

# Chapter 6

## Imports and trade measures

6.1 This chapter outlines current international conditions and how these have affected the Australian steel industry, manifesting most obviously in a surge of imports in recent years sold at less than their normal value into the Australian steel market.

6.2 The chapter examines the impact of trade measures implemented by governments of other countries to support their domestic steel industries, particularly in Asia, and discusses the trade remedies available to Australia to counteract these measures, including anti-dumping, countervailing and safeguard actions. The chapter further describes issues raised by submitters in relation to trade measures, and closes with the committee view and recommendations.

### Defining trade remedies

6.3 The World Trade Organisation allows its members to take measures against imported products in particular circumstances. The Department of Foreign Affairs and Trade defines these measures, or trade remedies, as 'trade policy tools that allow governments to take remedial action against imports which are causing material injury to a domestic industry'.<sup>1</sup> These include: anti-dumping actions; countervailing duty measures in response to foreign government subsidies; and safeguards, or emergency measures that temporarily limit imports in a particular industry.

6.4 Investigations into alleged dumping and countervailing duty are carried out by the Anti-Dumping Commission (ADC). The Productivity Commission is responsible for carrying out inquiries into whether a sudden surge of imports has affected a particular industry before safeguard measures can be implemented.<sup>2</sup>

### Dumping

6.5 Australia's understandings of what comprises dumping are based on the *Marrakesh Agreement establishing the World Trade Organization* (WTO Agreement):

...a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the

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1 Department of Foreign Affairs and Trade, 'Trade remedies', <http://dfat.gov.au/trade/topics/pages/anti-dumping-and-safeguards.aspx> (accessed 3 November 2017).

2 Department of Foreign Affairs and Trade, 'Trade remedies', <http://dfat.gov.au/trade/topics/pages/anti-dumping-and-safeguards.aspx> (accessed 3 November 2017).

comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.<sup>3</sup>

6.6 Drawing on the WTO Agreement definition, the ADC outlines dumping as follows:

Dumping occurs when an exporter sells goods to Australia at a price that is below the 'normal value' of the goods. The normal value will usually be the domestic price of the goods in the country of export. The margin of dumping is the amount by which that normal value exceeds the 'export price' of the goods.<sup>4</sup>

### ***Subsidies and countervailing measures***

6.7 The WTO Agreement states that a subsidy exists if a government or any public body within the territory of a member country provides a financial contribution where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments...<sup>5</sup>

6.8 The ADC outlines that subsidisation occurs when 'imported goods benefit from government assistance in the country of export'. The common forms that subsidies can take include preferential loans, tax incentives, grants and the provision of goods and services.<sup>6</sup>

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3 *Marrakesh Agreement establishing the World Trade Organisation*, Marrakesh, 15 April 1994, entry into force 1 January 1995, ATS 1995 No. 8, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 2.1.

4 Anti-Dumping Commission, *Australia's Anti-Dumping and Countervailing (Anti-Subsidy) System*, November 2013, p. 1.

5 *Marrakesh Agreement establishing the World Trade Organisation*, Marrakesh, 15 April 1994, entry into force 1 January 1995, ATS 1995 No. 8, Agreement on Subsidies and Countervailing Measures, Article 1.1. It also states that a subsidy is deemed to exist if there is any form of income or price support in the sense of Article XVI of the General Agreement on Tariffs and Trade 1994; and a benefit is thereby conferred.

6 Anti-Dumping Commission, *Australia's Anti-Dumping and Countervailing (Anti-Subsidy) System*, November 2013, p. 1.

6.9 Countervailing duties are measures imposed to counteract the amount of a subsidy if the subsidy is limited to a specific company or group of companies or industries.<sup>7</sup>

### *Safeguards*

6.10 Where an inquiry determines that a large number of imports cause or threaten to cause serious material injury to a particular domestic industry, the government may take safeguard action in accordance with its international agreements. This action may include, for example, temporarily restricting imports of a product until the domestic industry can adjust. Forms of safeguards include tariffs, tariff rate quotas or import quotas.<sup>8</sup>

### **How Australia's anti-dumping and countervailing framework works**

6.11 Australia's anti-dumping and countervailing system provides some Australian industries with additional protection from cheaper imported goods to that provided through the tariff system, where these have caused or threaten to cause material injury to an industry.<sup>9</sup>

6.12 Besides the WTO rules outlined above, a number of legislative instruments also set out Australia's response to dumping and subsidies. These include the *Customs Act 1921*, the *Customs Tariff (Anti-Dumping) Act 1975*, the *Customs Administration Act 1985*, *Customs Regulations 1926* and the *Customs Tariff (Anti-Dumping) Regulation 2013*.<sup>10</sup>

6.13 An investigation into dumping begins with an application from a local industry to the ADC. These applications must meet particular criteria, such as whether a sufficient proportion of the respective industry supports the application, and whether there is a plausible basis for the alleged existence of dumping or subsidisation.<sup>11</sup>

6.14 The ADC usually determines whether a product is dumped or not by subjecting it to the 'like goods' test – that is, by determining the price of the product or a very similar product in its country of origin and, if this is more than the export price

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7 Anti-Dumping Commission, *Australia's Anti-Dumping and Countervailing (Anti-Subsidy) System*, November 2013, p. 1.

8 Department of Foreign Affairs and Trade, 'Trade remedies', <http://dfat.gov.au/trade/topics/pages/anti-dumping-and-safeguards.aspx> (accessed 3 November 2017).

9 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 3.

10 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*, May 2015, p. 6.

11 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 28.

to Australia, whether it has caused or threatens material injury to the Australian industry in question.<sup>12</sup>

6.15 If a product has been found to be dumped, the responsible Minister will level duties against it. The basis for these duties is often the degree to which the product's import price has been reduced from its 'home' price – the 'dumping margin' – or, in the case of countervailing, the extent to which subsidies from a foreign government have allowed the supplier to charge a lower price.<sup>13</sup> Anti-dumping and/or countervailing measures will usually remain in place for five years, but can be extended for additional five year periods following review.<sup>14</sup>

6.16 Types of duty that can be applied to products determined to have been dumped include the *ad valorem* duty – that is, a proportion of the export price, which may vary according to market conditions; fixed duties, or a flat rate that does not vary over time and may restrict the possibility of price manipulation or circumvention; and combination duties.<sup>15</sup>

6.17 The Productivity Commission in a 2016 report was of the opinion that Australia's anti-dumping and countervailing system, compared to systems in other countries, sits 'in the middle of the range in terms of the "checks and balances" it [contains] on protections conferred to Australian industry'.<sup>16</sup>

6.18 Australian manufacturers and producers, unions, government agencies and importers are able to advise the government on its anti-dumping system through the International Trade Remedies Forum, administered by the Australian Government.<sup>17</sup>

### ***Exceptions and Free Trade Agreements***

6.19 A number of Australia's Free Trade Agreements (FTAs) restrict the actions that Australia can take against imported products from particular countries that are suspected to be dumped. For example, the Australia-New Zealand Closer Economic Relations Trade Agreement does not allow either country to engage anti-dumping measures against the other's exports.<sup>18</sup>

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12 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 4.

13 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, pp. 4–5.

14 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 5.

15 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*, May 2015, pp. 23–24.

16 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 33.

17 Anti-Dumping Commission, *International Trade Remedies Forum*, <http://www.adcommission.gov.au/adssystem/Pages/ITRF.aspx> (accessed 8 November 2017).

18 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 31.

