OneSteel

Submission to

Productivity Commission

Australia's Anti-Dumping and Countervailing System

Issues Paper

June 2009

Executive Summary

Onesteel welcomes the opportunity to participate in the Productivity Commission's review of the Australian Anti-Dumping and Countervailing System, to comment on its impact on individual stakeholders and the wider community, and to suggest changes that might be made to improve it.

OneSteel supports the retention of an anti dumping system ensuring that Australian industry can effectively access and use the anti-dumping regime in a manner that is consistent with Australia's WTO obligations under the Anti Dumping Agreement.

Onesteel recognises that the current system whilst effective, is not perfect and that enhancements to the Dumping and Subsidy Manuals need to be made, supported by the issue of Ministerial Directives and the development of Customs resources.

Onesteel does not believe there is a need to introduce a public (community) interest test to the Australian Anti dumping and countervailing system.

OneSteel does not believe that anti dumping should be incorporated into domestic competition law.

1 Introduction

In July of last year, the Council of Australian Governments (CoAG 2008, p. 4) agreed that anti-dumping should be one of the priority areas for further competition reform.

Against this backdrop, the Australian Government has asked the Commission to:

- Assess the policy rationale for, and objectives of, Australia's anti-dumping regime and the effectiveness of the current system in meeting those objectives
- Examine the economy-wide benefits and costs of the system
- Make recommendations on the future role of an anti-dumping system with the aim of improving the performance of the economy, having regard to the interests of industry, importers and consumers
- Assess the administration of the system, giving consideration to the key decision-making steps in the investigation process (see box 1 and figure 1) and advising on ways to improve administrative efficiency, reduce compliance costs and increase certainty for business.

The Productivity Commission is to issue its Final report on 26 December, 2009

OneSteel, has been involved in a number of anti-dumping inquiries over recent years.

- OneSteel has been an applicant and an interested party, having been exposed to the various components of the system including applications, reviews and continuation inquiries.
- OneSteel's anti dumping experience ranges across a broad range of product groups and end-user markets,
- OneSteel has also been party to anti dumping investigations overseas, however dumping has never been determined nor have anti dumping trade measures been applied against OneSteel exports.

OneSteel offers the following comments in respect of its experiences with the administration of Australia's anti-dumping system.

2 The Rationales for Australia's Anti-Dumping System

- At the international level, there is currently no doubt that anti dumping (or anti subsidy) proceedings may be warranted in a given situation and that, provided the substantive and procedural requirements are met, they are entirely legal. This is amply documented and proven by the current WTO anti dumping agreement and its predecessors.

- With respect to Australia, it is consistent with our commitment as a signatory to the WTO, in particular to the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

- Anti Dumping and Anti Subsidy can be seen to have widespread community support as addressing what is unfair behaviour. A community system's underlying rationale is that dumping is a means of unfair competition. It could be argued that in a truly liberalised market, there is no need for anti dumping legislation, however as truly equal conditions of competition do not exist in the international market, there is a key justification that an anti dumping system remains. As such, internationally both the anti dumping and subsidy agreement are seen as a necessary tool to enable countries to agree to a more liberal trading regime, ensuring a country's domestic industries that there is a mechanism available to them to address unfair competition.

- It would be inappropriate for Australia to consider any unilateral action regarding reducing access to anti dumping measures, when all our major trading partners (including China) have adopted both anti dumping and subsidy agreements enacting them into their domestic law.

3 The Benefits and Costs Of The Current System

- Dumping measures are not the same as tariffs, in that they are temporary and deal only with unfair trade.

- There is no reduction on fair competition in the market place from the imposition of dumping measures. Importers can still import goods, but cannot get an unfair advantage due to dumping or subsidisation of goods.

- There are costs involved but these costs are necessary to deal with establishing grounds for measures and of course completely avoidable if parties do not dump and governments abide by the obligations they agreed to abide by under the subsidies agreement

- The level of measures may sometimes be greater than the general tariff, but the application of the lesser duty rule means that they are not greater than needed to address unfair trade.

4 How Might The Current System Be Improved?

4.1 Retention of the existing system

- OneSteel supports the retention of the present system as being the most effective.

- The system is not considered perfect however and suggestions on how it can be improved are detailed in the following sections.

4.2 Like Goods

- The question of what constitutes “like goods” does not have to be resolved at the screening stage, although the early resolution of this issue is important.

