



Anti-dumping rules and the Australia-China Free Trade Agreement

Introduction

Australia and China are undertaking a joint feasibility study into a possible Free Trade Agreement (FTA). The study is not a precursor to the start of negotiations but rather a basis for identifying trade barriers and finding common ground for their removal.

For China, a recurring issue affecting bilateral trade relations is Australia's anti-dumping rules. Over the last decade, imports from China have been subject to more anti-dumping action than those from any major industrialised or developing country. This Note examines Australia's anti-dumping rules as they apply to China and discusses the likely changes that will result from an FTA with China.

Feasibility study

In October 2003, the Australian Trade Minister announced that both governments would undertake a joint study into the feasibility and benefits of an Australia-China FTA.¹ Initially the joint feasibility study was due to be completed by October 2005 and there was an understanding that the conclusions reached by the study would provide a basis for deciding whether to negotiate. This timetable was later revised and completion of the joint study was set down for the end of March 2005. Significantly, Australia agreed that as a condition to commencing negotiations for an FTA it would recognise China as a market economy.² Later, following a meeting with the Chinese Premier Wen Jiabao, the Trade Minister announced that he anticipated commencing formal trade talks in March 2005 after completion of the feasibility study. In February 2005, the Trade Minister signalled that the announcement of a decision to negotiate an FTA would coincide with the Prime Minister's visit to China in April 2005.³

Australia-China trade and anti-dumping activity

China is currently Australia's second largest export market and third largest source of imports. In 2003–04, trade between the two countries totalled \$25.3 billion, or 11 per cent of

Australia's total merchandise trade, compared to \$6.6 billion, or 4.7 per cent of merchandise trade in 1994–95. Moreover, there has been a fourfold increase in imports from China, from \$3.6 billion in 1994–95 to \$15.3 billion in 2003–04.⁴

In the decade from 1994–95 to 2003–04, eighteen anti-dumping actions were initiated by Australian industry against imports from China (Table 1). This represents 10 per cent of the total number of anti-dumping cases for the period. But surprisingly, anti-dumping actions involved a narrow range of industries, particularly chemicals and petroleum, their associated products and miscellaneous manufacturing (Table 2).

For the previous decade from 1984–85 to 1993–94, two-way trade between Australia and China increased from \$1.4 billion in 1984–85 to \$5.7 billion in 1993–94, with imports from China increasing from \$375 million to \$3.1 billion.⁵ During this period, a total of twenty-six anti-dumping actions were brought against China.

As Table 1 shows, anti-dumping activity by Australian firms against China has declined in spite of China's increasing share of merchandise trade and the growing trade imbalance in favour of China. Although the decline is consistent with the decline in anti-dumping activity overall, China is still a particular target for anti-dumping action (see Figure 1).

Market Economy Status

'Market economy status' (MES) is a term used in relation to anti-dumping. It is used in a World Trade Organization (WTO) related concept and is derived from anti-dumping laws in the United States which establish criteria for an exporting country to meet in order to qualify as a 'market economy' in anti-dumping cases.

According to the WTO definition of dumping, dumping occurs if a product is sold for export at a price below its normal value, i.e. when 'the export price of a product exported from one country to another is less than the

comparable price for the like product when destined for consumption in the exporting country'.⁶ The difference between the export price and normal value is 'the margin of dumping' and under WTO rules a member country can impose anti-dumping duties or securities against the dumped goods to the value of the dumping margin.

Anti-dumping rules provide various methods for calculating the 'normal value' of goods depending on whether the exporting country is a market economy or a 'non-market economy' (NME). But dumping outcomes tend to be less favourable for an exporting country when it is treated as a NME.

MES can be an important concept in bilateral trade relations and a change from NME to MES status can affect trade flows. In the United States, the anti-dumping consequences of being denied MES status are significant and the granting of MES status is often seen as a prelude to support for a country's accession to the WTO.⁷

Australia's anti-dumping rules

In Australia, the main method for calculating normal value is based on the exporter's domestic price. But in non-market economies, the price in the exporter's home market may not be a reliable guide for normal value as the domestic price may be subject to price controls, subsidies or other state intervention. In these circumstances, three methods can be used to calculate normal value. The main one is based on the domestic price in a designated third country (or surrogate country). The other options are – a constructed price based on the production costs in the surrogate country, or the price in the Australian market.

