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Productivity Commission Research Paper — Developments in Anti-dumping and Countervailing ('Anti-dumping') Arrangements

The Bureau of Steel Manufacturers of Australia (BOSMA) welcomes the opportunity to make a submission to the above research paper.

Contents

Our submission covers the four areas outlined in the scope, plus an Executive Summary and an Introduction.

1. Introduction

The Bureau of Steel Manufacturers of Australia (BOSMA) is the peak body representing the Australian steel manufacturers OneSteel, an Arrium business, and BlueScope Steel, and their various subsidiaries.

BOSMA members supply the majority of long and flat steel mill products used in the Australian domestic market. The two biggest market sectors for steel used in Australia are steel reinforcement and associated long product steels used in concrete buildings and structures, and structural steel and associated long and flat product steels used in steel framed buildings and structures.

The Steel Reinforcement Institute of Australia (SRIA) is the peak body for the reinforcing steel manufacture, distribution and processing value chain in Australia, and the Australian Steel Institute (ASI) is the peak body for the structural and flat steel manufacturing, distribution and fabrication value chain in Australia.

Arrium and BlueScope are companies with Australian and international operations employing around 17,000 people, and generate annual revenue of approximately $15 billion. OneSteel and BlueScope employ around 12,000 people in Australia while total employment in the steel sector, both upstream and downstream, was estimated to be over 100,000 in Australia (ABS 2011). Their steel businesses operate across several hundred sites, servicing customers in a variety of industries, including the building & construction, manufacturing, infrastructure and agriculture sectors.

Steel is a fundamental building block of any modern society and as such, despite significant trade exposure, a domestic steel manufacturing capability is an important and strategically valuable asset. BlueScope and Arrium currently have over $6 billion in capital invested in Australia and have a proud history of manufacturing quality steel products.

For the avoidance of doubt, BOSMA members are committed to the principles of free trade and specifically the WTO principles. We note that WTO trade rules do not consider anti-dumping action to be an exception to the rules, nor a form of protectionism. Anti-dumping action in no way interferes with competitive foreign products reaching Australian consumers nor does it isolate Australian firms from foreign competition in the Australian market.

Australian industries have a right to expect that the conditions of competition will be those that result from the natural competitive comparative advantages enjoyed by overseas firms and that they will not be exposed unilaterally to injurious dumping and subsidisation.

2. Executive Summary

BOSMA, representing the two large domestic import-competing steel manufacturers, sees the efficient and fair operation of Australia's anti-dumping system as a vitally important competitive framework to provide adequate remedies to address dumping and subsidisation and other similar unfair and injurious trade issues. The Australian Anti-dumping Commission (ADC) is a key vehicle for ensuring a level playing field for all manufacturers, whether local or offshore.

Australia's anti-dumping system is essential to support sustainable, efficient and competitive markets for merchandise trade. It ensures that Australian industries that have achieved international competitiveness, in a post-tariff and non-tariff global trading environment, are afforded a level playing field to compete fairly in the open and dynamic Australian market. BOSMA supports the government's efforts to strengthen the anti-dumping system as a key enabler of its free trade agenda.

It is important to recognise that Australian producers and manufacturers operate in the most competitive manufacturing region in the world with minimal to zero tariffs applying to imported goods into Australia. Indeed, Australian markets for merchandise trade are among the most competitive in the world.

Since 1983 Australia has entered into nine bilateral free trade agreements and one multi-lateral free trade agreement. DFAT analysis shows that typically >96% of all trade with these countries is conducted with a zero duty rate (Source: Submission by the Department of Foreign Affairs and Trade and AusTrade to the Parliamentary Joint Select Committee on Trade and Investment Growth, Business Experience in Utilising Australia's Free Trade Agreements, 17 July 2015 at p. 11)

In recent years, the global steel industry and international trade landscape has changed considerably, particularly with the emergence of China as a global steel powerhouse. Excess global steel production capacity, especially in China, has led to a glut of steel, which has placed downward pressure on steel prices and margins and caused an increase in dumping.

