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 CUSTOMS AND BORDER PROTECTION SERVICE

Question 1

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.' 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 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.

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Answer

- The Thailand-Australia Free Trade Agreement (TAFTA) entered into force on 1 January 2005.
- Articles 206 and 207 in Chapter 2 – Trade in Goods of TAFTA (Attachment A) relates to dumping and subsidies:
    - Article 206 (Dumping) provides for both countries to follow the anti-dumping rules and procedures provided for in the World Trade Organization (WTO) Anti-Dumping Agreement.
    - Article 207 (Subsidies) confirms rights and obligations under the WTO Agreement on Subsidies and Countervailing Measures.
- TAFTA creates opportunities for Australian industry. Some Thai tariffs would otherwise be as high as 200 per cent, so utilising TAFTA gives Australian products a competitive advantage.
- As TAFTA does not impose any new or additional obligations on Australia in relation to administering the anti-dumping and countervailing system, it is unlikely to have directly affected the number of investigations initiated or measures imposed on allegedly dumped or subsidised goods exported to Australia from Thailand.
- There was a slight reduction in the number of dumping investigations initiated when TAFTA came into force, with 4 new investigations initiated in the 3 years before, and 2 new investigations initiated in the 3 years after.
- Generally, all free trade agreements, including TAFTA, which Australia has entered into confirm our WTO rights and obligations and do not reduce industry's access or eligibility to seek redress if dumping occurs. The only exception to this is Australia's free trade agreement with New Zealand which does not allow for anti-dumping action by either party (reflected in s.269TAAA of the *Customs Act 1901*).

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Question 2

Hansard Reference: Page 10

Senator XENOPHON: ...Manufacturers have put to me—and I am sure that this is a view shared by unions—that there is an increased need for improving resourcing for investigations. What resources are set aside for investigations of these matters?

Ms Pitman: We have a branch that is dedicated to this, the trade measures branch. It has existed for many years. It has a number of units of personnel who are dedicated to operational investigation work. Geoff Gleeson is one of the directors in charge of one of those units and he has extensive experience in leading investigations. We have other units within the branch that are there to support and help to develop capability in our investigators.

Senator XENOPHON: We are running out of time. On notice, can you let us know what the resources are, what the budget is and whether it has changed over the years. The other issue is that it has been put to me by industry that the investigating team should be required to engage an industry subject matter expert on the team. Is that the case at the moment?

a) What are TMB's resources?
b) What is TMB's budget and how has it changed over the years?
c) Is the investigation team required to engage industry subject matter experts?

[This response also answers questions:
3 c) How much does TMB spend on forensic accounting?
6 d) In this financial year to date, and in the past two financial years, in how many investigations and reviews did Customs consult with independent experts? What proportion of total investigations and reviews is this?
9 a) How many staff work in the Trade Measures Branch? What has been the trend in the number of staff in the Trade Measures Branch over recent financial years?
9 b) On average, how many staff members are involved in a typical investigation? ,and
9 c) How does Customs mitigate resource constraints? Does Customs rely on staff outside of the Trade Measures Branch? How often? Do they have the necessary expertise?, and
9 d) In this financial year to date, and in the past two financial years, how much did Customs spend on consulting independent experts in anti-dumping investigations?]

Answer

a) What are TMB's resources?

- As at 24 May 2011, the Trade Measures Branch had a staff of 33 members, comprised of:
    - 19 operations staff members conducting anti-dumping investigations (including reviews of measures, continuation inquiries and duty assessments); and
    - 14 operational support staff members providing quality assurance, policy, capability development, industry liaison and engagement, management of administrative and judicial review, systems and knowledge management, corporate governance and monitoring compliance with anti-dumping and countervailing measures.
- Recent recruitment exercises have been successful, with various positions filled in both the investigations and support areas.

