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*“The Potential Impact of Recent
Changes in Australia's Fair
Trading Policy on Trade with
China”*

by

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1



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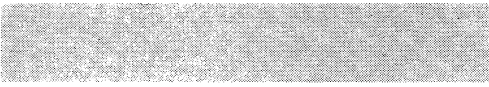
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ABSTRACT

In June 1997 the Australian government introduced a special law for the determination of dumping margins for goods exported from China. Under this new law the question of whether goods exported from China are dumped, is to be determined by special rules relating economies in transition. The result is that the anti-dumping rules applying to exports from China are to be inconsistent with the Agreement on the Implementation of Article VI of GATT 1994. Such a change has the effect of increasing the likelihood of a dumping finding against goods exported from China, when compared with other exporting countries. The last amendment to Australia's anti-dumping law that was deliberately inconsistent with the GATT was directed at the United States of America. That amendment provided for retaliation where Australia considered the actions of the other party against Australia were inconsistent with the intent of the GATT and the then Anti-Dumping Code. By comparison this latest policy change by the Australian government has raised little in the way of public debate.

Apart from what appears to be a radical shift in trade policy for Australia and its relations with one of its major trading partners China, Australia has applied a high proportion of its anti-dumping measures against China. The incidence of anti-dumping measures as well as being high against China, appear to relate to the increase in the value of imports generally from China and not whether these were found to be dumped. It would appear that there is a tightening of rules relating to dumping against China, enhancing the opportunity to apply dumping measures against cost competitive exports from China. This change in the law has introduced an ability to apply temporary de facto tariffs on goods from China, without the odium of imposing a safeguard measure under the GATT 1994 Agreement on Safeguards.



INTRODUCTION

In June 1997 the Australian government introduced a special law for the determination of dumping margins for goods exported from China. Under this new law the question of whether goods exported from China are dumped, is to be determined by special rules relating to economies in transition. The result is that the anti-dumping rules applying to exports from China are to be inconsistent with the *Agreement on the Implementation of Article VI of GATT 1994*. Such a change has the effect of increasing the likelihood of a dumping finding against goods exported from China, when compared with other exporting countries. The last amendment to Australia's anti-dumping law that was deliberately inconsistent with the *GATT* was directed at the United States of America. That amendment provided for retaliation where Australia considered the actions of the other party against Australia were inconsistent with the intent of the *GATT* and the then *Anti-Dumping Code*. By comparison this latest policy change by the Australian government has raised little in the way of public debate, although it has been the subject of a report by the Senate Economics and expenditure Review Committee (1997).

Apart from what appears to be a radical shift in trade policy for Australia and its relations with China. The high incidence of anti-dumping measures against China appears to relate to the increase in the value of imports generally from China and not whether these were found to be dumped. It would appear that there is a tightening of rules against China relating to dumping, enhancing the opportunity to apply dumping measures against cost competitive exports from China. This change in the law has introduced an ability to apply temporary de facto tariffs on goods from China. It avoids the odium of imposing a safeguard measure under the *GATT 1994 Agreement on Safeguards*.

BACKGROUND TO DUMPING MARGIN ASSESSMENT

The provisions of the *Anti-Dumping Agreement 1994* apply to both the ascertaining of the normal value and the export price. Article 2 of the *Agreement* refers to a number of issues relating to the establishing of normal value. It is prudent, therefore to consider the Australian domestic law within the context of the relevant international public law to which Australia is party.

In June 1997 the Australian government introduced a special law [that] has the effect of increasing the likelihood of a dumping finding being made against goods exported from China.

Ascertaining the price at which the goods are exported to Australia and the price in the country of export (the normal value) with which it is to be compared, allows the margin of dumping to be determined. The dumping margin is simply defined as the extent to which the export price is less than the normal value. However, there are five methods for the determination of normal value:

- domestic consumption price in the exporting country;
- constructed cost based approach in the country of origin;
- price of exports to a third country;
- price in a surrogate country, for exports from a centrally planned economy; and
- best information available, where there is insufficient information for any of the above methods.

The dumping margin is simply defined as the extent to which the export price is less than the normal value.