Since 2012, 104 anti-dumping and countervailing cases have been launched by G20 countries, including successful cases by BOSMA members BlueScope and Arrium. There has also been a rise in safeguard actions initiated in Asia and the Indian sub-continent whilst in South Africa tariffs have been moved back from zero per cent to the WTO Bound rate of 10 per cent. In response, the Australian steel industry has undertaken significant structural transformation, as a competitive Australian steel industry is an important foundation for a

competitive Australian manufacturing sector, as Australian-made steel is a key input for a large range of domestic manufacturers.

The supply of dumped and subsidised goods into the Australian domestic market threatens the sustainability of competitive Australian markets over the medium to long term. In the medium-term, sustained price undercutting reduces supply-side factors within the market into which the dumped or subsidised goods are sold, as non-dumped and non-subsidised (legitimate) exporters exit the Australian market. In the long-term, sustained price undercutting results in further reductions in supply-side factors, and with time, impacts demand-side factors, as consumer utility is eroded. In summary any short term market reductions in price are lost in the medium to long term.

Dumping and other subsidisation effectively cause a substantial lessening of competition as players are forced to exit due to injurious competition. Quality and non-conformance risks increase significantly as major purchases and projects are based on price instead of demonstrated compliance to design and material standards. Investment in market infrastructure reduces, logistics and supply chain costs increase, leading to further cost cutting and exits in the medium term.

Regional oversupply, has contributed to increased exporter activity in markets where the barriers to entry are low such as Australia. The expected relief from a low dollar has not delivered a slow-down in exporter activity. Confronted with import offers for marginally-costed goods, Australian manufacturers rely upon an effective anti-dumping system that can address the injurious prices swiftly. Delays in accessing measures create ongoing uncertainty for the Australian industry and its customers, as the periods of injury from the dumping extend to the medium-term (i.e. greater than 12-18 months).

BOSMA does not anticipate a decline in new anti-dumping cases in the short to medium term. Following the imposition of initial measures, we anticipate importers will seek out new sources of supply that will contribute to a recurrence of material injury already experienced.

BOSMA members submit that further reforms are needed to the Anti-dumping framework in order to achieve fairer and more equitable outcomes for domestic steel manufacturers. A number of issues are contributing to this.

i) Circumvention Activity penalties

Currently there is no penalty for circumvention. A simple solution would be to prescribe circumvention as an offence under Clause 4 of Schedule 1 ABA of the Customs regulations.

ii) Ad valorem or combination of duties

Circumvention is damaging to the operation of domestic markets in Australia, and precipitate price distortions and confusing price signals to market participants. The Anti-dumping Commission is contributing to this confusion through the use of *ad valorem* duties as the form of measures imposed. This problem can be easily remedied, and the solution was recently the subject of a recommendation of the House of Representatives' Committee Inquiry: "The Committee recommends that the Minister, in imposing any antidumping duties, should use a combination of duties in preference to a single duty".

House of Representatives - Standing Committee on Agriculture and Industry, Circumvention: closing the loopholes - Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures, Canberra, May 2015.

iii) Exemption provisions under the Dumping duty Act

Exemption applications are growing in numbers. The exemption provisions under the Dumping Duty Act should be revoked, and exemptions granted in the case of TCOs while they are in force. This will reduce the resources required within the ADC required to administer a scheme that duplicates the work performed by the TCO Branch within the Department of Immigration and Border Protection.

iv) Measurement of effectiveness of duties imposed

Once anti-dumping measures are imposed it is very difficult to see the effect due to ABS data affected by confidentiality suppressions. BOSMA advocates publication of a declassified report on total volumes of goods subject to anti-dumping duties, by country of origin. This aggregation will preserve the confidentiality of individual importers, but give a measure of effectiveness.

v) Non-verification of exporter data

A recent emerging trend in investigations involves the non-verification of exporter data by the ADC. For example in recent investigations the ADC has elected not to conduct verification visits with manufacturers in India, Vietnam, Korea, China, Malaysia and Turkey.

