



AUSTRALIAN STEEL ASSOCIATION INC.
A0020339V ABN 24 762 435 928

PO Box 4303, Geelong Retail, Geelong Vic. 3220
Registered Office: Suite 4, 259 Whitehorse Rd., Balwyn, Vic. 3103
Telephone: +61 3 5277 2822 Fax: +61 3 5277 2855
E-mail: info@steelaus.com.au Web: www.steelaus.com.au

Mr Geoff Johannes
National Manager Trade Measures
Australian Customs and Border Protection Service,
Customs House
5 Constitution Avenue
Canberra ACT 2601

Via email: tmpolicy@customs.gov.au

PRODUCTIVITY COMMISSION REPORT

REVIEW

OF

AUSTRALIA'S ANTI-DUMPING

AND

COUNTERVAILING DUTY SYSTEM

August 31, 2010

The independent voice for a truly competitive Australian market for steel users
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Introduction

The Australian Steel Association Inc (ASA) has participated in the Productivity Commission Inquiry process by making detailed submissions and presentations to:

- The Initial Inquiry
- The Draft Recommendations
- The Public Hearings

Background

The ASA and the writer have been reluctant participants in the anti-dumping/countervailing process since the early 1980's, in that for our sector of industry, imports provide the only alternative supply source, and thus the only true discipline of market competition for Australian steel users and converters of intermediate steel products.

Experience

It is no coincidence that since the lowering of tariffs on imports in the 1980's the Australian Government's trade-off to some local producers still requiring assistance has been an intentionally biased anti-dumping system to protect their domestic market against unfairly priced imports.

As stated, the ACCC is on the public record for having the anti-dumping system removed altogether "in order to prevent anti-competitive conduct and safeguard the interests of consumers".

As the terms of reference for the P.C. Inquiry also state, in July 2008 the Council of Australian Governments (COAG) agreed that a review of Australia's anti-dumping system was a priority and from an ASA perspective this was because the current system is basically anti-competitive.

What the ASA considers to be of critical importance is the fact that Australia's current system intentionally excludes many Australian producers, and services, most in need of a fair and transparent anti-dumping system that is also cost effective.

In our view, the basis for this consideration is clearly the current definitions and criteria for access in terms of:-

- Industry standing, and the required percentage of that industry's support, etc.
- Like goods test



Acceptance

The ASA, however, is prepared to accept the Commission's conclusions contained in 6.2 on Industry Standing and like goods which states, inter alia:-

“But absent any such amendments to the WTO Agreements consequent on DOHA, the need for unilateral changes of this nature does not seem strong.”

Reasons for our view on these issues are explained in the following brief outlines and our acceptance of the Commission's conclusion only strengthens the need for the introduction of a 'bounded' national interest test.

In terms of access and industry standing for our particular industry sector, the experience has been that one monopoly local producer can readily make application whereas their users and customer base cannot make an application on imports of the finished goods that they need to compete with.

For example at least one member of this interdepartmental committee, namely the Department of Innovation, Industry, Science and Research (DIISR) should be aware of the ever increasing volume of imported steel in pre-fabricated form for Australian project requirements.

We can only rely on our actual, factual experience in the steel sector and that experience has demonstrated that when the import supply of intermediate goods is threatened or disrupted by anti-dumping action the downstream customers switch to importing the fabricated, finished steel product.

Whilst there may always be other factors such as “turn key” project requirements, tenders, scale and available technology, etc., the imports in question range from farm gates and fencing to complete power stations.

Without attempting to demonstrate the probable linkage, these imports of pre-fabricated and finished steel components result in not only the monopoly local producer being excluded from the supply chain but also the value adding and downstream sectors of the Australian economy are also excluded, namely:-

- Australian Fabricators
- Australian Design Engineers
- Australian Logistics

The reality is that for reasons of being unable to satisfy industry 'standing' and 'like goods', neither the Australian steel fabricators, design engineers or logistic services can utilise the Australian anti-dumping system.