- Further recruitment is currently underway. The Trade Measures Branch is currently recruiting with the aim of increasing overall staffing numbers and improving the existing capability in such fields as accounting, law and economics.
- The number of staff members in the Trade Measures Branch has gradually declined since 2008/09. The yearly average Full Time Equivalent (FTE) Customs and Border Protection officers level 1-5 for the Branch in this and the past 2 financial years, is as follows:

Period	Yearly average FTE
2010/11 (to Apr 11)	29.2
2009/10	30.4
2008/09	33.2

- The typical number of resources required to manage a simple anti-dumping investigation is three investigations staff. The typical number of resources required to manage a complex anti-dumping and countervailing case (which would typically involve investigations into multiple countries) is five investigations staff. Additional resources including support staff from within the branch are brought into the team at certain times during an investigation to undertake domestic and international verification visits. Independent experts may also be engaged in various areas of expertise to assist with analysis of issues during a complex investigation.
- The recent increased level of anti-dumping and countervailing activity is being managed within existing resources using a number of strategies including flexible deployment of staff and, where necessary, seeking extensions to the statutory investigation timeframe of 155 days, as allowed by the legislation.
- While some of Australia's investigations are not being completed within 155 days, in general, they are still being completed within shorter timeframes than other jurisdictions.

b) What is TMB's budget and how has it changed over the years?

- Trade Measures Branch's operating budget (which includes employee and supplier) for 2010/11 is $4,517,797.
- TMB's operating budget has gradually declined since 2008/09. TMB's operating budget in this financial year, and in the past 2 financial years, is as follows:

Period	Operating budget
2010/11	$4,517,797
2009/10	$4,925,856
2008/09	$5,184,303

c) Is the investigation team required to engage industry subject matter experts? How much does TMB spend on forensic accounting?

- The team is not required to engage industry subject matter experts, however, Customs and Border Protection has sought independent expert advice in various technical areas such as accounting and economics on several occasions, including for the following cases in the last five years:
  - Aluminium extrusions from China (2010 and 2011);
  - LLDPE from Canada and the US (2009);
  - Clear laminated safety glass from China and Indonesia (2006); and
  - Hollow structural sections from China, Korea, Malaysia, Taiwan and Thailand (2006).
- None of the experts were for forensic accounting. The expenditure related to accounting advice on our verification process and Chinese VAT, economic and market analysis, and advice on technical product specifications.
- Customs and Border Protection will continue to consider independent and expert industry advice to support its assessment and analysis of various issues.

In this financial year to date, and in the past two financial years:

a) in how many investigations and reviews did Customs consult with independent experts?
b) what proportion of total investigations and reviews is this?
c) how much did Customs spend on consulting independent experts in anti-dumping investigations?

- In the two past two financial years and the current financial year, Customs and Border Protection has sought independent expert advice for two cases on four occasions:
  - Aluminium extrusions from China (2010 and 2011) (3); and
  - LLDPE from Canada and the US (2009) (1).
- This equates to expert advice being sought in 10% of investigations and reviews since 2008/09 (excludes reinvestigations, duty assessments and accelerated reviews).
- The advice sought in these two cases cost $129,785 in total.
- Customs and Border Protection will continue to consider independent and expert industry advice to support its assessment and analysis of various issues.

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Question 3

Hansard Reference: Page 11

Senator XENOPHON: On notice, would you provide more details on how you determine non-cooperation and the consequences of that and what you spend on forensic accounting. It seems that those who do not cooperate sometimes seem to be, if not rewarded, escaping the consequences of dumping duties.

a) How does Customs and Border Protection determine non-cooperation?
b) What are the consequences of non-cooperation?
c) How much does TMB spend on forensic accounting? **[Please refer to question 2 for the response to this question]**

Answer

a) How does Customs and Border Protection determine non-cooperation?

- The *Customs Act 1901* and the WTO Anti-Dumping Agreements provide that, where an exporter/trader is uncooperative, normal value can be determined based on all relevant information.
- All relevant information can include information provided by the Australian industry in its application.
- An interested party may be deemed as non-cooperative for:
  - not providing the information requested in the exporter questionnaire; or
  - not responding to the questionnaire in time; or
  - not permitting verification of information supplied in response to a questionnaire.

b) What are the consequences of non-cooperation?