The non-verification of exporter data will cause exporters to submit inaccurate EQRs that reduce duty liabilities in a review inquiry. Where the ADC elects to conduct a verification visit, the exporter is currently able to re-submit a revised EQR at the commencement of a

verification visit. Inevitably, exporters will adopt a risk-based approach to the completion of EQRs.

The integrity of data used in the determination of the variable factors is central to the effective operation of the anti-dumping system. The desk audit approach followed in respect of exporter data is inconsistent with the detailed audit methodology applied to Australian industry participants and results in a non-symmetrical approach to data verification of all interested parties.

vi) Model matching for fair comparison purposes

A further concern that has emerged in investigations involves the redaction from public file exporter visit reports of an exporter's domestic model numbers, often referred to as Product Control Numbers ("PCNs") in the steel industry, that identify the exporter's domestic sale grade of like goods used for fair comparison purposes with models exported to Australia during the investigation process.

The current approach to model matching followed by the ADC denies the applicant Australian industry natural justice in ensuring that the models (i.e. PCNs) technical specifications align with those of the goods exported to Australia and may be considered alike in all respects.

Also Australian industry is not afforded any opportunity to rigorously examine whether the claimed domestic sales of like goods by the exporter are in fact comparable (and alike) with the goods exported to Australia by the exporter during the investigation period.

The current practice of allowing exporters to rely upon claims of confidentiality that allow for the redaction of the identification of domestic grades in investigations is contributing to findings of negative dumping margins for exporters. BOSMA proposes that domestic grades (i.e. PCNs) are fully disclosed on a non-confidential basis prior to the conduct of a verification visit.

vii) Profit in s.269TAC(2)(c) constructed normal values

The level of profit applied in s.269TAC(2)(c) investigations is a continuing issue for applicant industries in anti-dumping investigations. Present practice requires the normal value for an exporter to be determined under s.269TAC(2)(c) where there are insufficient domestic sales in the ordinary course of trade by the exporter under s.269TAC(1).

Where this is the case (and normal values are determined in accordance with s.269TAC(2)(c)

the ADC will examine what remaining domestic sales (i.e. those that fall under the 5 per cent threshold) have been made by the exporter and at what level of profit the sales have been made. This level of profit is then applied to the constructed normal value determined in accordance with s.269TAC(2)(c).

The level of profit applied in these circumstances is often minimal – i.e. at barely recoverable rates of slightly above zero, or one or two per cent). The application of ultra-low levels of profit in constructed normal value findings results in outcomes where measures applied on this basis continue to cause injury to the Australian industry. Ultra low profit margins cannot continue on an ongoing basis as they are unsustainable and do not permit for re-investment in the current assets or in replacement manufacturing assets.

Reform is needed to the ADC's current approach to determining a level of profit in constructed normal value investigations. The level of profit to be included should reflect a minimum percentage that allows for re-investment in the industry and will therefore vary from industry to industry and be assessed on a case-by-case basis.

viii) Time limits for applications

The time limits for completed questionnaires and submissions should be strictly adhered to. This is the expectation for Australian industry in making an application for measures. Only in exceptional circumstances should deadline extensions to statutory deadlines be approved by the ADC.

ix) Retrospective approach

BOSMA submits that retrospective measures should be accessible to Australian industry, in circumstances where anti-dumping measures are circumvented, as soon as the circumvention is identified.

x) Revision of application form to encourage downstream applicants to apply

Small and medium sized downstream steel using enterprises find it difficult to coordinate the resources necessary to complete the current application process. The approved form (B108) has not changed substantively for over a decade. The amount and consolidation of information required is extremely onerous for large numbers of disaggregated downstream members of an industry affected by the imposition of measures on upstream material inputs. BOSMA suggests the ADC considers the approach applied by the European

Commission, where members of the downstream industry are engaged directly by the EC through a tailored producer questionnaire.

