

InfraBuild – Questions on Notice

Questions raised during the Hearing held on 6th December 2021

Your submission has argued that robust trade defence policies are a necessary precondition to attracting investment in domestic manufacturing.

Specifically, you have criticised that the Anti-dumping Commission applies a level of profit as low as 'zero' when determining a price point at which it will allow dumped goods. This is versus the European Commission, which, for example, uses a 6% profit in its own calculations.

InfraBuild believes that robust trade defence policies are a necessary pre-condition for attracting and retaining investment in domestic manufacturing.

For a business to remain a going concern it must maintain a level of profit and return on investment that enables it to finance future investment needs. Maintenance of productive output requires ongoing investment and preservation of working capital. Therefore, a rate of return that (at a minimum) preserves real returns, i.e. keeps pace with changing costs of capital and inflationary pressures is therefore crucial to just maintaining the status quo. Long term sustainability of any business and its capital investment needs requires higher rates of return that at least reflects the cost of capital replacement. For this reason, a rate of 0% profit does not provide for future capital costs, and indeed cannot even account for the most basic inflationary pressures faced by industry, i.e. CPI.

Article 9 of the WTO Anti-dumping Agreement states that it is desirable that the dumping duty imposed be less than the margin determined if such lesser duty would be adequate to remove the injury to the domestic industry. This is known as the Lesser Duty Rule.

Many countries, such as Canada and the United States, do not apply the Lesser Duty Rule as it is not a WTO mandatory requirement. Australia and the European Union are two jurisdictions that do and are regarded as "WTO plus" administrations.

InfraBuild is not opposed to the consideration of the Lesser Duty Rule, however, holds the view that reform is required to the Anti-dumping Commission's practise of determining what price level is adequate to remove injury from dumping (non-injurious price or 'NIP'). If the NIP is set too low and dumping is allowed to continue to suppress or depress the prices of Australian products, it is very difficult for Australian businesses to achieve sufficient returns to retain and attract investment to ensure sustainable operations.

To overcome the same issue faced by European producers, the European Commission introduced an amending regulation in 2018 such that their unsuppressed selling price now assumes a minimum profit of 6% be included in the calculation, with a higher profit margin possible on a case-by-case basis. - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:r11005>. In its notification to the WTO before taking a provisional safeguard measure on certain steel products, the European Union advised that

“it is considered that the level profit below 6% is insufficient to cover the investments needed to sustain the activity” and “used a level of around 8% profit as a sufficient profit level in this sector in order to cover investments”

InfraBuild advocates that the Australian Anti-dumping Commission adopt a similar approach and establish a minimum level of profit for determining the unsuppressed selling price, from which the NIP is determined, with a higher profit margin possible on a case by case basis.

Q. What changes would you like to see made to Australia’s current Anti-dumping regime, and if nothing else, do you think that the Anti-dumping Commission should amend its calculations to reflect those that are currently being used within Europe?

Opponents of Australia’s Anti-dumping system often misunderstand its purpose which is to create a level playing field between countries to encourage competitive fair trade. Playing by established rules is a concept well understood in sport but less so in international trade. The European Commission plays a pro-active role in educating stakeholders of the role of their Anti-dumping administration regime, and their website includes short videos to explain the concept. <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/>

The Department of Industry, Science, Energy and Resources the Anti-dumping Commission both play critical roles in ensuring that Australia’s trade defence policies and their application remain contemporary, efficient and effective as dumped imports follow the path of least resistance.

There are a number of changes that InfraBuild would like to see made to Australia’s anti-dumping regime that are not included in the reform package announced in the May 2021 budget. These are :

1. Update the Non-Injurious Price (NIP) provisions such that they are based on the Australian industry’s fully absorbed cost to make and sell together with an amount for profit of not less than 6%, allowing for higher margins on a case-by-case basis (driven by capital intensity).
2. Improve the transparency of the anti-dumping system by requiring the Anti-dumping Commission and the Anti-Dumping Review Panel (ADRP) to publish non-confidential reports of Duty Assessments. The duty assessment mechanism allows importers to receive refunds of interim dumping duties if the Commission establishes they are paid in excess to the contemporary dumping rates.

Industry members have recently become aware that as a result of a non-transparent decision of the ADRP that related to a duty assessment inquiry, the Commission is now obliged to include all domestic sales made by an exporter in their home market; irrespective of whether produced by them or not, or indeed imported from a third-country; in their determination of a normal (or fair) value against which their export price is compared for the purpose of calculating a dumping margin. This approach is an unprecedented departure from the hitherto uncontroversial and internationally accepted practise of only including an exporter’s domestic sales of their own production in the calculation of their normal (or fair) value for comparison purposes. InfraBuild is concerned that the Australian authorities’ unique interpretation puts at risk the integrity of the Commission’s normal value

calculation, thereby undermining the accuracy of the determination of an exporter's dumping margin.