Although anti-dumping legislation does not define a NME, the term is used to describe those countries that fit subsection 269TAC(4) of the *Customs Act 1901*. This section allows the Minister to use the above methods to calculate the normal value of a good where the government of an exporting country 'has a monopoly, or substantial monopoly, of the trade of the country' and 'determines or

Table 1: Anti-dumping and countervailing cases, initiations by trading region and country, 1984–85 to 1993–94, 1994–95 to 2003–04

Region/country	1984–85	1993–94	10-year period	Per cent ^a	1994–95	2003–04	10 year period	Per cent ^a
North America	7	2	46	8	-	-	9	5
Canada	-	-	7	1	-	-	2	1
United States	7	2	39	7	-	-	7	4
European Union^b	19	11	158	29	2	5	49	28
Austria	-	1	5	1	-	-	2	1
Belgium/Luxembourg	-	-	13	2	-	-	4	2
Finland	1	-	5	1	-	-	3	2
France	1	1	21	4	-	-	3	2
Germany	8	1	30	6	-	-	9	5
Italy	4	2	25	5	2	2	9	5
Netherlands	-	3	13	2	-	-	3	2
Sweden	1	-	5	1	-	-	5	3
United Kingdom	2	2	21	4	-	-	7	4
Other EU	2	1	20	4	-	3	4	2
Asia	28	27	220	41	2	7	92	52
China	1	2	26	5	1	3	18	10
Hong Kong	-	2	9	2	-	-	1	1
India	-	-	6	1	-	-	4	2
Indonesia	-	1	12	2	1	1	16	9
Japan	9	2	28	5	-	1	5	3
Malaysia	1	3	15	3	-	-	7	4
Singapore	2	6	22	4	-	-	5	3
South Korea	6	5	41	8	-	2	15	9
Taiwan	7	5	41	8	-	-	9	5
Thailand	2	1	20	4	-	-	12	7
Other	19	11	118	22	2	-	26	15
Saudi Arabia	-	-	4	1	-	-	2	1
South Africa	1	6	13	2	2	-	8	5
All other countries	18	5	101	19	-	-	16	
Total	73	51	542	100	6	12	176	100

- Nil. ^a The sum of percentages for the individual countries may not add to the regional totals due to rounding. ^b Countries not members of the EU before 1994-95 have been included for comparative purposes. Source: Australian Customs Service, *Annual Reports*.

substantially influences the domestic price of goods in that country’.

Using surrogate country information instead of domestic prices increases the likelihood of a positive dumping finding because the third country is invariably a higher cost producer.

In the case of market economies, subsections 269TAC(1), (2) and (6) narrow down the range of possible options for calculating normal value. The preferred method is the price in the exporter’s domestic market. When this cannot be used because there are not sufficient domestic sales, two alternatives are available – the price charged by the exporter in another country, or a constructed price based on the combination of the exporter’s costs of production, selling expenses and a profit margin. In the absence of price information or other information about the exporter’s production costs, the last option is a calculation based on the best available information.

For an exporting country deemed to be an ‘economy in transition’ (EIT), there are yet again different ways of calculating normal value. EIT status is defined by subsection 269T(5C) of the *Customs Act 1901*:

A country has an *economy in transition* at a time if:

(a) before the time, the Government of the country had a monopoly, or a substantial monopoly, of the trade of that country and determined, or substantially influenced, the domestic price of goods in that country; and

(b) at the time, that Government does not:

(i) have a monopoly, or a substantial monopoly, of the trade of that country; or

(ii) determine, or substantially influence, the domestic price of goods in that country.