xi) Lesser duty rule

The current problem with the application of the Lesser Duty Rule in the Australian anti-dumping system is that the options used by the ADC allow for a devaluation of the return on investment required by capital markets in order for the survival of the Australian industry. The correct and preferable approach is that a reasonable amount of profit should be determined from an assessment of the required return on investment, having regard to reinvestment requirements in plant and equipment to ensure ongoing improvements in efficiency and productivity. The ADC's caveat limiting the rate of return to "the resultant price" being "considered reasonable" is arbitrary and imposes an artificial view on the requirements of the industry to remain sustainable. BOSMA submits that the Anti-dumping Commission's policy should be revised on this element of the Lesser Duty Rule.

3. Trends in anti-dumping activity, and the drivers of this activity

In recent years, the global steel industry and the international trade landscape have changed considerably, particularly with the emergence of China as a global steel powerhouse. China produces more than 700 million tonnes of steel per annum and is the world's largest steel exporter. There is now a well-documented oversupply of steel globally, with many major producers around the world including China unwilling to remove this excess capacity.

Excess dumped and subsidised steel will continue to flow to those markets that have the least effective trade measures. Surplus export volumes at marginal pricing will always be an issue, and these will only be traded fairly if adequate anti-dumping and other anti-subsidisation measures are in place. In 2014 alone China was the faced with 38 separate impositions of anti-dumping duties on steel products by WTO member countries.

The Australian steel market has very low tariffs and is characterised by substantial and growing levels of imports. A number of the key steel trading countries exporting to Australia also have trade agreements in place or under final negotiation with Australia, which will reduce tariffs further. Imported steel products are sourced from a very wide range of countries including China, Japan, Thailand, South Korea, Malaysia, Taiwan, Singapore, Vietnam, New Zealand, Indonesia, United Kingdom, Spain, Germany, Turkey and South Africa.

Many factors influence global steel prices including: structural overcapacity in the global steel industry, a relatively fragmented industry structure, high exit barriers, high fixed operating costs, and the influence of government and regulatory policies including trade barriers and subsidies. Australian domestic steel prices, particularly for lower value-add commodity steel products, parallel and follow similar trends to international prices due to the open nature of the market and the wide range of competition from imports.

Some believe the peak of anti-dumping actions has been reached and that the lower Australian dollar exchange rate has provided significant relief from dumping for Australian manufacturers, such that the number of anti-dumping cases will begin to tail off. While the lower dollar would have provided some relief for the steel industry in normal market circumstances, in fact the surging global over-supply of steel has largely offset any benefit

from the lower dollar. This is expected to continue, and the outlook therefore is for continuing anti-dumping applications, as this is the only means available to steel producers.

Since the 2010-2013 period, China's finished steel exports have doubled to a run-rate this year of over 100 million tonnes per annum. With domestic steel demand having peaked in China, but with steel production and exports continuing to grow, steel prices and spreads have fallen dramatically. "Spread" is the difference between the selling price of steel and the cost of the raw materials to make that steel, and it is out of the spread that conversion costs and overheads have to be paid. For example Asian hot rolled coil spreads are currently down one third from the five year average to June 2014. Generally both flat and long steel product spreads are now materially lower than they were during the depths of the global financial crisis. There is little sign that the glut of steel will disappear soon.

China's steel industry is also extensively subsidised, as was proven in recent anti-dumping and countervailing investigations by the ADC. For example Report 198 found some 42 separate subsidy programs to certain manufacturers of hot rolled plate steel in China[1] And in Subsidy Investigation No. 237, Silicon Metal exported from China, the Anti-dumping Commission countervailed 39 subsidy programs with a margin of up to 37.6%.

Although significant, the outcome of Australian subsidy investigations concerning China tend to understate the extent of countervailing programs in operation in China. For example, in the recently concluded Canada Border Services Agency investigation concerning steel reinforcing bar exported from China to Canada, the authorities there countervailed over 170 subsidy programs with a margin of up to 14.7%.

