Thailand, available at http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR223.aspx (visited 22 April 2015).

	Investigation	Application	Initiation	Extension of Exporter Questionnaire (Min / Max)	SEF – scheduled date(s)	SEF – publication	Final Report	Assessment of application	Total extension of SEF	Total days of Investigation
4.	Wind towers (China and Korea)[112]	5 August 2013	28 August 2013	14 days	**Original**: 16 December 2013 **1st extension**: 4 February 2014	4 February 2014	21 March 2014	23 days	50 days	205 days
5.	Power Transformers(China, Indonesia, Korea, Taiwan, Thailand and Vietnam) [113]	8 July 2013	29 July 2013	14 / 30 days	**Original**: 18 November 2013 **1st extension**: 18 March 2014 **2nd extension**: 16 July 2014 **3rd extension**: 8 September 2014 **4th extension**: 22 September 2014	18 September 2014	2 December 2014	21 days	304 days	416 days
Ongoing Investigations										
6.	Certain PVC Flat Electric Cables (China) [114]	10 October 2014	6 November 2014	28 days	**Original**: 24 February 2015 **1st extension**: 25 May 2015	N/A	9 July 2015 (estimated)	27 days	91 days (as at 22 April 2015)	246 days (estimated as at 22 April 2015)

[112] Anti-Dumping Commission, Public Record for Investigation - Case 221, Wind towers exported from China and Korea, available at http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR221.aspx (visited 22 April 2015).

[113] See above n 86.

[114] Anti-Dumping Commission, Public Record for Investigation - Case 271, Certain Polyvinyl Chloride (PVC) Flat Electric Cables Exported from China, available at http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR271.aspx (visited 22 April 2015).

	Investigation	Application	Initiation	Extension of Exporter Questionnaire (Min / Max)	SEF – scheduled date(s)	SEF – publication	Final Report	Assessment of application	Total extension of SEF	Total days of Investigation
7.	Steel Reinforcing Bar (Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey) [115]	4 August 2014	17 October 2014	20 days	**Original**: 4 February 2015 **1st extension**: 23 March 2015 **2nd extension**: 1 July 2015	N/A	17 August 2015 (estimated)	74 days	148 days (as at 22 April 2015)	305 days (estimated as at 22 April 2015)
8.	Hollow Structural Sections (Thailand) [116]	5 June 2014	21 July 2014	7 / 12 days	**Original**: 10 November 2014 **1st extension**: 6 February 2015 **2nd extension**: 9 March 2015 **3rd extension**: 28 May 2015	N/A	13 July 2015 (estimated)	47 days	200 days (as at 22 April 2015)	358 days (estimated as at 22 April 2015)
9.	Zinc Coated (Galvanised) Steel (India and Vietnam) [117]	30 April 2014	11 July 2014	7 / 14 days	**Original**: 29 October 2014 **1st extension**: 18 March 2015 **2nd extension**: 17 May 2015	N/A	1 July 2015 (estimated)	72 days	201 days (as at 22 April 2015)	356 days (estimated as at 22 April 2015)

[115] Anti-Dumping Commission, Public Record for Investigation - Case 264, Steel Reinforcing Bar Exported from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey, available at http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR264.aspx (visited 22 April 2015).

[116] Anti-Dumping Commission, Public Record for Investigation - Case 254, Hollow Structural Sections Exported from Thailand, available at http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR254.aspx (visited 22 April 2015).

[117] Anti-Dumping Commission, Public Record for Investigation - Case 249, Zinc Coated (Galvanised) Steel Exported from India and Vietnam, available at http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR249.aspx (visited 22 April 2015).

	Investigation	Application	Initiation	Extension of Exporter Questionnaire (Min / Max)	SEF – scheduled date(s)	SEF – publication	Final Report	Assessment of application	Total extension of SEF	Total days of Investigation
10.	Newsprint (France and Korea) [118]	24 March 2014	22 April 2014	14 days	**Original**: 11 August 2014 **1st extension**: 29 August 2014 **2nd extension**: 18 December 2014 **3rd extension**: 6 February 2015	30 January 2015	23 March 2015 (estimated)	31 days	173 days	336 days (estimated as at 22 April 2015)
11.	Rod in Coils (Indonesia, Taiwan and Turkey) [119]	21 February 2014	10 April 2014	13 / 16 days	**Original**: 29 July 2014 **1st extension**: 17 October 2014 **2nd extension**: 15 January 2015 **3rd extension**: 1 March 2015	24 March 2015	15 April 2015 (estimated)	48 days	239 days	380 days (estimated as at 22 April 2015)
12.	PV Modules or Panels (China) [120]	31 January 2014	14 May 2014	7 / 21 days	**Original**: 1 September 2014 **1st extension**: 5 November 2014 **2nd extension**: 5 March 2015 **3rd extension**: 7 April 2015	1 April 2015	19 May 2015 (estimated)	103 days	213 days	371 days (estimated as at 22 April 2015)

[118] Anti-Dumping Commission, Public Record for Investigation - Case 242, Newsprint Exported from France and Korea, available at http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR242.aspx (visited 22 April 2015).
[119] Anti-Dumping Commission, Public Record for Investigation - Case 240, Rod in Coils Exported from Indonesia, Taiwan and Turkey, available at http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR240.aspx (visited 22 April 2015).
[120] Anti-Dumping Commission, Public Record for Investigation - Case 239, PV Modules or Panels Exported from China, available at http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR239.aspx (visited 22 April 2015).

	Investigation	Application	Initiation	Extension of Exporter Questionnaire (Min / Max)	SEF – scheduled date(s)	SEF – publication	Final Report	Assessment of application	Total extension of SEF	Total days of Investigation
13.	Silicon Metal (China) [121]	6 January 2014	6 February 2014	14 days	**Original**: 27 May 2014 **1st extension**: 25 August 2014 **2nd extension**: 24 October 2015 **3rd extension**: 21 February 2015	23 February 2015	7 May 2015 (estimated)	31 days	273 days	456 days (estimated as at 22 April 2015)

[121] Anti-Dumping Commission, Public Record for Investigation - Case 237, Silicon Metal Exported from China, available at http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR237.aspx (visited 22 April 2015).