6.20 While the China-Australia Free Trade Agreement does not limit either country's existing rights under the WTO to engage in anti-dumping measures, Australia recognises China as a market economy, meaning that unlike most other countries, it does not consider that the Chinese government subsidises its domestic industries. Because of this, Australia is required to consider 'the Chinese domestic price to be the normal value of the goods concerned' in its anti-dumping investigations, which has led to different approaches in the way Australia gathered and assessed data on Chinese products compared to many other countries, such as the United States.<sup>19</sup>

### **Global conditions**

6.21 As outlined in chapter 2 of this report, there is an oversupply of steel in the world. Two decades ago, most steel production took place in Europe, Japan and the United States. By 2005, global steel production had increased by 52 per cent, and by 2015, production had increased by 122 per cent, with the overwhelming majority of increased production taking place in China.<sup>20</sup>

6.22 Although China was a net importer of crude steel before 2006, its crude steel production grew at an average annual rate of 12 per cent between 2004 and 2014. In 2015, China was the world's largest producer of crude steel, with its steel comprising 50 per cent of global steel production.<sup>21</sup>

6.23 Global steel prices have declined since 2010. Margins, or the 'difference between costs of production and revenue', have declined recently, as have utilisation rates at the same time as steel stockpiles have grown.<sup>22</sup> A global slowdown in economic activity following the Global Financial Crisis combined with China's rapid economic transition and excess steel capacity have led to depressed prices and margins dropping beneath 'normal' long-term levels.<sup>23</sup>

6.24 Other governments have intervened to support their own industries in response to the global glut in steel and subsequent increase in imports. Market interventions appear to have amplified recently, and may have artificially extended the

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19 Weihuan Zhou, 'Indonesia challenges Australia's anti-dumping measures at the WTO', *The Conversation*, 15 September 2017, <https://theconversation.com/indonesia-challenges-australias-anti-dumping-measures-at-the-wto-83723> (accessed 6 November 2017); Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 33; Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, *Committee Hansard*, 6 April 2016, p. 72.

20 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 19.

21 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 19.

22 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 28.

23 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 33.

global downturn in steel.<sup>24</sup> Government interventions identified by the OECD as being particularly problematic for global trade include increased import duties, export incentives, government subsidies, trade financing, import quotas, investment measures, surveillance mechanisms and minimum import prices.<sup>25</sup>

6.25 In August 2016, the ADC released a report (the ADC report) with an economic analysis of Asian steel and aluminium markets and implications for Australia's anti-dumping system. The ADC report found that while:

...the cash cost (excluding depreciation) of producing a tonne of crude steel in Australia is estimated to be 12 per cent lower than in Japan and 21 per cent lower than in the United States...steel is estimated to be 4 and 16 per cent cheaper to produce in China and Russia, respectively, than in Australia.<sup>26</sup>

6.26 These estimates do not take into account government interventions in domestic steel industries.

6.27 The ADC report found that a significant contributing factor to the global crisis has been measures implemented by governments of a number of Asian countries:

...the nature and extent of Asian government interventions, and the relative magnitude of Chinese production, has meant that these interventions have been major contributing factors—but not the only contributors—to sustained global overcapacity, ongoing excess production, and depressed world prices.<sup>27</sup>

6.28 The report argued that many of these interventions adopted by Asian governments, particularly in China, 'would meet the OECD's definition of being market distorting'.<sup>28</sup>

6.29 The ADC report stated that globally, most new investments in expanding state-owned crude steel production are financed by Asian state-owned enterprises. In particular, the Chinese Government has provided subsidies for raw inputs, tax deductions, preferential tax policies and special support funds for non-state-owned enterprises.<sup>29</sup>

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24 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 35.

25 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 39.

26 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, pp. 20–21.

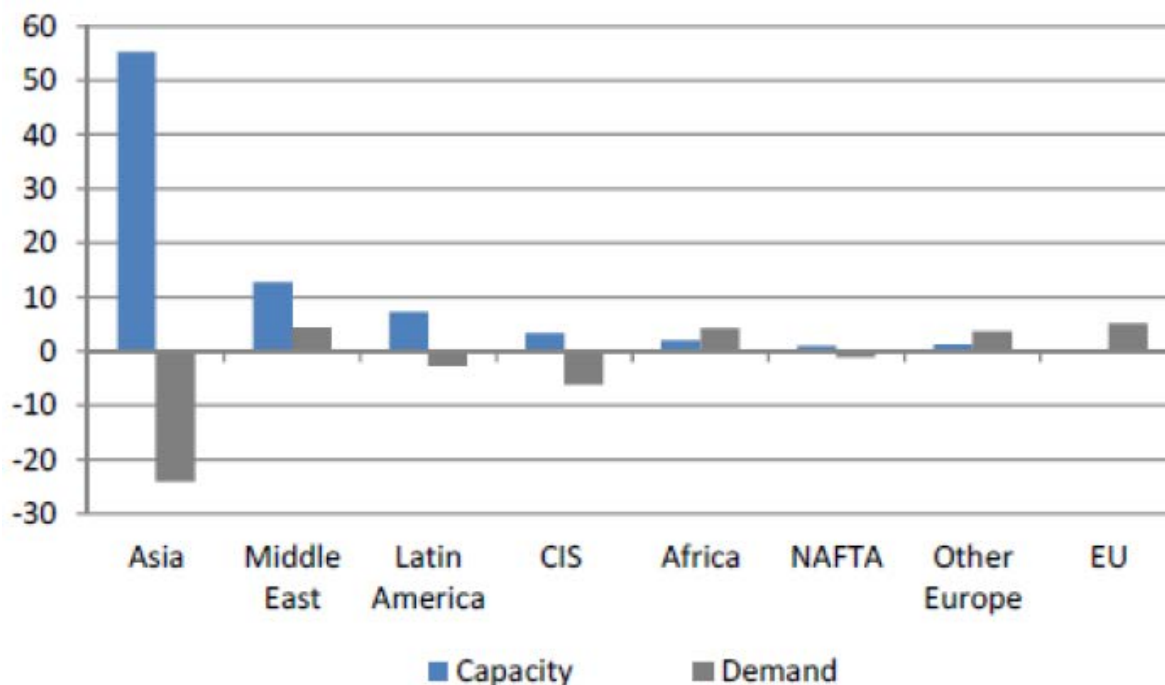
27 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 5.

28 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 35.

29 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, pp. 43–44.

6.30 Between 2015 and 2016, the biggest increase in the imbalance between steelmaking capacity and steel demand occurred in Asia (Figure 6.1).

**Figure 6.1: Steelmaking capacity and steel consumption changes by region in 2015 and 2016 (total volume change in mmt)<sup>30</sup>**



Source: OECD calculations, *Steel Market Developments, Q4 2015*

6.31 Arrium argued that the global steel overcapacity has led to a rise in exports as countries:

...seek to offload steel into export markets, more often at marginal pricing. Their target markets are those with the least trade protection against such activities...One of the most common ways to deal with surplus supply is to export product that cannot be sold domestically or into traditional export markets. Typically, these new export markets are penetrated by marginally pricing the exported goods. Such marginal pricing or sales at marginal cost (that is, at a cost less than the full absorbed cost to make and sell the goods in their domestic market) is, in effect, dumping.<sup>31</sup>

6.32 Arrium noted in its submission that globally, anti-dumping duties are among the most common forms of trade measures in response to slowed global economic growth and excess supply, and the number of anti-dumping cases is at an 'all-time high':

Around the world, there have been 20 new trade measures implemented each year in recent years, most of which are anti-dumping measures.

30 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 44, citing OECD calculations in *Steel Market Developments, Q4 2015, 2016*, p. 21.