Also, administratively, the issues of most concern from our near 30 year experience (and practice) include the discretionary application and treatment of the legislative hierarchy for determining Normal Values based on imaginary sales and notional cost constructions of overseas producers exporting to Australia.



ASA Perspective Any tariff on imports are simply taxes on Australian consumers and downstream user industries but an anti-dumping system skewed for use by monopoly local producers not only increases the tax, it also imposes an added cost burden by way of significant transaction costs, especially for exporters and importers.

Again, relying on our experience, a local monopoly steel producer such as 'Onesteel', a publicly listed company with very deep pockets, can for strategic purposes, make recurring and capricious anti-dumping applications against selected country exporters whilst it, the applicant, continues to supplement its own local production with imports from their "exclusive" overseas suppliers in other countries.

This is clearly a farcical situation and regardless of the actual final outcome, applicants such as 'Onesteel' achieve their objective due to the chilling effect the commencement of dumping investigations have on the supply of the targeted imported supply. In a very recent case on HSS, this chilling effect actually transformed into an ice age in that the investigation which commenced in November 2008 is still awaiting the ministerial decision as of 31/8/2010.

Box 4.4
P.C. Report

The strategic use of anti-dumping is dealt with in box 4.4 of the P.C. Report.

In terms of costs – for applicants such as 'Onesteel' the direct and indirect costs of making applications need to be measured relative to the market gains such actions create and the sum of \$250k for a 'Onesteel' is merely petty-cash compared to say the impost on a small to medium sized applicant (if eligible) or importer.

It has also been of concern that the cost to taxpayers for individual investigations by 'Customs' in so termed complex cases has been \$1 Million.

Recent cases initiated by 'Onesteel' on imports of HSS goods from various countries have in our view been complex cases and it is reasonable to claim that the beneficiary of those tax payer funded exercises has been the applicant irrespective of the final outcome.

In that sense a \$250k 'investment' is good business practice as 'Customs' do most of their work.

Also, our experience is that apart from the importer's cost of defending a dumping application being far more onerous, the importer needs to obtain the complete cooperation of their exporter supplier in the 'Customs' process as without that cooperation being to 'Customs' complete satisfaction the Australian entity dependent on the imported goods subject to an anti-dumping application has near to zero chance of success, and thus risks being able to obtain any future supply from a relationship developed over some period of time.



ASA Position

The ASA supports the need to retain an anti-dumping and countervailing system but rejects the view that “Australia’s practices are well regarded internationally and our system is considered to be fair, consistent, transparent and robust”.

The ASA therefore supports the need for changes that will effectively deliver the intended economy wide benefits rather than act as a strategic marketing tool for a few privileged local producers of what are essentially intermediate goods requiring downstream value adding.

The ASA also believes it is significant that Australia’s two monopoly steel producers are also Australia’s dominant distributors of their products to Australian end use customers, namely ‘Onesteel’ and ‘Bluescope’, being the steel sector’s version of the ‘Coles-Woolworths’ economy.

We also consider it instructive, however, that ‘Bluescope’, a global player for its ‘flat’ steel production and which for nearly all of its local product range is able to supply the total underlying domestic demand, is not considered a strategic user of the anti-dumping system.

On the other hand, ‘Onesteel’ is not considered a global player on its steel product range, has proved to be an unreliable supplier to the domestic market, and for reasons of economy of scale etc., is itself an importer of ‘like goods’.

Whilst we have relied on our particular experiences for the ‘steel’ sector, we believe it reasonable to state that those mainly ‘Onesteel’ experiences more than likely apply to the Australian customers requiring intermediate chemical and plastic industry inputs.

For these reasons the ASA urges the Government to change the existing legislative system to provide for a mandatory national interest test rather than it remain an idle discretionary consideration.

In essence all Government Ministers are obliged to make decisions in the national interest but to do so requires the ministerial decision maker being aware of all the circumstances and consequences of departmental recommendations.

National Interest Test 5.1

The ASA totally supports the perspective provided by Rio Tinto in 2006 which is contained in Box 5.1:-

“Currently the system operates in such a manner that the interests of those directly affected by the allegedly dumped imports, that is, the Australian industry producing like goods, are taken into account to the exclusion of interests of other parties.”