Canada Border Services Agency, Statement of Reasons concerning the final determinations with respect to the subsidizing of certain concrete reinforcing bar originating in or exported from the People's Republic of China, 4218-39 CV/138, Ottawa, (23 December 2014), p. 38.

In addition to anti-dumping actions by countries affected by China's steel capacity overhang problem, many have also sought urgent relief by use of safeguard's actions, and other tariff and non-tariff interventions. For example, in the case of concrete steel reinforcing bar exported from China, in addition to dumping and countervailing duties imposed by Canada and the European Union, four countries have increased import duties against Chinese exports of between 5% - 40%, Indonesia has imposed import quotas, and two countries have intervened via a revision of standards.

Australia has not been immune to the economic slowdown. The contraction in demand in Australia increased the appetite for importers to seek-out the cheap supply of raw material

steel products. This increased import competition at dumped and subsidised prices triggered BOSMA members applications for anti-dumping measures.

BOSMA has also seen the emergence of new exporters that fill the supply position following the imposition of measures. Instances of 'country hopping' whereby importers seek out new sources of supply have contributed to sustained periods of injury. Relief from the country hopping activities of importers and exporters is subject to the same procedural arrangements as a new investigation, so injurious behaviour is exacerbated until new anti-dumping applications can be lodged and determination is given.

4. The particular role that recent changes to the anti-dumping system may have played in this context

BOSMA welcomed the Federal Government's establishment of the Anti-Dumping Commission and its bolstering of the resources of the newly-formed agency. However, Australia's anti-dumping laws do not reflect the changes in the Agreement on Subsidies and Countervailing Measures (ASCM) and the agriculture subsidies becoming actionable in 1999 and 2004 respectively. Specifically, the changes include as actionable subsidies research activities by firms and research enterprises, assistance for disadvantaged regions for regional development, assistance to firms to adapt to new environmental requirements, and certain assistance for a range of agricultural activities. It is appropriate that these programs are included as actionable within Australia's anti-dumping laws.

Following the introduction of the Tranche 2 legislative changes, extensions of time in investigations have become the operative norm rather than the exception. In some cases, extensions have been granted on three separate occasions during the conduct of an investigation.

The time limits for completed questionnaires and submissions should be strictly adhered to. This is the expectation for Australian industry in making an application for measures. Only in exceptional circumstances should deadline extensions to statutory deadlines be approved. In respect of the ADC seeking a timeframe extension to publish an SEF or complete a report to the Minister, a single timeframe extension of a maximum 30 days should be permitted if agreed to by the applicant. Only in exceptional circumstances should more than a single timeframe extension exceeding 30 days be approved.

The regularity at which timeframe extensions have been approved since the introduction of the Tranche 2 changes with effect from 10 June 2013 is disappointing and extends the period of uncertainty associated with an investigation outcome. BOSMA requests tightening of the approval process for investigation timeframe extensions.

BOSMA supports the removal of the s. 269TAC(13) provision that allowed for normal values to be determined under .s269TAC(2)(c) without the inclusion of a level of profit. The exclusion of a level of profit is contrary to commercial reality and afforded exporters a competitive advantage via a reduced normal value outcome. BOSMA considers further reform is required in applying an appropriate level of profit in normal value determinations under s.269TAC(2)(c) so that the level applied is commensurate with ongoing re-investment in the industry. Ultra low profit margins cannot continue on an ongoing basis as they are

unsustainable and do not permit for re-investment in the current assets or in replacement manufacturing assets.

The Tranche 3 amendments included changes to the Regulations which allow the Minister to impose different forms of measures, including combination of fixed and variable duty method, floor price duty method, fixed duty method, or the ad valorem duty method. The ADC has detailed a preference for recommending measures based upon the *ad valorem* methodology, as the "easiest" form of measure to administer and a common form of measure in other jurisdictions.

