

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

LAW COUNCIL OF AUSTRALIA AND LAW INSTITUTE OF VICTORIA

Question 1

Hansard Reference: Page 22

Mr Percival: I think in the Law Council's submission—I cannot remember on which bill—they found that the manner in which they assessed whether the measures should be continued, the test, in the US was wrong; it was inconsistent. It regularly happens. I do note that the US does actively pursue antidumping. They are currently looking at reforming their system. I have got articles on it which I have not read, but they seem to be moving probably closer to our system.

Mr Hudson: But they are known as being more aggressive. They have got a much bigger administrative infrastructure, which reviews US trade relations with a variety of countries and I think it is probably fair to say that they more aggressively pursue what they see to be issues of concern for the local industry.

Senator XENOPHON: So it is a resources issue in part.

Mr Hudson: It is a resources issue and also an attitude issue.

Mr Percival: But also you are finding that China and India are increasingly high users of antidumping in the world today, so everybody is getting into the game.

Senator XENOPHON: When you say that these are in breach under the articles of the WTO agreement, are you referring to case law as such or are you saying that prima facie it could be? It has not been tested, though, has it?

Mr Percival: It depends on which particular ones that you are looking at. As you said, regarding the one dealing with provisional securities, we are just looking at the article in the WTO antidumping agreement and what it says. I am not certain whether there is any WTO jurisprudence on that. In relation to article 3, we have referred to two WTO cases on that. If the Senate wants me to go into further detail about those, I am more than happy to.

Senator XENOPHON: I would find it useful. You have referred to the dynamic random access memory semiconductors case.

Mr Percival: From Korea, I think.

Senator XENOPHON: From Korea. That is one of the authorities that you referred to.

Mr Percival: I am more than happy to paraphrase the reasoning in those cases, at a panel level. The panel then gets appealed to the WTO. Panel body reports go from anywhere to 200 to 400 pages. The appellate body reports are usually shorter; 100 to 200 pages.

Senator XENOPHON: A precis would be terrific. We would thank you for that.

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Mr Hudson: They usually issue a summary, don't they? Just the highlights.

Mr Percival: To wade through one of those is not easy. But if you would like some further comment on that, I can provide it.

Senator XENOPHON: Yes.

Answer: Attached is a précis on the WTO Panel's decision on 'United States – Anti-dumping Duty on Dynamic random Access Memory Semiconductors (DRAMs) of One Megabit or above from Korea' that was prepared by the WTO Secretariat. Also attached are other précis of decisions of the WTO Appellate Body that may be of interest to the Committee.

The WTO Secretariat prepares one page précis for most decisions of the WTO Panel and the WTO Appellate Body and they are available with the complete reports on the WTO website:-

Appellate Body: http://www.wto.org/english/tratop_e/dispu_e/ab_reports_e.htm

Panel:

http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A6#selected_agreement

Also, the Committee may be interested to learn that the WTO has prepared and published a document titled "WTO Analytical Index" that summarises WTO jurisprudence on provisions in WTO Agreements. The Index is available on the WTO website and that part of the Index for the WTO Anti-Dumping Agreement is at:

http://www.wto.org/english/res_e/booksp_e/analytic_index_e/anti_dumping_e.htm

That part of the Index dealing Article 3 of the WTO Anti-Dumping Agreement, the injury analysis, commences at around paragraph 100 of the Index.

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Question 2

Hansard Reference: Pages 24-25

CHAIR: Mr Percival, you mentioned that in the United States several processes and decisions were held to be against WTO requirements. Did that result in the overturning of those decisions in the United States?

Mr Percival: The WTO process is that a complaint is lodged by another country saying your systems and processes are not WTO compliant. If the dispute resolution body in the WTO concludes that that is correct and those processes, procedures or legislation are not WTO compliant then typically the panel, the appellate body who has heard the case, will say, 'This is what you need to do to bring the processes and legislation'—whatever it might be—'into compliance,' and there is an obligation to do that. If they do not do that then ultimately there can be sanctions, which can take the form of awards of compensation or trade sanctions. This is part of what you are seeing, not in this area, in the Boeing-Airbus dispute.

Mr Hudson: Australia has been subject to WTO resolution issues that affected the apples from New Zealand—the fire blight issue—where they ruled that our measures were not consistent with WTO rulings. They told us to go away and do it in a way that is consistent.

Mr Percival: Flowing from that, one would expect that having had a WTO ruling saying that our procedures in the DRAMS case were non-WTO compliant, you would think it would be incumbent upon the US to not only legislate to change its rules but also revisit that particular case.

CHAIR: Review the decision?

Mr Percival: Yes, because clearly it does not stand up.

CHAIR: It would be very disruptive for the industry involved. It would be a very long period of uncertainty for them while the case was at the WTO and then to see what the government's response would be.

Mr Hudson: You are correct in mentioning the government response because ultimately a political aspect comes into it as well.

Mr Percival: It can do. The US has been playing around with zeroing for a long time. All they really need to do is to get rid of it and they would save themselves a lot of time and money.

CHAIR: It is probably a bad political time at the moment.

Mr Percival: The commentators in the US are suggesting that they scale back some of their anti-dumping.

Senator XENOPHON: If you have any information on that commentary it might be useful.

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Answer

The article in question was one titled "Beyond Exports: A Better Case for Free Trade" by Daniel Ikenson and Scott Linicome for the Centre for Free Trade Studies: see attached.

Also attached are some other articles addressing anti-dumping that may be of interest to the Committee including one on the European Commission's attempt to reform its anti-dumping system.