CHAPTER 10

The Antidumping Experience of a GATT-Fearing Country

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Australia has always seen itself, in the words of a former trade bureaucrat, as a "GATT-fearing nation." It has traditionally been a high protection country but has relied predominantly on GATT-approved tariffs to protect its industry. It has also had a tradition of public inquiry and scrutiny of tariffs and, since the late 1960s, has slowly come to recognize that protection is, above all, a tax on domestic economic performance. Tariffs have accordingly been greatly reduced in recent years, and their eventual elimination has received unprecedented political support.

This new attitude has carried over to some extent into the antidumping arena. In earlier years, as traditional assistance to industry waned, amendments and new interpretations of antidumping regulations made antidumping a more comprehensive safeguards instrument. But recent legislation explicitly forbids the Antidumping Authority to use antidumping measures "to assist import-competing industries in Australia or to protect industries in Australia from the need to adjust. . . . " And, in the late 1980s, antidumping activity declined from historically very high to historically low levels.

Nevertheless, it is not possible to conclude from Australia's experience that merely amending antidumping rules and procedures can eliminate its protectionist tendencies. It is in the nature of antidumping that there will always be latitude for discretionary response to political pressure, and rule changes themselves are reversible. More fundamentally, the whole thrust of Australian antidumping, in keeping with the GATT rules, continues to be

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This chapter is based on a more extensive study (Banks 1990) written while the author was Projects Director at the Center for International Economics, Canberra. In preparing it, he benefited greatly from discussions with officials from the Australian Customs Service; Antidumping Authority; Industries Assistance Commission; Department of Industry, Technology, and Commerce; and Department of Foreign Affairs and Trade. The author is particularly grateful for the assistance of the Australian Customs Service in providing statistical information. Helpful comments on an earlier draft were received from officials in the organizations mentioned above as well as from the Center for International Economics, the OECD secretariat, and the World Bank. The views expressed are, of course, the author's own responsibility.

about safeguarding the interests of particular import-competing industries, rather than promoting Australia's broader economic interests.

A Brief History

Dumping was an issue in Australian trade politics already in 1901, at the time of federation. In 1906, measures were enacted to address predatory dumping, and in 1921 the Customs Tariff (Industries Preservation) Act established broader procedures for imposing penalty duties on imports deemed to have been sold at prices lower than in their suppliers' home markets. This legislation was similar to that enacted in Canada and the United States (Dale 1980). In the Australian system, Parliament delegates the power to take antidumping action to the minister responsible for customs matters.

Present legislation is a much amended form of the Customs Tariff (Antidumping) Act of 1975, which was introduced to implement the GATT Antidumping Code of 1967. One notable institutional change, which is best explained at the outset, was the progressive removal of the Industries Assistance Commission (IAC) from the antidumping system.

Role of the Industries Assistance Commission

The IAC was established in 1973, replacing the Tariff Board, as an independent government authority to provide information on the extent and effects of government assistance to industry. All proposed industry protection measures were subject to public inquiry and advice by the IAC, based on its assessment of the economywide effects.[1] This explicit economywide perspective set the IAC apart from the Tariff Board and, indeed, from institutions in all other countries (Rattigan 1988; Long et al. 1989). Only in antidumping inquiries was the IAC's advice not based on economywide criteria. The IAC had inherited from the Tariff Board the function of making final determinations in antidumping cases. Preliminary findings were made (and continue to be made) by Customs.

The requirement that the IAC apply much narrower criteria to antidumping cases than to other inquiries created a point of tension that largely explains subsequent developments. In 1975, the IAC lost its central role in antidumping investigations and became an appeal body on antidumping matters. In 1984, the act was amended to provide that judgments in such appeals were to be confined to the facts—of the exporter's pricing and of injury to Australian producers. In short, the IAC was specifically instructed to ignore economywide considerations. The IAC nevertheless continued to point out

1. In March 1990, the IAC was itself replaced by the Industry Commission, which has a broader investigative mandate into interventions affecting all areas of economic activity.

some of the adverse consequences for consumers and downstream industries of taking antidumping action. Finally, in 1988, the IAC lost its court of appeal function and was withdrawn altogether from any formal involvement in the antidumping process.

The IAC's disconnection from the antidumping system underlines the special place that antidumping occupies in industry protection policy in Australia. The antidumping system has been and remains concerned with industry-specific injury and takes no account of the effect on the rest of the economy of remedying that injury through higher import duties.

Takeoff: The Early 1980s

Antidumping activity increased rapidly in the 1980s, reflecting global and national recessions, a rising Australian dollar, and the increased difficulty of obtaining industry assistance through conventional means. Pressure mounted for the government to take tougher action against low-priced imports and led to some significant legislative changes in the early 1980s.

