

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

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

Question 1

Hansard Reference: Page 6.

Mr Baxter: I should just clarify something that I just said—and I am happy to do it in public—relating to the issue of trade unions. I said there had been a [*sic*, no] finding in a WTO dispute settlement case about that. That, as I understand, is correct. The issue has been raised in one dispute, which was the EC bed linen dispute

Senator XENOPHON: What was the name of that dispute?

Mr Baxter: EC bed linen. We can provide further details about that if the committee wishes.

CHAIR: Thanks, Mr Baxter. I think that would be useful.

Senator CAMERON: Chair, given that this is on the public record I think we should contextualise it a little bit, because people will be wondering what that is about. This was about the trade union movement being a party to the legislative process. Would that sum it up? Is that correct?

Mr Baxter: An interested party.

Senator CAMERON: But named in the legislation?

Mr Baxter: Yes, that is right.

Answer:

In the dispute *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*,¹ (in which India had taken dispute resolution action against the European Communities), there was no finding that trade unions could, or could not, participate in an anti-dumping investigation. However, the Panel reported that India had asserted that in assessing the level of support for the relevant application for anti-dumping duties, the European Communities had wrongly considered the support expressed by producers' associations on behalf of their members.² The Panel reported that the European Communities had argued that that the phrase “expressed by domestic producers” in Article 5.4 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994³ may include expressions of support by a trade association.⁴ The Panel reported that: “In the European Communities' view, footnote 14 to Article

¹ WT/DS141/R.

² Paragraph 6.202 of the Panel's report.

³ Article 5.4 provides, in part, that “An investigation shall not be initiated ... unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry”.

⁴ Paragraph 6.205 of the Panel's report.

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5.4, which allows trade unions to express support on behalf of their members, also undermines India's arguments".⁵

Question 2

Hansard Reference: Page 8.

Senator CAMERON: Mr Baxter, regarding the Thai free trade agreement—you look perplexed.

Mr Baxter: It is a bit out of my remit but—

Senator CAMERON: Is it?

Mr Baxter: I can try and take something on notice, if you like.

Senator CAMERON: You might like to take these on notice: have there been any complaints of dumping since the signing of the Thai free trade agreement; were there any complaints of dumping before signing the Thai free trade agreement; has the Thai free trade agreement resulted in injury to Australian manufacturing; and what are the terms of trade between Australia and Thailand in relation to the Thai free trade agreement? The econometric modelling that was done by your department on the Thai free trade agreement said that there were going to be huge benefits—can you advise us if those benefits have been delivered? I may have some questions I will put on notice in relation to trade agreements. We are now talking about unilateral trade agreements. What are the implications of unilateralism by Australia on trade in relation to dumping?

Mr Baxter: Sorry, on that one: can I clarify what a unilateral trade agreement is?

Senator CAMERON: You had better ask the minister; he just announced it two weeks ago.

Mr Baxter: You are talking about the reference to unilateralism in the statement?

Senator CAMERON: Yes. I would assume if you do an agreement you say, 'We're going to disarm but you can keep up some of your buyers [*sic*, barriers].' That is a unilateral free trade agreement. We have decided we will unilaterally reduce barriers but the trading partner does not have to. Is that what you understand unilateralism to be?

Mr Baxter: I hesitate to comment on that. That is well beyond my remit, so I would have to take that on notice.

Senator CAMERON: I would like you to have a look at that and any implications that those free trade agreements and unilateralism in free trade negotiations we have on dumping.

Mr Baxter: Okay. Can I just comment? A number of your initial questions are relating to complaints about dumping before and since the Thai free trade agreement and are issues on which Customs, I

⁵ Footnote 80 to the Panel's report.

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think, would be better placed to advise than we would. A number of your questions are areas within DFAT's portfolio responsibility and I am sure we can—

Senator CAMERON: Can I then ask Customs to take on board any of the issues that are relevant to them because I do not have the—

Mr Baxter: We can consolidate it.

Mr Johannes: We can advise you.

Answer:

“What are the terms of trade between Australia and Thailand in relation to the Thai free trade agreement?”

The balance of trade between Australia and Thailand for the two years prior to the entry into force of the Australia-Thailand FTA (on 1 January 2005) and for the period after its entry into force is summarised in the following table:

Australia's trade with Thailand (A\$m)

	2003	2004	2005	2006	2007	2008	2009	2010
Total Merchandise Exports	2,252	3,060	4,129	4,280	4,417	5,332	4,236	5,854
Total Merchandise Imports	3,605	3,771	4,812	6,258	7,889	10,151	11,627	11,005
Total Two-way Merchandise Trade	5,857	6,831	8,941	10,538	12,306	15,483	15,863	16,859
Balance on Merchandise Trade	-1,353	-711	-683	-1,978	-3,472	-4,819	-7,391	-5,151
Total Service Exports	645	627	662	697	819	935	1,070	1,015
Total Service Imports	650	867	912	1,209	1,621	2,055	2,225	1,955
Total Two-way Services Trade	1,295	1,494	1,574	1,906	2,440	2,990	3,295	2,970
Balance on Services Trade	-5	-240	-250	-512	-802	-1,120	-1,155	-940
Total Exports	2,897	3,687	4,791	4,977	5,236	6,267	5,306	6,869

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Total Imports	4,255	4,638	5,724	7,467	9,510	12,206	13,852	12,960
Total Two-way Trade	7,152	8,325	10,515	12,444	14,746	18,473	19,158	19,829
Balance on Total Trade	-1,358	-951	-933	-2,490	-4,274	-5,939	-8,546	-6,091

“The econometric modelling that was done by your department on the Thai free trade agreement said that there were going to be huge benefits—can you advise us if those benefits have been delivered?”