- In cases where it is difficult to make a thorough initial assessment, the approach of Customs to advise parties of a preliminary view, and to publish an issues paper, seeking formal submissions as part of the ongoing investigation, is considered to be a practical approach.

4.3 Normal value calculations

- The time periods over which normal values are calculated, and the methodology for calculating those normal values, are appropriate.

- Despite the methodology being appropriate, Customs needs to take greater heed to standard practices within an industry in determining normal values. Inconsistent determinations can have a material impact on calculated dumping margins creating the

effect of 'moving the goal posts' for any applicant, potentially making a valid dumping claim, invalid.

- Furthermore, Customs should not permit exporters to change the nominated date of sale for normal value calculation purposes, from one investigation to another purely because it assists the exporters' preferred position.

4.4 Market Situation

4.4.1 Legislation

Section 269TAC(2)(a)(ii) details the legal basis for considering whether domestic sales are unsuitable for normal value purposes.

In December 2008, Australian Customs issued a Discussion Paper on Market Situation (the Paper) that seeks to address the test contained in s.269TAC(2)(a)(ii) and provides clarification, as follows:

- requires identification of the situation in the market that makes sales in that market unsuitable for normal values – in this case a government activity that influences costs or prices; and
- a finding that the market situation has rendered domestic selling prices unsuitable for normal values *i.e. there has been a material reduction in the domestic selling prices of the goods that is attributable to the market situation* (emphasis added).

OneSteel is concerned with the italicised comments included as an explanation of what outcomes constitute circumstances for a market situation.

- A material reduction in selling prices may be only one indication of a market situation. A further consideration involves domestic selling prices at levels below what they might otherwise be, due to government influence on inputs (e.g. energy, water and/or raw materials). The explanation provided in the Paper suggests that the only contemplation of a market situation is where the domestic selling prices have been reduced. This should not be the sole consideration. Government influence (via control on inputs and/or fiscal policies such as exemptions of taxes) may impact domestic selling prices materially to suppress prices at levels materially below what they would otherwise be.

- This matter is raised to ensure that Customs maintains an open mind when examining the circumstances of what constitutes "unsuitable sales" for normal value purposes.

4.4.2 China

- Applications for anti-dumping measures by Australian industry which assert market situation – by the greatest majority – are targeted at China. This is due to the change in policy announced in April 2005 by the then Government to recognise China as a market economy. The Paper indicates that there is no automatic assumption that domestic selling prices in China are unsuitable for determining normal values.

- No case has been proven that a market situation exists in China rendering domestic selling prices unsuitable for normal value purposes. All normal values have been determined using prevailing domestic selling prices. This would suggest that the 'hurdle bar' has been set at an unreasonably high level which potentially negates any positive finding of a market situation.

4.4.3 Applications

- The Paper identifies the *prima facie* test necessary to support a claim that domestic sales are unsuitable for normal value determination (i.e. a market situation). The information must be supported with evidence which possesses "sufficient merit to establish reasonable grounds for the publication of a dumping duty notice."

- Customs will only investigate whether a market situation prevails on the basis of an adequately documented application that passes the sufficiency of evidence test. It is unlikely Customs will make a finding that a market situation has rendered domestic selling prices unsuitable in the absence of a request (although prices may be deemed unsuitable on an alternate basis). The sufficiency of evidence test is a substantial hurdle for Australian industry to overcome – particularly more daunting for the small to medium enterprises ("SMEs") seeking to action injurious imports. The lack of transparency in some jurisdictions further adds to the difficulty.

4.4.4 Sufficiency of Evidence

- OneSteel does not disagree with the principles contained in the sufficiency of evidence section of the Paper. It is noted however that Customs has referenced the Canadian

administration's approach to assessing whether domestic prices are unsuitable – i.e. "whether domestic prices are materially influenced by the government of that country and are not substantially the same as they would be if they were determined in a competitive market".

- Whilst applauding the introduction of the Canadian methodology, Customs practice to date has been particularly restrictive, permitting only very limited circumstances to be used as evidencing the influence of government owned enterprises on domestic selling prices.

In particular, OneSteel is concerned with the limiting nature of the following factors:

- The number of government owned enterprises in the sector under examination;
- Whether government enterprises are trading unprofitably so as to significantly lower prices in the market; and
- The prices of the private enterprises are also lowered due to the unprofitable trading of the government owned enterprises.

