

The Senate

Economics
References Committee

Australia's steel industry: forging ahead

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Abbreviations

ACRS	Australasian Certification Authority for Reinforcing and Structural Steel
ADC	Anti-Dumping Commission
ANZGPA	Australia and New Zealand Government Procurement Agreement
BOF	Blast Oxygen Furnace
CPRs	Commonwealth Procurement Rules
EAM	Electric Arc Method
FTA	Free-trade agreement
GPA	World Trade Organisation Agreement on Government Procurement
HSS	Hollow structural sections
JSCGP	Joint Select Committee on Government Procurement
NCBPs	Non-conforming building products
SMEs	Small and medium-sized enterprises
SOG	Senior Officers' Group
TBT	World Trade Organisation Agreement on Technical Barriers to Trade
WTIA	Welding Technology Institute of Australia
WTO	World Trade Organisation

Executive summary

1.1 This inquiry arose after a growing crisis in the Australian steel industry came to a head during the 44th Parliament. Australia's two major integrated crude steel producers, the Arrium steelworks in Whyalla, South Australia, and the BlueScope steelworks in the Illawarra region, New South Wales, faced major financial issues, leading to the decision of both to lay off significant numbers of employees. On account of these financial problems, Arrium was placed into voluntary administration, leading to further uncertainty surrounding the future of the steel industry in Whyalla and Australia more broadly.

1.2 The sale of Arrium to British consortium GFG Alliance was completed in September 2017, thereby securing the continued operation of the Whyalla steelworks for the immediate future. However, the conditions creating the crisis that manifested most obviously in Arrium's collapse remain. This inquiry investigated a number of these conditions in detail and how they have impacted the Australian steel industry, including: inconsistent standards; issues in procurement policies; and unfair and uncompetitive trade practices, leading to dumped and subsidised imports and further price strains on steel produced in Australia.

1.3 The inquiry received alarming evidence regarding the safety risks posed by products that do not meet Australian standards, including steel used in bridges, poles, caravans, trailers and safety structures used on mining sites. Most steel fabricated in Australia conforms to appropriate standards produced by Standards Australia, with contracts in many instances requiring proof of third party certification. However, evidence provided to this inquiry suggested that legal loopholes in contracts and gaps in regulatory regimes in some instances may allow imported fabricated steel to avoid complying with the same standards as steel made in Australia, meaning that Australian steel incurs a higher cost base than imported products that do not necessarily have to meet the same level of quality.

1.4 In other instances, imported steel is accompanied by fraudulent third-party certificates, or first-hand declarations that the product meets standards without independent inspections. Some evidence suggested that as much as 80 per cent of fabricated structural steel, most of it imported, is found to be non-compliant with Australian standards when inspected. The committee heard examples of tubes filled with water to meet weight requirements; non-conforming levels of lead in paint on pre-painted steel products; and other non-conforming products that led to the collapse of buildings and signs. With little incentive to comply with standards, and no compliance or inspection regime, these products are entering Australia and being used in key construction and manufacturing projects.

1.5 Submitters and witnesses to the inquiry told the committee that in government procurement, standards compliance through third-party certification is compulsory only for contracts above a particular threshold. Nor does the government currently require that subcontractors meet the same standards as primary contractors, and there is no system to monitor conformance at any level in government-funded contracts.

The committee is concerned that the government is not leading the way by ensuring that steel procured in government contracts meets appropriate standards, thereby raising the potential that government funds are being used to source material used in structures that pose a risk to public safety.

1.6 Australia's Industry Participation policy aims to provide full, fair and reasonable opportunity for Australian industry to supply goods and services to major project. However, the Australian Government only requires Australian Industry Participation plans to be completed by successful tenderers who have been awarded contracts, meaning that tenderers are not required to consider how they will involve Australian industry during the tender application process. The committee heard that the threshold of \$500 million above which a project requires an Australian Industry Participation plan was set at a level more relevant for projects undertaken during the mining boom than projects in current conditions. Further, many Australian businesses are at a competitive disadvantage when competing for contracts because their costs are higher to meet product, occupational health and safety and environmental standards, and Australian steel is not subsidised by the government, unlike steel sourced from other countries in Asia that is able to compete at a lower price as a result.

1.7 The Australian steel industry has been affected by a global oversupply in steel occurring at the same time as an upsurge in production from China, where government support for the industry in the form of subsidies and tax remedies help to keep prices artificially down, as is the case in a number of other countries in Asia. The result of this oversupply is an increase of dumped products from around the world as countries seek to offload their excess steel at low prices. The pressures caused by the influx of dumped and subsidised steel into Australia are considerably greater than the normal pressures expected in naturally competitive markets, creating additional pressures on the Australian steel industry. The committee heard that the costs involved in lodging an anti-dumping case, as well as a framework that does not suit fabricated products, mean that many Australian companies, particularly small and medium-sized enterprises, are unable to make use of Australia's trade remedy system to offset the unfair advantages that many of their international competitors have. As one submitter said, 'I am not saying competition is not fair; I am saying it is not fair competition'.

