



Australia's Anti-dumping and Countervailing System

*Submission to Australian Customs on the Productivity
Commission's Final Report*

by

BlueScope Steel

31 August 2010

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Executive Summary

As a large domestic import-competing manufacturer, the operation of Australia's anti-dumping and countervailing system is an important public policy issue for BlueScope Steel (BlueScope).

BlueScope made two submissions to the Productivity Commission during its inquiry into Australia's anti dumping and countervailing system. We welcome the opportunity to make this further submission to government on the Commission's final report.

In particular, BlueScope would like to reinforce its view that:

- A robust anti-dumping system is very important in providing the confidence needed to underpin ongoing investment in domestic manufacturing.
- The ability to take action against injurious dumping is not an "exception" to the liberal rules of world trade, but rather a well-established World Trade Organisation (WTO) right.
- Anti-dumping measures do not significantly reduce import competition, nor do they constrain access by domestic industry to competitive supplies of steel. Historical data shows large volumes of flat steel imports are available in the Australia domestic market, from a wide range of exporting countries (around 20 countries are regular exporters of flat steel products to Australia). There is no evidence that the two anti-dumping applications made by BlueScope in the last decade (both successful) had any significant impact in terms of constraining overall import volumes.
- While there are a number of improvements that should be made to Australia's anti-dumping and countervailing system (e.g. timeliness of investigations; adequacy of import data; Customs resources) we do not believe there is a case for wholesale changes to the system that could undermine its effectiveness or make it significantly more onerous for applicants.

Specifically, BlueScope:

- Strongly supports the 30-day time limit with respect to Ministerial decision-making on recommendations from Customs.
- Supports the proposal to review and ensure adequate and appropriate resourcing of the Australian Customs and Border Protection Service.
- Supports continuation of a five-year default period for the application of measures.

- Supports the Commission's recommendation, in its final report, to drop its earlier proposal for a two-year freeze on reapplication of duties, which would have amounted to an open invitation to re-commence dumping with impunity.
- Supports improvements to data transparency, not suppressing data that is otherwise publically available whilst maintaining confidentiality of data that is not.
- Supports the use of comparable cases from other relevant jurisdictions when assessing applications.
- Does not support the extension of the investigation period as this would not result in a more timely and efficient process and could prolong the period in which applicants suffer material injury.
- Does not support the proposal to limit the reapplication of duties to 3 years (reapplication should remain at 5 years).
- Does not support the opinion of the Productivity Commission that the annual collection of data by local industry will not be onerous.
- Strongly disagrees with the Commission's proposal for an additional economic test (so-called 'public interest' test). This will increase cost to the applicant and Customs with no net benefit to the public.

In addition to the above, we have also outlined two further improvements to the system that fall outside or, or are additional to the Productivity Commission's recommendations:

1. Improving the transparency of data and widening the scope/sources of data that can be included in an application; and
2. Reducing the period over which sustained injury needs to be demonstrated (currently nominally around twelve months), in addition to speeding up the investigation process.

We would be happy to provide further information in support of this submission. Any questions regarding the submission should be directed to David Jenkins, Manager Government Relations, tel: 03 9666 4022 or Hayley Ward, Sustainability Analyst, tel 02 9319 9022.

About BlueScope Steel

BlueScope Steel is the largest Australian steelmaker by volume, and the only domestic flat steel products manufacturer. It is also the only significant exporter of steel products, selling around half its Australian production overseas under normal circumstances.

In 2008/09, uncoated flat-rolled iron and steel products were amongst Australia's top 40 merchandise exports by value.¹ In the previous year (2007/08²), BlueScope's exports across all categories of flat steel products totalled some \$2.3 billion.³ Key export destinations (in order of value 2008/09) were: the United States; Thailand; Italy; Korea and Vietnam. Other important export destinations for Australian steel include New Zealand; South Africa; Saudi Arabia; United Arab Emirates; and Indonesia.

BlueScope is listed on the Australian Stock Exchange (ASX: BSL) and is amongst the fifty largest companies by market capitalisation. The company employs approximately 9,500 people in Australia and a further 9,500 overseas.