It would appear that each of these items is linked and that failure in any one area discounts a possible finding of government influence. Furthermore:

- Government owned enterprises may only be partially owned by government, yet still controlled by the government. A literal interpretation suggests that unless the government owned enterprise is trading unprofitably, lower prices will not be considered artificially low.
- Each of the factors identified in the Draft Manual should be considered in isolation, rather than in aggregate. If there is participation of government owned and/or controlled enterprises in the sector then prices in the sector should be examined to determine "*whether they are materially influenced by the government of that country and are not substantially the same as they would be if they were determined in a competitive market*." - as per the Canadian methodology.

The key consideration is whether the prices are lower than they otherwise would be because of the government owned enterprise influence in the sector (as distinct from determining whether prices have been reduced).

4.4.5 Customs' Investigations

- The Paper indicates that where there is no cooperation from exporters, Customs will not examine market situation claims. However, Customs should consider circumstances where a seller (who is not an exporter) in the market of the exporting country is approached and elects to cooperate with Customs, and information on domestic selling prices is made available to the investigation.

- It would not be appropriate to discount alternative sources of information on domestic prices in instances where an exporter (or exporters) elects not to cooperate.

- OneSteel supports comments made in the Paper that indicate Customs may independently find a market situation exists in the exporting country. In these circumstances, Customs will notify the government in the exporting country and interested parties, and investigate accordingly, time permitting. OneSteel suggests that it would be appropriate for this provision to be explicitly mentioned in the Dumping Manual.

- A further consideration relates to information available to Customs during the course of an investigation involving numerous countries. In circumstances where there is more than one exporting country and where the applicant industry has nominated one of the countries as possessing characteristics which reflect a market situation, dependent upon the circumstances, Customs may have available to it benchmark information on selling prices and costs from a second market. This information may be used to assist Customs in concluding whether prices are artificially low, or whether the prices are at levels which are lower than they otherwise would be but for the government influence.

- In circumstances where government owned enterprises are suppliers of key inputs and/or manufacturers of the goods under consideration, Customs should consider benchmarking the input costs, and the costs and selling prices of the subject goods (for example, in China), with costs and prices from other market economy costs and prices. This comparison could assist Customs in concluding whether prices are artificially low (or lower than they otherwise would be due to government influence) and therefore unsuitable for normal value purposes.

- In a situation where only one country's exports are the subject of an application, the applicant would seek to include surrogate information to demonstrate that artificially low prices (and hence a market situation) are evident in the exporting country.

4.4.6 Existence of subsidies

- OneSteel believes that subsidies can influence domestic selling prices in the exporting country. As such, Customs should have the ability to examine the impact of subsidies on the domestic prices of the goods under investigation, in the context of a dumping investigation. Any material impact of subsidies on domestic selling prices may render the domestic selling prices unreliable.

- OneSteel also considers that government policy in the country claimed to be a market situation can materially influence domestic selling prices. For example, the manipulation of VAT duties on export and the imposition of export taxes on certain key manufacturing inputs that results in an oversupply of the raw material in the exporting country at artificially reduced prices, are likely to cause a reduction in the domestic selling prices of the subject goods.

- Similarly, government control of electricity and gas prices can result in prices in the market situation country being lower than they otherwise would be.

- Policy decisions by state and local governments are just as likely to be found in an investigation and can impact prices in a manner similar to government subsidies.

4.4.7 Nil or inadequate government cooperation

- Anti-dumping investigations are conducted in accordance with legislative timeframes. Whilst it is appropriate to provide reasonable extensions for the supply of information in investigations where a market situation is claimed, the information must be provided in a timely and efficient manner.

- Extensions of time granted to publish a Statement of Essential Facts may prolong the material injury suffered by the Australian industry. It is therefore important that government cooperation is encouraged in a time efficient manner.

Summary of recommendations to improve the current system where it is claimed a market situation exists.