3. Issue a Ministerial Direction requiring the Commission to exclude domestic sales by the exporter in their home market that are not produced by them (i.e. third party produced or imported goods) in calculating their normal value, used to determine their dumping margin.

Another area where you've called on Australia to harmonise its policies with the European Union is in the area of trade policy. In addition to the anti-dumping measures, you've also called on Australia to adopt the European Union's WTO compliant regulations which provide a remedy against exporters who tranship dumped goods via a third country, or who benefit from cross border subsidies.

InfraBuild is not calling on Australia to fully harmonise its policies with the European Union but rather that the Australian government give serious consideration to a number of the European Union's WTO compliant regulations.

Q. Could you expand upon which European Union regulations you think are particularly important for Australia to adopt, and why you think these are critical to ensuring fair trade?

InfraBuild believes that there are a number of European Union regulations that Australia should adopt in principle to ensure that its trade defence arrangements continue to be effective.

1. Alter Australia's anti-circumvention legislation relating to the "avoidance of the intended effect of the duty" such that an exporter subject to dumping duties that lowers their export price relative to their normal value (domestic price) may be defined as a circumvention activity (namely duty absorption). Unlike article 12 - Absorption of the European regulations <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1036&from=en> Australia's legislation only applies to the behaviour of the importer, not the behaviour of the exporter. This means that exporters to Australia can increase the margin by which they dump with no legislative recourse available to Australian Industry to remedy the further injury.
2. Alter Australia's anti-circumvention legislation relating to "transshipment" (export of goods through one or more third countries) and "minor modification", such that any amendments to the original dumping duty notice be applied broadly with a process to exclude/exempt specifically named exporters not found to be circumventing by these methods. The ability of the Minister to exclude bona fide exporters from the circumvention measures provides the Minister with the confidence to impose wider ranging, more effective measures against countries with exporters found to circumventing the original measures. The European Union's regulation Article 13 - Anti-Circumvention provides for exemptions to be granted after anti-circumvention measures have been applied.

Your submission focused heavily on support for the development of a low-emissions steel industry, and on the development of a circular economy more broadly. You've argued that support for these industries will be critical to navigate things like the European Union's Carbon Border Adjustment Mechanism.

InfraBuild believes that it is important that the Australian government develop a whole of government cohesive and aligned policy position across a range of areas.

A good example to reference overseas is the 'Towards competitive and clean European Steel' initiative from the European Commission.

This 'policy' is an update to the previous New Industrial Strategy' articulated in 2020. It's a co-ordinated policy position recognising the 'twin' green and digital' transitions driving economic change. The co-ordinated EU approach to these changes see's Energy, digital and industry policy coming together to achieve a single focus

In Australia's case, factors needing to come together to create investment include:

- A policy framework enabling financial incentives to emit less
- Market confidence in the long-term stability of the Australian regulatory and policy framework
- The availability of Federal Govt and private funding along the path towards market deployment
- Robust protection against unfair trade practices

Supporting these factors, the EU has developed a raft of policies that support Industries ability to successfully transition to a low emission economy. Examples of these aligned policies include:

- Data Governance Act and Digital EU Program
- Innovation – Research Fund for coal and steel (RFCS)
- Innovation Fund
- Invest EU Fund
- Standardisation Policy
- Sustainable products Initiative
- Public Procurement
- Just Transition mechanism (JTM) - similar to the NSE Govt Hunter and Illawarra Transition plans
- Circular Economy Action Plan
- Sustainable Financing Taxonomy – Action plan on Sustainable financing including taxation policy
- Competition Policy

InfraBuild would like to highlight the last three policies listed above with respect to initial query.

Circular Economy

With respect to material circularity, any Australian Government plan needs to relate to product design, quality and safety of secondary materials, addressing exports of material so as to promoting 'local' circularity of recyclable goods – this includes scrap steel.

Sustainable Financing Taxonomy – Sustainable financing including taxation policy

The Australian Governments R&D Tax Incentive program is an important program and we commend the government on this initiative. InfraBuild believes that there is an opportunity however to make further amendments to R&D taxation.

New R&D reforms have also extended the R&D Tax Incentive for larger R&D entities with high levels of R&D intensity. A premium of up to 16.5% is allowed where total R&D deductions are greater than 2% of total expenses. This applies from FY22.