Anti-dumping measures based upon the ad valorem methodology are prone to circumvention (via reductions in export prices, including in a rising market so that the exporter may secure a market advantage) and do not adequately address the injury to the Australian industry that the measures were intended to address. In respect of the use of ad valorem measures by other administrations, the level of dumping and subsidisation determined by other administrations is typically of a far greater magnitude than the margins determined in Australia, where with smaller, low single digit margins, there is an incentive to reduce the duty liability further to avoid the IDD amount payable.

BOSMA supports the recommendation of the House of Representatives Agriculture and Industry Committee that the combination form of measure become the default method in all investigations.

New anti-circumvention provisions were introduced within Part 5A of the Customs Act. Following representations to the ADC, further provisions were introduced into the Regulations to address "slightly modified" goods the subject of measures, applying for applications received after 1 April 2015.

5. How anti-dumping measures have affected individual sectors and Australia's broader economy

As detailed before, the increased uncertainty following the global financial crisis has led to the contraction of many overseas domestic markets. As a consequence, manufacturers have turned to export markets to off-load excess production. The steel industry in particular is the subject of significant oversupply with China the largest supplier on the export market.

Many steel producing nations supplying excess production on export markets, see the Australian market with its low or zero tariffs, as a preferred targeted export destination. Exporters also typically face a low risk that effective anti-dumping measures will be imposed in a timely manner, compared to other WTO countries. Australian manufacturers therefore require access to an effective anti-dumping system where measures can be accessed in a timely manner.

It is noted that despite anti-dumping and countervailing measures having been imposed on a range of steel products since 2012, the overall competition from exporting countries has remained significant as measured by the number of exporters and volume of exports.

Where anti-dumping only measures were imposed, the exporter market share before and post the imposition of measures has also remained within a few per cent. For those products that had both subsidy and anti-dumping measures imposed on exporters, the market share position post measures is five to eight per cent lower than before measures were levied.

This decrease in market share was due to the fact that the subsidised exports immediately exited the Australian market. However importers did not take long to find new sources of supply from which to secure import volumes to the Australian market. Then BOSMA members are faced with having to prepare new anti-dumping applications for these new entrants.

The overall long-term effect of dumping, if not checked and penalised, therefore leads to lack of investment and innovation by manufacturers who are faced with a cycle of continuous cost cutting, followed by exit in the long term due to sustained injurious competition.

6. Any opportunities to improve outcomes from Australia's anti-dumping system.

The Australian anti-dumping system is generally fair, however, there are areas that warrant improvement to ensure that it continues to support the creation of competitive and sustainable markets for goods in Australia.

Currently the efficiency of Australia's anti-dumping system is being eroded through circumvention of measures imposed. A number of issues are contributing to this – not in any order of priority.

i) Circumvention Activity penalties

Currently there is no penalty for circumvention. A simple solution would be to prescribe circumvention as an offence under Clause 4 of Schedule 1 ABA of the Customs regulations.

ii) Ad valorem or combination of duties

Circumvention is damaging to the operation of domestic markets in Australia, and precipitate price distortions and confusing price signals to market participants. The ADC is contributing to this confusion through the use of ad valorem duties as the form of measures imposed.

This problem can be easily remedied, and the solution was recently the subject of a recommendation of the House of Representatives' Committee Inquiry: "The Committee recommends that the Minister, in imposing any antidumping duties, should use a combination of duties in preference to a single duty. This should be the default position in each case, unless it can be demonstrated by the Minister that a single duty is more suitable than a combination"

House of Representatives - Standing Committee on Agriculture and Industry, Circumvention: closing the loopholes - Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures, Canberra, May 2015.