- Replacement of the "significant reduction in prices" criteria when examining the impact of government owned enterprises with an assessment of "whether prices have been determined as they would have been in a competitive market";

- Concern that the 'hurdle bar' has been set at an unattainable level so that a market situation finding (e.g. in respect of goods exported from China) is unlikely to be established;

- Adoption of benchmarking of prices and costs in investigations where there is more than one country of export (where it is alleged a market situation is evident in one country), and consideration of surrogate information from a market economy supplied by the applicant;

- Recognition that it may not always be practicable to obtain specific written documentation identifying the government's influence or control which renders domestic selling prices unsuitable, although the prices can be established as artificially low based upon best available information;

- Acknowledgment of inquiries conducted by other administrations (particularly Canada and the European Union) which confirm the existence of the equivalent 'market situation' in the same industry sector subject to investigation; and

- That in the absence of adequate cooperation from the government of the exporting country, Customs may rely upon the information provided by the applicant industry (in the event it is not adequately refuted).

4.5 Material Injury – Profits foregone and/or reduced market share in a growing market

The consideration of injury matters should take account of profits foregone and/or reduced market share within a growing market, even if sales volumes are rising. OneSteel believes that further clarity is needed on this issue.

- OneSteel accepts that a finding of material injury is in most cases, but not all, dependent on a finding of profit. What is not clear is whether the term "profit", as used in the Ministerial Direction, means actual or potential profit.

- As noted in the Customs Dumping Manual, Article 3.4 of the WTO Anti-Dumping Agreement refers to actual and potential injury in relation to all the indicators (with the obvious exception of the level of dumping margin). In essence, material injury indicators can be based on what has occurred, or what may occur. However, in either case, any finding on material injury can only be made on the basis of positive evidence, the test set out in Article 3.4.

- OneSteel is concerned that there remains debate about whether potential profits (or as it has been referred to, "profits forgone") can be considered an appropriate test for material injury, even though it is clearly referred to in the WTO Anti-Dumping Agreement and accepted under Section 269TAE of the Customs Act 1901.

- The failure to acknowledge the loss of potential profits is to enable an exporter to benefit in an expanding market, rather than the Australian industry, which is then denied the benefit of anti-dumping measures in such a circumstance.

- The failure to acknowledge the loss of potential profits is to deny Australian industry (due to dumped imports), the ability to capitalise on any investment and cost savings it has made through the business cycle.

Material Injury Summary

- A new Ministerial Direction on Material Injury needs to be issued that provides clarity on how the issue of profits foregone relates to material Injury assessment.

- The directive needs to state that Customs be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline. The directive should also state that it is possible to find material injury where an industry suffers a loss of market share in a growing market without a decline in profits.

4.6 Countervailing/Subsidy

Australia's list of actionable subsidies under the countervailing provisions should be closer aligned with the WTO list. The inclusion into the Australian Dumping and Subsidies manual of the actionable subsidies list and concepts found in the WTO SCM agreement would enhance the clarity of this document.

4.7 Basis for calculating a non injurious price – level of profit

OneSteel suggests that in those circumstances where a constructed price is used for calculating a non injurious price (refer Trade Measures Policy Advise 1/2004), then the amount of profit to be determined should reflect the level of profit, needed to meet the level of return (i.e. internal hurdle rate), needed by an industry to ensure re-investment and ongoing participation in the market place. It is not Customs' role to determine the appropriate level of profit and/or return on investment

4.8 Onus of Proof on Applicant

- OneSteel believes that Customs currently places an undue onus on the applicant to provide evidence beyond reasonable doubt regarding all assertions made in an application concerning exporters and the relevant overseas markets for the goods under consideration.

- OneSteel supports the need for well researched and documented applications and submissions, however believes that Customs has 'raised the bar' to such a level that the time and cost burden to provide evidence beyond reasonable doubt, effectively deters many Australian manufacturers from utilising the legislation despite having a genuine prima facia case.

- Furthermore, OneSteel believes that Customs does not apply the same 'level' of veracity to exporter responses and/or assertions. OneSteel believes that there is a need for Customs to provide greater symmetry between applicants and exporters with respect to evidence required to support assertions and Customs assessment of this evidence.

4.9 ABS suppressed Data

- OneSteel has experienced considerable difficulty in obtaining import data for the preparation of an anti-dumping application where certain data has been suppressed by the Australian Bureau of Statistics ("ABS"). The suppression of ABS data follows from a request by an importer (or importers) that the publication of the data will lead to the public disclosure of confidential business information.

- OneSteel considers that restricted access to import data (as imposed by the ABS) significantly retards an applicant's ability to adequately provide the necessary information in a form required by Customs for the purposes of an anti-dumping application.

- Given market share is one of the key material injury assessment criteria and that an applicant needs to nominate an exporter country, it seems deficient that this information is often not available to support an application.