Whilst a great initiative, it is problematic for some who have dependency on fluctuating raw material inputs. For example, if key raw material inputs for an organisation over the past year have increased circa 30% - whilst they may have invested \$100-\$150m in R&D for the period, the rapid increase in raw materials may mean they miss the >2% threshold and hence the incentive benefit provided by the government. To address this issue, InfraBuild encourages the Government to introduce a mechanism to account for such escalations, so that Industry can invest in R&D with certainty.

Competition Policy

As Industry (and particularly Energy Intensive Industry) transitions to low carbon emission manufacturing, the cost to do so will not be insignificant.

It is critical that Australian Government policy promotes and fosters the successful transition of industry to low carbon emission and does not leave the Australian industry unfairly exposed to trade competition from overseas competitors who are not equally investing in the transition to a low carbon emission manufacturing – instead avoiding the transition costs and choosing to compete as a high carbon emission competitor albeit from a lower cost base.

The failure of the Australian Government to effectively address this potential trade issue via not introducing their own CBAM (or similar) to provide equity (level playing field) in the market, will not only unfairly expose the Australian manufacturing Industry to lower cost higher carbon emission competition, but will also simply 'export' Australia's carbon footprint offshore, undermining any commitment to lower global greenhouse gas emissions.

Q. What role do you think the government should play in supporting the transition towards a circular economy? Are there specific supply chain support measures which you would like to see implemented?

Government can play a significant role in encouraging the transition towards a circular economy via recognition in Commonwealth Government Procurement Rules of the strategic importance of encouraging the use of materials with a high recycled content and by endorsing an update of the “Australian and New Zealand Government Framework for Sustainable Procurement”, published by the Australasian Procurement Construction Council [2007] to better reflect the need to drive towards a circular economy.

Government can also play an important role in providing specific R&D incentives for projects targeting increased circularity, such as creating commercial opportunities for the repurposing of associated products such as steel slag, effective utilisation of energy resultant from production processes, such as “off-gases” and heat resulting from the primary manufacturing process, therefore reducing the amount of “new” energy required.

Government procurement contracts could call for evidence from construction materials suppliers demonstrating the level of circularity of their product. One recognised mechanism for demonstrating circularity is the Materials Circularity Indicator [MCI], which was developed by the Ellen MacArthur Foundation and Granta Design.

Q. With regards to the development of a low-emissions steel industry specifically, how critical do you think government procurement will be to supporting the growth of that industry?

Government as a procurer is very influential in respect of driving change in construction product supply chains generally, particularly in the context of the current infrastructure boom. Government procurement guidelines should include reference to working with industry to collaboratively drive towards reduced lower embodied carbon construction solutions. This could and should include encouragement for early full supply chain engagement to aid in optimising process and logistical efficiencies, reduce waste and to drive innovation.

Specific targets for embodied carbon in materials could be considered for Government funded projects however these should also be considered in the context of a balanced and phased approach and further supporting mechanisms from government such as investment in renewable energy generation and transmission infrastructure and targeted R&D support for lower embodied carbon products and solutions, should be identified and actioned.

Your submission also made reference to the challenges in eradicating modern slavery from supply chains. Other submissions to this inquiry have made a similar argument.

Q. In your view, do you think there is a risk that modern slavery is being used to produce materials at price points which other countries, who don't use slavery, are unable to compete? And if this is happening, do you think government procurement policies need to be amended to de-prioritise lowest cost purchasing, with a greater focus on how easy or hard it is to verify allegations of modern slavery abroad?

Modern Slavery is a significant issue globally. In the steel sector there are concerns relating to the sourcing of items such as steel scrap, alloys, and iron ore from underdeveloped and developing countries.

Steel scrap, for example, can be generated in the numerous ship-breaking yards of Southern Asia, renowned for their poor human rights records <https://www.leighday.co.uk/latest-updates/blog/2021-blogs/shipbreaking-judgment-the-shipping-industry-and-the-law-of-negligence/>. The scrap generated via those yards is eventually used by steel makers to make “new” steel.

It is currently challenging for many steel makers to determine the provenance of steel scrap, and similarly iron ore and steel alloys, unless the steel maker can provide evidence of traceability throughout their supply chain. InfraBuild, as an integrated steel manufacturer, owning assets across the full value chain, from scrap recycling through to steel distribution is uniquely positioned to provide greater confidence to the market that all reasonable measures have been taken to eliminate modern slavery from its supply chain.