1.8 Since this inquiry commenced, energy prices have doubled. Energy price volatility is affecting the viability of energy-intensive manufacturers like steel. The impact of energy prices on steel production has led the new owner of the Whyalla steelworks to invest in forms of renewable energy to ensure that the steelworks will be self-sufficient and protected from future energy price volatility. If rising energy prices are not curtailed, and security of supply is not established, Australian steel will suffer further disadvantage and the industry may not be able to survive.

1.9 Despite these challenges, Australia's steel manufacturers have several key advantages over international competitors. These include access to high quality reserves of iron ore and coking coal; the ability to respond quickly to local demand requirements; relatively short lead times; less likelihood of reworks because of misinformation and mistakes; reduced whole-of-life costs, including maintenance and technical support; a skilled labour force trained in the latest steel fabrication

techniques and welding processes; strong international brand recognition of several product lines; and high quality products that comply with established Australian standards. The Australian steel industry also has a strong track record of innovation and producing new and cutting-edge steel products, as well as a relatively reduced environmental impact compared to many international competitors.

1.10 Even with these advantages, the committee heard that the domestic steel industry has declined in recent years and will continue to decline without urgent action by the Australian government to address the issues of standards, procurement and unfair import competition. The recommendations proposed by the committee are intended to maximise the competitiveness of the Australian steel industry and to level the playing field so that Australian steel has the best opportunity to compete fairly in an increasingly globalised market.

List of recommendations

Recommendation 1

2.73 The committee recommends that the Australian Government develop a bipartisan solution to high energy costs that will reduce energy prices and secure supply for steel manufacturers.

Recommendation 2

4.85 The committee recommends that the Australian Government investigate the possibility of making third-party certification of steel compulsory for structural and fabricated steel used in Australia where relevant standards are available.

Recommendation 3

4.87 The committee recommends that the Australian Government work with the states and territories to improve consistency in standards between different Australian jurisdictions and regulatory bodies, with a view to harmonising current standards requirements.

Recommendation 4

4.89 Subject to forthcoming recommendations from the Senate inquiry into non-conforming building products, the committee recommends that the Australian Government develop a confidential reporting mechanism through which industry and other stakeholders can report non-conforming steel products so that the Commonwealth Federal Safety Commissioner can take proportionate action based on the safety risk posed by the product.

Recommendation 5

4.92 Subject to forthcoming recommendations from the Senate inquiry into non-conforming building products, the committee recommends that the Australian Government develop a clearer regulatory framework to deal with non-conforming steel products, with consideration given to stricter penalties for non-conforming products or products found to have fraudulent certifications, and the development of a public database of these products and their origin.

Recommendation 6

4.95 The committee recommends that the Australian Government convene a national steel forum comprised of representatives from industry, government and other stakeholders to investigate the possibility of establishing and funding an industry-managed steel compliance scheme that involves random independent conformity inspections.

Recommendation 7

5.111 The committee recommends that the Australian Government maximise the use of locally made steel in Commonwealth funded projects.

Recommendation 8

5.113 The committee recommends that the Australian Government develop an overarching steel policy that would form the basis for decision-making and initiatives affecting the industry.

Recommendation 9

5.115 The committee recommends the establishment of a national Steel Supplier Advocate, which will:

- provide strategic advice to the Australian Government on the challenges and opportunities facing the industry;
- assist Australian steel manufacturers to win major contracts and identify opportunities to improve competitiveness; and
- work with state government counterparts to plan for the sector and develop future industry initiatives.

Recommendation 10

5.117 The committee recommends that the Australian Government reconsider its decision to reject Recommendation 1 of the Joint Standing Committee on Government Procurement report and request the Department of Finance revise clause 10.9(c) of the Commonwealth Procurement Rules to require all goods purchased by the Australian Government to comply with Australian standards unless none are applicable or it is inappropriate to do so.

Recommendation 11

5.118 The committee recommends that the Australian Government reconsider its decision to reject Recommendation 4 of the Joint Standing Committee on Government Procurement report and commit to enhancing the procurement-connected policy for Australian Industry Participation plans so that good procurement practices are implemented down through the supply chain, so that both prime and sub-contractors:

- implement best practice terms and conditions; and
- are contractually obligated to report on those terms and conditions.