Benefits of a sustainable domestic steel industry

BlueScope has vertically integrated flat steel manufacturing operations at Port Kembla, making steel products that include steel slab, hot rolled coil, cold rolled coil, steel plate and value-added metallic coated and painted products. BlueScope's brand portfolio contains many well-known names including COLORBOND® steel, ZINCALUME® steel, TRUECORE® steel and the LYSAGHT® range of building products.

The company operates a national network of service centres, metallic coating, painting and roll-forming facilities, and steel distribution sites and is a major steel product supplier to the Australian building and construction, automotive and general manufacturing industries. A competitive Australian steel industry is an important foundation for a competitive Australian manufacturing sector. Australian-made steel is a key input for a large range of domestic manufacturers.

¹ Department of Foreign Affairs and Trade, *Composition of Trade Australia*, 2008-09, p.40

² This was the last financial year which BSL exports were at normal levels. Significant upgrades at BSL Port Kembla site significantly reduced production and export capacity in the previous two financial years.

³ BlueScope Steel internal data

BlueScope provides value to Australian customers through the domestic supply chain, including selected just-in-time (JIT) inventory management reducing inventory stocking costs. Domestic customers also have access to a range of specialised made to order non standard steel grades, coatings and colours. Without a domestic supplier security of supply and access to low cost supply chain systems diminish.

The BlueScope domestic value proposition includes access to strong technical and product support. BlueScope has a proud history of market leading product developments and is a technological leader and innovator in the development of coated building products for the building and construction markets. The recent high solar reflectance product developments in the COLORBOND® steel range showcase the benefit of innovation made in Australia for Australian conditions.

BlueScope has recently announced a long-term joint collaborative technical agreement with Nippon Steel Corporation (NSC) to develop next-generation coated steel products for global building and construction markets. Under this agreement BlueScope and NSC will undertake joint research and development underpinned by a 40 year working relationship leveraging the capabilities of each company to create the next-generation of coated steel technology.

Trade Policy

BlueScope supports free trade, open markets and the elimination of subsidies and other market distorting interventions by governments. We have, for example, been a strong supporter of the OECD process to eliminate subsidies and introduce market discipline to the global steel industry. BlueScope has worked hard to modernise our business, continually improve its competitiveness, and adapt to the demands of competing in one of the world's most open markets.

We believe that internationally competitive producers in Australia have nothing to fear from import competition that takes place in the normal course of business. However even the largest, most competitive companies can be seriously injured by dumped goods, particularly in commodity markets, where dumping margins are large and import volumes are significant, or in domestic niche markets which have small or volatile sales volumes.

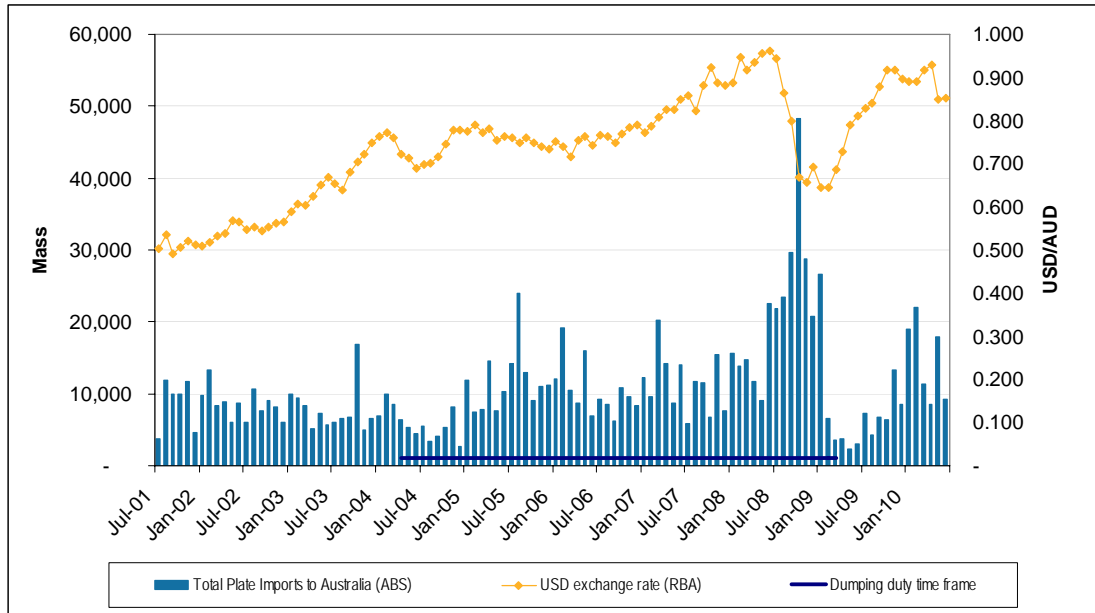
Having an effective anti-dumping system in place to deal with such market distortions is extremely important. It would be a serious error in economic policy if the government – particularly in a small and open market such as Australia's – were to conclude that the possibility of effective action against injurious dumped imports should be abandoned in the interest of a “more open” trade policy. Anti-dumping rules are not an “exception” to the liberal rules of international trade, but rather a WTO-sanctioned remedy against unfair and injurious behaviour.

