RIO TINTO

Submission

to

Productivity Commission Review of National Competition Policy Arrangements

Rio Tinto Group in Australia

Rio Tinto is a world leader in finding, mining and processing the earth's mineral resources. In 2003, Rio Tinto's Australian investments in iron ore, coal, aluminium, diamonds, uranium, gold and salt totalled A$11.4 billion. These investments employ over 10,000 Australians. Rio Tinto is the largest iron ore producer in Australia, exporting 118 million tonnes in 2003. Rio Tinto is a large investor in the coal industry - Australia's biggest export earner and an important source of international comparative advantage. Rio Tinto is also a large investor in bauxite production, alumina refining and aluminium smelting in Australia. This industry sector represents Australia's second largest export earner. Rio Tinto has a direct economic interest in a competitive Australian economy.

Rio Tinto's Submission

Rio Tinto's submission calls for a review of *Part XVB of the Customs Act 1901* and the *Customs Tariff (Anti-Dumping) Act 1975* under national competition policy arrangements; a full public inquiry into Australia's anti-dumping laws by the Productivity Commission; amendments to Australia's anti-dumping laws to take national interest criteria into account; and the separation of injury aspects of an investigation from the dumping investigation.

National Competition Policy

In 1995 the Australian federal, state and territory governments agreed to a program of competition policy reform under the National Competition Policy (NCP) framework. In November 2000, the Council of Australian Governments (CoAG) agreed to a further review of NCP arrangements by September 2005. The NCP process and related reforms provided a comprehensive approach and commitments to economic reform across all levels of government. The objective of the process was to increase economic efficiency and growth for the Australian economy and the Australian community more broadly.

As part of the NCP framework, the Australian Government makes payments to state and territory governments conditional on progress made on implementing NCP reform commitments. These payments follow an independent assessment by the National Competition Council (NCC).

It has been widely recognised that there has been substantial progress in the implementation of NCP over the past eight years, which has delivered significant benefits to Australia. This progress is detailed in the NCC's annual assessment of governments' progress in implementing NCP and related reforms. Reform of barriers to trade has been substantial, as shown by the reduction in import tariffs over the period. However, the NCC points out that three barrier assistance measures remain:

- passenger motor vehicles
- textiles, clothing and footwear
- anti-dumping and countervailing legislation.

Anti-dumping and countervailing legislation

Under WTO rules, a country can apply antidumping measures if dumped imports cause or threaten material injury to a competing domestic industry. In addition, the WTO Agreement allows countervailing duties where exports benefiting from certain forms of subsidy cause or threaten to cause material injury or serious prejudice to a domestic industry. However, the impact of anti-dumping measures extends beyond domestic industries that suffer material injury. The impact extends throughout the economy and causes adverse impacts on using industries.

What's wrong with anti-dumping?

When a foreign country 'dumps' goods into Australia, there are two effects. One is the *cost* to a local manufacturer having to compete with the now cheaper imports. It may 'injure' the local producer's sales, causing it to lay off workers, and that has negative ripple effects through the economy.

The second effect from dumping is the *benefit* to consumers. Consumers, either households or other firms using the imports as inputs into their own production processes, now have access to cheaper goods. That saving allows them to spend their money elsewhere. That, too, has ripple effects, only this time, they are positive, such as generating jobs elsewhere.

When all direct and ripple effects are properly measured, if the benefits exceed the costs, low-cost imports are in Australia's national interest. The problem is, anti dumping legislation does not consider what is in the national interest. The anti-dumping legislation considers *only* the costs. It does not consider the benefits to consumers, other manufacturers, exporters using imported inputs or the economy as a whole. Anti-dumping reviews are biased, by law, to examine the interests of just one stakeholder — the local manufacturer. Consumers and the national interest do not get considered in the review process and the competitive effects of imposing dumping duties are not considered.

In short, protecting a domestic industry restricts competition and imposes higher costs on other industries and final consumers. Consequently, these measures have the potential to impose a significant cost on the economy.