Recommendation 12

5.119 The committee recommends that the Australian Government reconsider its response to Recommendation 8 of the Joint Standing Committee on Government Procurement report and ensure that, in negotiating future trade or World Trade

Organisation agreements, Australia does not enter into any commitments that undermine the Australian government's ability to support Australian businesses.

Recommendation 13

5.120 The committee recommends that, in light of the evidence provided to this inquiry by the Australian Steel Institute relating to the steel industry's Environmental Sustainability Charter, the Australian Government reconsider its decision to reject Recommendation 3 of the Joint Standing Committee on Government Procurement report and facilitate the introduction of a procurement connected policy requiring Commonwealth agencies to evaluate the whole-of-life environmental sustainability of goods and services to be procured.

Recommendation 14

5.122 The committee recommends that the Australian Government better utilise the small and medium-sized enterprise provisions in free trade agreements.

Recommendation 15

5.124 The committee recommends that the Department of Finance reconsider its current procurement implementation guidelines, noting the concerns of the Joint Standing Committee on Government Procurement that the current guidance may undermine the intent of the new Commonwealth Procurement Rules, specifically clause 10.30 relating to economic benefit.

Recommendation 16

5.127 The committee recommends that relevant entities should be required to make reasonable enquiries to determine standards compliance in all Commonwealth funded projects involving steel, not just those above relevant thresholds.

Recommendation 17

5.129 The committee recommends that the Australian Government review the level of funding to the Australian Industry Participation Authority to ensure it is adequate, and that compliance with Australian Industry Participation plans should be monitored and audited.

Recommendation 18

5.130 The committee recommends that the Australian Government restore the requirement in legislation for all tenderers for Commonwealth projects to submit Australian Industry Participation plans, not just the successful tenderer.

Recommendation 19

5.132 The committee recommends that the Australian Government review the thresholds for Australian Industry Participation plans, with a view that they should be significantly reduced to take into account recent changes in industry.

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.

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.

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.

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.

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.

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.

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.

Chapter 1

Introduction

Referral and conduct of the inquiry

1.1 On 26 November 2015, the Senate referred the following matters to the Senate Economics References Committee (the committee), for inquiry and report by the last sitting day of June 2016 (30 June 2016):

- a) the future sustainability of Australia's strategically vital steel industry and its supply chain; and
- b) any other related matters.¹

1.2 The committee held three public hearings, in Wollongong (1 April 2016), Whyalla (5 April 2016) and Canberra (6 April 2016), and carried out two site visits, to BlueScope steelworks in the Illawarra region and the Arrium steelworks in Whyalla. The committee published thirty-eight submissions on its website from individuals and organisations.

1.3 With the dissolution of both houses of 44th Parliament on 9 May 2016 for a general election on 2 July 2016, the inquiry lapsed. On 11 October 2016, the Senate agreed to the committee's recommendation that the inquiry be re-adopted with the same terms of reference in the 45th Parliament, with a final report to be presented by 1 December 2017.²

1.4 The committee re-opened submissions with a closing date of 17 February 2017. An additional seven submissions were published on the inquiry's website.

1.5 The committee tabled an interim report on 1 December 2016, which focused on the collapse and imminent sale of Arrium.

Background to the inquiry

1.6 When this inquiry arose, the Australian steel industry was facing a number of significant challenges. Foremost among these challenges were the possible closures of Australia's two major integrated crude steel producers, the Arrium steelworks in Whyalla and the BlueScope steelworks in the Illawarra region. Both Arrium and BlueScope had reported financial losses in the years prior to the inquiry, leading to the decision to lay off significant numbers of employees.

1.7 BlueScope reported that it had returned to profitability in the 2015 financial year.³ The sale of Arrium Steel to GFG Alliance was formalised on 1 September

1 *Journals of the Senate*, No. 130, 26 November 2015, p. 3495.

2 *Journals of the Senate*, No. 9, 11 October 2016, p. 295.

3 BlueScope Steel Ltd, *Submission 4*, p. 4.

2017, with Arrium Steel's name changed to Liberty OneSteel.⁴ Both developments are welcomed by this committee. However, the evidence received in this inquiry suggests that many of the underlying challenges that led to the financial problems of Australia's biggest steel producers remain. Without appropriate policy settings and proper government support, Australia's steel industry remains vulnerable to future crises.

1.8 The committee acknowledged the broader nature of the challenges facing the steel industry in its interim report on the collapse of Arrium. As such, the committee recommended that the committee's final report should address in detail potential policy and legislative reforms, particularly in the areas of anti-dumping and countervailing measures, government procurement and standards. This report addresses these issues and makes a range of recommendations intended to help secure the future of the steel industry in Australia.