Feaver and Wilson (1995,p.229) have found that the two most frequent bases by far used by Australia for determining normal value have been the exporter's domestic selling price and the best information available.¹

From the list of methods for determining normal value it can be seen that centrally planned economies are a special case. That is, the other methods of determining normal value are considered inappropriate for economies that are centrally planned, as the price is not determined in the context of a competitive domestic market for goods. In the note 2 to paragraph 1 of Article VI of the *GATT 1994* it is explained that:

"It is recognised that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining the price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate."

Article 2.7 of the *Anti-Dumping Agreement 1994* entrenches this provision.

Provision is made in section 269TAC(4) of the *Customs Act 1901* for the recognition of these circumstances. The *Act* goes on to provide for the normal value to be determined by reference to an appropriate and reasonable application

of the normal value methods of determination in another country. Garnaut (1989,p.212) commented on the application of these provisions in cases concerning an investigation of alleged dumping from the Peoples Republic of China:

"The greatest arbitrariness arises in relation to China. Under the *GATT Code*, importing countries are permitted to judge whether exports from a centrally planned economy are dumped by comparing export prices with costs of production, not in the centrally planned economy itself but in a third country.

Australian producers competing with imports from China are allowed to make their case by presenting data from economies with cost structures which bear no relation to those from China. While recent developments have introduced consultations with China on choice of third country, there is still a problem with the approach. The three most recent cases against China used comparisons with costs in The Republic of Korea, Malaysia and Argentina respectively."

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The relative proportion of trade subject to market versus command control is changing in the Chinese economy as China prepares for full membership of the *GATT*. According to Wang (1995,p 9), in March 1993 more than 80 per cent of the categories of goods traded in China had been market priced. This was said to coincide with the relaxation of price controls and the move towards a market economy.

An example of the extent of the move towards a market based economy is the 1992 court action by the regional Shenzhen Government to stop the listed Sino-foreign stock of Shenzhen Champaign Industrial Co Ltd. being traded on the Shenzhen Stock Exchange. In this unreported case cited by Wang (1995,p.27), the Guangdong Court of Economic Appeal ruled that the trade in shares was a matter for the company and its shareholders. The outcome of this case is further evidence of the move towards a market based economy, with the legitimisation of commercial transactions involving the company as an economic entity and its owners as shareholders, a basic premise of the Western commercial system. Even more recently, in September 1997, President Jiang

Zemin at the Chinese Communist Party Congress further embraced a market economy by announcing a fully fledged corporatisation program. (Australian Financial Review 13 September 1997).

However, the use of surrogate countries for setting normal values for China still continued to be applied by the Australian administration from 1995 onwards. In the *Dumping of Access Floor Panels from China* (ADA 1995, No. 147), the Authority chose South Africa as a third country for normal value determination. This followed the inquiry into the *Review of the Australian Customs Service negative preliminary finding on Fibreglass Insect Screening from China* (ADA 1993, No. 111), where the Authority used the domestic price in Australia as the basis for the normal value, on the grounds that there was no other information available. The first recognition of China as a competitive market economy through the use of domestic selling prices in China was in *Glyphosate acid* (ADA 1996, No. 159). This followed advice from the Department of Foreign Affairs and Trade on the changing nature of the Chinese economy. Subsequent reports also followed this advice.

The treatment of China as a centrally planned economy, which has been the subject of considerable deliberation since the mid-1980s, should be contrasted with that accorded to the Czech and Slovak Federal Republic (CSFR). The Department of Foreign Affairs and Trade advised Customs in favour of adopting a free market approach in the dumping case on *Certain Self-propelled Multi-tyred rollers from the Czech and Slovak Federal Republic* (ADA 1993, No. 92, p. 11). This was subsequently reflected in Customs decision that: "the criteria of paragraphs 269TAC(4)(a) and (b) were no longer met in the case of CSFR." The Authority in agreeing with Customs also considered a report by the United Nations Development Program Trade Expansion Program, a report by the General Agreement on Tariffs and Trade Committee on Balance of Payments Restrictions and data from the then Czechoslovak Chamber of Commerce and Industry. It concluded that: "...the Government of CSFR has begun a major program of economic reform, including the liberalisation of prices and foreign trade." (ADA 1993, No. 92, p. 12). The question is how different are developments in China, one of Australia's major trading partners, as it gears-up for WTO Membership, to those that are maintained in the Czech

The first recognition of China as a competitive market economy through the use of domestic selling prices in China, followed advice from the Department of Foreign Affairs and Trade on the changing nature of the Chinese economy.

and Slovak Federal Republic? Or was there another explanation for the then recognition of the relative openness in trade with the Czech and Slovak Federal Republic and the closed trade relations with China.