Australia's use of anti-dumping

Anti-dumping activity in Australia tends to fluctuate with exchange rates and the business cycle, with requests from industry for anti-dumping measures increasing in periods of high exchange rates. Box 1 outlines how anti-dumping legislation affects Australian exporters who depend on free access to imports during times of high exchange rates.

In 2001-02 Australia initiated 16 anti-dumping cases, which was 5 per cent of the 327 anti-dumping cases initiated internationally — making Australia the world's seventh largest user of anti-dumping (Productivity Commission, *Trade Assistance and Review 2002-03*). This compares to 1996-97, when Australia initiated 22 of these actions. However, the number of cases initiated each year is a poor indicator of the effectiveness of the legislation to restrict trade because even the *threat* of an anti-dumping action can restrict competition in the marketplace.

Furthermore, in a world of e-commerce, where global prices are established through on-line auctions, anti-dumping legislation can restrict competition between input suppliers to Australia's detriment. For example, in a competitive on-line auction a world market price may be established that happens to be below the price charged in the domestic market of supplier country "A". This price, however, may not be available to Australian purchasers if a positive injury determination against another supplier in the same industry in country "B" has created the reasonable fear by all suppliers that they will be subject to anti-dumping actions if they supply Australian customers at that price.

Recent changes to anti-dumping legislation

Anti-dumping policy and administration have undergone important changes over the past decade. The most significant changes were:

- the shortening of the antidumping and countervailing investigation to a single stage (155 days) conducted by the Australian Customs Service; and

- the abolition of the Anti-Dumping Authority, which had developed into a quasi-independent supervisory and review body interposed between Customs (as initiator and investigator) and the Minister (as final decision maker).

The NCC, in its 2003 assessment of NCP, said that the streamlined administrative process for anti-dumping action may encourage Australian industry to pursue such actions more often. Further, the NCC says that the new appeal process — which consists of a review of existing information with no further investigation — could result in more appeal outcomes that favour the retention of duties (NCC 2003, Assessment of Governments' Progress in Implementing the National Competition Policy and Related Reforms: 2003 - Volume two: Legislation Review and Reform, page 12.10).

In recent times, Rio Tinto has faced two antidumping applications that have a direct impact on costs – ammonium nitrate from Russia and iron and steel grinding mill liners from Canada. Rio Tinto is opposing a third application, which is for anti-dumping duties on imports of silicon from China. A review by the Trade Measures Review Officer (TMRO) of the ministerial decision to take anti-dumping action against grinding mill liners from Canada in March 2004 recommended that the Minister affirm his 2003 decision. The application for anti-dumping action on silicon from China is currently under investigation.

Lack of NCP review

The NCC, in its 2003 assessment of governments' progress in implementing the NCP and related reforms, reported:

> The Commonwealth Government has not made progress towards completing its review and reform of the competition restrictions contained in the *Antidumping Authority Act 1988*, the *Customs Act 1901* (part XVB), and *the Customs Tariff (Anti-dumping) Act 1975*. Despite the new administrative arrangements for antidumping having operated for over four years, the Commonwealth has not announced the timing or manner of its review of legislation on antidumping and countervailing measures. As a result, it has not met its CPA clause 5 obligations to review and reform antidumping legislation.

The Competition Policy Agreement (CPA) clause 5 obligation is the fundamental principle that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs; and the objectives of the legislation can only be achieved by restricting competition.

1 How dumping affects exporters

Most recognise that the performance of the Australian mining industry is very sensitive to world prices, exchange rates and domestic costs. In February this year, the Australian dollar traded as high as US$0.79 — an appreciation of over 50 per cent above levels during 2001. Until recently, the farming and mining industries — which account for well over half of Australia's total exports — were also hit hard by low world commodity prices. Australia's weak net export performance is the single biggest drag on national economic growth.