Other parliamentary inquiries relevant to the this inquiry

1.9 It is worth noting here that a number of other parliamentary inquiries have been held concurrently into some of the broader issues raised in this inquiry. These include, for example, the Senate Economics References Committee inquiry into non-conforming building products, the Joint Select Committee on Government Procurement's inquiry into the Commonwealth procurement framework, and the Senate Economics References Committee inquiry into the future of Australia's naval shipbuilding industry. Relevant evidence and conclusions from these inquiries are referred to throughout this report.

Scope and structure of the report

1.10 This report focuses on the issues that led to the creation of an environment in which the future of Australia's steel industry seemed uncertain, and will likely continue to place the future of this industry in jeopardy. These issues include: inconsistencies in standards and certification between domestically produced steel and imports, leading to non-conforming and potentially unsafe structures; an uneven playing field for Australian business in government procurement; and difficult international conditions, including a global oversupply of steel, trade-distorting policies by foreign governments, and a subsequent surge in imported, dumped and subsidised products into Australia.

1.11 The report consists of six chapters, including this introductory chapter:

- Chapter 2 provides an overview of the steel industry in Australia, including BlueScope Steel and Arrium (now Liberty OneSteel), and the role of steel manufacturers and distributors. It further outlines recent trends in Australian steel production. The chapter also examines the contribution of a domestic steel industry to the Australian economy, and considers what makes Australian steel competitive.

4 Liberty OneSteel, 'GFG Alliance has completed the acquisition of the Arrium Mining and Steel businesses', <https://www.libertyonesteel.com/announcement/> (accessed 12 September 2017).

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- Given the centrality of the collapse of Arrium to this inquiry, chapter 3 considers the events leading to Arrium being placed into voluntary administration (a matter considered in greater detail in the interim report) and provides overview of the subsequent sale of Arrium to GFG Alliance. The chapter also briefly considers the future of the steelworks, including the significance of recent announcements by Mr Sanjeev Gupta, Executive Chairman and Chief Executive Officer of GFG Alliance, regarding plans to greatly increase the use of renewable energy to power the steelwork's operations.
 - Chapter 4 summarises the current regulatory framework for steel standards and certification requirements, and looks at the effects of differing expectations and requirements of domestic and international producers. The chapter also examines examples of non-conforming steel products and fraudulent certification provided in evidence. In considering these matters, the chapter also outlines relevant recommendations made in the Joint Select Committee on Government Procurement's June 2017 report on amendments to the Commonwealth Procurement Rules, and considers the government's response to those recommendations.
 - Chapter 5 addresses government procurement policies as they relate to the steel industry. In doing so, chapter 5 outlines the current Commonwealth Procurement Rules (as of March 2017) and the Australian Industry Participation framework, and considers the various views expressed on these matters by inquiry participants.
 - Chapter 6 outlines current international conditions and their effect on the Australian steel industry. These conditions, as chapter 6 explains, are characterised by an international glut in steel, trade distortion policies by other governments, and a recent rise in dumped and subsidised imports. The chapter also describes Australia's current trade remedies regime and recent legislative changes to the anti-dumping framework.

Acknowledgements

1.12 The committee thanks all those who assisted with the inquiry, in particular the individuals and organisations who made written submissions and appeared before the committee in public hearings. The committee benefited greatly from the participation of these individuals and organisations.

1.13 The committee especially thanks individuals who wrote to the committee outlining the personal impact that the decline and possible end of domestic steel production would have on their lives and livelihoods. The evidence given by these individuals was crucial to the committee coming to an appreciation of the need for stronger action to ensure the survival of Australia's steel industry.

Chapter 2

Overview of the steel industry in Australia

2.1 This chapter gives a broad overview of the steel industry in Australia, including Australia's primary steel producers and the role of steel manufacturers and distributors. It also outlines the economic contribution of the steel industry to the Australian economy and local economies. The chapter ends with a discussion of the competitiveness of Australian steel and its contribution to innovation and technology.

2.2 The chapter does not cover in detail international conditions and how these have impacted the Australian industry – this issue is instead discussed in chapter 6.

Structure of the steel industry in Australia

2.3 Steel is used in almost all infrastructure and construction.¹ Significant amounts of steel have been produced in Australia since 1915.² Today, the Australian steel industry is an international leader in coatings, and is recognised globally for its leadership in safety and product development.³ Steel remains an important part of the domestic economy, and the steel industry employs 90,000–100,000 people around the nation.⁴

2.4 The steel supply chain covers all aspects of steel production, from raw material inputs, to crude steel and steel products, to manufacturing and end-use demand for steel products.⁵ The main industries purchasing iron and steel manufacturing products are manufacturing (48.7 per cent), construction (42.6 per cent) and mining (5.3 per cent).⁶

2.5 Today, the Australian steel industry consists of various companies involved in different stages of the steel production and supply chain. The two major integrated steel producers⁷, BlueScope Steel and Arrium Steel (now Liberty OneSteel), which were both formerly part of BHP Limited, produce crude steel domestically as 'upstream' manufacturers, although they produce different products to each other.