Anti Dumping measures do not reduce effective competition or competitive imports

Anti dumping and countervailing measures are not used by BlueScope to restrict competitive importation of steel into Australia. In the past ten years, BlueScope has lodged two applications with Australian Customs for dumping duties. In both instances an affirmative determination was made by Customs. The first was for plate steel from China, Indonesia, Japan and Korea, with exceptions in respect of Dongkuk Steel Mill Co. Ltd of Korea and PT Gunung Rajapaksi and PT Gunawan Dianjaya Steel of Indonesia. Anti-dumping measures relating to this application began on 25 March 2004 and expired on the 2 April 2009. The second was in relation to tinplate imports from Taiwan, which began on 10 January 2001 and expired on 10 January 2006. There are currently no anti-dumping or countervailing measures in place or under review by Customs on the range of products directly manufactured by BlueScope in Australia.

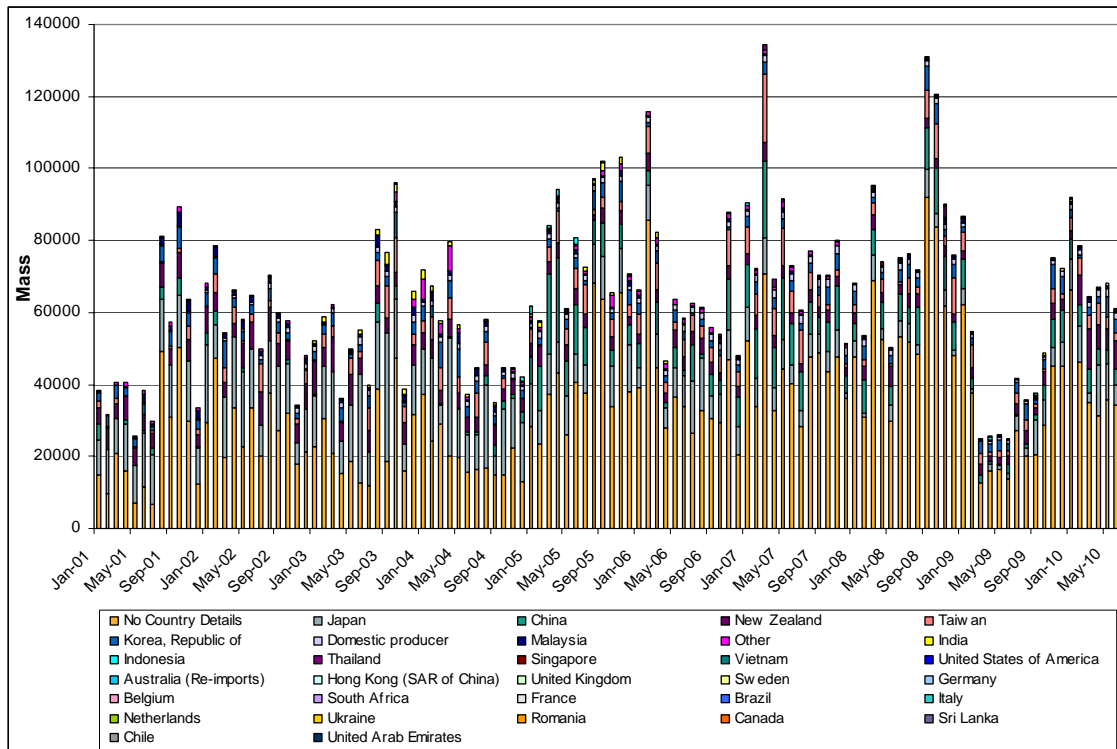
Anti dumping and countervailing measures provide the security in the Australian domestic market needed to ensure adherence to a rules-based trading system, and the confidence needed to underpin ongoing investment in domestic manufacturing capacity. This stability has enabled imports to flow into Australia steadily over the past decade. Figure 1, below, shows the weak correlation between the last period of duties on plate steel and imports of plate steel as well as the strong correlation to open trade market drivers, notably the AUD/USD exchange rate.