- Perhaps if this information was readily available, claims of 'frivolous and vexatious applications' may fall as potential applicants can better assess their material injury claims prior to making a decision to lodge an application.

4.10 Duty absorption

OneSteel believes that there is a need for the introduction of a duty absorption scheme. Whilst there are procedures set out in the dumping manual that enable some redress to this issue, there is no formal recognition of what is described by the EC as anti absorption proceedings which allow a quick review of measures to ensure that the dumping measures are effective.,

4.11 Country Hopping

OneSteel believes that a new Ministerial Guideline should be issued with respect to the issue of Country Hopping.

4.12 Ministerial decisions

The Act should provide for a maximum period of 60 days within which the Minister makes a decision as to recommendations made by Customs.

4.13 The current five year norm for anti-dumping measures

- OneSteel supports the retention of the existing 5 year period for both antidumping measures and sunset reviews.

- The current system enables affected Parties to seek a review of the level of measures and seek revocation of measures. There is no suggestion that the review process is currently ineffective.

4.14 Freeze on re-applications

There should be no freeze on re-application. An application is either accepted or rejected by Customs on its prima facia merits. An application is not accepted if it is 'frivolous'. If an application is rejected, there is no unnecessary cost or effort borne by affected parties.

4.15 Preliminary determination

- Customs' current practice not to impose securities for interim duties on exporters (as is allowed under Article 7.1 of the WTO AD Agreement and under Section 269TD of the Customs Act 1901), before issuing the Statement of Essential Facts means that Australian Industry continues to suffer material injury whilst an investigation proceeds.

- Customs' focus should be on when there is sufficient information to make such a decision, not on waiting until the issuing of a Statement of Essential Facts. It would be expected that in most investigations by day 60, Customs would have completed applicant visits and be in receipt of exporter questionnaires .i.e. have sufficient information on which to support a preliminary determination.

- OneSteel recommends there should be an administrative deadline of 90 days after initiation that requires Customs to make a decision based on the information that is available at that time. This is of particular relevance to those investigations that Customs seeks and is granted a time extension from the Minister.

- In the event that Customs determines that dumping has not occurred (following visits to exporters after the imposition of measures), provisional measures can be removed and refunded.

4.16 Retrospective Measures

Section 269TN (3) and (4) of the Customs Act provide that dumping measures can be imposed retrospectively on products that have entered the Australian market up to 90 days prior to the date of the application of provisional measures under certain two circumstances:

- the goods have been imported by an importer who knew or ought to have known, that the amount of the export price of the goods was less than the normal value and that by reason thereof material injury would be caused to an Australian industry; or

- that the goods of a kind have been exported to Australia on a number of occasions which has caused injury, or but for the publication of a dumping notice, would have been determined to have caused material injury to an Australian industry by reason of the amount of the export price of the goods being exported being less than the normal value of the goods exported.

Despite this no provisional measures have been imposed since 1986.

- Guidelines need to be prepared to establish the evidential standard that is required, and which factors can be used to establish the required knowledge to attribute to an individual importer. Onesteel considers the test of "knowing" can be based on information other than the subjective opinion of the importer.

- Other factors which could be used to establish "knowledge" are whether an exporter has dumped goods into other countries (normally established by reference to WTO semi-annual returns), or whether they have dumped goods into the same country before.

4.17 Improving administration of the existing system

4.17.1 Organisation of Case Management

OneSteel recommends a practice whereby a particular Customs team only undertakes work on two cases in the same industry sector. This promotes a balance between becoming familiar with an industry and the need to ensure fresh insights into the process.

4.17.2 Need for Better resourced and skilled Customs investigation teams

- It is critical that Customs resourcing be appropriate to manage multiple (simultaneous) and effective investigations. It is noted that recent cuts to resources have left Customs with limited resources to adequately perform complex investigations. This is to the detriment of applicants' accessibility to the system as Customs needs to manage its budget and it could be perceived that this determines their ability to accept applications and / or resource appropriately those investigations they choose to accept.

- Customs needs to invest in resources with a higher level of competency in accounting and investigative skills to ensure they can effectively verify applicant, exporter and public domain information.

- This current lack of skill set, results in Customs' apparent reluctance to reject exporter information, even if there is strong conflicting evidence in the public domain.