1 Arrium Ltd, *Submission 16*, p. 1.

2 Department of Industry, Innovation and Science, *Submission 18*, p. 6.

3 World Steel Association, *World Steel in Figures 2017*, p. 9; Mr Oscar Gregory, Director, ARC Research Hub for Australian Steel Manufacturing, University of Wollongong, *Committee Hansard*, 1 April 2016, p. 28.

4 Arrium Ltd, *Submission 16*, p. 2; BlueScope Steel Ltd, *Submission 4*, p. 3; Australian Industry Group, *Submission 10*, p. 9.

5 Department of Industry, Innovation and Science, *Submission 18*, p. 4.

6 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 15.

7 An integrated steel producer converts iron ore into finished or semi-finished steel products, which traditionally requires coke ovens, blast furnaces, steelmaking furnaces and rolling mills. See: Department of Industry, Innovation and Science, *Submission 18*, p. 6.

2.6 The industry also includes smaller scale operators, manufacturers and distributors, a network of more than 160 steel distribution and warehouse premises, 'downstream' supply chains of structural steel fabricators, iron and steel product importers and recyclers.⁸

BlueScope Steel

2.7 BlueScope Steel is Australia's only producer of flat steel.⁹ Formerly BHP Steel, BlueScope de-merged from BHP Billiton in 2002 to form a stand-alone public company. The steelworks that it now operates in Port Kembla, in the Illawarra region of New South Wales, first opened in 1928.¹⁰

2.8 BlueScope outlined in its submission that its annual steel production capacity in Australia is 2.6 million tonnes. It manufactures in all mainland states of Australia and exports approximately 800,000 tonnes a year to various markets, including the United States, Thailand, Vietnam, the United Arab Emirates, Malaysia and Singapore. The key focus of the company is:

...higher value, branded products for the building & construction industry. Products manufactured by Bluescope in Australia include steel coil and plate, galvanised steels, and a range of coated and painted steel products... Steel coil and plate products are sold to a range of manufacturers who convert them into products such as structural steel sections, girders and beams, fabricated structures, machinery, defence and transport equipment.¹¹

2.9 Following the committee's site visit to the steelworks at Port Kembla, BlueScope's Chief Executive, Mr Mark Vasella, explained that another key focus of BlueScope is innovation and research:

Innovation is a key strategy of ours and the basis of our success in our coated and steel products, which you witnessed today. We are a small producer of commodity steel by global standards but we are, unusually, a large manufacturer in terms of value-added painted and coated steel products. We run an innovation and product development facility here at Port Kembla, with 70 people employed and some 30 PhD qualified scientists. We continue to invest in our products, such as Colorbond—most recently with the next generation of Colorbond in partnership with Nippon Steel, our joint venture partner from Japan. We also invest in the steel innovation hub at the University of Wollongong.¹²

2.10 BlueScope also supplies products through its Lysaght division which, according to the division's website, was a pioneering producer of Australian

8 Arrium Ltd, *Submission 16*, p 2; Australian Industry Group, *Submission 10*, p. 9.

9 BlueScope Steel Ltd, *Submission 4*, p. 3.

10 Department of Industry, Innovation and Science, *Submission 18*, p. 6.

11 BlueScope Steel Ltd, *Submission 4*, pp. 2, 3.

12 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *Committee Hansard*, 1 April 2016, p. 2.

corrugated iron sheeting used in roofs, sheds and other buildings.¹³ Today, Lysaght rollforms and creates products that include fencing, roof and wall cladding, rainwater products, steel house framing, structural products such as flooring systems, walkways and meshes, and home improvement products.¹⁴

2.11 Between 2011 and 2014, BlueScope reported consecutive net losses after tax. Mr Vasella stated that 'the current trading environment for BlueScope has been probably the toughest in living memory'.¹⁵

2.12 BlueScope outlined in its submission that because of these circumstances, it had:

...undertaken significant structural transformation, including halving its commodity steel production in Australia by shutting one of two blast furnaces, and nominally exiting the export market (although exports continue due to weaknesses in key domestic markets)... The company has recently taken action to reduce costs at our Australian steelmaking operations by approximately \$200 million, in order to achieve cashflow breakeven on hot rolled coil production given current global steel prices and spreads.¹⁶