- Exporters who do not cooperate may be subject to an 'All Other' rate of dumping or countervailing duties which is higher than the rates for cooperating exporters.
- Where there are several exporters in one country and one or more cooperate, while others do not, Customs and Border Protection often considers the most relevant and reliable information would be that obtained from cooperating exporters. However, in these circumstances, non-cooperating exporters are usually not granted adjustments to normal value that were favourable to the cooperating exporters.
- Where there is no cooperation at all from exporters in a country, the following will be considered:
  - information set out in the Australian industry's application;
  - price lists, provided there is supporting information from independent sources;
  - information from other independent sources (e.g. trade publications, trade statistics);
  - industry publications and industry consultancy reports;

- information gathered from other countries subject of the same investigation;
- earlier dumping investigations.

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4 May 2011, Canberra

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Question 4

Written

Senators HURLEY and EGGLESTON asked:

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

The Law Council and Law Institute of Victoria consider that the issues presented by the Siam decision would be addressed by the revocation test the bill would introduce (subparagraph 269ZDA(1A)(b)), and that there is "no reason to render the revocation of measures conditional on the publication of a 'revocation review notice' to address the Full Federal Court's decision in the Siam Case".

a) Does Customs agree with this assessment?
b) What advantages would the revocation review notice system have for Customs and other parties involved in anti-dumping reviews?
c) Should every review of measures involve a review of whether the measures remain warranted? Why/why not?

Answer

a) Does Customs agree with this assessment?

- No. The Siam decision is problematic for two reasons.
- First, the case highlighted a lack of clarity in the current review process, whereby affected parties must request one of three things: (a) a complete revocation of existing anti-dumping measures; (b) an adjustment to existing measures; or (c) both a revocation, or failing that, an adjustment based on changed circumstances.
- Second, the Court in its decision formulated a new test for determining whether anti-dumping measures ought to be revoked. The formulation will likely lead to measures being revoked where they remain warranted.

b) What advantages would the revocation review notice system have for Customs and other parties involved in anti-dumping reviews?

- The intention of the amendments contained in the Customs Amendment (Anti-Dumping Measures) Bill 2011 is to make the process of applying for a revocation review clear to all affected parties.
- The amendments clarify that if affected parties want the Minister to revoke measures, they must apply for it, and they must do so at the outset of a review process or within 40 days of a review commencing.
- The proposed amendments will require an affected party to provide evidence that there are reasonable grounds for asserting that measures are no longer warranted.
- The amendments will improve procedural fairness, by giving affected parties advance knowledge of a party's intent to seek the revocation of the measures and will give them adequate time to defend their interests.

- The second problem raised by the Siam decision was the Full Federal Court's construction of the revocation test.
- In the absence of a legislative test, the Court determined that the Minister must revoke anti-dumping measures, unless satisfied that there would be dumping causing material injury to the Australian industry if measures were not in place.
- The formulation is problematic because, where dumping measures are in place, it will be difficult to establish dumping causing material injury. In fact, if dumping measures are effective, then, in theory, there should be no injurious dumping.
- As a result of the Siam decision, it is more likely that a finding of no dumping or no injury during a review period would lead to revocation of the measures.
- For these reasons it is appropriate to amend the review provisions to clarify the circumstances under which dumping measures should be revoked.
- The proposed amendments insert a new test which will provide that the Customs CEO must recommend that the Minister revoke measures unless satisfied that the removal of the measures would lead, or be likely to lead, to a continuation of, or recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measures are intended to prevent.

c) Should every review of measures involve a review of whether the measures remain warranted? Why/why not?

- No. A revocation inquiry looks at a broad range of issues and is similar in scope, length and complexity to an original investigation. Revocation inquiries impose greater burdens on interested parties than partial reviews (e.g. of the level of measures). This burden should be confined to circumstances where revocation is in issue.

Question 5

Written

Senators HURLEY and EGGLESTON asked:

a) What factors may lead Customs to determine that dumping may be taking place, but the material injury was as a result of other factors? How often does this situation arise?
b) How does Customs assess threat of material injury in anti-dumping investigations? How often does it consider the threat of material injury in its investigations?

Answer

a) What factors may lead Customs to determine that dumping may be taking place, but the material injury was as a result of other factors?

- A number of factors may lead Customs and Border Protection to determine that dumping may be taking place, but that material injury resulted from other factors. Those factors include:
  - Volume and prices of imported like goods that are not dumped
  - Contraction in demand or changes in the patterns of consumption
  - Restrictive trade practices of, and competition between, the foreign and domestic producers
  - Developments in technology
  - Export performance and productivity of the domestic industry
  - Issues raised by interested parties
  - Domestic or global economic factors (eg GFC)
  - Domestic Competition
  - Capacity/Supply Constraints.