31 Arrium Mining and Minerals, *Submission 16*, pp. 5–6.

Since 2008, China has been the main target of implemented trade steel measures introduced by many countries. Of the 135 measures implemented by countries other than Australia, 74 are related to Chinese products and 31 target China exclusively.<sup>32</sup>

6.33 The problems facing Australia's domestic steel industry because of global conditions are not unlike the problems facing domestic steel industries in a number of other countries, including, for example, the United States, which initiated a review in April 2017 to determine whether steel imports constituted a national security risk.<sup>33</sup>

6.34 Arrium argued that dumping and marginal pricing would not necessarily resolve by themselves when global economic conditions improve:

This is because of disparity between regional economic conditions: so long as the export economy has surplus supply and capacity, then the strategy of 'marginal pricing' will continue. The spiral of 'marginal pricing' and dumping will only end when the domestic (and traditional export) markets of the export source have restored demand and supply equilibrium, and the exporter is again motivated to return to a strategy of full cost-absorption and profit. Only then will markets previously subjected to 'marginally priced' or dumped goods be abandoned.<sup>34</sup>

#### ***Global conditions and trade measures in Australia***

6.35 Steelforce provided global figures (see Figure 6.2) demonstrating that Australia was the most active initiator of trade cases in 2015, submitting that '[t]his is somewhat ironic, considering the country's small share of global steel production', equating to 0.3 per cent of global steel capacity in 2014.<sup>35</sup> Arrium highlighted a global increase since 2010 in 'anti-dumping activity which has been reflected in an increase in Australian cases'.<sup>36</sup>

6.36 Most of Australia's trade remedy measures are levied on imports from China, followed by Korea, Taiwan and Thailand.<sup>37</sup>

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32 Arrium Mining and Minerals, *Submission 16*, p. 11.

33 United States of America Department of Commerce, *Presidential Memorandum Prioritizes Commerce Steel Investigation*, 20 April 2017, <https://www.commerce.gov/news/press-releases/2017/04/presidential-memorandum-prioritizes-commerce-steel-investigation> (accessed 8 November 2017).

34 Arrium Mining and Minerals, *Submission 16*, p. 6.

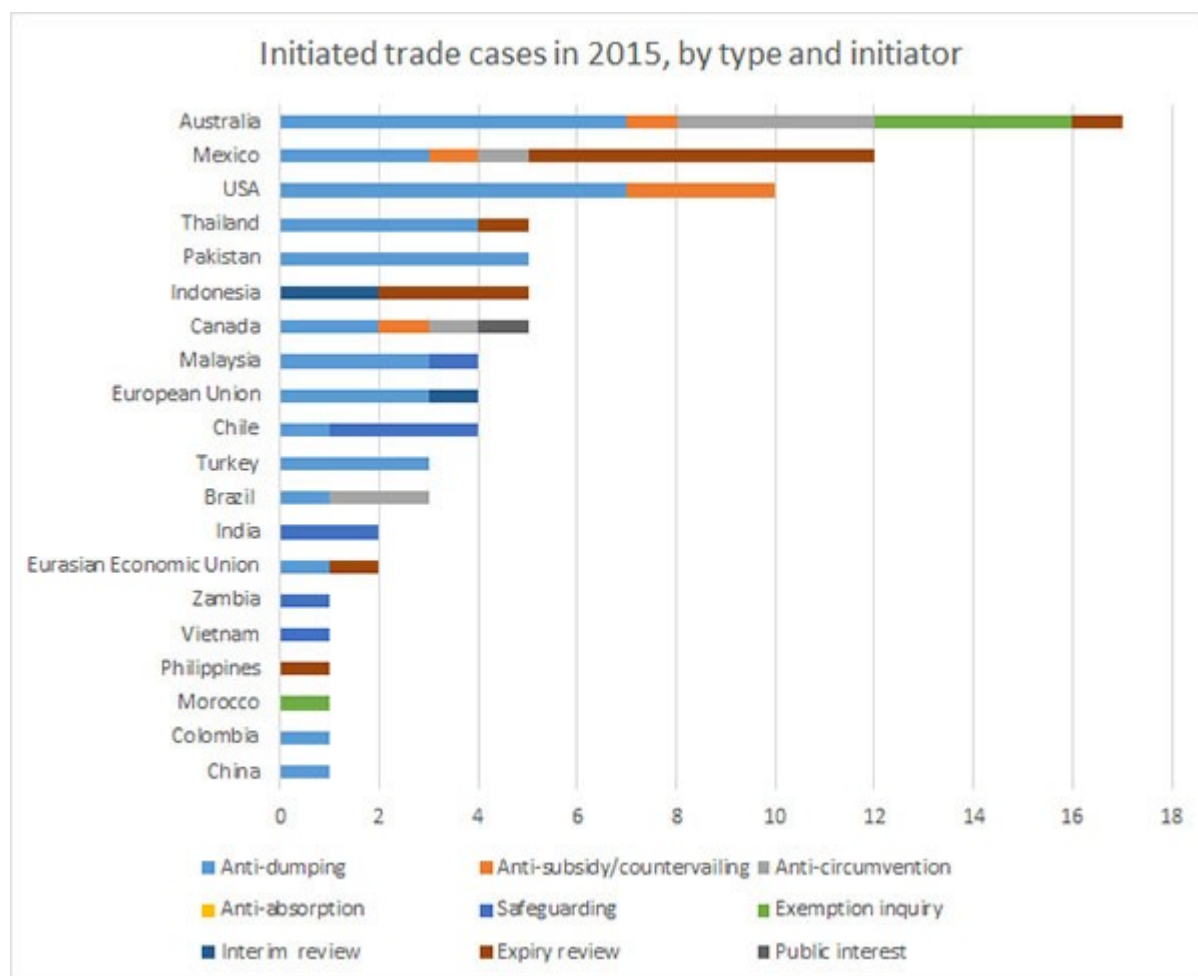
35 Steelforce, *Submission 11*, p. 7; Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 14.

36 Arrium Mining and Minerals, *Submission 16*, p. 11.

37 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 83.



**Figure 6.2: Initiated trade cases in 2015, by type and indicator<sup>38</sup>**



Source: Steel First, in Steelforce

6.37 The overwhelming majority of cases initiated with the ADC in recent years have related to steel (86 per cent in 2014–15), and most measures imposed (61 per cent) are also for steel (Figure 6.3). The Anti-Dumping Commissioner gave evidence to this inquiry indicating that as of April 2016, around 75 to 80 per cent of the ADC's casework involved investigations into the steel sector.<sup>39</sup>

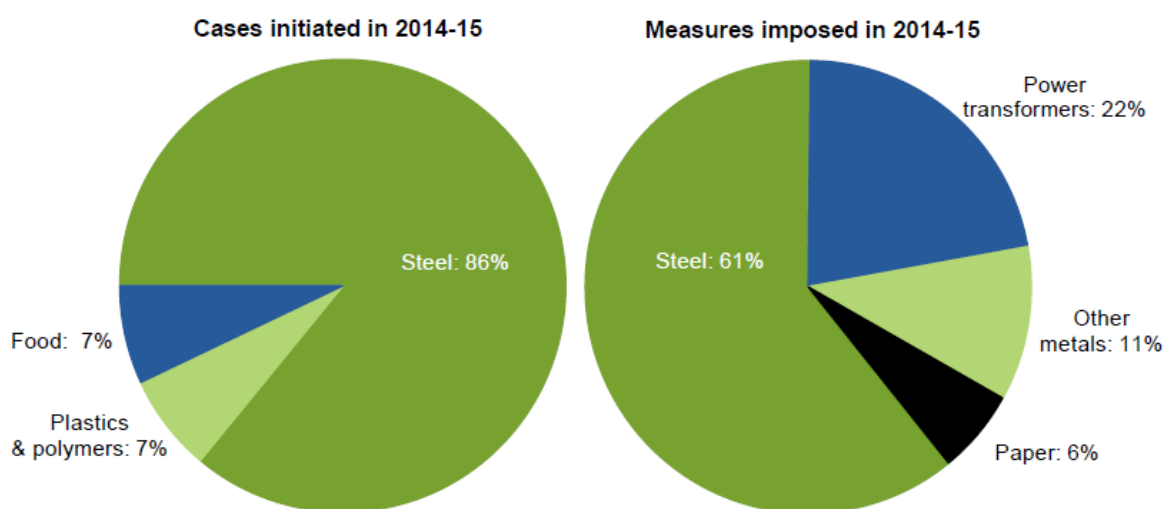
6.38 As of 17 January 2017, 35 of the 45 (77 per cent) anti-dumping measures in place on steel applied to products also produced by Arrium and BlueScope.<sup>40</sup>

38 Steelforce, *Submission 11*, p. 6.

39 Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, *Committee Hansard*, 6 April 2016, p. 73.