Figure 1: Plate steel imports (tonnes) July 2001-June 2010, data purchased from ABS.



The variety of import competition in Australia is strong with 41% of flat steel imports supplied in the 2010 financial year coming from some 19 different countries, and the remaining volume arrived from undisclosed countries of origin or re-imported Australian steel (0.1%).

Figure 2: Flat steel imports (tonnes) January 2001 to June 2010 (including plate, hot rolled, cold rolled, painted, zinc and aluminium coated steel) , data purchased from ABS.



Anti-dumping action in no way interferes with competitive foreign products reaching Australian consumers and anti-dumping action does not isolate Australian firms from foreign competition in the Australian market. Given the large volume of flat steel imports (approximately 20-40% of total raw steel products consumed) and the number of importing countries, it is highly unlikely that any anti-dumping action would deprive consumers of competitive imports.

Anti Dumping measures provide certainty for investment

The decline in the number of anti-dumping and countervailing measures deployed in Australia in recent years is not an indication that policy is no longer needed. Rather, we believe having an effective anti-dumping regime in place plays an important 'policeman on the beat' role in deterring such activity. Accordingly, BlueScope strongly supports the continuation of an Australian anti-dumping and countervailing system. Australian industries have a right to expect that the conditions of competition result from the natural comparative advantages enjoyed by overseas firms, and that they will not be exposed – unilaterally – to injurious dumping.

We support the comment from Minister for Home Affairs, Brendan O'Connor that "Australia's practices are well regarded internationally and our system is considered to be fair, consistent, transparent and robust."⁴ This strong platform provides stability that has enabled BlueScope to invest in Australia with confidence.

Over the past two decades BlueScope has invested heavily in Australia in new technology, new equipment and products as well as up-skilling our workforce. Recent investments include:

- 2010 product launch of COLORBOND® Coolmax® steel in Whitehaven™ BlueScope's new high solar reflectance roofing material.
- 2009 No.5 Blast Furnace at Port Kembla was successfully relined with an estimated capital cost of \$372 million.
- 2009 \$134 million Sinter Plant upgrade.
- 2008 product launch COLORBOND® steel with Thermatech® in all 20 standard COLORBOND® steel standard roofing colours helps reduce a building's energy load, whilst allowing a wider choice of thermally efficient roofing colours.
- 2007 Western Sydney Service Centre opening of new state-of-the-art \$150 million COLORBOND® steel production facility.

⁴ Joint media release by Senator Hon Nick Sherry, and Hon Brendan O'Connor MP, Minister for Home Affairs, 27 May 2010.

- 2006 \$100 million Hot Strip Mill upgrade.
- 2004 \$94 million Sinter Machine Emissions Reduction Project
- Ongoing graduate, cadet and apprentice recruitment and training schemes.
- Ongoing investment in training existing employees.

All of this investment has been predicated on three principles:

- 1- The maintenance of free and open markets;
- 2- Adherence to a rules-based trading system by all countries; and
- 3- Continued macro and micro-economic reform in Australia to ensure our manufacturing industry remains competitive.

Responses to specific recommendations

Recommendation 5.1: The new public interest test

BlueScope does not support the recommendation to implement a public interest test. We believe there is nothing in the Australian experience, or those of other countries that have introduced something akin to a 'national interest' test, that shows the potential benefits of such an approach would outweigh the political and economic costs it would undoubtedly engender. In short the recommended 'public interest test' is not in the public interest.