Australia does not maintain a list of NMEs or EITs as such, instead the Customs Regulations (Schedule 1B) contains a list of 134 countries that are exempt from the EIT provisions. Exporting countries not listed in the Regulation are assessed by Customs on a case-by-case basis to determine whether or not the goods in question are produced under market conditions. Customs Regulation 183 sets out the criteria for assessment for EITs.⁸

Normal value is calculated in the same way as for market economies,

but with two exceptions – if normal market conditions do not prevail, or the exporter fails to respond to the special Exporter’s Questionnaire.

In practical terms, the onus of proof is on the exporting country to show that market economy conditions operate in setting the domestic price. If market conditions cannot be demonstrated, then normal value is calculated as if the exporting country were a NME. Subsection 269TAC(5D) allows the Minister to determine normal value ‘having regard to all relevant information’.

What makes it possible for Australia to treat China as an EIT are provisions in China’s protocol of accession to the WTO requiring member states to give Chinese exporters the opportunity to show that market conditions prevail in the industry concerned. But under its accession protocol, China also agreed that WTO member states could treat it as a NME until 2015.

If Australia were to grant MES to China, this would require that China no longer be treated as a NME or EIT for all products originating in China. Procedurally it would mean that prior to an announcement of a decision to negotiate an FTA, the Minister would

add China to Schedule 1B of the Customs Regulations.

How will MES affect anti-dumping investigations?

There is not a significant difference between the way normal values are calculated for EITs, compared to market economies except where market economy conditions do not prevail, or if the exporter does not respond to the special questionnaire. Even in the case of market economies, under certain conditions, normal value can be calculated using surrogate third country information, or other methods unrelated to the exporter's domestic price. But typically these methods, which are the least favourable to the exporter, are the last options. But in the case of EITs, if market conditions do not prevail, or the exporter chooses not co-operate with Customs, there is only the fall-back option in subsection 269TAC(5D).⁹

In practice, Customs is not able to decide whether an exporting country is an EIT and which method to use to calculate the normal value until an investigation has commenced and it has received price information from the exporter. Prior to this, it has no way of knowing if the exporting country is an EIT. From a procedural standpoint, Customs may only decide if a *prima facie* case of dumping exists on the evidence provided in an anti-dumping application. A *prima facie* finding of dumping will depend on the standard of proof of dumping. Where an exporting country is not a market economy and EIT status has not been determined, it becomes a question of accepting a low or high standard of proof.

Silicon exported from China

Silicon exported from China is the most recent anti-dumping case against China and illustrates the methodology for calculating normal value and how China's MES status would affect these processes.

In its anti-dumping application, Simcoa, the Australian manufacturer of silicon, alleged that imports from China were at dumped prices and had substantially undercut its own prices. As evidence of the dumping, Simcoa provided two normal values – the domestic price in China (adjusted for costs) and a constructed normal value based on the cost of production in South Africa (substituting Simcoa's costs for selling and administration expenses).¹⁰

In assessing the application, Customs was not able to verify the information

Table 2: Anti-dumping initiations^a 1994-95 to 2003-04

Commodity	
Access floor panels	Shelving kits
Glyphosate ^b	Carpet gripper
Laminated glass	Dichlorophenoxy-acetic acid
Toughened glass rectangular panels	Sodium metabisulfite
Gun rovings	Steel ladders
Cotton blankets	Hot rolled plate steel
Picture frames	Uncoated paper
Portland cement	Silicon
Disk brake rotors	

^a Anti-dumping actions initiated by industry. Each commodity is counted as a separate anti-dumping action.

^b Separate actions were initiated in 1995-96 and 2000-01.

Source: Productivity Commission, *Trade and Assistance Review*, Annual Report Series.

regarding adjustments to the selling price (such as Value Added Tax and delivery/export charges) and revised the cost estimates in the application. Without reference to the constructed normal value based on production costs in South Africa, the evidence of dumping (using only the domestic price in China with the revised costs) was less clear-cut. The application was nevertheless accepted as having demonstrated *prima facie* that silicon exports were at dumped prices and an investigation was initiated.