Several legislative amendments in 1982/1983 facilitated the use of antidumping action; and following a change of government in 1983, the incoming minister with responsibility for antidumping ordered a departmental review of the process, observing that "the government is determined to ensure that the protection afforded industry is not undermined" (IAC 1984, 42). Four main areas of legislative change resulted in 1984:

- *Sales at a loss:* Additions to the legislation (section 5[9]) regularized the practice, in determining normal values, of excluding prices charged by exporters in their domestic markets when those sales were made at a loss.
- *Material injury:* A list of relevant considerations in judging material injury was added to the legislation.
- *IAC reviews:* The IAC was relieved of its statutory obligation to refer to economywide policy guidelines when reviewing antidumping matters.
- *Monitoring:* Administrative changes were made to expedite the antidumping process.

Several of Australia's trading partners interpreted these measures as an intensification of the protectionist elements of the antidumping process (GATT 1984). Australians, too, began to voice concerns about the direction antidumping was taking. A 1985 IAC report on assistance to the chemicals and plastics industries described the costs to user industries and the economy generally of antidumping procedures and noted the high incidence and extensive country coverage of antidumping action in that sector. The IAC

warned that the antidumping system could subvert the government's goal of reducing industry protection and recommended that any future decisions on antidumping for the industry should reflect "national interest" considerations (IAC 1985).

That antidumping action could impose high costs on user industries was forcefully demonstrated a short time later by a case that triggered a new review of antidumping procedures and eventually resulted in the scheme that operates today. That case involved antidumping duties on certain agricultural fertilizers. A severe political backlash forced the government to provide farmers with temporary payments to offset the increased costs resulting from antidumping duties until reviews of the industry and the whole antidumping process could be conducted.

The Gruen Review

In February 1986, Fred Gruen, an economics professor at the Australian National University, was appointed to undertake that review and to recommend improvements to the system, looking particularly at whether a national interest provision should be included. The review had considerable influence on subsequent changes to antidumping procedures and on perceptions about how the scheme had operated in the past.

Gruen received some 130 submissions from industry associations, trade unions, private firms, government authorities, and foreign governments. His report, released in April 1986, was critical of several aspects of the scheme as it had operated since 1980. Gruen observed that "Australia makes greater use of antidumping action than do other comparable countries, . . . [which] has the potential to frustrate the achievement of other government objectives in the industry, trade, competition, and economic policy areas" (Gruen 1986, iii).[2] Gruen nevertheless recommended that the system be continued but with two important changes designed to "(a) reduce the discrepancy between the concept of 'unfair trading practices' as it is applied within Australia and as it is applied by Australia to its imports of goods; and (b) discourage too extensive use of the antidumping system as a more readily available system for restricting imports" (iv).

Gruen's recommendations were based largely on his investigations into three key issues: the assessment of fair prices, material injury and the causal link with dumped imports, and a national interest provision.

Assessment of Fair Prices

Gruen criticized Australia's increased propensity, shared with the other main antidumping countries, to use cost estimates instead of market prices in determining normal values. He particularly criticized the practice of rejecting exporters' local prices when they do not cover all costs, which results in "declared normal prices which can be substantially above the actual domestic market price" (28). He recommended the repeal of section 5(9) of the act concerning sales at a loss and urged that representative prices for comparable goods sold to third markets be used when domestic price data were unavailable and that constructed values be used "only when there is no conceivable practical alternative" (29).

Material Injury

Gruen observed that "the injury test is operated on the basis that virtually any injury caused by dumping is unacceptable" (30). He recommended that price effects by themselves not be considered sufficient evidence of injury, that a "substantial effort" be made to allow for the influence of factors other than dumping in causing injury, and that injury be considered in the context of the "entire operations of the relevant establishment" (32).

A National Interest Provision

The Gruen review was precipitated by the conflict between producers seeking action against (dumped) imports and the users of those products and by general dissatisfaction with procedures that took only the interests of the former group into account. The IAC had argued in its chemicals industry report that antidumping action should be taken only when it is in the national interest—meaning, on the basis of an assessment of its economywide effects. Gruen, who was asked specifically to consider whether a national interest provision should be included, decided that it should not, largely on practicality grounds: "The addition of a 'national interest' clause must add to the uncertainty of the proceedings and to administrative complexity and would increase costs of investigation to both the participants and the Government. It would also expose the Minister—and the Department—to intensive lobbying on individual dumping decisions" (36).

Legislative Response to the Gruen Report

In announcing its decision on the Gruen report in October 1986, the government said that if Australia were to rationalize protection it was essential that manufacturers not be subject to injury from products imported at prices below those charged in the country of origin. The government further promised that it would not provide Australian industry with "a lesser safeguard against *unfair* competition" than that provided by the United States, Canada, and the European Community. However, it also implied that the antidumping process had exceeded its charter in the past and expressed a new determination that antidumping not be used as an alternative form of industry protection.