2.13 The burden of cost-cutting at BlueScope has fallen heavily on its workers. In November 2015, BlueScope workers agreed to a new Enterprise Agreement that triggered 500 job losses, a three-year pay freeze and the loss of various employee conditions.¹⁷ Witnesses from the Australian Workers' Union suggested that because of the measures employees agreed to so that BlueScope could achieve cashflow breakeven, some employees experienced financial losses as great as \$30,000 a year.¹⁸

2.14 The NSW Government announced an assistance package for BlueScope in October 2015 that involved the deferral of \$60 million in payroll tax over three years.¹⁹ A federal government assistance package was in turn announced in

13 Lysaght, 'An Australian Icon', <http://www.lysaght.com/about-us/an-australian-icon> (accessed 31 July 2017).

14 BlueScope Steel Ltd, *Submission 4*, p. 3.

15 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *Committee Hansard*, 1 April 2016, p. 2.

16 BlueScope Steel Ltd, *Submission 4*, p. 4.

17 ABC News Online, 'BlueScope assistance package passes through NSW Parliament', <http://www.abc.net.au/news/2015-11-19/bluescope-assistance-package-enacted-in-law/6954030> (accessed 3 August 2017).

18 Mr Glenn Leake, Branch Executive Delegate, The Australian Workers' Union; Mr Wayne Phillips, Branch Secretary, The Australian Workers' Union; and Mr Lance Turner, Branch Executive Delegate, The Australian Workers' Union, *Committee Hansard*, 1 April 2016, pp. 18–20.

19 ABC News Online, 'BlueScope assistance package passes through NSW Parliament', <http://www.abc.net.au/news/2015-11-19/bluescope-assistance-package-enacted-in-law/6954030> (accessed 3 August 2017).

December 2015, consisting of \$670,000 to assist retrenched workers make the transition to new jobs, and appoint a local employment facilitator.²⁰

2.15 BlueScope reported that it had returned to profitability and payment of a dividend in the 2015 financial year.²¹ In February 2016, BlueScope announced a \$50 million increase in its half-year earnings expectations to \$230 million, which it attributed to 'earlier [than expected] delivery of cost reductions, growth in Australia domestic dispatches and better margins'.²²

Arrium Mining and Materials

2.16 Arrium, previously known as Onesteel, spun off from BHP in 2000. It was Australia's only manufacturer of steel long products, and is Australia's leading steel distributor and reinforcing steel supplier.²³ The Arrium-owned steelworks in Whyalla, South Australia have operated since 1941.²⁴

2.17 Arrium outlined in its submission that its annual steel production capacity in Australia was 2.6 million tonnes. It produced around 44 per cent of the total amount of crude steel made in Australia each year, and its share of the domestic steel production market was approximately 75 per cent.²⁵

2.18 Arrium was placed into voluntary administration on 7 April 2016. On 13 July 2017, Arrium's creditors formally approved the purchase of Arrium's steel division by international industrial and metals company Liberty House under the banner of the London-based company GFG Alliance.²⁶ Further details of the sale are outlined in Chapter 3.

Steel manufacturers and distributors

2.19 The Australian steel industry, including both upstream and downstream supply chains, comprised 12,253 registered businesses as of June 2014. Besides the major upstream companies, the industry overwhelmingly consists of a large number of smaller iron smelters, and downstream steel manufacturers and fabricators, including a

20 Senator the Hon Michaelia Cash, Minister for Employment, *Media Release*, 'Help at hand for Port Kembla BlueScope workers', 21 December 2015.

21 BlueScope Steel Ltd, *Submission 4*, p. 4.

22 Tim Binsted, *The Sydney Morning Herald*, 'BlueScope tips \$50m profit boost after job cuts, new Port Kembla enterprise agreement', 12 February 2016, <http://www.smh.com.au/business/mining-and-resources/bluescope-upgrades-profit-forecast-to-230m-20160211-gms53n.html> (accessed 3 August 2017).

23 Arrium Ltd, *Annual Report 2015: Building Resilience*, p. 2.

24 Department of Industry, Innovation and Science, *Submission 18*, p. 6.

25 Arrium Ltd, *Submission 16*, p. 2.

26 KordaMentha Restructuring, 'Arrium Creditor Committee Approves Sale to GFG Alliance', <http://www.arrium.com/~media/Arrium%20Mining%20and%20Materials/Files/ASX%20Announcements/FY2018/Arrium%20Creditor%20Committee%20approves%20sale%20to%20GFG%20Alliance%2013%20July%202017.pdf> (accessed 31 July 2017).

network of over 160 steel distribution and warehouse premises.²⁷ The Australian Industry Group reported in its submission that most of these registered businesses were small: as of June 2014, 93.2 per cent were small businesses with fewer than 20 employees, and only 6.4 per cent were medium sized with 21 to 199 employees.²⁸

2.20 The Department of Industry, Innovation and Science (Department of Industry) made a similar observation in its submission, noting that downstream industries consisted of smaller businesses:

Of the employing businesses, the majority of the firms in the Iron Smelting and Steel Manufacturing, Iron and Steel Casting, and Steel Pipe and Tube Manufacturing industries are small businesses employing 1–19 employees. It is only in the upstream industries i.e. the Iron Smelting and Steel Manufacturing and the Iron and Steel Casting industries where there are any large firms employing 200 employees or more.²⁹

2.21 BlueScope and Arrium also compete in the downstream market, as they both sell raw steel products to downstream Australian manufacturers and compete against these manufacturers with their own value-added downstream products.

