

Dissenting Report by Labor Senators

1.1 The Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015 and the Customs Tariff (Anti-Dumping) Amendment Bill 2015 were referred to the Senate Economics Legislation Committee for inquiry and report on 18 March 2015. Submissions closed on 15 April 2015.

1.2 These bills make several amendments to Australia's anti-dumping laws, including the abolition of the International Trade Remedies Forum (ITRF) and the introduction of fees for reviews by the Anti-Dumping Review Panel (ADRP).

International Trade Remedies Forum (ITRF)

1.3 The ITRF was introduced by Labor in government as part of a package of reforms to improve and streamline Australia's anti-dumping system.

1.4 The ITRF is a formal advisory group, comprising key users of the anti-dumping system, charged with providing expert advice to government on the effectiveness of the anti-dumping system. Its membership is drawn from industry, manufacturers, producers, importers, unions, industry associations and representatives from government agencies.

1.5 The role of this expert advisory group is to provide ongoing strategic advice and feedback to government on the implementation and monitoring of Australia's anti-dumping system. For this reason, the role of the ITRF was enshrined in legislation to ensure that this valuable dialogue continues in the future.

1.6 It is disappointing that the government is proposing to abolish a measure that previously enjoyed bi-partisan support. It is the Labor Party's view that getting rid of independent advice is counterproductive and demonstrates this government's aversion to genuine consultation with industry.

1.7 Labor Senators on this Committee also note that the evidence tendered to this inquiry confirms that the ITRF has not met since March 2013, despite being required to meet at least twice a year under the Customs Act (the Act).

1.8 The government is therefore intending to abolish the ITRF without ever having convened a meeting, despite supporting its establishment by the former Labor government, and despite the fact that it was formed by an Act of Parliament to advise the Minister on the operations of the anti-dumping system.

1.9 Given this, evidence tendered to the Committee by the Department of Industry and Science in its submission, which states that 'the central role of the Forum has been fulfilled', lacks credibility.

1.10 The Committee has not heard any evidence in favour of abolishing the ITRF from stakeholders, with the exception of the Department of Industry and Science.

1.11 On the contrary, submissions from the Victorian government, the AMWU, AWU and CFMEU, the Australian Industry Group, the Food & Beverage Importers Association, the Australian Forest Products Association, the Australian Steel Association and the National Farmers Federation were either supportive of the

retention of the ITRF or expressed concerns about the arrangements for its proposed replacement.

1.12 These concerns were echoed in evidence presented at the public hearing and are most comprehensively articulated in the joint submission to the Committee from the AMWU, AWU and CFMEU.

1.13 Labor Senators thank the unions for their ongoing proactive role in ensuring Australia's anti-dumping system is effective in minimising injury to Australian industry.

Fees for Reviews by the Anti-Dumping Review Panel (ADRP)

1.14 Labor Senators on this Committee also have serious concerns about the proposal to introduce fees for reviews by the ADRP.

1.15 Several submissions, including from the Manufacturers' Trade Alliance, the Victorian government, the Food & Beverage Importers Association, the Australian Steel Association and the joint submission from the AMWU, AWU and CFMEU, either expressed concerns or opposed outright the imposition of fees for reviews by the ADRP.

1.16 It has been suggested, for example in the submission from the Manufacturers' Trade Alliance, that increased legal and procedural thresholds would be more effective in curtailing frivolous review applications.

1.17 Concerns were also raised that the proposed fee structure, which provides a lower fee for SMEs, may be manipulated by high-turnover exporters channelling review applications through a lower-turnover importer in order to avoid paying the higher fee.

1.18 This issue has clearly not been adequately addressed and requires much more consultation with relevant stakeholders and users of Australia's anti-dumping system.

Other Concerns

1.19 There was opposition and concerns raised by a number of stakeholders to several technical measures in these bills and some amendments were proposed.

1.20 These matters include (but are not limited to): the ability of the Anti-Dumping Commissioner to vary the length of the investigation period, the definition of a subsidy, the lesser duty rule, determining the normal value of goods, access to import data, and how measures in these bills relate to Australia's Free Trade Agreements.

1.21 Labor Senators note that in the absence of an appropriate consultative body, such as the ITRF, stakeholders have no formal mechanism for raising these concerns and participating in an open and transparent dialogue with government about the ongoing operation of Australia's anti-dumping system, particularly as it relates to the aforementioned concerns.

Conclusion

1.22 Australia's anti-dumping system is critically important to the maintenance of fair trade for our domestic producers. The previous Labor government improved and streamlined the system, including establishing measures such as the ITRF.

1.23 The ITRF was a constructive body and performs an important function in ensuring Australia's anti-dumping system is operating effectively. The government should utilise the ITRF, as it is required to by law.

1.24 Labor Senators believe that the decision to abolish the ITRF is premature and unjustified, particularly given that it previously enjoyed bipartisan support and has never met during the present government's term.

1.25 Furthermore, Labor Senators remain unconvinced that the introduction of fees for reviews by the ADRP is the most appropriate way to reduce frivolous review applications. Evidence tendered to this Committee, both in the submissions and in the public hearing, supports this assessment.

1.26 For these reasons, Senators Carr, Dastyari and Ketter do not support the majority report and make the following recommendations to the Senate:

Recommendation 1

1.27 Labor Senators recommend that the Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015 be amended to delete the section of the bill which abolishes the International Trade Remedies Forum, so as to retain the forum.

Recommendation 2

1.28 Labor Senators request that the legislative instrument imposing a fee for review by the ADRP be delayed until the effect of increased legal and procedural thresholds for review applications can be assessed.

1.29 Should the increased legal and procedural thresholds prove insufficient in reducing frivolous applications to the ADRP, the appropriateness of further increasing these thresholds should be considered as a potential alternative to imposing a fee.

Recommendation 3

1.30 Labor Senators recommend that a meeting of the ITRF be convened as a matter of urgency, to consider and provide feedback on any matters relating to these bills and any other related issues, including:

- **length of the investigation period;**
- **definition of a subsidy, including the government's policy to strengthen the enforcement of the provisions of the WTO Agreement on Subsidies and Countervailing Measures, and the government's policy to take a stronger stance in WTO forums on the transparency of foreign subsidies;**
- **the lesser duty rule;**
- **fees for reviews by the ADRP and their possible manipulation;**

- **Australia's Particular Market Situation provisions, including options for determining 'normal value' where a particular market situation has been found and exporters' costs do not reasonably reflect costs associated with production and sale;**
- **access to all data, including import data for the purposes of investigating dumping and unfair subsidies; and**
- **the ongoing operation of the ITRF, including mechanisms to ensure that it is convened in accordance with the Act and utilised to efficiently and effectively fulfil its role as stipulated by the legislation.**

**Senator Sam Dastyari
Deputy Chair**

Senator Chris Ketter

Senator the Hon Kim Carr