40 Department of Industry, Innovation and Science, *Submission 41*, p. 6.

**Figure 6.3: Australian anti-dumping and countervailing initiations and measures imposed by industry, 2014-15<sup>41</sup>**



Source: Productivity Commission

6.39 The Productivity Commission, in its 2016 report into Australia's anti-dumping system, argued that 'the incentive to seek relief through the system has been greater when economic conditions have been tough'.<sup>42</sup> However, the Anti-Dumping Commissioner was of the opinion that an increase in the number of applications for dumping or countervailing duties 'reflects the nature of policies implemented by other governments, Asian governments in particular'.<sup>43</sup> For example, the ADC found that the Chinese government had introduced measures such as export taxes and export quotas on key inputs in steelmaking to 'keep input prices artificially low and create significant incentives for exporters to redirect these products into the domestic market'. The effect of these measures would lead to an increase in domestic supply and reduce 'domestic prices to a level below what would have prevailed under normal competitive market conditions'.<sup>44</sup>

6.40 A number of submitters and witnesses argued that it is relatively easy for foreign companies exporting steel to target the Australian market. For example, the Illawarra Business Chamber (IBC) contended that Australia's relatively open market has impacted the Australian steel industry negatively:

41 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 9.

42 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 7.

43 Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, *Committee Hansard*, 6 April 2016, p. 73.

44 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 46.

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Australia has been rated one of the world's freest economies: an assessment the IBC welcomes. At the same time, the low barriers to entry into Australian markets mean that global pressures have had a significant impact on the domestic steel industry's competitiveness...<sup>45</sup>

6.41 Arrium argued that Australia has relatively weak anti-dumping measures compared with other countries:

Australia's anti-dumping and countervailing measures are generally among the shortest in the world, with some of the lowest margin rates. This makes Australia's measures less supportive of the domestic industry relative to other countries, and places the steel industry at a disadvantage...Australian markets are among the most open, and therefore the most competitive in the world. There are minimal to no tariffs on imported goods, which makes it a very attractive market for exporters.<sup>46</sup>

6.42 Mr Mark Vassella, the Chief Executive of BlueScope Australia and New Zealand, gave evidence that:

Without an effective antidumping regime...steel finds its way to the path of least resistance...The Australian market really is an open market in terms of steel...So companies with last tonnes, incremental tonnes, will sell their product wherever they can—often—just [to] get cash for it.<sup>47</sup>

6.43 The Australian Manufacturing Workers' Union also was of the opinion that 'dumped product is attracted to markets that have relatively weak anti-dumping and countervailing protections, and Australia's is recognised as a relatively weak system'. They further argued although anti-dumping duties of 'well over 30 [per cent] and up to several hundred per cent' are common in other similar countries such as the United States, 'Australian anti-dumping duties rarely if ever exceed the 30 [per cent] level'.<sup>48</sup>

6.44 Mr Travis Wacey from the Forestry, Mining and Energy Union suggested that given the relative weakness of Australia's anti-dumping systems compared to other countries, companies might continue to dump in the Australian market even after having duties levelled against them because of Australia's relatively smaller duties compared to the United States:

You might get a reward from antidumping of duties of 10 per cent, but the United States might have it at 500 per cent, so you might still get that steel coming and disturbing the market anyway. You might not have a strong

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45 Illawarra Business Chamber, *Submission 5*, p. 4.

46 Arrium Mining and Minerals, *Submission 16*, pp. 11–12, 15.

47 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *Committee Hansard*, 1 April 2016, pp. 5–6.

48 Australian Manufacturing Workers' Union, *Submission 27*, p. 5.

anticircumvention framework in place, so you might get those duties circumvented anyway.<sup>49</sup>

6.45 However, the Anti-Dumping Commissioner questioned the assumption that Australia's anti-dumping system is perceived as weak internationally:

The answer to that question, to be honest with you, is that I do not know, although I do speak to my counterparts in the US, China, Canada, Korea, Taiwan and the European Commission on a very regular basis, and most of them believe that Australia's antidumping system is a very strong and robust one. Whether firms in those economies believe that we are a soft touch is another matter.<sup>50</sup>

### **Impact of foreign trade measures on the Australian steel industry**

6.46 The ADC report concluded that Asian government interventions in their domestic steel industries had led to additional pressures on Australian markets that went 'beyond the challenges expected in highly competitive markets'.<sup>51</sup> Its economic analysis suggested that if economically inefficient market interventions and steel overcapacity were to continue indefinitely without remedial measures, production in Australia's steel industry would shrink by an estimated \$169 million for every \$400 million of dumped/subsidised imports.<sup>52</sup>

6.47 Emphasising the impact that international conditions had on the Australian steel market, Edcon steel submitted that:

Our industry has suffered over recent years from low margins due to import competition, and this is not fair. I am not saying competition is not fair, I am saying it is not fair competition.<sup>53</sup>

6.48 Arrium's Chief Executive of Strategy gave evidence at the Canberra hearing about the impact of the global glut in steel on the domestic industry, and how reactions from other countries in response had further affected Australian steel production:

The key challenge in the current external environment is margin. We have seen steel prices in absolute terms reduce by 60 per cent since 2012 and we have seen steel margins over scrap reduce by 80 per cent. Volume helps—do not get me wrong, volume helps—but steel pricing globally right now is the challenge. In response to that we are seeing other countries do a range

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49 Mr Travis Kent Wacey, Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 6 April 2016, p. 19.

50 Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, *Committee Hansard*, 6 April 2016, p. 74.

51 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 62.

52 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 68.

53 Edcon Steel, *Submission 19*, p. 1.

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of things... Other countries closer to our region have put safeguard measures in place—countries like Thailand, Indonesia, Malaysia and the Philippines.<sup>54</sup>

6.49 The committee received evidence outlining the impact that dumping had on the domestic steel industry. For example, Bisalloy asserted that dumping of products from Finland, Japan and Sweden:

...prevented it from supplying Q&T [quenched and tempered] steel plate on a competitive basis. The dumping also prevented Bisalloy from maximizing its production output that would have contributed to increased production cost efficiencies (via higher volumes) permitting further re-investment opportunities by Bisalloy in the business.<sup>55</sup>

6.50 Arrium outlined that in the medium term, reduced prices that result from dumping as domestic producers try to remain competitive with dumped products lead to the following impacts:

- Exporters dealing in non-dumped and non-subsidised goods exit the market in favour of other, more profitable options;
- Importers of non-dumped and non-subsidised goods begin to reduce their investment in the current market, and do not look to increase or improve supply chains; and
- Local Australian producers suffer financial injury from the dumping, which means they lose the capacity to invest in improvements, expansion, productivity and associated developments.<sup>56</sup>

6.51 The long term impacts of dumping, Arrium suggested, would lead to further negative outcomes in the Australian steel industry:

- Exporters dealing in non-dumped and non-subsidised goods do not enter or invest in the domestic market due to risk of damage by dumped products;
- Importers of non-dumped, non-subsidised goods exit the market as they lose return on their investment and the capacity for improvement or expansion;
- Local Australian producers exit because of financial injury and the inability to attract or retain capital due to low returns on investment, resulting in significant job losses and poorer economic outcomes;
- The loss of future investment in rebuilding domestic production due to the risk of recurrent dumping; and
- The loss of competition in the market, usually resulting in higher prices and poorer outcomes for consumers.<sup>57</sup>

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54 Ms Naomi Margaret James, Chief Executive, Strategy, Arrium Mining and Materials, *Committee Hansard*, 6 April 2016, p. 31.