RECOGNITION OF THE TRANSITION OF THE CHINESE ECONOMY

Official recognition of the fact that China had made significant progress in certain sectors of its economy towards the competitive markets came with the *Glyphosate acid case* in November 1996 and the publication of a discussion paper by Australian Customs in July 1997. In this paper it was explained that there was no basis under the post Uruguay legislation for the adoption of a surrogate country for establishing normal values for exports from China. China was no longer a country where there was a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State. In terms of the *Anti-Dumping Agreement 1994*, the normal values for exports from China can be determined on competitive market criteria without resorting to a surrogate country.

Such an outcome means that the industries benefiting from anti-dumping measures against exports from China effectively lose the surrogate country protection. This appears to be an unacceptable policy outcome for the government. The government's reaction has been to restore the previous protection by proposing an additional discretionary power on the method for determining normal value on exports from China.

Countries in transition, according to Drabek (1996), is a term used to describe the former communist countries seeking membership in the WTO. The difficulty for these countries is that their change to the world trading system is not marginal as many have laws relating to imports which can be best described as discretionary, and little in the way of effective anti-trust laws. In the cases of Hungary, Poland and Slovakia all three have imposed additional trade restrictions and have applied to the WTO for special consideration based on balance of payments difficulties. The rapid changes from a command to a market driven economy have given rise to severe adjustment problems in countries in transition.

The policy issue is how best to integrate the economies of these countries into the world trading system. Imposing additional barriers to trade through the toughening of anti-dumping measures would not appear to be consistent with the adjustment needs of these economies. It is at the least inconsistent for Australia to be agreeing to special consideration for transitional status on the basis of balance of payments difficulties, while under the same internationally agreed rules invoking more lenient standards for dumping determination.

Given that the law has been substantially biased, has the incidence of dumping findings been greater with respect to China than Australia's other major trading partners? The answer is basically yes.

TREATMENT OF EXPORTS FROM CHINA

Given that the law has been substantially biased in favour of dumping findings against China, has the incidence of dumping findings been greater with respect to China than Australia's other major trading partners? The answer is basically yes, but not as unfavourable as exports from Korea. As indicated in the introduction, the incidence of anti-dumping and countervailing actions appear to relate to the volume of imports from a country and the change in the share of imports from a country. These two characteristics alone explain over 50% of the variation in the incidence of such measures between the exporting countries (Attachment 2).

Attachment 1 contains import data for a fourteen year period from 1982-83 to 1995-96 and a summation of the positive final findings on anti-dumping and countervailing measures for the same period. Although the anti-dumping and countervailing findings were compiled on a financial year basis, it is difficult to use this information in a dis-aggregated format. Firstly, the findings are by no means similar in the impact they have on Australian industry or imports from the exporting country. Secondly, findings on exports from countries are relatively few in number for each year, and tend to be irregular in their proclamation. The only practical way of handling such discrepancies is to aggregate the data increasing the probability of these effects being dissipated over time. Therefore there has been no reliance on time series analysis, rather looking at the effect of the administration of these measures over the time period for which reasonably reliable data exist.²

Raw import value data was simply cumulated for the period, whereas the change over the period was taken as the difference between the last financial year and the first in the period. This data was used to predict the number of anti-dumping and

countervailing measures through the use of a least squares regression equation. The following function was derived:

$$\text{Country Final Positive Findings (Y)} = f(\text{Country Volume of Imports (X1)} + \text{Country Proportional Change in Imports (X2)})$$

This can be represented by:

$$Y = 5.71 + 0.18(X1) + 1.28(X2)$$

The adjusted $r^2 = .55$ with and significance level of 1%. When decomposed, import volume has the higher predictive value and a level of significance of 1% with the change in the proportional composition of imports significant at the 5% level.