4.17.3 Introduction of new information during Appeals

OneSteel suggests the Appeals processes should be amended to permit the introduction of relevant new information or account for material changes in circumstances.

4.18 Reviews

OneSteel considers there is a need to introduce guidelines to Customs in the Customs Manual as to how Customs should determine whether or not to accept an application to review measures, or an application for continuation of measures including what factors are considered in this process.

4.18.1 Review of Measures

- There should be Guidelines published that set out how Customs should approach making a determination on whether or not to accept an application for a review.

- Guidelines should also set out those circumstances in which the Minister decides to initiate a case, in particular where an application is sought for a review of variable factors, and the Minister requests a review on whether the measures should remain.

- Guidance should be provided as to what other information Customs will have regard to under section 269ZC (1) (b) to any other matter in determining whether or not to accept an application for review.

4.18.2 Review of continuation of measures

OneSteel recommends that the Manual be amended to reflect the findings of the Panel in US Corrosion Resistant Carbon Steel Flat Products from Japan and the Appeal Body's findings in US Oil Country Tubular Products from Argentina.

4.19 Post imposition of measures

Monitoring and compliance

- It is OneSteel's understanding that the monitoring of interim duties is not afforded the highest priority by Customs. The monitoring of interim duty collection is undertaken intermittently as available resources permit.

- It is OneSteel's expectation that once interim duties have been imposed there should be some return to normal trading conditions. During this period it is anticipated that Customs would ensure applicable interim duties are paid by importing parties. In addition to the duty collection function, Customs should also be involved in monitoring the effect of the interim duties imposed on market selling prices for the GUC – to ensure that the duties imposed have the desired effect of enabling the industry's prices to recover to non-injurious levels.

- This latter activity, where market prices are monitored regularly by Customs, does not presently occur. OneSteel recommends that Customs actively monitor the impact of interim duties on market prices through close liaison with the applicant industry.

5. Alternative approaches

5.1 Should Australia's anti-dumping system have regard to economy-wide impacts? If so, what are the options for introducing such a focus and what would be their benefits and costs?

OneSteel recognises and supports the relevance of the general public interest, whilst noting that the general public interest includes the interests of Australian manufacturers and other stakeholders. OneSteel would, however, submit that decisions about the general public interest –

especially given that this is an international issue – are ones best made by the Executive Branch of Government.

Accordingly, OneSteel opposes the introduction of a public interest test into Australia's Antidumping and Countervailing System.

It is important to consider the following principles that currently apply to international trade:

- The act of dumping is not illegal, merely actionable in limited circumstances where it is shown to cause material injury to domestic industry.

- Dumping of a product into a market where there are no producers of that product (or like products) is not actionable and potentially delivers a benefit to consumers through lower pricing.
- If there is a domestic industry, but it chooses not to complain, the dumping may continue unabated. Dumping investigations are not automatic or compulsory.

- The international community has for many years, and particularly since 1947, recognised dumping as an unfair trading practice when it causes material injury to domestic industry. Article VI of GATT declares: "The contracting parties recognize that dumping … is to be condemned if it causes or threatens material injury to an established industry …"

- The international community, in adopting Article VI of GATT and the Anti-Dumping Code, has already determined that the benefits of dumping to the wider economy must be modulated to safeguard the interests of domestic industry. (This is partly because there is no international equivalent of national competition laws.) Those benefits (which include not just price, but also diversity of product offerings, competition and consistency of supply) are modulated, not eliminated by anti-dumping measures. The products are not banned from the market and are not subjected to prohibitive pricing.

- The Anti-Dumping Code (and the Australian Customs Act) imposes extensive disciplines on regulators and participants in dumping investigations in an attempt to limit the scope and quantum of anti-dumping measures. While not perfect, in Australia at least, it has served tolerably well.

- While, in almost every dumping case, some affected parties will have perceived causes for complaint about the specific outcomes of particular investigations, there is no evidence that the system has been subject to blatant abuse by any parties or has been grossly mismanaged by Customs. Having said that, there is undoubtedly room for

improvement in the administration of the system and the participation in it by affected parties and OneSteel has made suggestions to this effect elsewhere in this submission.

Whilst opposed to the introduction of a public interest test OneSteel would like to make comment on some forms of public interest test are part of the EU (Community Interest) and Canadian Antidumping and countervailing systems.