2. All subsequent references in this chapter to Gruen are to the Gruen report (1986).

The government's response was implemented through a package of legislation in 1988 that made the following changes to the antidumping system:

- While section 5(9) remained—relating to the invalidity of normal values based on domestic prices when sales are consistently made at a loss—the legislation was amended so that constructed normal values were to include a profit only in special circumstances (to be specified in subsequent regulations), with the presumption that otherwise a zero profit was to be imputed.
- The inclusion of a national interest provision was rejected, for much the same reasons that Gruen had rejected it, but the minister was explicitly given discretionary power to take national interest criteria into account, although they were not defined. In the Second Reading Speech, the minister intimated that trade diplomacy would be an important consideration, but economywide effects were not mentioned (Jones 1988).
- A sunset clause was introduced, limiting the duration of any antidumping action to three years, "consistent with [the government's] intention that antidumping and countervailing measures do not become a substitute form of ongoing assistance" (Jones 1988, 2312). This clause applies to actions against commodities, regardless of the time profile of actions against the particular exporters involved.
- For the first time, specific time limits were provided for each stage of the antidumping process.
- An Antidumping Authority (ADA) was established to recommend to the minister whether antidumping or countervailing duties should be imposed and to advise the minister on antidumping issues in general.

The first of the ADA's two roles (and implicitly the second) had previously been assigned to the Customs Service, with provision for review by the IAC. Apart from administering antidumping measures, Custom's role is now confined to obtaining preliminary findings; after that, it may be called on to assist the ADA in obtaining information. The act provides for the responsible minister to issue directions to the ADA, so that the ADA "is guided by the current industry policy objectives of the government" in its interpretation of the legislation. The government made it clear that tests for demonstrating material injury and causality would be tightened through such guidelines.

Industry Reaction

Manufacturing interests wasted little time in showing their dissatisfaction with the 1988 legislation. The Australian Chamber of Manufactures put its case in terms of what it saw as "fewer safeguards" in the new antidumping system than existed overseas. A task force established by the chamber argued for another review of the legislation and, in the meantime, for government consultation with industry "to ensure the current legislation operates effectively" (Stubbs 1989). The chamber further demanded that regulations provide more flexible injury criteria, that a profit component of at least 8 percent be used in constructed normal values, that interim action be taken in 55 rather than 180 days, and that ministerial discretion to reject an ADA recommendation be removed.

The last two demands have fallen on deaf ears thus far. The other demands, however, were considered in the context of a November 1989 report to the minister by the ADA. The recommendations of this report were reflected in regulations and legislation in 1989 and 1990. They appear not to have satisfied industry interests, however, as the task force has continued to monitor the operation of the antidumping system and lobby for further rule changes.

Antidumping in Practice

Concern is growing internationally that antidumping is not being used in the spirit of the GATT rules, that it is operating in practice as a de facto protectionist device rather than as a means of preventing injury from imports priced below levels in the country of origin (Hindley 1988; Bhagwati 1988). The much greater use of antidumping action in Australia—and Canada, the European Community, and the United States—than in other comparable countries has sometimes been interpreted as indicating that antidumping processes in Australia (and the other countries) are biased in favor of such action. This question can be approached in two ways: by examining trends in antidumping activity in Australia and by examining the rules and procedures for antidumping.

The Pattern and Extent of Antidumping

There is no denying that Australia has been a key player in the antidumping arena. From January 1980 through June 1989 Australia undertook 488 cases —less than the United States (when countervailing duty cases are added in), but considerably more than Canada and the European Community, economies with much larger import volumes.

Rise and Fall

Actions in place rose sharply to a peak of 188 in 1985 (equal to one-third of the total for GATT members) before declining equally sharply in the next few years (fig. 10.1). Thus, Australia's stock of antidumping actions, which was greater

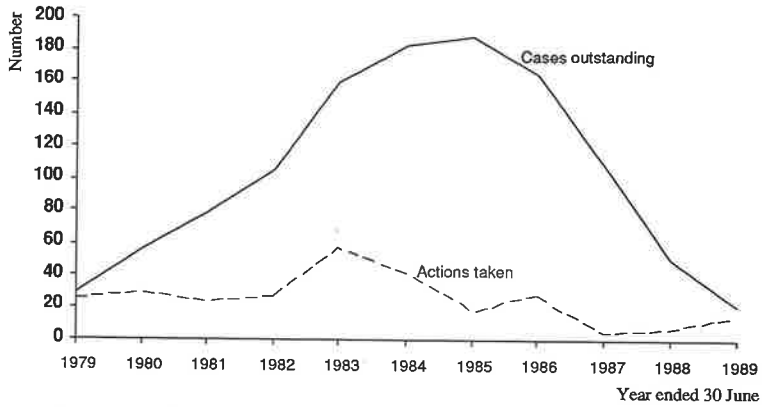

Fig. 10.1. The Rise and Fall of Antidumping.
(*Source:* Australian Customs Service.)