Few would disagree that a market determined exchange rate is the right policy for Australia. Normally, the exchange rate would fall as commodity prices fall, providing a cushion to the vagaries of the world market. But the exchange rate is currently being driven by interest rate differentials between Australia and the United States and also expectations about the strength of the US economy.

One way of maintaining export performance when the exchange rate is high is to offset the loss in export revenue by lowering the landed cost of inputs. One glaring barrier to this option is Australia's policy on anti-dumping. In May 2001, Customs imposed a duty ranging from 34 to 116 per cent for 5 years on ammonium nitrate (used for fertiliser and explosives) from the Russian Federation. That is a big impost on farmers and miners. In September 2003, Customs imposed a duty of 64 to 87 per cent for 5 years on iron and steel grinding mill liners (used for grinding ore in Rio Tinto's copper/gold business) from Canada. Anti-dumping duties have also been imposed on high-density polythene, copper tube, glass, paper and galvanised steel pipe - although the duties imposed on these products are not known by Rio Tinto because they are not direct inputs for Rio.

Much is often made of the fact that Australia has comparatively low average import tariffs, but that does not include anti-dumping duties. These are quietly being imposed here and there, almost unnoticed by those not directly affected. These extra duties, which are taxes, are borne by the farmers and miners that export commodities. Commodity markets are highly competitive and these cost increases cannot be passed on. Loss of exports is the result.

Why no progress?

A key question is why has the Australian Government made no progress in reviewing its anti-dumping legislation as required under the 1995 decision to review all government legislation for its anti-competitive effects? One factor is that the Australian Government cannot withhold NCP payments from itself for lack of progress in reviewing and reforming anti-dumping legislation. In this way, it does not face the same incentive to comply with NCP objectives as do the states and territories. In 2003-04, the NCC recommended that out of total payments of $759 million to states and territories, $53.9 million was permanently deducted and $126.9 million was suspended due to lack of compliance.

Another reason why the Australian Government has not reviewed the anti-dumping provisions is that an organised lobby works hard to maintain the status quo. This is largely for two reasons. First is the arbitrary nature of the protection as there can be up to five years of protection provided without review. Second is the one-sided view taken by the Customs Department of the assessment of the economic effects of anti-dumping and the lack of transparency in the determination of dumping duties. Earlier, it was noted that only the costs from dumped product are included in the assessment of injury — the economic benefits to users of lower cost inputs or cheaper raw materials are not included. This unbalanced assessment leads to determinations that favour the local producer facing extra competition from lower cost imports at the expense of exporters and final consumers to the detriment of the national interest.

Summary and recommendations

In summary, current anti-dumping legislation in Australia is anti-competitive and imposes real net costs on the mining industry and the economy. Changing anti-dumping legislation to include an economywide benefit–cost test would enhance competition and improve efficiency. Reform of *Part XVB of the Customs Act 1901* and the *Customs Tariff (Anti-Dumping) Act 1975* is one area where there is clear evidence of the potential gain to Australia from improving our international competitiveness.

Our key recommendations are as follows.

- *Part XVB of the Customs Act 1901* and the *Customs Tariff (Anti-Dumping) Act 1975* should be reviewed under national competition policy arrangements.

- *Part XVB of the Customs Act 1901* and the *Customs Tariff (Anti-Dumping) Act 1975* should be subject to a full public inquiry by the Productivity Commission for their impact on the Australian economy as a barrier to competition from imported goods;

- *Part XVB of the Customs Act 1901* and the *Customs Tariff (Anti-Dumping) Act 1975* should be amended to include a national benefit test.
  - Particularly, current provisions for material injury to domestic producers should be expanded to include an economywide benefit–cost test across all producers and consumers in the Australian economy.

- Administration of the Act should be divided so the injury aspects of an investigation are separated from the dumping investigation and put in the hands of a tribunal with responsibility for ensuring the competitive neutrality of government decisions in the domestic market with all concerned parties having the right of appearance with procedures along the lines of those used by the Productivity Commission.