- The essence of the test is whether, where dumping, material injury and causal link are proven, there are nevertheless good reasons (in the public interest) for not imposing measures.

- The test may also be used to decide whether, in the event that measures are imposed, they should be at a lower level than the dumping margin or non-injurious price would otherwise require.

- The economic rationale offered to support the use of a public interest test is that the cost of imposing measures (assessed across the economy) should not be disproportionate to the benefit (normally, to the domestic industry) of imposing them.

- The WTO Negotiating Group on Rules in the Doha Round has considered whether Article 9 of the Agreement on the Implementation of Article VI of GATT (the Anti Dumping Code) should be amended to insert a requirement that members take due account of representations made by domestic interested parties (industrial users, suppliers of inputs to the domestic industry and representative consumer organizations) whose interests might be affected by the imposition of measures. The Chair of the Group describes the positions of the various members as being “very far apart” and the participants being “sharply divided” on the desirability of the proposal. Unless and until the WTO reaches consensus on this issue and amends Article 9 accordingly, it would be premature and dangerous for Australia to unilaterally adopt a public interest test.

The Commission refers to the “feasibility of embodying public interest tests within anti-dumping regimes”. As well as being opposed to the adoption of a public interest test as a matter of principle, OneSteel considers that the proposal is not feasible from a practical standpoint.

- The Commission has noted that the EU’s community interest test has very rarely been a determining factor in the outcomes of investigations.

- The Commission will also be aware that the European Commission has received criticism from some quarters for its allegedly inadequate application of the community interest test.

- While not venturing an opinion on the validity of that criticism, OneSteel notes that the task required of the EC by Article 21 of Council Regulation No 384/96 is intrinsically difficult, if not impossible, to perform in an objective, accountable and consistent manner. Article 21 requires the EC to form "an appreciation of all the various interests taken as a whole including the interests of the domestic industry and users and consumers; and a determination pursuant to this Article shall only be made where all parties have been given the opportunity to make their views known …" The logistical and bureaucratic resources required to identify relevant stakeholders, elicit their views, assess supporting evidence, facilitate hearings where requested, reconcile the disparate views of the stakeholders and make a decision within prescribed time limits are prodigious. It is hardly surprising that the process (and its outcomes) is open to criticism.

- One of the main criticisms levelled at the EC approach to assessing the community interest is that it is largely qualitative and insufficiently quantitative.

- The Commission will be aware of at least one attempt to develop an economic model for quantifying the community interest (see the Copenhagen Antidumping Model proposed by Copenhagen Economics in 2005). The reliability of such modelling would no doubt need to be subjected to rigorous academic and commercial assessment before being adopted. The application of such modelling would require yet further bureaucratic and commercial resources to be committed.

OneSteel observes that, regardless of the view taken of its effectiveness, the EC has far greater resources than the Australian Government to commit to the assessment of a community, or public, interest test. The adoption of such a test in Australia would inevitably lead to:

- A requirement for greatly increased bureaucratic resources, when Customs and previous administrations have historically been under-resourced to administer the existing system

- Additional economic and econometric investigations being conducted by affected parties

- Additional delays in finalising dumping investigations

- Additional costs to the government and affected parties

Given the relatively low level of dumping investigations affecting the Australian economy and given the basic principles outlined above, these costs and delays cannot be justified.
The time delay and complexity and cost would be considerable, and would require a much greater investigation period, or period to be added on post investigation which would prevent the timely imposition of measures.

5.2 *Could dumping be addressed within competition policy?*

- Opinions vary amongst commentators about the economic merit of maintaining an anti-dumping regime. Protagonists argue that dumping is an unfair trading practice and should be actionable where it is demonstrated that it adversely affects domestic industry. Antagonists argue that any injury to domestic industry should be subjugated to the greater benefit accruing to consumers by having access to imported products at lower prices.

- The Productivity Commission has already highlighted in its Issues Paper the underlying policy differences in considering anti dumping and competition policy if anti dumping was incorporated into domestic competition law.

- Prior commentary in this submission demonstrates more than anything else, that anti-dumping is an *international* issue, Accordingly, OneSteel would submit that institutions and laws designed for *domestic* issues are very unlikely to be a constructive source of solution for *international* issues. Thus, the *Trade Practices Act* and the ACCC – whilst having a proven track record in successfully addressing domestic issues – are not a suitable foundation for improvements on international issues because they have not been created for that purpose.