than that for other countries in 1985, was only a fraction of that for Canada or the United States by 1989 (fig. 10.2). The rise in the stock of antidumping actions up to 1985 reflected an increase in the number of actions in the early 1980s, discussed previously, and a very low rate of revocation of previous antidumping measures. After 1985, the situation was reversed: the fall in the stock of antidumping actions reflected a sudden increase in the revocation of old measures and a decline in the number of new cases (table 10.1).

The most straightforward explanation for the rise in antidumping activity in the early 1980s would be a sudden increase in dumping at that time. Gruen observed that "with the world economic recession in the early 1980s, basic

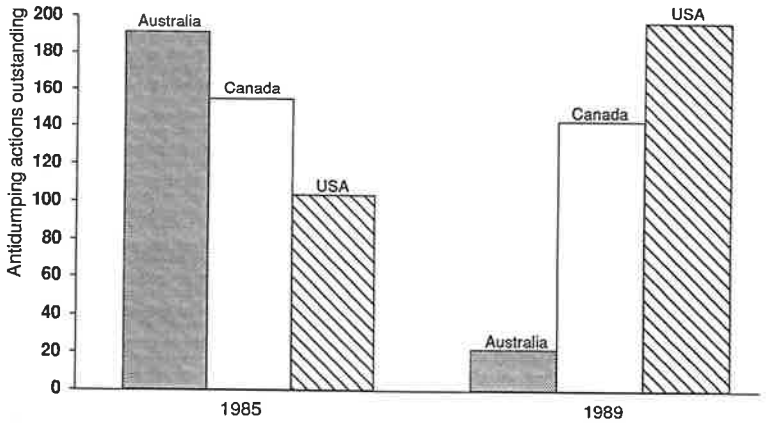

Fig. 10.2. Australia's Stock of Antidumping Compared.
(*Source:* GATT, Committee on Antidumping Practices, Reports for 1985 and 1989.)

TABLE 10.1. Antidumping Stocks and Flows, 1979–1989

Year Ended 30 June	New Actions Taken	Old Actions Revoked	Outstanding Actions at 30 June
1979	25	0	29
1980	28	1	56
1981	23	1	78
1982	26	0	104
1983	57	2	157
1984	41	17	183
1985	18	13	188
1986	27	50	165
1987	4	60	109
1988	7	66	50
1989	15	43	22

Source: Australian Customs Service.

commodities became available at bargain basement prices" (8). At such times, it is normal business practice to cut prices and reduce profit margins, as long as variable costs are covered. But this would normally apply to both domestic and foreign markets and need not lead to dumping in the price discrimination sense. Coincidentally, however, just before this time, Customs had begun to interpret the GATT provision that the normal value for an export good should be taken as the comparable domestic price "in the ordinary course of trade" to mean *not at a loss*. Redefined in this way, it would not be unusual for the incidence of dumping to rise during a global recession. And, with domestic markets depressed, injury is more likely to be found.

The increased demand for antidumping action can similarly be explained as a reaction not only to the possible increase in dumping (as originally defined) but also to the increased competitive pressures placed on Australian industries, whose international competitiveness in depressed domestic markets was declining. The rise and fall of antidumping cases was broadly inversely correlated with movements in the international competitiveness of Australian manufacturing industry (fig. 10.3). In general, the second half of the 1980s was characterized by a more buoyant domestic economy.

Similarly, the sudden increase in the revocation of antidumping measures that began in the mid-1980s—well before the introduction of the three-year sunset clause—may be attributable to the sharp depreciation of the Australian dollar, which greatly improved the international competitiveness of Australian manufacturers, as well as to a more active Customs review process for weeding out antidumping measures that were no longer justified. This stepped-up review may well have been prompted by the increased scrutiny of the antidumping process around the time of the Gruen review.