Recommendation 5.1 (page 28) the new public interest test

The imposition and continuation of anti-dumping and countervailing measures should be subject to a 'bounded' public interest test, embodying a presumption that measures will be imposed if there has been dumping or subsidisation that has caused, or threatens to cause, material injury, unless one (or more) of the following circumstances apply:

- the imposition of measures would preclude effective choice and competition in the Australian market for the like goods, and the resulting scope for the applicant supplier to exploit market power could not be addressed through application of the lesser duty rule*
- the price of the imported goods concerned after the imposition of measures would still be significantly below competing local suppliers' costs to make and sell*
- un-dumped or non-subsidised like imported goods are readily available at a comparable price to the dumped or subsidised imported goods*
- prior to the commencement of injurious dumping or subsidisation, the local industry's share of the domestic market for the goods concerned was low, with that share likely to remain low even if measures were imposed*
- the large majority of the overseas supplier's output of the goods concerned is exported, with the goods imported into Australia being exported at a price which covers the supplier's fully distributed costs and a reasonable profit margin (plus the value of any identifiable input subsidies).*

Any test that allowed dumping in markets where one player has strong market share or where there are multiple low market share players is strongly opposed. Such an approach could allow sustained injurious dumping against BlueScope, or against its domestic manufacturing sector customers.

The existing requirements for successfully demonstrating injury as a result of dumping are onerous, costly and time consuming. It is BlueScope's experience that initiating and pursuing an application costs many tens of thousands of dollars and hundreds of hours of management time. An anti-dumping application is not something that is undertaken lightly or without considerable effort and reflection by the applicant. A natural outcome of the process without the inclusion of the proposed public interest test is that applicants would not make a submission if the outcome was not likely to remove their injury. The high rate of conversion from investigation

to application of duties in the past decade would tend to support the view that that the already costly and onerous application process effectively screens out many applications that would not be in the defined “public interest”.

Adding a public interest test would increase administrative and compliance costs for applicants, as well as increasing the resources government would need to devote to assessing applications. It could also compromise the (already long) timeline for investigations.

The difficulty in defining the public interest, and the resulting subjectivity of such a test, would most likely result in the final decision being left to a Minister anyway, who is unavoidably subject to both direct and indirect political pressures.

Recommendation 6.4: Default five year term with limit of one three year extension.

BlueScope supports the Commission’s final recommendation that there be no change to the current five-year default period for anti-dumping and countervailing measures.

We are also pleased that the proposal for a two-year freeze on the reapplication of duties, after the expiration of the initial term, has been dropped by the Commission. BlueScope strongly objected to this recommendation in the draft report, believing it constituted an open invitation for importers to recommence dumping, with no suitable remedy available to domestic producers.

However, we do not support the recommendation that extensions of anti-dumping and countervailing measures, following a continuation review, be limited to one three-year term. Instead, we believe the current setting, which allows for a five-year extension, should remain. We see no reason to reduce the term of extensions, given that Recommendation 6.5 provides for an annual review of measures and adjustment accordingly, which ought to be sufficient to modify duties during the reapplication period if circumstances have changed.

Recommendation 6.5: Review and adjustment of measures on an annual basis

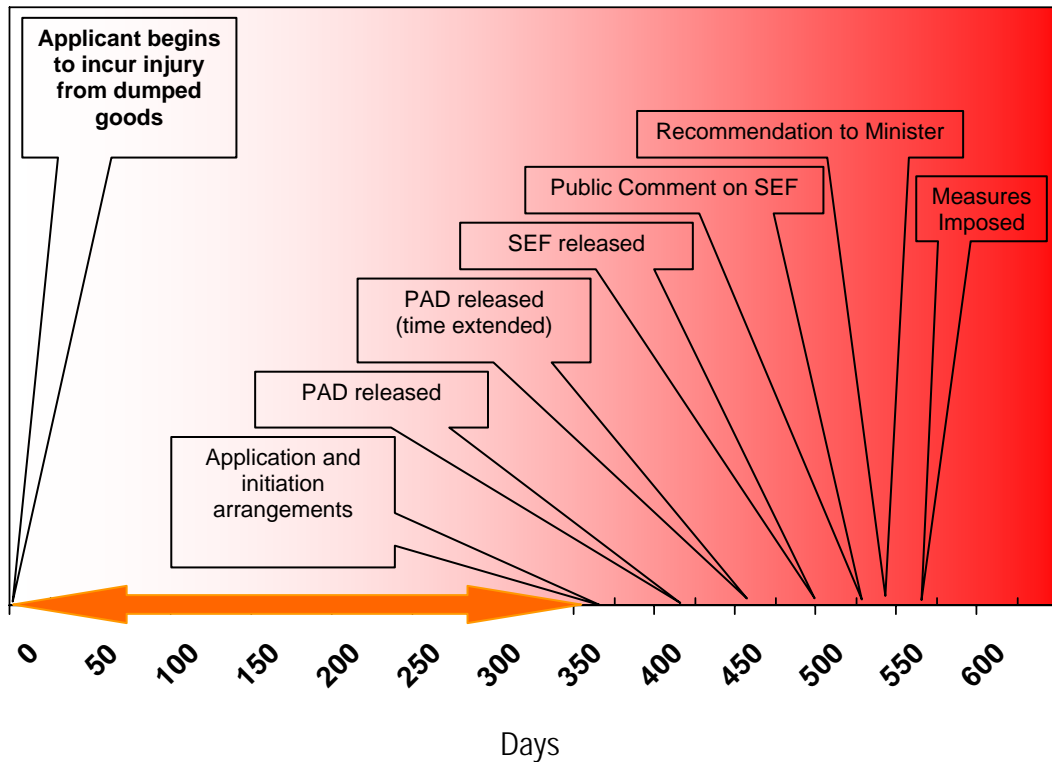
BlueScope does not support the opinion of the Productivity Commission that “Assembling [variable factors] data should not be overly onerous for firms, particularly if they knew in advance that it would be required” (page 120). Any recommendation that requires local industry to collect, analyse and supply data for the purpose of allowing Customs to complete an annual assessment, will be onerous and costly for firms. In effect, it will transfer administrative cost to the local industry adding to the injury already suffered.