55 Bisalloy Steel Group Limited, *Submission 33*, p. 3.

56 Arrium Mining and Minerals, *Submission 16*, p. 16.

## Previous inquiries into trade remedies

6.52 Reflecting the increasing importance of Australia's trade remedies system in recent years, a number of other inquiries have examined Australia's anti-dumping and countervailing system. Three of the major inquiries are outlined in brief here because of their relevance to this inquiry.

### *2015 House of Representatives inquiry into circumvention*

6.53 The House of Representatives Standing Committee on Agriculture and Industry inquired into circumvention (the circumvention inquiry) of anti-dumping measures, resulting in a report in May 2015.<sup>58</sup>

6.54 Australia's anti-circumvention framework is a relatively recent phenomenon. It was first introduced in new provisions to the *Customs Act 1901* in June 2013.<sup>59</sup> Responsibility for anti-circumvention investigations and actions lies with the ADC.

6.55 The circumvention inquiry arose in response to concerns from industry that producers subject to anti-dumping measures immediately find a way to circumvent, or avoid, the measures by, for example:

- making minor modifications to goods that do not substantially change the essential characteristics of the goods;
- exporting goods from third countries; and
- reducing export prices to evade absorbing the increased cost incurred by anti-dumping duties (also known as duty absorption).<sup>60</sup>

6.56 Submissions to the circumvention inquiry detailed the ways in which steel producers were circumventing anti-dumping measures. For instance, BlueScope in its submission to the inquiry provided an example of how flat steel imports had been slightly modified by adding alloys, so as to avoid anti-dumping measures on the original product:

It is our experience that increasing volumes of flat steel imports are being slightly modified by the addition of an alloy, principally boron, in minor quantities (commonly referred to as "Pixie dust") and then reclassified under Australia's tariff system so as to avoid or circumvent anti-dumping measures. The evidence indicates that this practice is deliberately and sometimes blatantly aimed at avoiding dumping duties, with the alloy

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57 Arrium Mining and Minerals, *Submission 16*, p. 16.

58 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*, May 2015, p. 1.

59 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*, May 2015, p. 8.

60 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*, May 2015, p. 15.

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goods being sold into the same end-use applications as non-alloy steel but without dumping measures being applied.<sup>61</sup>

6.57 BlueScope identified a subsequent ninety-fold increase in products imported under the 'other alloy' tariff code between September 2013 and September 2014 to circumvent duties applied to dumped non-alloyed products.<sup>62</sup> Arrium in its submission to the circumvention inquiry also outlined how within six months of the imposition of dumping duties against hollow structural sections (HSS), imports of alloyed HSS products increased by around 1,000 per cent.<sup>63</sup>

6.58 Evidence provided to this inquiry also outlined these methods of circumvention and addressed the topic of circumvention.<sup>64</sup>

6.59 Because of concerns raised to the circumvention inquiry about the ability of producers to circumvent *ad valorem* duties, the House of Representatives Standing Committee on Agriculture and Industry recommended that the default position in each anti-dumping case should be the application of a combination of fixed and variable duties.<sup>65</sup> A number of submitters to the current inquiry referenced the circumvention inquiry and explicitly endorsed this recommendation.<sup>66</sup>

### ***2016 Productivity Commission research paper***

6.60 The Productivity Commission published a research paper in February 2016 outlining recent developments in anti-dumping arrangements.

6.61 The Productivity Commission concluded that the anti-dumping system resulted in costs to downstream user industries, consumers and the wider economy, and questioned whether any anti-dumping system was in Australia's best interests. It recommended 'a fundamental rethink of the system' that would involve the choice between either a drastically revised system to reduce its costs, or erasure of the system altogether.<sup>67</sup>

6.62 The Productivity Commission also recommended a proposal, similar to its previously proposed 'public interest test', that the anti-dumping system include

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61 BlueScope Steel, *Submission 9* to House of Representatives Inquiry into Australia's anti-circumvention framework in relation to anti-dumping duties, p. 3.

62 BlueScope Steel, *Submission 9* to House of Representatives Inquiry into Australia's anti-circumvention framework in relation to anti-dumping duties, p. 3.

63 Arrium, *Submission 14* to House of Representatives Inquiry into Australia's anti-circumvention framework in relation to anti-dumping duties, p. 6.

64 Australian Steel Institute, *Submission 19*, pp. 21–22.

65 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*, May 2015, p. 36.

66 Australian Steel Institute, *Submission 19*, p. 4; Bisalloy Steel Group Limited, *Submission 33*, p. 3.

67 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 79.

provision to suspend measures that would be unreasonably costly for the broader community or ineffective at remediating injury.<sup>68</sup>

6.63 The Productivity Commission's recommendations differed considerably from the recommendations of the circumvention inquiry and, as discussed below, the ADC report.

### ***2016 ADC analysis of Asian steel and aluminium markets***

6.64 In February 2016, the Government asked the Anti-Dumping Commissioner to provide an economic analysis of global steel and aluminium markets and how distortions within these markets had affected dumping of Asian steel and aluminium in Australia.<sup>69</sup>

6.65 The findings of the ADC report have been referenced elsewhere in the body of this chapter and, as such, are not outlined here.

6.66 The ADC report recommended that trade remedies be implemented to offset the effects of Asian government market interventions that have led to an increase in dumping and subsidised imports entering Australia.<sup>70</sup>

### **Recent changes to Australia's anti-dumping and countervailing system**

6.67 A number of legislative changes and reforms have been made in recent years to Australia's anti-dumping regulatory framework. Some of the evidence provided to this inquiry in the 44<sup>th</sup> Parliament raised issues that have now been addressed by these changes. Relevant changes in this respect include:

- Amendments to the *Customs Amendment (Anti-Dumping Improvements) Regulation 2015*, commencing 1 April 2015, which expanded circumvention activity to include slight modification of goods.<sup>71</sup>
- The requirement that the Anti-Dumping Commissioner should, wherever possible, impose provisional measures at day 60 of an investigation. Where not possible, the Commissioner should produce a report outlining why a preliminary affirmative determination was not made at that time.<sup>72</sup>

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68 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 90.

69 The Hon. Christopher Pyne MP, Minister for Industry, Innovation and Science, 'Press Conference: Government Inquiry into Steel Dumping', 18 February 2016.

70 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 59.

71 Anti-Dumping Commission, 'New circumvention activity to address the slight modification of goods exported to Australia', *Anti-Dumping Notice No. 2015/44*, 30 March 2015.

72 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 108.



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- A revised deadline of 37, rather than 40, days for submission of information at the start of investigations.<sup>73</sup>
  - The closure of a circumvention loophole, with galvanised steel and HSS products with dumping duties against them no longer being able circumvent duties by slight modification.<sup>74</sup>
  - Passage of the Customs Amendment (Anti-Dumping Measures) Bill 2017 which closed loopholes that allowed foreign exporters to exploit the duty rate review process and then recommence injurious dumping for up to 18 months without any remedial duties in place.

