

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Program 1.1

Question No. 35

Senator Xenophon asked the following question at the hearing on 25 May 2010:

What is the potential impact of the WTO antidumping treaty on the kinds of criteria that can be used to establish injury?

The answer to the honourable senator's question is as follows:

Australia is bound under international law to conduct anti-dumping investigations consistently with the requirements of the *World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* (the Anti-Dumping Agreement).

Pursuant to the Anti-Dumping Agreement a determination of injury must be based on positive evidence and an objective examination of both:

- a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and
- b) the consequent impact of these imports on domestic producers of such products.

An examination of the impact of dumped imports on the domestic industry requires an evaluation of all relevant economic factors and indices having a bearing on the state of the industry. Criteria used to establish injury must be consistent with these requirements.

Relevant factors and indices include (but are not limited to): actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

Once dumping and injury have been established the Anti-Dumping Agreement requires that a causal link be established. The dumping must be shown to have caused the injury to the domestic industry. It is not sufficient to simply show that the two elements are present in the market.