

Questions on Notice

Senate Economics Legislation Committee

Inquiries into the Customs Amendment (Anti-dumping Measures) Bill 2011 and
Customs Amendment (Anti-Dumping) Bill 2011

4 May 2011, Canberra

AUSTRALIAN INDUSTRY GROUP

Question 1

Hansard Reference: Pages 42-43

Senator XENOPHON: If I can go to—you may want to take this on notice—a number of submissions from government. I cannot talk about DFAT's submission at this stage. There are submissions from JELD-WEN, the Law Institute of Victoria and the Law Council of Australia which have said that this could be in breach of our international obligations under the WTO. Could you comment on that and perhaps make reference to their submissions—I think they made reference to article 3.1 and to article 11 as well. Earlier there was a very interesting question to a previous witness from Senator Eggleston. I am sure Senator Eggleston will correct me if I am wrong but basically the question was: which status do you give these rules, these WTO rules, these GATT rules? Are they a guide? Are they almost like a code of conduct rather than black-letter law and are we taking them too literally compared to other countries?

Mr Willox: Certainly, if I may say so, I think you could take the impression away that Australia has taken a very pure view.

Senator XENOPHON: Fundamentalist, some would say, Mr Willox.

Mr Willox: Yes, some may say that, but if there is a view it has certainly been very much a black-letter law view of the WTO anti-dumping agreement. I would like to see in detail what some of the government departments have said. We have always said that we have to be broadly WTO compliant, because that will then open up the option for Australia or Australian companies or organisations to be taken to the WTO. That may be an argument that we have to have in some cases to establish exactly what is intended, basically to test this agreement. It is often a matter of interpretation. We have been very clear as we framed our response to this legislation to ensure that as broadly as possible we are compliant with what we would take to be the intent of the WTO agreement; but as far as we have made clear there is very little here that we see as being far outside the reaches of any WTO guidelines.

Answer

The relevance of WTO rules and case law to domestic legislation is clearly open to interpretation. There is great variance across approaches taken by our trading partners. There are some who take the approach that national legislation is bound within what WTO rules explicitly permit. For example, if the rules don't specify that you can hold a public hearing on a Tuesday, then you cannot. However, this interpretation is not practical or within the spirit of the Agreement. The Committee may wish to consider the approach taken by some, that is, an importing country and its administering authority can do anything except what they have expressly agreed not to do under the Agreement.

Differences in the way that the Agreement is implemented domestically across the WTO membership are clearly illustrated. The Committee may wish to consider a comparative study of this effect to illustrate that there is more than one way to have a WTO consistent anti-dumping regime, some providing more effective assistance to local industry in addressing dumping than others.