Looking more closely at the results of the regression it can be seen in Attachment 2 that for China the predicted value from the regression was 15 positive final findings over the period. The actual experience of China was 20 determinations against exports from China. That is, there was a substantial bias against exports from China even when the residuals are standardised. There are three other major exporting countries which appear to have been subject to a similar level of discriminatory treatment. These are Korea where there has been a rapid increase in exports to Australia although about half that from China, and France and Italy with moderate growth both having high domestic subsidy policies.

POLICY IMPERATIVES

Article 2 of *GATT 1994* clearly prohibits discrimination in trade between members while excepting anti-dumping and countervailing measures. While it could be claimed that there is scope for Australia to employ the exceptions from Article 2, being the restriction of the provision to members and the exception of anti-dumping and countervailing measures, this would be unlikely to succeed in the trade forum. Even the United States in its trade with China does not discriminate as to membership when applying most favoured nation treatment to exports from China. It is hardly a policy that Australia could afford to employ with China. Further more the obvious practice of Australia in taking higher than

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normal level of anti-dumping and countervailing actions against China has created considerable trade friction between the two trading partners. That is the imposition of anti-dumping measures tends to restrict imports into Australia (Mastoris and Gunasekera (1997)). There seems little point in heightening these trade problems with China when there are other less damaging ways of handling trade issues with China.

ALTERNATIVES

If the complaint is that prices of inputs into or final exports from China are in some way subject to non-market factors under the influence of the Chinese government, then the solution is more likely to rely on the application of countervailing measures rather than anti-dumping measures.

If the complaint is that prices of inputs into or final exports from China are in some way subject to non-market factors under the influence of the Chinese government, then the solution is more likely to rely on the application of countervailing measures rather than anti-dumping measures. The *Subsidies Code 1994* incorporates the three levels of actionable subsidisation, the benefits test and the specificity test for actionable subsidies. The definition of a subsidy included in Article 1.1 of the *Subsidies Code 1994*, requires a financial contribution by a government or some form of income or price support conferring a benefit.³ Article 1.2 of the *Subsidies Code 1994* qualifies the application of the subsequent provisions prohibiting subsidies and allowing countervailing action, by ensuring that before countervailing action can be invoked the subsidy must be specific in accordance with the provisions of Article 2.

For a subsidy to be specific to certain enterprises (ie. an enterprise or industry or group of enterprise or industries) in accordance with Article 2.1 of the *Subsidies Code 1994*,⁴ there needs to be: legislation specifically limiting the subsidy to certain enterprises.⁵ On the other hand, where objective criteria are applied by the administering authority which are neutral in their application as between certain enterprises, such as, a subsidy applied automatically based on the number of employees or size of enterprise, these subsidies are not considered specific.⁶ A finding of specificity is influenced by the administration of the subsidy, for example, where the subsidy is used disproportionately by certain enterprises, after taking into account the extent of industrial diversification in an economy and the length of time a subsidy program has been in operation.⁷ Article 2.2 defines as specific a subsidy limited to certain enterprises within a designated geographical region,⁸ Article 2.3 deems export performance and import replacement subsidies

prohibited under Article 3 as specific subsidies.⁹

Having defined an actionable subsidy as a financial contribution by a government (or income or price support) benefiting certain enterprises specifically, how is this benefit to be measured? Article 14 of the *Subsidies Code 1995* gives guidelines as to the method to be used in the calculation of the amount of a subsidy in terms of the benefit to the recipient. Four examples are given:

- the provision of equity capital inconsistent with the usual commercial practice of private investors;
- a loan at less than comparable commercial rates;
- a loan guarantee by the government which reduces the amount a firm pays below that available at commercial rates; or
- the provision of goods and services by the government for less than adequate remuneration, or purchased for more than adequate remuneration.¹⁰

China should not be singled out by Australia for deliberate discriminatory treatment. Such discrimination can only harm Australia's trading relations with China.

CONCLUSION

Given the relatively broad scope for applying countervailing measures it seems that the proposal for additional power against dumping of goods exported from China is unwarranted. To suggest that Australia would need to apply surrogate country domestic prices in the assessment of normal values is at best an antiquated approach in the application of safeguard measures. This approach tends to suggest that there is still a misunderstanding of the Chinese economy. There are already sufficient powers under the *GATT 1994 Subsidies Agreement* and the enabling domestic legislation to deal with situations where the actions of a government of an exporting nation influence the prices of specific inputs and final products. The discussion above does not address the availability of remedies under the *GATT 1994 Safeguards Agreement*. These are always available to nations should there be a need for temporary adjustment assistance. China should not be singled out by Australia for deliberate discriminatory treatment. Such discrimination can only harm Australia's trading relations with China.