Recommendation 7.4: 30-day time limit on Minister

BlueScope strongly supports Recommendation 7.4 that the Minister has a 30-day time limit with which to respond to advice from Customs or the Trade Measures Review Officer (TMRO).

However, we also believe that further improvements to the timeliness of investigations can and should be made. Timeliness should not be measured only in terms of the investigation length and government response, but also in the time from the commencement of injury to the domestic industry to the time of the imposition of corrective measures. Not including the significant time taken in the preliminary stage of preparing and screening an application in the review ignores a significant stage in the process (as illustrated in Figure 3 below). Whilst there is no official minimum period for data in order to make an application, there is a requirement to go beyond presenting a case at face value and supply sufficient data to substantiate the claims made. One of the results of this investigative burden on the applicant is a period of approximately twelve months passing before an application is made. This investigative period by the applicant should be included in the review of the system. This will allow for the consideration of measures that improve the productivity of the application and Preliminary Affirmative Determination (PAD) process.

Figure 3: Adaptation of Figure 3 OVERVIEW XXVII Lag of injury incursion to PC process commencement.



Recommendation 7.5: Resourcing of Customs and TMRO

BlueScope strongly supports this recommendation, that the Australian Government should ensure the Australian Customs and Border Protection Service and the Trade Measures Review Officer (TMRO) are adequately and appropriately resourced to enable them to effectively undertake their functions under the new system. This level of resourcing should allow for engagement of outside expertise where necessary to enhance the quality of Customs’ decision making.

Recommendation 7.3: Extension of investigation period

BlueScope does not support this recommendation. Improvements to the system from the recommendations 7.4 and 7.5 as well as BlueScope’s recommendation to improve the efficiency of the process during the preliminary stages more that resolves any circumstance where an extension may have arisen. Extending the time of investigations only increases the injurious effect of dumped goods. Rather than extending timeframes, it would be more efficient for if solutions were found to issues that have the potential to cause delays.

Recommendations 7.6 and 7.9: Transparency of import data

An improvement that could be made to the system that was not within the scope of previous submissions is the need for greater transparency of data to enable industry to analyse potential dumping. The burden of this lying on the applicant provides a barrier to access anti dumping measures and increases the administrative burden on Customs to assess claims. The report acknowledged that this is a concern for several industries (Page 160) but offered no recommendation to resolve the concern. A possible recommendation could be Customs conducting confidential analysis of import data at the request of domestic industry during the preliminary stages of an application.

BlueScope supports **Recommendation 7.6**: Customs should indicate to the Minister any comparable cases in other countries; and also recommends extending the use of comparable cases in other countries as acceptable support data for applications where access to primary pricing data is limited or not available to industry.

BlueScope also supports **Recommendation 7.9**: ABS should not suppress data if the same or similar data is publically accessible.