How often does this situation arise?

- There have been 15 new investigations in the last three financial years (i.e years ending 30 June 2009, 30 June 2010 and 30 June 2011 inclusive). In six (6) (or 40%) of these investigations, Customs and Border Protection found that while there was dumping and/or subsidies, this had not caused material injury. To the extent that material injury to the Australian industry was evident in these cases, it was found to be due to other factors.

b) How does Customs assess threat of material injury in anti-dumping investigations?

- Anti-dumping measures may be imposed when dumping is threatening to cause material injury to the Australian industry. Customs and Border Protection assesses whether dumping is threatening to cause material injury where such an allegation is made by the Australian industry. In addition, in those cases where Customs and Border Protection

finds dumping, but assesses that the dumping has not already caused material injury to the Australian industry, Customs and Border Protection will proceed to a further assessment as to whether material injury is threatened.

- The WTO Anti-Dumping Agreement requires that a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. It envisages that a change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.
- Relevant considerations in assessing whether material injury is threatened include:
  - a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
  - sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional export;
  - whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
  - inventories of the product being investigated.

How often does it consider the threat of material injury in its investigations?

- Customs and Border Protection considers the threat of material injury when that allegation is made by the applicant, which is rare. Threat can also be considered when an investigation establishes there has been dumping and/or subsidies but this has not already caused material injury to the Australian industry. However, measures have not been imposed solely as a result of threat of material injury.
- There have been 15 new investigations in the last three financial years (i.e years ending 30 June 2009, 30 June 2010 and 30 June 2011 inclusive). In six 6 (or 40%) of these investigations, Customs and Border Protection found that while there was dumping and/or subsidies, this had not caused material injury. Four (4) (or 67%) of the six (6) investigations went on to consider whether material injury was threatened. None of the four (4) cases resulted in a finding that material injury was threatened by dumping and/or subsidies.
- In accordance with the WTO Agreement:

  "With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care".

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Question 6

Written

Senators HURLEY and EGGLESTON asked:

Customs has noted that many of the amendments of the Customs Amendment (Anti-Dumping) Bill 2011 already occur in practice.

a) Are all economic factors listed under the Customs Act considered, or is it on a case-by-case basis?
b) How often are trade union organisations involved or consulted in investigations?
c) How often do you receive submissions after the cut-off date for submissions, and how often are these accepted?
d) In this financial year to date, and in the past two financial years, in how many investigations and reviews did Customs consult with independent experts? What proportion of total investigations and reviews is this? **[Please refer to question 2 for the response to these questions]**

[This response also answers questions:
8 a) How does Customs invite interested parties to lodge a submission?
8 b) Do you write directly to interested parties, rely on the public notice, or a combination of both? and
8 c) If you do not write directly to interested parties, how likely is it that interested parties would be aware of the investigation during the time that submissions may be received?]

Answer

a) Are all economic factors listed under the Customs Act considered, or is it on a case-by-case basis?

- All economic factors listed are considered when information is available.
- This is consistent with Article 3.4 of the WTO Anti-Dumping Agreement, which requires an evaluation of the actual and potential effects on a range of factors. The WTO Appellate Body in Thailand-Steel (March 2001) [WT/DS122/A/B/R] upheld a WTO Panel's finding that each of the 15 listed factors in the mandatory list of factors in Article 3.4 must be considered by an investigating authority. This finding has been maintained in subsequent WTO Panel and Appellate Body rulings.

b) How often are trade union organisations involved or consulted in investigations?

- Whenever a trade union expresses an interest it is added to the interested parties list. Customs and Border Protection will consider any submission provided by a trade union. In practice this has rarely occurred.

How does Customs invite interested parties to lodge a submission? Do you write directly to interested parties, rely on the public notice, or a combination of both? If you do not write directly to interested parties, how likely is it that interested parties would be aware of the investigation during the time that submissions may be received?