In the subsequent investigation and after interviews with the exporters, Customs was able to determine that market conditions existed and EIT provisions could be applied to China. Accordingly, normal value for silicon was assessed by Customs on the basis of domestic prices in China adjusted for selling costs and other expenses.¹¹ Customs found evidence of dumping, with dumping margins ranging from 3.7 per cent to 8.1 per cent (much less than was alleged in the application.) Dumping margins were just above the 2 per cent *de minimis* margin required by WTO rules before anti-dumping measures can be imposed. Customs also found material injury to Simcoa caused by the dumping (loss of sales and profitability) and recommended the imposition of dumping securities. EIT provisions have been in use since ministerial guidelines were released in December 2000. Significantly, in the majority of cases, normal values were calculated by Customs on the basis of domestic prices in China.

If Australia were to accept MES for China, its new status would come into play in the *prima facie* situation when an industry first alleges dumping. The burden of proof of dumping would be much higher than a calculation based on third country production costs.

Why is China seeking MES?

China is not currently recognised or categorised as operating a market economy under WTO rules. Hence, there are few incentives for China to pursue MES through the WTO. The trade advantages for China in having MES come from bilateral agreements.

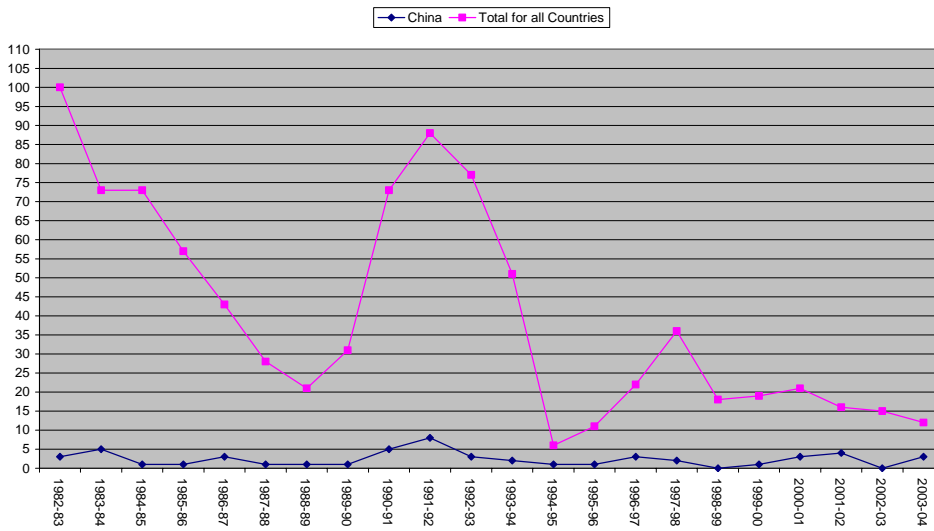
From a regional trade perspective, China's status as a market economy will make it more attractive to source product from China, as MES status will apply to all goods originating in China. In the context of Australia's anti-dumping rules, MES status for China will raise the burden of proof needed to initiate an anti-dumping investigation and result in much less dumping found against China.

A 2002 study by the National Bureau of Economic Research (NBER) noted that China's trade policy was geared to improving market access for its manufactured exports. According to the NBER study, the imperative for China since its accession to the WTO is to negotiate regional agreements:

China, like other large powers in the trading system (the US and the EU) has clear incentive to commit to multilateral disciplines like the WTO as a way of gaining non discriminatory access to large markets and head off discrimination against her either in both these or smaller third country markets by fellow large powers. But closer to home (and as with the US and EU) China has equally clear incentive to negotiate supplemental regional agreements which deal with interests in local markets in ways which go beyond WTO disciplines. The US with NAFTA, and the EU with accession and other agreements have encountered similar incentives with similar results.¹²

So far China has negotiated agreements, or initial frameworks of

Figure 1: Anti-dumping initiations 1982-83 to 2003-04



Source: Australian Customs Service, *Annual Reports*

agreements with Hong Kong, Macao, ASEAN, Australia and New Zealand, which granted MES status to China in April 2004. Other APEC countries to follow New Zealand's decision to grant MES are Malaysia, Singapore and Thailand. Discussions on possible FTAs with India, South Africa, the Gulf Cooperation Council countries, Chile and South Africa are already underway.