END NOTES

¹ Feaver and Wilson (1995) p 229 report that between 1988 and 1993 the Anti-Dumping Authority made the following determinations of normal value under the *Customs Act 1901*: section 269TAC(1) - 95; section 269TAC(2)(c) - 27; section 269TAC(2)(d) - 4; section 269TAC(4) - 23; and section 269TAC(6) - 93.

² Data on anti-dumping and countervailing actions for the period 1993-94 to 1995-96 was taken from the half yearly returns to the WTO. There appear to be a number of timing inconsistencies which need further clarification with Customs, however, this does not effect the analysis.

³ Reflected in section 269T of the *Customs Act 1901* (as amended by section 7 of 1994 Act No 150) which includes this definition in its provisions. However, it also includes an agglomeration of provisions which according to the explanatory notes to the Bill attempt to reflect Article 1.1 of the *Subsidies Code 1994* taking into account some of the illustrative list of export subsidies in Annex 1.

⁴ Section 269 TAAC of the *Customs Act 1901* defines a countervailable subsidy and reflects the specificity provisions of Article 2 of the *Subsidies Code 1994*. It excludes both non-actionable subsidies as described in paragraph (a), (b) and (c) of Article 8.2 of the *Subsidies Code 1994* and domestic support measures set out in Annex 2 to the *Agreement on Agriculture*.

⁵ Reflected in section 269 TAAC (2) (a) of the *Customs Act 1901*

⁶ Reflected in section 269 TAAC (3) of the *Customs Act 1901*

⁷ Reflected in section 269 TAAC (5) of the *Customs Act 1901*

⁸ Reflected in section 269 TAAC (2) (b) of the *Customs Act 1901*

⁹ Reflected in section 269 TAAC (2) (c) & (d) of the *Customs Act 1901*

¹⁰ This is only a precise of the provisions of Article 14. Reflected in section 269 TACC (1) to (7) of the *Customs Act 1901*

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PRELIMINARY FINDINGS

YEAR	82-83	83-84	84-85	85-86	86-87	87-88	88-89	89-90	90-91	91-92	92-93	93-94	94-95	95-96	96-97	Totals
CNTRY																
NZ	15	3	3	8	2	2	1									34
ASTA	1	1			1			1								4
BLGM	6	3		3		2	1	1	1	2						19
BRAZ	3		1	3	4	1	2		4	3	2					23
CAN	2	3	1	2			1		1		3					13
CHIN	3	4	1	1	4	1	1	1	4	7	2					29
DENM	1			1					2							4
FGMY	8	5	9	6	4	4			3	1	2					42
FINL				1	1			1								3
FRAN	3	4		2	3	2		2	2	5	1					24
HONG		2		1		1	1			2	1					8
INDO								1	1	2						4
INIA											4					4
IRE	3			1					3							7
ISRA	2	1	1	1				2	1	2	1					11
ITAL	4	2	3	4	1	2		2	2	8						28
JAP	13	5	4	6		3	3	1	5	6	1					47
MEXI	1							1		1	1					4
MLAY			1		1				2	2	1					7
NWAY			2							1						3
NETH	6	1			2	1	1		2	3						16
PHIL		2	1	1				1	1	1						7
RKOR	2	3	5	4	1	3	3	3	4	7	1					36
SAFR		1		3				1								5
SAUD								1		3						4
SING		2	1	1		1	1		2	4	1					13
SPAI		2		1	1	1			4	2						11
SWED	2	1	2						1	3						9
SWIT						1										1
TAIW	4	5	4	5	5	3		5	3	7	4					45
THAI			3		1			2	1	6	2					15
UK	7	3		5	2	3			3	4						27
USA	13	6	5	6	5	5	1	2	4	4	2					53
OTHER	6	2	3	6	9	2	3	2	10	5	3	1	0	0	0	52
TOTAL	105	61	50	72	47	38	19	30	66	91	32	1	0	0	0	612
ARGE					2	1			1	2	2					8
CZEC		1	1	1	2		2					1				8
GREE	1		1					1	2							5
HGRY	1		1				1									3
POLA				2	1	1			1		1					6
PORT	1															1
QATA	2			1	1				1							5
ROUM					1					1						2
TURK					1				2							3
USSR	1	1		1						2						5
VENZ				1	1			1	2							5
YUGO									1							1
SUB-TOTAL	6	2	3	6	9	2	3	2	10	5	3	1	0	0	0	52