2.22 Several submitters noted that Arrium and BlueScope's domestic market shares can be problematic, because they hold a significant degree of market power and can refuse to supply to or impose particular terms on smaller industry competitors.³⁰ As one submitter observed:

[B]ecause BlueScope and Arrium are so integrated, the smaller industry participants will generally be required to compete with BlueScope or Arrium related entities in downstream, value-added markets...

Here-in lies the problem – there are no internal sources of competition for Arrium or BlueScope. They produce different products from one another. If an entity cannot purchase steel products from these entities, it must seek a source from elsewhere, or close-up shop.³¹

Economic contribution of the steel industry to Australia

2.23 The steel industry is an important contributor to the Australian economy, both in terms of its earnings and as a provider of employment. In its submission, the Australian Steel Institute referred to ABS data showing that in 2011, the entire steel industry supply chain employed over 100,000 people in Australia, with an annual turnover in excess of \$35 billion.³² According to 2013–14 ABS data referred to by the Australian Industry Group, the upstream steel industry (iron smelting and steel

27 Australian Industry Group, *Submission 10*, p. 9.

28 Australian Industry Group, *Submission 10*, p. 16.

29 Department of Industry, Innovation and Science, *Submission 18*, p. 16.

30 Best Bar Reinforcements, *Submission 22*, p. 1; Steelforce, *Submission 11*, p. 5.

31 Best Bar Reinforcements, *Submission 22*, pp. 1–2.

32 Australian Steel Institute, *Submission 19*, p. 3.

manufacturing) directly employed about 18,500 people, paid annual wages of \$1.5 billion and had an annual sales and service income of about \$11.1 billion.³³

2.24 A summary of the 2013–14 ABS data provided by the Australian Industry Group in its submission is shown in Figure 2.1.

Figure 2.1 Australian Steel Industry and Downstream Supply Chain (2013–14)³⁴

Industry sector (ANZSIC groups) added	Industry value		Employment	Sales and service income	Wages and salaries
	Nominal \$m per annum	% of manuf.	At end of June number	Nominal \$m per annum	Nominal \$m per annum
Iron Smelting and Steel Manufacturing (2110)	2,159	2.2	18,569	11,133	1,490
Basic Ferrous Metal Product Manufacturing					
Iron and Steel Casting (2121)	600	0.6	5,753	2,132	445
Steel Pipe and Tube Manufacturing (2122)	236	0.2	2,220	997	154
<i>Total</i>	836	0.8	7,973	3,129	599
Steel Products Manufacturing and Fabrication*					
Iron and Steel Forging (2210)	166	0.2	1,534	618	132
Structural Steel Fabricating (2221)	2,185	2.2	21,835	7,167	1,480
Metal roof and guttering – excl. aluminium (2224)	287	0.3	2,723	1,239	189
Other structural metal prod. manufacturing (2229)	807	0.8	8,894	2,459	477
Boiler, tank and heavy gauge containers (2231)	433	0.4	5,255	1,104	283
Sheet metal product manufacturing (2240)	820	0.8	9,280	2,034	517
Spring and Wire Product Manufacturing (2291)	363	0.4	3,609	1,373	226
Nuts, bolts, screws (2292)	176	0.2	1,522	627	102
Other fabricated metal prod. manufacturing (2299)	1,936	2.0	19,874	4,924	1,197
<i>Total</i>	7,173	7.4	74,526	21,545	4,603
Total Steel Industry and downstream supply chain	10,168	10.4	101,068	35,807	6,692
Total Manufacturing	97,547	100.0	879,073	385,671	55,381

*Source: ABS, Australian Industry, 2013–14, *sectors where most businesses use iron and steel as their principal inputs using information from IBISWorld Industry Reports.*

2.25 The Illawarra Business Chamber noted that the multiplier effect of the steel industry in Australia is significant, with 3–5 indirect jobs for every direct job generated by the industry.³⁵

2.26 In its submission, BlueScope stated that it employs approximately 7,500 workers in its Australian operations, thousands more as contractors and suppliers, and a further 8,500 employees overseas.³⁶ Arrium stated in its submission that it employs