The translation of domestic competitive difficulties into antidumping

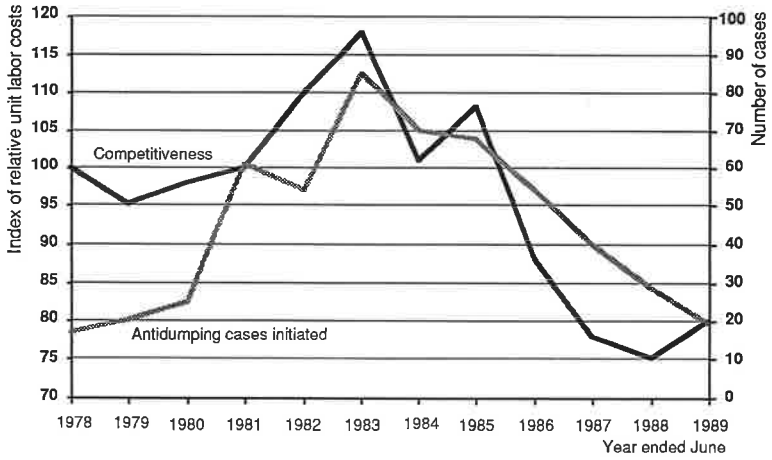

Fig. 10.3. Competitiveness and the Demand for Antidumping.
(*Source:* Treasury Budget Statements 1989–1990, Australian Customs Service.)

action rather than into demand for conventional assistance might have reflected perceptions that pursuing such assistance through the IAC process would be too difficult for most industries—except the politically most powerful ones, like textiles and clothing and motor vehicle producers. Gruen makes a telling observation about the antidumping surge in the early 1980s: "Increasing import competition and the Government's clear policy of avoiding raising tariff levels or taking more drastic protectionist measures placed the dumping administration under pressure in the 1980s. Phrases such as 'the first line of defence' came to be applied to the system" (8).

Country Coverage and Incidence

As a general proposition, the more countries against which antidumping action is taken for a given commodity, the more protectionist the antidumping process can be said to be—in the sense of protecting an industry from, and depriving an economy of, prevailing world market prices. Between July 1983 and June 1989, some 270 dumping measures were revoked or released, involving about 115 commodities. For half of these commodities, antidumping actions involved a single supplier. Of the remainder, 10 percent involved two dumping suppliers and 40 percent involved three or more. For nearly 20 percent of the commodities, actions had been taken against six or more suppliers.

That the antidumping net is in practice catching much normal international trade is also illustrated by the mixed catch of countries in particular cases, from the least developed to centrally planned and highly industrialized. Consider the following lineup of countries against which antidumping duties

were imposed for over eight years on imports of electric motors: Brazil, India, Taiwan, China, Czechoslovakia, East Germany, Poland, Romania, Yugoslavia, West Germany, the Netherlands, and the United Kingdom. While all these suppliers were undoubtedly found to have been dumping according to Australia's legislation (and GATT rules) it is reasonable to conclude that in such cases the dumped prices were in fact the world price.

The incidence of Australia's antidumping action varies considerably by country or region as well (table 10.2). Relative to their shares in Australia's imports, the hardest-hit are the Asian Tigers (mainly Korea and Taiwan) and especially China and the Eastern bloc—the last accounting for 9 percent of antidumping but only 0.2 percent of imports. China and the Tigers are also the world's lowest-cost suppliers of many light manufactures. However, Japan, another top competitor, had the lowest incidence of antidumping action relative to its import share.

The relatively high incidence of antidumping actions involving centrally planned economies undoubtedly reflects the fact that export prices from third-country market economies, not domestic selling prices, are used to determine normal values. Under these conditions, it is difficult to imagine how dumping could be objectively measured; and even if it could, there remains the problem that whenever the centrally planned economy is the lowest-cost producer, its export price must inevitably be found to be below the (third country) normal value. This is clearly relevant to China, for example, which has been justifiably critical of its treatment under Australia's antidumping laws.

TABLE 10.2. Country Incidence of Australian Antidumping, 1983–1989 (percentages)

Country or Region	Proportion of Antidumping Actions[a]	Share of Imports[b]
North America	12	24.3
New Zealand	5	4.1
Western Europe	34	26.4
Japan	10	23.1
Asian Tigers[c]	16	8.0
China	6	1.2
Other developing	7	12.3
Eastern bloc	9	0.2

Sources: Australian Customs Service; International Monetary Fund, *Direction of Trade.*
[a]Based on 249 actions revoked or released between July 1983 and June 1989.
[b]In 1985.
[c]Hong Kong, Korea, Singapore, and Taiwan.

Industry Incidence

While the pattern of formally initiated antidumping cases across industries is quite uneven (table 10.3), it is apparent that the least competitive sectors such as textiles, clothing and footwear, and transport equipment are the most infrequent users of the antidumping process. That low level of recourse to the antidumping process may reflect the already high protection these industries were receiving, largely through import quotas that insulate them from import-price competition. (The only items of clothing that have been subject to dumping duties are those for which quotas do not apply.)