- Interested parties are mainly invited to lodge a submission through Public Notices and Australian Customs Dumping Notices. Email and post are also used to invite submissions. Interested parties are able to monitor the Electronic Public Record and respond to submissions, reports and other published information.
- Customs and Border Protection relies on a combination of the above methods for notification. It is very likely interested parties would be aware of an investigation. Customs and Border Protection's data base enables identification of most interested parties, including exporters, importers and traders. Experience has shown that organisations with an interest that are not included on the initial interested parties list, become aware of the investigation as it proceeds, generally with sufficient time to make submissions.

c) How often do you receive submissions after the cut-off date for submissions, and how often are these accepted?

- Acceptance of submissions after the cut-off date is a common occurrence in relation to all interested parties (e.g. exporters, importers, industry). Late submissions have only been rejected where they would impact negatively on the ability to issue a Statement of Essential Facts, make a recommendation to the Minister, or complete other required processes within the required timeframes.

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Question 7

Written

Senators HURLEY and EGGLESTON asked:

In its investigations and reviews, does Customs consider whether similar anti-dumping or countervailing measures have been imposed by other countries, the findings of their investigations and the level of the measures imposed?

[This response also answers questions:

11 b) How does this differ from other comparable international anti-dumping and countervailing administrative systems? and
13 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

- Yes. However:
  a. the outcome of any investigation is dependent upon the particular circumstances of the case; and

  b. comparisons with outcomes of investigations undertaken in foreign jurisdictions such as the US and Canada are problematic for a number of reasons, including differences in:

     - the periods examined in determining whether goods have been dumped;
     - the goods being investigated;
     - the parties involved in the investigation;
     - the domestic markets; and
     - the legal frameworks, for example Australia recognises China as a market economy for anti-dumping purposes, but the EU, US and Canada do not.

  Therefore it is unlikely that the findings of the Customs and Border Protection investigation will mirror the EU, US and Canadian findings.

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

- Anti-dumping rules and practices in the United States, Canada and Australia all stem from WTO agreements. There are some broad differences in administration (agencies, nature of system, legislation, resources).
- Examples of specific differences include:
  - Australia's treatment of China as a market economy;
  - Australia's application of the lesser duty rule; and

- The separation of assessment of dumping and assessment of material injury into separate agencies in the US and Canada.

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Question 8

Written

Senators HURLEY and EGGLESTON asked:

How does Customs invite interested parties to lodge a submission? Do you write directly to interested parties, rely on the public notice, or a combination of both? If you do not write directly to interested parties, how likely is it that interested parties would be aware of the investigation during the time that submissions may be received?

Answer

[Please refer to question 6 for the responses to these questions]

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Question 9

Written

Senators HURLEY and EGGLESTON asked:

a) How many staff work in the Trade Measures Branch? What has been the trend in the number of staff in the Trade Measures Branch over recent financial years**? [Please refer to question 2 for the responses to these questions]**
b) On average, how many staff members are involved in a typical investigation? **[Please refer to question 2 for the response to this question]**
c) How does Customs mitigate resource constraints? Does Customs rely on staff outside of the Trade Measures Branch? How often? Do they have the necessary expertise? **[Please refer to question 2 for the responses to these questions]**
d) In this financial year to date, and in the past two financial years, how much did Customs spend on consulting independent experts in anti-dumping investigations? **[Please refer to question 2 for the response to this question]**
e) In this financial year to date, and in the past two financial years, how many investigations have been extended beyond the 155 days that Customs has to investigate and report to the Minister?
f) In this financial year to date, and in the past two financial years, were resourcing issues a factor in extensions being requested for investigations? If so, what proportion of extensions did resourcing issues contribute to?

Answer

e) In this financial year to date, and in the past two financial years, how many investigations have been extended beyond the 155 days that Customs has to investigate and report to the Minister?

- The default timeframe for anti-dumping and countervailing investigations is 155 days. Where an investigation cannot reasonably be completed within the default timeframe, a one-time extension to the publication date for the SEF may be granted by the Minister. The effect of an extension to the publication date of the SEF is to extend the 155 day default timeframe within which Customs and Border Protection has to complete its investigation and provide its report and recommendations to the Minister.
- The number and proportion of cases extended beyond 155 days in this financial year, and in the past 2 financial years, is as follows:

Period	Number extended*	Proportion of total
2010/11 (to 20 May)	17	81%
2009/10	6	60%
2008/09	4	18%

* Numbers do not include resumed investigations, cases where the 155 day timeframe does not apply (reinvestigations, accelerated reviews) or those where extensions are not permissible (e.g. duty assessments, resumptions).