Australia-China FTA

An FTA with China would require Australia to reduce tariffs on Chinese goods to zero and eliminate over time all non-tariff trade barriers restricting Chinese imports (such as quotas, local product standards and practices).

Australia's main merchandise exports to China are minerals (principally iron ore), metals and farm products (wool). Meanwhile, Australia imports a large range of manufactured goods, such as computers, electrical goods, furniture, toys and a range of plastics. Tariffs in these industries are already low, at 5 per cent (the general rate of tariff) or below.

The largest category of manufactured goods is textile, clothing and footwear (TCF) products which represent one quarter of imports from China. For the two industries with the highest tariffs (the automotive and TCF industries), a preferential tariff rate would apply until tariffs were phased down to zero, most likely by 2015 or 2020. But both countries would retain their WTO rights to anti-dumping action.

A survey of Australian manufacturing by the Australian Industry Group in 2004 revealed a strong fear of an FTA with China:

A common theme throughout the company interview process was the disparity in cost bases between the two countries (lack of level playing

field), making competition unfair. Companies pointed out that they believed China was not a market economy and as a result able to keep costs artificially low. Low labor costs, low environmental protection costs, subsidized energy inputs, subsidized infrastructure costs, subsidized freight, lower overheads (no superannuation payments, occupational health and safety costs etc) were all cited as key cost advantages for China. Coupled with China's enormous scale of manufacture and exponential growth in production plant infrastructure and increasing sophistication of production technology, the scene is only set to get more challenging.¹³

Conclusions

It seems certain that Australia will grant China MES as a prelude to the start of formal trade negotiations for an FTA. Understandably, Australia's minerals and energy, and steel sectors, as well as farming groups are strongly supportive of an FTA with China. Not surprisingly, the manufacturing sector generally, the plastics and chemical industry, and small producers remain unconvinced and fearful.¹⁴ Accepting China as a market economy will put the spotlight on the negotiations and strengthen Australia's case in arguing for the exemption of those sectors that do not meet the market economy test and for strengthening the safeguards regime to ensure an even playing field for Australian manufacturing.

1. See Media Release, '[Australia-China Trade and Economic Framework](#)', 24 October 2003.
2. [Australia-China FTA Joint Feasibility Study](#) 11 August 2004.

3. *The Weekend Australian* "Dumping rules are planned for China", 13 February 2005.
4. *Composition of Trade Australia, 1994-95, 2003-04*, Department of Foreign Affairs and Trade.
5. *Direction of Trade 1981-82 to 2001-02*, Department of Foreign Affairs and Trade.
6. See Article 2, of the [Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994](#).
7. *The Economist*, 'Time to Trade', 13 June 2002.
8. See [Regulation 183](#). The European Union, unlike the United States, re-classified China as an 'economy in transition' in 1998 and uses a set of criteria to establish if the Chinese exporter is operating within a market environment.
9. There are some minor procedural differences that are referred to in Andrew Stoler, [Market Economy Status for China: Implications for Antidumping Protection](#), 13 August 2004.
10. See Australian Customs Service, IR No. 81, [Certain silicon exported from China](#), May 2004, pp. 10-11.
11. See Australian Customs Service, PAD No. 81, [Silicon from the People's Republic of China](#), October 2004.
12. [China's New Regional Trade Agreements](#), NBER Working Paper 10992, December 2004, p. 1. See also [China's Post Accession WTO Stance](#), NBER Working Paper 10649, August 2004.
13. [Australia-China Free Trade Agreement Feasibility Study](#), Australian Industry Group (AIG), July 2004, p. 15 and [Australian Manufacturing and China](#), AIG, August 2004, pp. 32-36.
14. See Plastics and Chemicals Industries Association, [China - Market Economy Status - Implications for Anti-Dumping Remedies](#), July 2004.

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