There has been significant growth in two-way trade since the implementation of the Thailand-Australia Free Trade Agreement (TAFTA); 17% per year, up from 11% in the five years prior to TAFTA. Thailand is now Australia’s 9th largest two-way trading partner and 2nd largest two-way trading partner in ASEAN.

TAFTA has provided benefits to Australia and has been an important factor in contributing to significant trade growth. An average of 94% per cent of tariff lines are now at zero (both ways) under TAFTA. Two-way trade (goods and services) grew to \$19.8 billion in 2010, up from \$8.3 billion in 2004 (the last calendar year before TAFTA came into force). Australian merchandise exports to Thailand have grown by over 40% since TAFTA came into effect in 2005. Australian services exports to Thailand have experienced annual trend growth of 13.5% from 2005-09, up from 4.3% the five years prior to TAFTA.

There are also a broad range of benefits to Australian consumers and Australian businesses from TAFTA, including: a greater choice of competitive priced consumer goods; market access opportunities; cheaper, faster and more certain export clearance arrangements; and access to cheap intermediate inputs.

“What are the implications of unilateralism by Australia on trade in relation to dumping? ... Yes. I would assume if you do an agreement you say, 'We're going to disarm but you can keep up some of your buyers [sic, barriers].' That is a unilateral free trade agreement. We have decided we will unilaterally reduce barriers but the trading partner does not have to. Is that what you understand unilateralism to be?... I would like you to have a look at that and any implications that those free trade agreements and unilateralism in free trade negotiations we have on dumping.”

The Gillard Government's Trade Policy Statement – ‘Trading our way to more jobs and prosperity’ – establishes unilateralism as one of the five principles guiding Australia’s trade policy. The Government’s view is that pro-competitive domestic economic reform benefits Australia, including by increasing prosperity over time. Because it is beneficial, such reform should be pursued unilaterally regardless of whether other countries are reforming their own economies.

The Trade Policy Statement does not include any reference to anti-dumping policy. At present, the most important reference point for Australia’s anti-dumping regime is the WTO legal framework which provides the key disciplines on anti-dumping that WTO members must comply with.

This is consistent with the Trade Policy Statement which notes the importance of the WTO to Australia’s trade policy and interests and reaffirms our long standing support of the WTO.

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There is nothing in the Trade Policy Statement which would limit Australia's ability to make changes to its anti-dumping policy on a unilateral basis, but in a manner consistent with the relevant WTO disciplines.

"Has the Thai free trade agreement resulted in injury to Australian manufacturing?"

In the two new anti-dumping investigations conducted by the Australian Customs and Border Protection Service in respect of goods from Thailand since entry into force of TAFTA, Customs has not found that Thai goods have caused any material injury to the Australian industry.

The remaining questions

DFAT refers to the answers provided by Customs and Border Protection in relation to the remaining questions.

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Question 3

Written

Senators HURLEY and EGGLESTON asked:

Government's Bill — Customs Amendment (Anti-dumping Measures) Bill 2011

In their submission, the Law Council and Law Institute of Victoria suggest that the bill's requirement for a revocation review notice to be published before the CEO of Customs can recommend revocation to the Minister, or before the Minister can revoke the measures, would be inconsistent with Australia's WTO obligations. The submission considers, based on WTO rulings, 'the relevant authorities have no discretion in whether or not to consider whether the measures should be revoked. Rather the authorities are obliged to consider whether the measures remain necessary to offset dumping and, if so, to what extent'.⁶

- a) Does DFAT consider that the provisions of the bill are compliant with Australia's WTO obligations? Why/why not?
- b) Should every review of measures involve a review of whether the measures remain warranted? Why/why not?

Answer

DFAT refers to the answers provided by Customs and Border Protection in relation to this issue.

⁶ Law Council of Australia and Law Institute of Victoria, *Submission 6*, p. 3.

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Question 4

Written

Senators HURLEY and EGGLESTON asked:

Private Senator's Bill – Customs Amendment (Anti-Dumping) Bill 2011

- a) If the amendments proposed in the Customs Amendment (Anti-Dumping) Bill 2011 were enacted, are they likely to impact the number of dispute cases brought against Australia?
- b) Are there currently any reviews being undertaken of anti-dumping and countervailing systems on an international level? Are there WTO negotiations on foot related to anti-dumping and countervailing systems?

Answer

- a) DFAT considers that there is a significant risk that Australia could be subject to dispute settlement action at the WTO if it enacted the proposed amendments.
- b) The only "review" of anti-dumping and countervailing systems on an international level that DFAT is aware of is the WTO Doha Development Agenda ("Doha Round") which includes a mandate to clarify and improve the existing disciplines under the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures while preserving the basic concepts and effectiveness of the rules. Well over 150 proposals for amendments to these Agreements have been tabled by WTO Members. Draft texts from the Chairs of the Rules Negotiating Group were issued in November 2007 and December 2008. A further revised draft text on anti-dumping as well as commentary on a number of sensitive issues was included in the Chair's report of 21 April 2011.

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Question 5

Written

Senator EGGLESTON asked:

In what respects does the administration of anti dumping rules as practised in the United States and Canada differ from the practice and methods used in Australia?

Answer

DFAT refers to the answer provided by Customs and Border Protection in relation to this issue.