- While some of Australia's investigations are not being completed within 155 days, in general, they are still being completed within shorter timeframes than other jurisdictions. In the last three years:
    - All Customs and Border Protection cases were completed within shorter timeframes than the EU prescribed period of 365 days (and up to 15 months).
    - All, other than two exceptions (ie two Aluminium Extrusions cases), were completed within shorter timeframes than the USA prescribed period of 280 days.
    - Just under half all of the cases (9 out of 19) were completed within shorter timeframes than the Canadian prescribed period of 210 days.

f) In this financial year to date, and in the past two financial years, were resourcing issues a factor in extensions being requested for investigations? If so, what proportion of extensions did resourcing issues contribute to?

- There are a number of reasons for timeframe extensions sought by Customs and Border Protection depending on the individual circumstances of the investigation. The particular reasons for an extension may be set out in the Australian Customs Dumping Notice that is published to advise interested parties when an extension has been granted.
- The major factors for extended investigation timeframes are usually:
    - the number of members of the Australian industry, which may lead to delays in the provision of consolidated information on the Australian industry and its performance over the injury period;
    - the complexity of the particular case reflected by the number of potential interested parties, which may require additional processes for sampling parties for the purposes of verification;
    - the complexity of the particular case reflected by the issues raised and the information required to be provided and potentially verified (e.g. combined claims of dumping and subsidisation, with the latter adding a requirement for consultation with foreign governments).
- In addition to the usual drivers, recent extensions have been sought to manage the significant increase in workload since the global financial crisis (e.g. in 2008/09 a total of 18 cases were initiated compared to Year To Date 31 March 2011 with 22 cases already initiated). The increased level of anti-dumping and countervailing activity is currently being managed within existing resources using a number of strategies including flexible deployment of staff and, where necessary, seeking extensions to the statutory investigation timeframe of 155 days, as allowed by the legislation.
- The major factors that contributed to extended timeframes since 2008/09 included:

- the complexity of the investigations—involving large numbers of interested parties, multiple exporting countries and/or combined applications for dumping and countervailing measures;
- difficulties exporters and government agencies experienced in providing required information in a timely manner; and
- difficulties members of the Australian industry have experienced in providing required information in a timely manner—exacerbated whenever there is more than one member of the Australian industry.

Question 10

Written

Senators HURLEY and EGGLESTON asked:

a) In this financial year to date, and in the past two financial years, how many decisions were appealed to the Trade Measures Review Officer (TMRO)? How many were appealed to the Federal Court?
b) What proportion of Customs' decisions that were appealed to the TMRO were successful and required Customs to review their findings?

Answer

a) In this financial year to date, and in the past two financial years, how many decisions were appealed to the Trade Measures Review Officer (TMRO) and to the Federal Court?

- Only certain CEO and ministerial decisions are reviewable by the TMRO. The number of decisions appealed to the TMRO in this financial year, and in the past 2 financial years, is as follows:

Period	Number appealed to the TMRO
2010/11 (to 20 May)	15
2009/10	9
2008/09	4

- Federal Court review can be sought for decisions that cannot be reviewed by the TMRO, and after a decision has already been reviewed by the TMRO. The number of decisions appealed to the Federal Court in this financial year, and in the past two financial years, is as follows:

Period	Number appealed to the Federal Court
2010/11 (to 20 May)	0
2009/10	4
2008/09	2

b) What proportion of Customs' decisions that were appealed to the TMRO were successful and required Customs to review their findings?

- Following review of a CEO decision, the TMRO must decide whether to affirm or revoke the original decision. Following review of a ministerial decision, the TMRO must provide a report to the Minister recommending that Minister either affirm the original decision or direct the CEO to conduct a reinvestigation.
- The number of decisions remitted to Customs and Border Protection by the TMRO in this financial year, and in the past two financial years, is as follows:

Period	**Number appealed to the TMRO**	**Number of decisions remitted***	
2010/11 (to 20 May)	15	6	40%
2009/10	9	4	44%
2008/09	4	3	75%
Total	*28*	*13*	*46%*

*Remitted for reinvestigation or resumption.