Attachment 2

Regression Analysis of Dumping Findings and Import Volumes x Country 1982- 83 - 1995-96

Country Final +ve Findings = f (Country Volume of Imports + Country Proportional Change in Imports)

Regression Statistics

Multiple R	0.760305
R Square	0.578064
Adjusted R Square	0.549935
Standard Error	4.842813
Observations	33

ANOVA

	df	SS	MS	F	Significance F
Regression	2	963.9302	481.9651	20.5504	2.39E-06
Residual	30	703.585	23.45283		
Total	32	1667.515			

	Coefficients	Standard Error	t Stat	P-value	Lower 95%	Upper 95%	Lower 95.0%	Upper 95%
Intercept	5.715823	1.004075	5.692627	3.3E-06	3.665231	7.766415	3.665231	7.766415
X Variable 1	0.182314	0.02844	6.410381	4.45E-07	0.124231	0.240398	0.124231	0.240398
X Variable 2	1.275303	0.548949	2.323173	0.027136	0.154201	2.396405	0.154201	2.396405

RESIDUAL OUTPUT

Observation	Predicted Y	Residuals	Standard Residuals				
1	6.367632	-5.36763	-1.14472	18	9.094814	-3.09481	-0.66001
2	7.271543	3.728457	0.795144	19	6.056555	-2.05656	-0.43859
3	6.341473	7.658527	1.633285	20	6.456473	1.543527	0.329178
4	8.089289	0.910711	0.194221	21	6.042697	-3.0427	-0.6489
5	14.92084	5.079156	1.083199	22	10.90329	13.09671	2.793052
6	6.368234	-3.36823	-0.71832	23	6.383124	-0.38312	-0.08171
7	13.95233	2.04767	0.436693	24	3.01642	-0.01642	-0.0035
8	7.09687	-3.09687	-0.66045	25	9.725694	0.274306	0.058499
9	9.03935	9.96065	2.124244	26	6.780696	-2.7807	-0.59302
10	6.423868	-3.42387	-0.73019	27	8.930902	-5.9309	-1.26485
11	6.790713	-2.79071	-0.59516	28	7.640518	-6.64052	-1.41618
12	6.542208	-2.54221	-0.54216	29	10.66979	1.330205	0.283684
13	6.454519	-1.45452	-0.3102	30	8.138108	0.861892	0.18381
14	6.239497	-1.2395	-0.26434	31	13.105	-3.105	-0.66218
15	9.688763	6.311237	1.345957	32	33.91815	-6.91815	-1.47539
16	19.83104	4.168964	0.889088	33	9.684955	3.315045	0.706978
17	6.034643	-3.03464	-0.64718				

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FACULTY OF BUSINESS AND LAW

The Faculty of Business and Law is one of CQU's largest faculties. All courses offered by the Faculty are designed to satisfy the practical needs of commerce, industry and government. Undergraduate courses prepare students for a wide range of occupations in the business sector, and concentrate on developing the knowledge and skills required in a modern business environment.

The Faculty offers undergraduate and postgraduate degrees with specialisations in accounting and finance, human resource management, public sector management, social enterprise management, quality management, international business, management and economics, marketing and strategic management, tourism and taxation. Specialised courses are accredited by the relevant Australian professional bodies.

COLLABORATIVE RESEARCH GROUP (AUSTRALIAN BUSINESS IN THE ASIA-PACIFIC REGION)

This collaborative research group is funded by the Central Queensland University to encourage academics to develop specialised research skills pertinent to the study of Australian businesses operating in the Asia-Pacific region. Its main aims and objectives are to learn about the intricacies of conducting research in different Asia-Pacific cultures, learn about sensitivities in business networking in the region, identify and access information and expert resources and formulate and conduct specific research projects.

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