TABLE 10.3. Incidence of Antidumping Cases by Industry,[a] July 1983[b]–June 1989

Industry	Six Year Total (no.)	Share of Total (%)	Assistance Rate[c]	
			Nominal (%)	Effective (%)
Food and beverages	13	4.6	8	5
Textiles	5	1.8	24	71
Clothing and footwear	2	0.7	70	182
Wood, wood products and furniture	1	0.4	13	17
Paper and paper products	10	3.5	12	15
Chemical and petroleum products	91	32.3	4	13
Non-metallic mineral products	3	1.1	3	4
Basic metal products	37	13.1	6	9
Fabricated metal products	14	5.0	15	22
Transport equipment	2	0.7	27	51
Other machinery and equipment	81	28.7	16	22
Miscellaneous manufacturing	23	8.2	18	26
Total	282	100.0		

Source: Australian Customs Service.
[a]Cases formally initiated.
[b]The number for 1983–1984 was extrapolated from data including subsidy countervailing cases.
[c]The nominal rate of assistance is based on tariffs and other assistance for each industry's output, whereas the effective rate is a measure of net assistance, taking into account tariffs and assistance on inputs as well.

The heaviest users of antidumping action have been the chemicals industry and producers of machinery and equipment. The chemicals industry, a producer of major inputs into industrial processes, has received relatively low levels of assistance through the IAC process, which takes into account the costs that protection for chemicals producers would impose on other Australian industries. But chemicals is a relatively cyclical industry, with high fixed costs—just the sort of industry the "below fully allocated costs" antidumping formula will protect.

Price Effects of Antidumping Action

The overall price effects of antidumping action are very difficult to evaluate from available information. Actual duties collected are next to useless as an indicator of the average wedge between foreign and domestic prices. A significant proportion of antidumping actions (50 percent in 1988/1989) take the form of price undertakings (the exporter agrees to raise the price) rather than an antidumping duty. Moreover, antidumping duties operate on a sliding scale, depending on the gap between the import price and a designated floor price, and, as described later, it is in the exporters' interests to price up to the floor level and appropriate the revenue that would otherwise have been paid in duties.

Statistics on dumping margins are not kept systematically but are indicated in the reports on particular cases and in semiannual reports to the GATT. Lloyd (1977) found that average margins across industries in the early 1970s ranged from 10 to 43 percent and were in most cases significantly greater than the relevant average nominal rates of assistance. Similarly, dumping margins for cases on which action was taken in 1984/1985 and 1988/1989 vary considerably by product and by supplier for a given product (table 10.4). (For

TABLE 10.4. Dumping Margins and Tariffs, 1984/1985 and 1988/1989 (percentages)

Product	Number of Countries	Average Dumping Margin Percentage[a]	Tariff Percentage[b]
1984/1985			
Outboard motors	1	27.1 P	10
Steel pipe and tube	5	10.4–64.0	10–15
Alloy steel chain	1	3.0 P	20
Fluorescent lamps	9	3.0–50.0 P	10–15
Polystyrene	3	5.3–5.8	30
Ceiling sweep fans	1	32.0	20
Pasta	1	23.0	10
Phosphoric acid	1	25.0	20
Diagnostic reagent strips	1	79.0	15
Pthalic anhydride	3	6.0–50.0 P	20
Dextrose monohydrate	2	10.0 P	5–10
Polyvinylchloride	1	7.0 P	25
Domestic microwave	1	12.0 P	25
Waxed cotton motorcycle garments	1	22.5 P	40+
Stearic acid	1	16.3 P	5
Dioxtyl phtholate	1	26.8 P	15
Vinyl floor tiles	1	20.6 P	20
Film laminate	1	10.0 P	22.5
1988/1989			
Levamisole hydrochloride	6	9.0–36.5 P	free
Colored pencils	3	29.0–43.0 P	8–13
Multityred rollers	1	56.0 P	24
Fork lift trucks	1	14.0 P	21
Cement clinkers	1	55.0 P	free
Electric motor parts	1	32.5 P	13
Outboard motors	3	25.5–39.0 P	10

Source: Australian Customs Service, *Semiannual Report of Antidumping Actions*, prepared for GATT (various issues).
[a]A dumping margin is the difference between the normal value and the fob export price, expressed as a percentage of the normal value. P denotes provisional finding.
[b]For each product, the preferential rate for developing country exporters is 5 percentage points below the general rate.

example, margins on fluorescent lamps ranged from 3 percent for Japan to 50 percent for Canada.) In most cases, dumping margins are considerably larger than the protective tariff. No significant differences are discernible between the 1984/1985 data and the 1988/1989 data, except that the average dumping margin was, if anything, higher in 1988/1989.

Rules and Procedures

A necessary complement to an examination of the outcomes of antidumping cases is an understanding of how the rules and procedures work. Most of the international debate is focused here: the concern is to tighten up the rules and procedures to prevent or limit the use of antidumping activities as a protectionist, instead of a fair trading, device.