6.68 The Department of Industry, Innovation and Science (the Department of Industry) stated on its website that as part of its efforts to enable better access and assistance for Australian businesses using the anti-dumping system, the government had established 'an Anti-Dumping Information Service, the expansion of the International Trade Remedies Advisory service and a hotline as a central point of contact for enquiries about Australia's anti-dumping system'. The government highlighted a newly established market research function to provide economic analysis of trends and trending behaviours across different markets to assist anti-dumping investigations.<sup>75</sup>

6.69 The Anti-Dumping Commissioner provided the committee in April 2016 with an overview of reforms to the anti-dumping system at that time:

The reforms addressed areas such as placing a greater onus on business to cooperate with investigations; introducing more stringent deadlines for submissions; improving the merits review process; and directing me as the commissioner to make a preliminary affirmative determination on day 60 of an investigation, meaning provisional measures can be imposed, or issue a status report providing reasons why a preliminary affirmative determination was not made...

The government has provided additional funds to the commission to employ additional investigators and strengthen its market intelligence unit... The recently established Anti-Dumping Information Service provides targeted economic analysis of trends and trading behaviours across markets to provide better information earlier in the process...

In addition to the additional resources, we are currently implementing the recommendations of an external review of the commission to ensure our processes are timely and effective and continue to deliver quality outcomes.

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73 Productivity Commission, *Developments in Anti-Dumping Arrangements: Productivity Commission Research Paper*, February 2016, p. 108.

74 Rachel Baxendale, 'Pyne closes loophole on steel imports', *The Weekend Australian*, 19 March 2016, p. 28.

75 Department of Industry, Innovation and Science, 'Levelling the playing field – changes to Australia's anti-dumping laws', <https://industry.gov.au/industry/IndustryInitiatives/TradePolicies/Pages/Levelling-the-playing-field-changes-to-Australias-Anti-dumping-laws.aspx> (accessed 7 November 2017).

One of the key changes will be the implementation of a new investigations model...This will also allow me to make a preliminary affirmative determination earlier in the investigation process...when I believe it is necessary to prevent injury to the Australian industry.<sup>76</sup>

6.70 In its submission to the 45<sup>th</sup> Parliament, the Department of Industry also gave an update on recent changes aimed to strengthen the anti-dumping system:

On 9 September 2016, the Government announced a range of operational improvements to the anti-dumping system. As part of these, the [Anti-Dumping] Commission has put in place a new investigations model to create efficiencies and improve the quality and timeliness of anti-dumping investigations. The Commission has adopted a more active, risk-based approach to address proven circumvention activities...The Commission is working with the Department of Immigration and Border Protection to take a stronger whole-of-government approach to ensuring overseas exporters and Australian importers comply with Australian anti-dumping and countervailing (anti-subsidy) duties.<sup>77</sup>

6.71 The Department of Industry informed the committee that in late 2016, it had consulted with a range of stakeholders, including steel manufacturers, steel importers and steel fabricators, on the effectiveness and efficiency of the anti-dumping system, and provided assurances that the feedback it had received 'will inform the Government whether additional opportunities for improvement exist'.<sup>78</sup>

### **Issues raised by submitters**

6.72 As noted above, there have been some amendments to Australia's anti-dumping and countervailing system during the period of this inquiry. This section of the report focuses only on those issues raised by submitters not directly covered by the legislative changes discussed above.

#### ***Recent changes***

6.73 Several submitters wrote or spoke in support of recent changes to the anti-dumping system. Bisalloy Steel, for example, suggested the changes 'have enhanced the operation of the system'.<sup>79</sup> Similarly, BlueScope Steel submitted:

These legislative changes, together with the establishment and resourcing of the Anti-Dumping Commission, have led to significant improvements in the effectiveness of Australia's anti-dumping system. However, further changes are needed to ensure Australia's anti-dumping system is effective in redressing the injury caused by dumping.<sup>80</sup>

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76 Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, *Committee Hansard*, 6 April 2016, p. 69. See also Anti-Dumping Commissioner, *Reforms to the Anti-Dumping System*, April 2016 (tabled 6 April 2016).

77 Department of Industry, Innovation and Science, *Submission 41*, p. 5.

78 Department of Industry, Innovation and Science, *Submission 41*, p. 5.

79 Bisalloy Steel Group Limited, *Submission 33*, p. 3.

80 BlueScope Steel, *Submission 4*, p. 2.

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### ***Free Trade Agreements***

6.74 Several submitters raised concerns about FTAs and their impact on the Australian steel industry. The Australian Steel Association asserted that:

With FTAs being agreed with Australia's major regional partners, imposing (dumping) duties on the inputs to Australia's downstream steel intensive manufacturers simply has the effect of transferring competitive strain to the sector of the Australian steel industry most under pressure.<sup>81</sup>

6.75 BlueScope Steel outlined that its key areas of concern in negotiating bilateral and plurilateral trade agreements included trade measures, as follows:

Maintenance of anti-dumping rights; staged tariff reductions for sensitive steel products; rules of origin; mechanisms to address subsidies and non-tariff barriers; product standards; and harmonisation of intellectual property arrangements.<sup>82</sup>

### ***Costs to lodge an application with the ADC***

6.76 Some evidence that the committee received concerned the costs involved in running an anti-dumping case. The General Manager of Bisalloy Steel stated that the costs can be 'anywhere from a half-a-million dollars to a million dollars'.<sup>83</sup>

6.77 Mr John Doyle, who appeared on behalf of 63 businesses, outlined that the costs and time involved in running an anti-dumping case can be a deterrent to smaller businesses:

[T]o run an anti-dumping case costs in excess of half a million dollars or more—between half a million and a million dollars. Obviously, that comes out of any company's bottom line, whether it is BlueScope, Arrium, Bisalloy...It is just crazy.<sup>84</sup>

### ***Involvement of small and medium-sized enterprises (SMEs) in anti-dumping cases***

6.78 The committee heard that the anti-dumping system as it stands caters to large businesses producing raw product. Mr Ian Waters, who also gave evidence on behalf of 63 businesses, stated that most of these businesses down the supply chain did not engage in the anti-dumping process, although dumping was a matter of concern for them if they purchased raw product from companies:

...like Bisalloy, BlueScope and Arrium. It is important to know also that the dumping only applies to raw product. With those thousands of tonnes of steel that we are talking about, a lot of that is fabricated steel, so it is not covered by dumping.<sup>85</sup>

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81 Australian Steel Association, *Submission 24*, p. 9.

82 BlueScope Steel, *Submission 4*, p. 2.

83 Mr Thomas Victor Matinca, General Manager, Sales and Strategy, Bisalloy Steel Group Limited, *Committee Hansard*, 1 April 2016, p. 16.