We are obviously and acutely aware of the fact that practically all of the other submissions to the Commission are strongly opposed to the introduction of any form of public interest test.

In terms of the ASA's strong support for the Commission's recommendation (5.1) to introduce a public interest test our real concern on not obtaining this fundamental change is the likely and pre-disposed view of Australia's Department of Foreign Affairs and Trade (DFAT) which is broadly touched on in Box 5.4 being an outline on the DOHA discussions, and which appear to be in limbo.

The ASA, however, has reason to suspect that DFAT's position is anything but ambivalent on the question of any public interest test in that DFAT may even consider the introduction of such a test as being "anathema" to its views on any change.

Hopefully our suspicion is unfounded and that objectivity prevails in the national interest.

Summary

The ASA wholly and strongly supports the Commission's 5.1 recommendation on the introduction of a 'bounded' public interest test and the supporting framework changes detailed as key points in Ch. 6

In our view, the Government's failure to introduce this legislative change would perpetuate an anti-competitive mechanism available for the relatively few, and predominantly sole, local producers of basic industry inputs that also can readily afford the expense in getting their applications accepted by 'Customs'.

OTHER RECOMMENDATIONS - ISSUES

Normal Value

Box 6.2 details the basis for calculating Normal Values, and Box 6.3 briefly outlines the ASA case on 'Steelforce'.

The ASA is opposed to the practices of calculating imaginary domestic sales and notional constructed costs to make and sell "like goods" in the absence of any actual domestic sales of the exported goods produced to satisfy Australian market requirements.

Recommendation 6.6 on duty collection is of critical importance in this context.

To cite a case study, the current, yet to be resolved HSS Review Investigation on 'Steelforce', is based on year 2008 which for the first 9 months of that year, steel prices globally reached unprecedented highs.



If the Minister were to continue Measures on 'Steelforce' exports based on notional constructed Normal Values for year 2008 the company would be rendered totally uncompetitive on price in the Australian market.

The adoption of recommendation 6.6, should the Measures be continued, would allow the company's exports to be price competitive on the prevailing Australian market.

Compared to the year 2008 historical highs, today's prices on most steel products are considerably lower and the WTO Agreement on anti-dumping was never intended to unfairly discriminate against a specific exporter (or country).

The ASA requests that the administering authority have more regard for common sense, real world commercial factors when having to apply methodologies on Normal Value calculations for exporters having no domestic sales of goods exported to Australia.

Zeroing

Recommendation 6.2

ASA supports the recommendation that Australia should not adopt the practice of zeroing.

Provisional Measures

Recommendation 6.3

ASA supports this recommendation on provisional Measures subject to the introduction of the Commission's recommended public interest test.

Continuation

Recommendation 6.4

On the question of continuation reviews the ASA response is that 'Customs' must determine in a positive sense that dumping, and thus injury, will continue rather than act on the basis of merely a negative test – e.g. Measures should be continued in the event that future exports may be dumped.

The adoption of a three year term is obviously more acceptable than the current five year period.

Adjustments

Recommendation 6.5

ASA supports this recommendation in its entirety.

Duty Collection

Recommendation 6.6

The ASA totally supports the Commission's recommendation that the correct amount of duty should be payable on importation and that the refund / assessment process be abolished.



**Feedback
Monitoring**

Recommendation 6.7

ASA supports this recommendation on monitoring and feedback.

Subsidies

Recommendation 6.8

ASA supports the recommendation on actionable subsidies.

Resources

Recommendation 7.5

The ASA supports the need for all administrations to be adequately and appropriately resourced.

The ASA has real concerns on the current resource capabilities of the TMRO.

Absent the TMRO being better resourced, the ASA submits that the AAT should assume that role.

Recommendation 7.10

The ASA supports the recommendation that all of the proposed reforms take effect as soon as practical possible, **including** the new public interest test and the changed continuation provisions.

Conclusion:

Please contact the writer should the Committee require any further detail or information relating to this submission, namely:

M J Howard
CEO
ASA Inc