In Australia, like in other countries, the rules and procedures have changed considerably over the past decade, particularly on three issues that are central to antidumping: normal value, material injury, and the causality between the two.

Normal Value

The gist of GATT's Article VI is that an export is priced below normal value if its price is less than the "comparable price, in the ordinary course of trade, for the like product" sold domestically or, in the absence of domestic sales, is less than the highest comparable price on third markets or the "cost of production . . . plus a reasonable addition for selling cost and profit."

Even to the uninitiated, the linguistic loopholes in this definition are apparent. For example, what exactly do the "ordinary course of trade," the "like product," the "cost of production," and the "reasonable addition" refer to? The GATT Antidumping Code is not very helpful. It is thus in each country's national legislation and administrative practice that we must seek an interpretation of such terms.

The Australian legislation (the 1975 Act) was as vague on these aspects of normal value as GATT Article VI and the Antidumping Code. However, as noted, the term "ordinary course of trade" began to be interpreted in the early 1980s as excluding sales which do not cover all costs of production. This change (shared by the other leading antidumping countries) opened a Pandora's box of new possibilities for finding dumping. It means that the essential price-discriminatory requirement for dumping need no longer apply: export prices need not be lower than domestic selling prices for dumping to be found.

Australia's experience with the determination of normal values shows that it is possible for quite different findings to be made on the basis of the same facts. This conclusion emerges from IAC reviews and from a comparison of the ADA's assessments with those of Customs. One illustration is the case of cherries in brine or other preservative from Italy, which was sent to the IAC for review in March 1985, following a request by a producer of glacé cherries that recently imposed antidumping duties on imports of cherries in brine be revoked. The chairman of the IAC described some points at issue:

> While the Act requires that *like goods be compared with like*, this is easier said than done. Even for this product—which may appear to present little difficulty in comparing Australian imports with like goods in the exporting country—four different grades of cherries are commercially recognized in Italy. . . . Customs' judgment was to recognize only three grades. In its subsequent review, the Commission found that if four grades had been used the extent of dumping found would have been much less. This was true also of the valuation of reusable drums in which cherries are packaged. Customs considered that the drums should be valued as new whilst Commission investigations suggested that, in view of their physical condition, the drums were only worth half that much. The exercise of different judgments in this case can be seen to have produced widely divergent results in terms of the penalty which could be imposed on the users of brined cherries. (Carmichael 1986, 2–3)

Material Injury

The wide scope for different interpretations of the "facts" applies to other key elements of antidumping decisions as well, including material injury. Like the GATT Code, the Australian legislation provides a nonexhaustive list of factors to be taken into account in determining injury, including loss of market share, employment or production declines, price suppression, profit declines, and underutilization of capacity. But this provides little real guidance or discipline for the administrators. The IAC has observed on the basis of its own experience in antidumping investigations that

> . . . considerable judgment is required to determine in a practical sense what injury means. . . . Even where injury is judged to exist, it is common for investigations to find that injury is attributable to a range of factors. . . . And even where dumping is involved in such cases, it is often not possible to determine what share of total injury is attributable to it alone. (Carmichael 1986, 5)

In cases in which imports from a single source are too small to have much effect on their own, Australia (and other countries) have aggregated the market effects of dumped imports from different sources to show injury. For example, the Singapore High Commission in Australia drew Gruen's attention

"to three cases in 1980 when Singapore's share of the Australian market was 0.01 percent (vertical filing cabinets), 0.05 percent (synthetic organic dyes), 0.26 percent (correcting fluid)" (31). There was an active debate in the GATT a few years ago about whether this practice was consistent with the Code, and like many interpretative debates about the intent of (intentionally) ambiguous GATT law, it appears to have led nowhere. However, this approach appears to be on firm legal ground in Australia, having been tested in the federal court (although that does not make the practice any more rational from an economist's perspective).

In 1989, an ADA report provided a masterly exposition of the issues but was in the end unable to tie the concept of material injury down much better in operational terms than previously: "The Authority concludes that 'material' should be considered in terms of its opposite: thus not immaterial, insubstantial or insignificant; greater than that likely to occur in the normal ebb and flow of business" (ADA 1989, 1).

Assessment

Antidumping in Australia has passed through a major cycle over the past decade, as eloquently depicted in figure 10.1. The analysis in this chapter suggests that that cycle has had more to do with domestic economic conditions and the degree of permissiveness in antidumping rules and their interpretation than with the incidence of dumping.

In the late 1980s, more buoyant domestic economic conditions and the diminished Australian dollar reduced the demand for antidumping actions, while legislative and other changes to the system simultaneously reduced the supply. Compared with its own past and other countries' present, Australia is much less of an antidumping activist than it was. The question is whether this stance will continue. The analysis presented here raises several basic issues that have a bearing on that question.