Currently, the ADC routinely imposes anti-dumping measures in the form of ad valorem duty rates. These are circumvented by exporters by reducing the export price by the amount of the ad valorem duty rate. The combination method gives importers and exporters a guide of an export price above which to trade with certainty, and supports a level playing field.

iii) Exemption provisions under the Dumping duty Act

Exemption applications are growing in numbers. The exemption provisions under the Dumping Duty Act should be revoked, and exemptions granted in the case of TCOs while they are in force. This will reduce the resources required within the ADC required to administer a scheme that duplicates the work performed by the TCO Branch within the Department of Immigration and Border Protection.

iv) Measurement of effectiveness of duties imposed

Once anti-dumping measures are imposed it is very difficult to see the effect due to ABS data affected by confidentiality suppressions. BOSMA advocates publication of a declassified report on total volumes of goods subject to anti-dumping duties, by country of origin. This aggregation will preserve the confidentiality of individual importers, but give a reasonable measure of effectiveness.

v) Non-verification of exporter data

A recent emerging trend in investigations involves the non-verification of exporter data by the ADC. Following the receipt of exporter questionnaire responses ("EQR's") the ADC assesses the completeness of the EQR to establish if the exporter may be considered a

'cooperative exporter'. Once satisfied that the EQR is complete, the ADC will then risk assess the volume of exports from the cooperative exporters and decide whether to conduct verification visits with cooperative exporters.

For example in investigation No. 249, the ADC elected to conduct verification visits with the largest exporter of galvanised zinc coated steel from each of India and Vietnam. In respect of India, a further three cooperative exporters were not visited. For Vietnam, another cooperative exporter was not visited.

Similarly in Investigation No. 264 (Rebar exported from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey) the Commission elected not to visit cooperative exporters in Malaysia and Turkey based upon a risk assessment of export volumes during the investigation period.

The practice of non-verifying exporter data has become more prevalent in review inquiries, with the ADC electing not to visit exporters in recent review investigations on galvanised zinc coated steel exported from Korea, hollow structural sections (HSS) exported from China by the exporter Tainjin Youfa, HSS exported from China by Dalian Steelforce, and aluminium road wheels (ARWs) exported from China.

The non-verification of exporter data will cause exporters to submit inaccurate EQRs that reduce duty liabilities in a review inquiry. Where the ADC elects to conduct a verification visit, the exporter is currently able to re-submit a revised EQR at the commencement of a verification visit. Inevitably, exporters will adopt a risk-based approach to the completion of EQRs.

The integrity of data used in the determination of the variable factors is central to the effective operation of the anti-dumping system. The 'desk audit' approach followed in respect of exporter data is inconsistent with the detailed audit methodology applied to Australian industry participants and results in a non-symmetrical approach to data verification of all interested parties. Where there is no verification visit, the "Dumping Margin Calculation" Report invariably determines negative dumping margins.

vi) <u>Model matching for fair comparison purposes</u>

A further concern that has emerged in investigations involves the redaction from public file exporter visit reports of an exporter's domestic model numbers, often referred to as Product Control Numbers ("PCNs") in the steel industry, that identify the exporter's domestic sale grade of like goods used for fair comparison purposes with models exported to Australia during the investigation process.

In most instances, all domestic model information is identifiable on the exporter's website. However, during the conduct of the verification visit, the exporter requests the information concerning the domestic grade equivalent to remain confidential on the grounds of commercial sensitivity.

The current approach to model matching followed by the ADC denies the applicant Australian industry natural justice in ensuring that the models (i.e. PCNs) technical specifications align with those of the goods exported to Australia and may be considered alike in all respects.

BOSMA views the current approach to model matching by the ADC as deficient and flawed in that the Australian industry is not afforded any opportunity to rigorously examine whether the claimed domestic sales of like goods by the exporter are in fact comparable and alike with the goods exported to Australia by the exporter during the investigation period.

BOSMA submits that reform of the current model matching process and methodology is required for future investigations. The current practice of allowing exporters to rely upon claims of confidentiality that allow for the redaction of the identification of domestic grades in investigations is contributing to findings of negative dumping margins for exporters. BOSMA is seeking change to the model matching process so that domestic grades (i.e. PCNs) are fully disclosed on a non-confidential basis prior to the conduct of a verification visit.

vii) Profit in s.269TAC(2)(c) constructed normal values

The level of profit applied in s.269TAC(2)(c) investigations is a continuing issue for applicant industries in anti-dumping investigations. Present practice requires the normal value for an exporter to be determined under s.269TAC(2)(c) where there are insufficient domestic sales in the ordinary course of trade by the exporter under s.269TAC(1).