- Of the 13 decisions remitted over this period, Customs and Border Protection affirmed eight decisions, changed two decisions and is still reviewing three decisions.

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 CUSTOMS AND BORDER PROTECTION SERVICE

Question 11

Written

Senators HURLEY and EGGLESTON asked:

a) What powers under the Customs Act does Customs have to compel or require information to be provided?
b) How does this differ from other comparable international anti-dumping and countervailing administrative systems? **[Please also refer to the response to question 7]**

Answer

a) What powers under the Customs Act does Customs have to compel or require information to be provided?

- The *Customs Act 1901* does contain power to compel Australian based interested parties to provide information: section 214B of the *Customs Act 1901*. Customs and Border Protection has very rarely used these provisions for its anti-dumping and countervailing investigations. Information is generally provided by interested parties on a voluntary basis.
- Interested parties - especially importers and end-users – generally cooperate and provide relevant information, as to not do so would likely result in a finding adverse to their commercial interests (i.e. imposition of additional duties at the border).

b) How does this differ from other comparable international anti-dumping and countervailing administrative systems?

- Canada and the USA have bifurcated administrative arrangements for their trade remedies system. Investigations to determine whether imported goods are dumped or subsidised are undertaken by one agency (e.g. Canada Border Service Agency (CBSA) or the US Department of Commerce (DoC) and another agency (Canadian International Trade Tribunal (CITT) and US International Trade Commission(ITC)) conducts the investigation and assesses whether dumped or subsidised imported goods have caused or threaten to cause material injury to domestic manufacturers of like goods.
- The Canadian authorities have advised that CBSA and the CITT have power to require a party to provide evidence; and the CBSA have "rarely, if ever," exercised this power.
- US DoC has advised that it does not have power to require a party to provide evidence, information is provided on a voluntary basis and failure to cooperate results in the use of some sort of facts available determined by the particular circumstances of the case. The US ITC does have a statutory subpoena power to require a party to provide evidence, however, we have been advised by the US authorities, it is very rarely used.
- At this point, we do not have information on the frequency of the CITT's use of its power or the European Commission's powers (if any) to require a party to provide evidence.

Question 12

Written

Senators HURLEY and EGGLESTON asked:

How do ABS confidentiality requirements limit access to information and the scope of an investigation in anti-dumping and countervailing investigations and reviews? In particular:

a) How does this affect compilation of import data statistics by Customs? How does it limit the information (such as import statistics) that Customs can access during an investigation or review?
b) Do the ABS confidentiality requirements influence the outcomes of investigations or reviews? If so:
   i) how do they influence the outcome of investigations or reviews; and
   ii) what methods does Customs use to overcome ABS confidentiality requirements?
c) How does this limit the compilation of data by interested and affected parties?

Answer

a) How does this affect compilation of import data statistics by Customs? How does it limit the information (such as import statistics) that Customs can access during an investigation or review?

- The ability for Customs and Border Protection to access, compile and analyse import data is not affected by ABS confidentiality requirements. This is because the primary source of import data in investigations and reviews is Customs and Border Protection's import database. This database contains a high degree of detail relating to all importations, much of which is commercial-in-confidence.

b) Do the ABS confidentiality requirements influence the outcomes of investigations or reviews?

- No. Import data analysis undertaken by Customs and Border Protection in anti-dumping and countervailing investigations or reviews is not affected by ABS confidentiality requirements.
- Customs and Border Protection extracts import details from its own database and these details are usually adequate for investigations and reviews. To the extent the import data may be inadequate; the reason for this is not ABS confidentiality requirements. Rather, it is often due to the fact that a tariff classification may contain import details for goods of a broader category than the specific goods subject to investigation or review.

c) How does this limit the compilation of data by interested and affected parties?

- Some applicants for anti-dumping and countervailing measures have indicated to Customs and Border Protection that due to confidentiality requirements in the ABS import data, within certain tariff classifications, there is insufficient detail at a country level to allow meaningful analysis of export prices and volume by country. This may

make it more difficult for applicants to substantiate claims of dumping or subsidies causing material injury.

Question 13

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? ***[Please refer to question 7 for the response to this question]***