For one thing, it is clear that the antidumping system retains a degree of administrative or ministerial discretion that makes it vulnerable to business and political cycles. That is not just an Australian characteristic: it is common to the antidumping process everywhere. The Australian government has at least wrestled fairly publicly with the problem to obtain some greater precision and objectivity. And in some areas, improvements have been made. But on the three touchstones of antidumping—normal values, material injury, and causality—there are many points at which arbitrary judgments will always need to be made. Inevitably, those judgments will be colored by the political and economic climate of the day. Compared to the early 1980s, the present climate is relatively dry, but that can change again.

Because antidumping is a complex process with many rules that, depending on interpretation or minor changes, can have important differential effects

on the fortunes of Australian industries, the system and its mode of operation will remain of abiding interest to import-competing industries. Lobbying for rule changes or favorable interpretations will continue as long as the expected return from such lobbying exceeds the cost. Recent events in Australia suggest that that continues to be the case.

Regardless of whether antidumping has served as a protectionist device in Australia, it is clear that industry sees it in that role. The Gruen report and the recent ADA (1989) review of key concepts provide sufficient evidence of that. The ADA review noted industry's contention that market conditions in Australia should be taken into account in constructing foreign exporters' normal values. And on the national-interest issue, industry's position is unequivocal: "Dumping should be considered as a corporate and not a country activity and national interest should play no part" (Stubbs 1989).

Rent-seeking efforts in the antidumping arena are also influenced by relative costs and benefits. It is now quite difficult for industries to obtain the sort of conventional border protection that was common a decade ago. That Australian policy has taken a liberalizing direction is now widely understood and accepted, and protection has become a discredited concept in Australia. But, as in the United States and elsewhere, fairness will always be popular. And antidumping is seen to be about achieving fairness. In practice there has been no documented instance of predatory dumping in Australia. Observed dumping is typically either marginal cost pricing—which is not considered unfair domestically—or the inevitable outcome of protection in the exporter's home market, which applies to many Australian exporters themselves (Banks 1990).

Antidumping has the further attraction to industry of being a "low track" route for obtaining protection against imports, as Finger, Hall, and Nelson (1982) have explained in the American context. It takes place according to rules and procedures that industry and specialist consultants soon master, away from the public glare. The IAC route, by contrast, is "high track," costly to claimants, and more likely to meet persuasive opposition.

More important, the antidumping route has the advantage for firms seeking protection that the rules take no account of the wider effects of antidumping duties on user industries or consumers. It was noted that most antidumping action in Australia has been on major inputs to other production activities—where the potential for net loss to the economy is greatest.

The demand for antidumping as a protectionist device will continue and can be expected to rise again when times get tough. In the past, the supply of antidumping has to some extent responded to that demand. Whether that occurs again hinges in part on the new Antidumping Authority.

It seems clear that the ADA has brought a fresh and more critical eye to antidumping in Australia. It has tightened up the use of the injury test and provides a second careful pass at the normal-value arithmetic. On several

occasions, its assessments have differed from those of Customs in a direction more sympathetic to the foreign exporter. However, these positive developments might have more to do with the government's attitude than with the institutional innovation as such. The ADA operates essentially within the same industry-specific framework, following the same criteria, as Customs. Any difference in perspective results from the fact that the ADA, in its own words, "stands in the shoes of the Minister" (ADA 1990, 18) and is thus more attuned to the political environment in which technical decisions are made. But that can go different ways.

Tinkering with the procedures and criteria for taking antidumping action can help reduce its protectionist tendencies (although such changes are reversible). But it does not resolve the fundamental problem that antidumping is at bottom about safeguarding the interests of particular industries. As long as this remains the objective, there will always be tension between antidumping policy and the broader interests of the national economy and the world trading system.

Postscript

On 12 March 1991, in a speech announcing further substantial reductions in tariffs, as well as a range of other "microeconomic reforms," the prime minister promised that "as tariffs continue to be lowered, the government will not allow unfair competition from dumped imports which damage local industry." He announced that "a comprehensive review of antidumping procedures and the operation of the Antidumping Authority will be finalized by the end of the year" (Department of Prime Minister and Cabinet, 1991, 3.11–3.12). As a first step, the government decided to "strengthen" antidumping immediately by speeding up processing times, limiting the setting of antidumping duties below the estimated dumping margin, reducing the emphasis on injury assessments by Customs, amending legislation so that the three-year sunset clause will apply to each country source of dumping separately, and duplicating provisions in U.S. legislation that take into account injury to agricultural producers from the dumping of processed food products.

Throughout 1991, as recession deepened in Australia, antidumping activity began to rise sharply again. In December, further rule changes to facilitate antidumping action were announced, including extension of the sunset period and a loosening of the material injury requirements.

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