84 Mr John Doyle, on behalf of 63 businesses, *Committee Hansard*, 6 April 2016, p. 47.

85 Mr Ian Waters, on behalf of 63 businesses, *Committee Hansard*, 6 April 2016, p. 46.

6.79 The Australian Steel Institute highlighted that more fabricated steel is imported into Australia than raw product, but anti-dumping cases have not investigated fabricated steel:

We would like to bring to the Senate's and the Government's attention that there is more structural steel fabrication being brought into the country than there is 'mill gate' steel. The 'mill gate' steel has been very successful in proving dumping, however none of the fabricated steel has even put a case together...None of these products have ever lodged a dumping case, as the system is not 'user-friendly' to these products or this sector.<sup>86</sup>

6.80 The Australian Steel Institute stated that evidence suggests that many manufactured/fabricated steel products are being dumped. However, it submitted, 'due to the nature of the anti-dumping system and the laws, it has been very difficult for manufactured products or SMEs to take advantage of the system'.<sup>87</sup> The Institute's National Manager, Industry Development and Government Relations, gave further evidence outlining the difficulties inherent in the current system for manufactured steel products:

The dumping legislation does not lend itself to manufactured product. It is not good for bespoke product, and that is essentially what a lot of the imported fabricated products are. Every building, every iron ore plant, every conveyor belt is different. The antidumping legislation struggles with that.<sup>88</sup>

6.81 As a solution to the issue of few SMEs using the current system, the Australian Steel Institute argued that the ADC and the government 'need to assist the many SMEs within the downstream steel channel (i.e. BlueScope and Arrium's customers) [to] access the anti-dumping system'.<sup>89</sup>

6.82 It should be noted that SMEs currently have access to the International Trade Remedies Advisory Service, provided by the Australian Government, to help them prepare applications and provide information about Australia's anti-dumping and countervailing system.<sup>90</sup>

### ***Lack of information made publically available***

6.83 The Australian Steel Institute argued that because the ADC has full access to import data from the Australian Bureau of Statistics, the ADC should have the power to self-initiate an investigation, particularly in anti-circumvention inquiries, instead of

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86 Australian Steel Institute, *Submission 19*, p. 11.

87 Australian Steel Institute, *Submission 19*, p. 23.

88 Mr Ian Cairns, National Manager, Industry Development and Government Relations, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 5.

89 Australian Steel Institute, *Submission 19*, p. 23.

90 Australian Government, *International Trade Remedies Advisory Service*, 4 October 2017, <https://www.business.gov.au/advisory-services/international-trade-remedies-advisory-service> (accessed 8 November 2017).

relying on industry, which only has access to 'redacted data'.<sup>91</sup> BlueScope also made the same proposal on the same grounds.<sup>92</sup> However, the Anti-Dumping Commissioner gave evidence that the ADC currently has this power, 'and the ability to do so is based on information that we would consider meets the standard', although as of April 2016 the ADC had never self-initiated an investigation.<sup>93</sup>

6.84 The Australian Steel Institute further proposed that a review is needed to establish what data the ABS can release:

so that businesses can do more than only follow the flow of international trade so informed decisions can be made to determine whether, in a particular case, products from a particular country have been 'dumped' into Australia.<sup>94</sup>

6.85 The Anti-Dumping Commissioner advised that the ADC has a new anti-dumping information service. However, the function of this service appears to be to provide the ADC with statistical analyses of trends across markets, rather than providing Australian businesses with data relevant to anti-dumping allegations.<sup>95</sup>

#### ***Time taken to conduct anti-circumvention inquiries***

6.86 BlueScope Steel expressed concern about the length of anti-circumvention inquiries, which are currently subject to a 155 day legislative timeframe, as are anti-dumping inquiries. BlueScope argued that because of the nature of an anti-circumvention inquiry, it should require less time than the original anti-dumping inquiry that had determined the product was dumped:

An anti-circumvention inquiry is only held after a successful anti-dumping investigation, and only where there is prima facie evidence that exporters or importers are circumventing measures imposed in the original investigation. As the anti-circumvention inquiry relates to dumping and goods already fully investigated by the ADC, it should not require a timeframe that is as long as the original investigative timeframe. A shortened timeframe...would more quickly ensure that the intended effect of the original dumping duties is not undermined and the domestic industry does not suffer prolonged injury.<sup>96</sup>

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91 Australian Steel Institute, *Submission 19*, pp. 19–20.

92 BlueScope Steel, *Submission 4*, p. 10.

93 Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, *Committee Hansard*, 6 April 2016, p. 75.

94 Australian Steel Institute, *Submission 19*, p. 20.

95 Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, *Committee Hansard*, 6 April 2016, p. 75; Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 11.

96 BlueScope Steel, *Submission 4*, p. 10.

## ***Duties***

6.87 A number of submitters questioned the particular types of duties that the ADC imposes on products found to have been dumped, or called for changes to specific types of duties. For example, BlueScope proposed that 'the combination duty method be made the default method for all cases'.<sup>97</sup>

6.88 Some evidence concerned the 'lesser duty' rule, calling for it to be removed or to only be used in exceptional circumstances.<sup>98</sup> For example, Bisalloy Steel submitted that:

...the recent policy change involving the non-mandatory consideration of the lesser duty rule for SMEs (with effect from 1 January 2014) excluded industries where only one SME local manufacturer supplies the Australian market. The policy change on the mandatory consideration of the lesser duty rule does not benefit Bisalloy. It is understood that the introduction of the policy change was intended to ensure that there would be no exploitation of market position by a monopolistic supplier – however, Bisalloy cannot be viewed as holding a dominant position with less than 45 [per cent] market share.<sup>99</sup>

6.89 Bisalloy Steel asked for 'the non-mandatory consideration of the lesser duty rule' in investigations where the sole SME does not hold a dominant (that is, greater than 50 per cent) market share position.<sup>100</sup>

6.90 The Australian Manufacturing Workers' Union called for a reform of the anti-dumping handbook used by the ADC, to examine duties and other issues, such as:

...how normal values are calculated; how profit margins are allocated in construction of normal values; how 'particular market situations' are determined; the types of duties applied (*ad valorem* or flat); [and] data access and verification...<sup>101</sup>

## ***Safeguards separate to the ADC***

6.91 The committee received evidence questioning why Australia's safeguards system rests with the Productivity Commission, while the anti-dumping and countervailing framework rests with the ADC. The Australian Manufacturing Workers' Union in their submission highlighted the issue with the current arrangement:

[S]afeguard tariffs are a legitimate and WTO sanctioned remedy for unfair and damaging trade practises. Yet the Australian authority charged with assessing claims for safeguard protection is the Productivity Commission

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97 BlueScope Steel, *Submission 4*, p. 9.

98 Australian Steel Institute, *Submission 19*, p. 3; Bisalloy Steel Group Limited, *Submission 33*, p. 3.

99 Bisalloy Steel Group Limited, *Submission 33*, p. 3.

100 Best Bar Reinforcements, *Submission 22*, p. 4.

101 Australian Manufacturing Workers' Union, *Submission 27*, p. 6.

(PC). The PC has no particular expertise in assessing trade remedies on a case by case, real world basis. They do not as a matter of course have access to the customs data required for such assessments and their work is much more focused on broad microeconomic policy reform rather than real world assessments of trade practises. The recent establishment of the Anti-dumping Commission presents an opportunity to better align the treatment of safeguard tariffs and other trade remedies. The Commission has routine access to relevant customs data, has expertise using this data, has established links with industry and has as its bread and butter work the assessment of trade remedies.<sup>102</sup>

6.92 A proposal from the Chief Executive of BlueScope Australia and New Zealand, Mr Mark Vassella, aligned with the view that there could be a more effective system for safeguards:

One reform we think would greatly improve protection against surges of dumped imports where there are global gluts—as we are seeing at the moment—would be to make it faster and simpler for the government to apply safeguard measures. The current process is onerous, requiring the Productivity Commission to extensively investigate. A faster investigative process carried out by, for example, the Anti-Dumping Commission or the industry department could provide more effective relief.<sup>103</sup>

6.93 Mr Vasella argued that BlueScope considered it 'a bit of an anomaly...that [responsibility for safeguards] is not with the Anti-Dumping Commission, when the rest of the policy and the regime is'.<sup>104</sup>

6.94 The South Coast Labour Council also suggested that one agency should cover both anti-dumping and safeguard functions, as exists in other jurisdictions, such as the United States.<sup>105</sup> The Council submitted that:

...the ADC's work is constrained...by the demarcation of key trade protection powers such as safeguards with other agencies, in this case the Productivity Commission...[I]t simply makes no sense to have the responsibilities for safeguards and anti-dumping tariffs demarcated over [two] separate Government agencies and ministries...Putting aside the fact that these safeguards have been rarely used (once by the Productivity Commission since its inception), combining the [two] functions under the auspices of the ADC would make administrative sense and ensure a more holistic Government approach to anti-dumping action...<sup>106</sup>

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102 Australian Manufacturing Workers' Union, *Submission 27*, p. 6.