Where this is the case (and normal values are determined in accordance with s.269TAC(2)(c) the ADC will examine what remaining domestic sales (i.e. those that fall under the 5 per cent threshold) have been made by the exporter and at what level of profit the sales have been made. This level of profit is then applied to the constructed normal value determined in accordance with s.269TAC(2)(c).

It is BOSMA's assessment that the level of profit applied in these circumstances is often minimal – i.e. at barely recoverable rates of slightly above zero, or one or two per cent). The application of ultra-low levels of profit in constructed normal value findings results in outcomes where measures applied on this basis continue to cause injury to the Australian industry. Ultra low profit margins cannot continue on an ongoing basis as they are

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BOSMA is seeking reform to the ADC's current approach to determining a level of profit in constructed normal value investigations. The level of profit to be included should reflect a minimum percentage that allows for re-investment in the industry and will therefore vary from industry to industry and be assessed on a case-by-case basis.

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The time limits for completed questionnaires and submissions should be strictly adhered to. This is the expectation for Australian industry in making an application for measures. Only in exceptional circumstances should deadline extensions to statutory deadlines be approved.

ix) Retrospective approach

BOSMA submits that retrospective measures should be accessible to Australian industry, in circumstances where anti-dumping measures are circumvented, as soon as the circumvention is identified.

x) Revision of application form to encourage downstream applicants to apply

Small and medium sized downstream steel using enterprises find it difficult to coordinate the resources necessary to complete the current application process. The approved form (B108) has not changed substantively for over a decade. The amount and consolidation of information required is extremely onerous for large numbers of disaggregated downstream members of an industry affected by the imposition of measures on upstream material inputs.

BOSMA suggests the ADC considers the approach applied by the European Commission, where following the initiation of an investigation on the strength of an application by a single or number of members of the downstream industry (subject to the support thresholds being met), other producer members of the industry are engaged directly by the EC through a tailored producer questionnaire[2], and SME producer members (specifically) are targeted through a tailored, SME-targeted questionnaire[3].

This assists a large number of members of a downstream industry to pursue their interests under the anti-dumping system, without the significant resources and delays that are otherwise incumbent under the Australian system's approach. It is observed that applications made by a large number of industry members are simply not present in the Australian anti-dumping system

xi) Lesser duty rule

The lesser duty rule operates within the Australian anti-dumping system to ensure that the amount of dumping and/or countervailing duty is not greater than is necessary to prevent injury or a recurrence of the injury.

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[2] *An example of a typical producer questionnaire may be found at* http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151937.pdf *(Accessed, 30 October 2015)*

[3] *An example of a typical SME producer questionnaire may be found at* http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151936.pdf *(Accessed, 30 October 2015)*

The calculation of the non-injurious price (NIP) provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping and subsidisation.

The current problem with the application of the Lesser Duty Rule in the Australian anti-dumping system is that the options used by the ADC allow for a devaluation of the return on investment required by capital markets in order for the survival of the Australian industry. The correct and preferable approach is that a reasonable amount of profit should be determined from an assessment of the required return on investment, having regard to reinvestment requirements in plant and equipment to ensure ongoing improvements in efficiency and productivity. The ADC's caveat limiting the rate of return to "the resultant price" being "considered reasonable" is arbitrary and imposes an artificial view on the requirements of the industry to remain sustainable.

BOSMA submits that the Anti-dumping Commission's policy should be revised on this element of the Lesser Duty Rule.

Thank you for the opportunity to make a submission to the PC research paper on anti-dumping. If you have any questions about our submission, we will be pleased to provide further clarity.

Further detailed information on the subject of anti-dumping can be found in the separate submissions to the PC research paper by Arrium and BlueScope.

Yours faithfully,

David Armston FAICD
Executive Director & Secretary
BOSMA