103 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, BlueScope, *Committee Hansard*, 1 April 2016, p. 3.

104 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, BlueScope, *Committee Hansard*, 1 April 2016, p. 10.

105 South Coast Labour Council, *Submission 23*, p. 10.

106 South Coast Labour Council, *Submission 23*, p. 8.

6.95 However, the Anti-Dumping Commissioner gave evidence indicating that Australia's system of separating safeguard functions from anti-dumping and countervailing functions was not necessarily unusual compared to other countries, stating:

It varies...I am not sure if it is unusual. There are a number of models, some of which you might call integrated models and some of which are separate.<sup>107</sup>

### **Committee view**

6.96 The evidence provided to this and other related inquiries indicates that current global conditions and market interventions by other governments, particularly those in Asia, have contributed to a global glut in steel and consequent influx of dumped and subsidised steel into Australia. The Anti-Dumping Commission has provided valuable analysis of this issue through its 2016 analysis of the global steel and aluminium markets.

6.97 Reflecting these global conditions, most of the Anti-Dumping Commission's work—as much as 80 per cent—is concerned with steel. The committee is of the view that the Anti-Dumping Commission plays a vital role in protecting the Australian steel industry from dumped steel or steel products unfairly subsidised by foreign governments. Australia's anti-dumping regime must be continually strengthened so that it can effectively defend Australian industry against unfair and anti-competitive trade practices. To guarantee the future of the Australian steel industry, the government must adequately resource the Anti-Dumping Commission so that it can operate in a timely and effective manner, and give consideration to employing experts from the private sector with industry experience.

### **Recommendation 20**

**6.98 The committee recommends the Australian Government ensure that the Anti-Dumping Commission is adequately resourced so that it can operate in a timely and effective manner and defend Australian industry against unfair and anti-competitive trade practices.**

### **Recommendation 21**

**6.99 The committee notes that in adequately resourcing the Anti-Dumping Commission, it would be preferential for officials to have private sector experience prior to gaining employment within the Commission.**

6.100 The committee heard evidence from multiple stakeholders indicating that the current division of Australia's trade remedies system between the Anti-Dumping Commission, which deals with dumping and countervailing, and the Productivity Commission, which deals with safeguards investigations, is ineffective and onerous. So long as the safeguards function rests with the Productivity Commission, it remains inaccessible to industry and removed from Australia's broader trade remedies

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107 Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, *Committee Hansard*, 6 April 2016, p. 70.



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framework. To facilitate industry's access to future trade remedy actions and reduce administrative constraints, these functions should be incorporated into one agency.

6.101 The committee notes that during Senate Estimates hearings, the Anti-Dumping Commissioner acknowledged that safeguards investigations in other international jurisdictions (such as the European Union, the United States, Canada and South Africa) are often conducted by the same body undertaking the anti-dumping and countervailing investigations.<sup>108</sup>

6.102 The Department of Foreign Affairs and Trade has also confirmed that similar arrangements exist in Korea and China.<sup>109</sup>

6.103 It is the committee's view that Australia should align its anti-dumping processes with international best practice/norms to ensure that Australian industry is afforded the same protection as foreign industries and can access safeguards measures when appropriate. The recent United States investigation into whether steel imports pose a threat to national security could lead to American import tariffs on steel, resulting in excess Chinese steel being dumped in Australia. This possibility points to the need to ensure that all trade remedies are made available to protect Australian industry.

## **Recommendation 22**

**6.104 The committee recommends that responsibility for safeguards inquiries should be transferred from the Productivity Commission to the Anti-Dumping Commission, in line with international best practice.**

6.105 The committee understands that recent reforms have improved Australia's anti-dumping system, but remains of the view that there are significant problems still to be addressed. A number of submitters and witnesses to this inquiry emphasised their concerns about the level and type of particular duties imposed by the Anti-Dumping Commission. To address this issue, applicants should be able to nominate the form of duty to be applied in anti-dumping applications. A working group should also be established in the International Trade Remedies Forum to reform the Anti-Dumping Commission's handbook, particularly with regards to duties.

## **Recommendation 23**

**6.106 The committee recommends that the Australian Government introduce a mechanism for applicants involved in anti-dumping investigations to nominate the form of duty to be applied, which can be recommended to the Minister by the Anti-Dumping Commissioner.**

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108 Mr Dale Seymour, Anti-Dumping Commissioner, Anti-Dumping Commission, Department of Industry, Innovation and Science, answers to questions on notice, Economics Legislation Committee, 22 October 2015 (received 29 January 2016).

109 Department of Foreign Affairs and Trade, answers to questions on notice, Senate Foreign Affairs, Defence and Trade Legislation Committee, 27 February 2014 (received 2 May 2014); Department of Foreign Affairs and Trade, answers to questions on notice, Senate Foreign Affairs, Defence and Trade Legislation Committee, 23 October 2014 (received 12 December 2014).

**Recommendation 24****6.107 The committee recommends the establishment of a working group of the International Trade Remedies Forum to reform the anti-dumping handbook.**

6.108 The committee is concerned that the cost and structure of the current anti-dumping system inhibits SMEs from utilising Australia's anti-dumping framework, despite evidence suggesting that they are significantly affected by dumping and subsidies of imported steel, particularly manufactured/imported steel. Although the International Trade Remedies Advisory Service helps SMEs to prepare applications, case costs of half a million to a million dollars dissuade many SMEs from considering lodging anti-dumping action. In addition, the system is not 'user friendly' to the fabricated steel sector, much of which is comprised of SMEs.

**Recommendation 25****6.109 The committee recommends that the Australian Government consider establishing a legal aid system to expand access to the Australian anti-dumping system by affected industry stakeholders, particularly small and medium-sized enterprises.****Recommendation 26****6.110 The committee recommends that the working group proposed in Recommendation 23 within the International Trade Remedies Forum also consider ways in which the anti-dumping system can be reformed to be more user-friendly for small and medium-sized enterprises and the fabricated steel sector.**

6.111 The committee also heard that a further inhibiting factor for businesses wishing to lodge anti-dumping cases is that in some cases they cannot access the trade and import data held by the Bureau of Statistics that informs the Anti-Dumping Commission's work. The committee considers that the Australian Government should investigate how this and other relevant data can be made publicly accessible, where appropriate.

**Recommendation 27****6.112 The committee recommends that the Australian Government look at ways to better facilitate access to data held by the government to assist companies seeking to access the anti-dumping system.**

6.113 Previously, the Australian Government rejected a recommendation from the Productivity Commission to establish a 'public interest test' in which anti-dumping measures considered to be unreasonably costly to the broader community could be suspended. The committee notes that the Minister still has the ability to consider whether duties are in the public interest. The committee further notes that there has been widespread bipartisan opposition to the implementation of a public interest test in the levying of duties, and considers that the government should continue to oppose any push for this or similar recommendations to be implemented.

**Recommendation 28**

**6.114 The committee recommends that the Australian Government should continue to oppose the introduction of a 'public interest test' in the levying of duties.**

**Senator Chris Ketter**  
**Chair**

**Senator the Hon Kim Carr**