33 Australian Industry Group, *Submission 10*, p. 11.

34 Australian Industry Group, *Submission 10*, p. 11.

35 Illawarra Business Chamber, *Submission 5*, p. 1.

36 BlueScope Steel Ltd, *Submission 4*, p. 3.

almost 7,000 people directly, generates around 14,000 jobs through its activities, and spends nearly \$4 billion in goods, services and taxes annually.³⁷

2.27 The Bureau of Steel Manufacturers of Australia in its submission noted that 'it has been estimated that every dollar of steel production generates an additional gross output of \$2.30 across the wider economy'.³⁸

Economic contribution of the steel industry to local communities

2.28 The Bureau of Steel Manufacturers of Australia also highlighted that 'many steelmaking facilities are... located in regional centres, and form the basis for the area's economy'.³⁹ The presence of local steel plants leads to flow-on jobs in the education, health, banking and hospitality sectors, which service steel employees. Two examples of this are the Illawarra region and Whyalla. Both regional economies are heavily dependent on BlueScope and Arrium continuing to operate within their regions.

The Illawarra region

2.29 BlueScope Illawarra on its website reported that it directly employs around 3,000 people in the Illawarra and indirectly supports about 10,000 jobs in the region, including contractors, suppliers and other service providers who depend upon the Port Kembla Steelworks.⁴⁰

2.30 Submitters highlighted that the economic impact of Bluescope's operations in the Illawarra region is significant. The Illawarra Business Chamber submitted:

Analysis conducted by Wollongong City Council estimated the impact of this aspect of BlueScope's business at \$1.916 billion per annum (without taking into effect the multiplier effects). This impact would increase to approximately \$2.572 billion per annum, after taking into account all direct, indirect and consumption effects.⁴¹

2.31 Councillor Gordon Bradbery, the Lord Mayor of Wollongong, provided evidence at the Wollongong hearing that the loss of 500 jobs in the BlueScope steelworks was anticipated to lead to an economic impact on the local economy of around \$402 million. He also argued that even though the region had experienced a number of economic downturns because of decreases in the size of BlueScope's workforce since the 1980s:

Manufacturing remains the most important sector in the output of the region. It contributes about \$7.9 billion annually in revenue to the region's gross regional product. The manufacturing sector is the second largest industry in terms of

37 Arrium Ltd, *Submission 16*, p. 2.

38 Bureau of Steel Manufacturers of Australia Ltd, *Submission 6*, p. 4.

39 Bureau of Steel Manufacturers of Australia Ltd, *Submission 6*, p. 3.

40 BlueScope Illawarra, 'About Us: BlueScope in the Illawarra', <https://www.bluescopeillawarra.com.au/about-us/> (accessed 31 July 2017).

41 Illawarra Business Chamber, *Submission 5*, p. 2.

employment, after health and social services, employing about 8,570-odd people, equating to about 12 per cent of Wollongong's workforce.⁴²

2.32 A representative from the Australian Workers' Union who gave evidence suggested the closure of the BlueScope steelworks would have a 'devastating effect' on the region, given the number of jobs and businesses dependent on the steelworks:

We have hundreds and hundreds of people who directly or indirectly rely on the works. Apart from about a thousand contractors on site, there are also a number of other contractors, fabricators, who buy product directly for their work or who do work for the company. [W]hether it be a cafe shop, the little company that supplies the doormats or the people that take away the oil and recycle it...⁴³

Whyalla

2.33 A range of submitters and witnesses at the Whyalla hearing emphasised that Whyalla's economy is heavily dependent on the local steel industry.⁴⁴

2.34 In its submission, Arrium outlined the contribution of the steelworks to Whyalla's economy in more detail:

[The Whyalla steelworks] employs 25 per cent of the town's workforce and makes up 35 per cent of its economy. The presence of the Steelworks also provides indirect benefits: other sectors, such as education, health, hospitality and tourism rely on the population base the Steelworks provides. This base also ensures access to a level of services from governments (including schools and healthcare) that generally do not exist in nearby, lower-population towns.⁴⁵

2.35 The importance of Arrium to the Whyalla economy, and the impact of Arrium's financial crisis on the city, is further discussed in chapter 3.

Trends in Australian steel production and utilisation

2.36 Integrated steel manufacturing in Australia began in the late nineteenth century with the discovery of iron ore resources in South Australia. Over the years, integrated steelworks have closed around the country, with only Arrium and BlueScope remaining.⁴⁶

42 Councillor Gordon Bradbery, Lord Mayor, Wollongong City Council, *Committee Hansard*, 1 April 2016, p. 34.

43 Mr Wayne Phillips, Branch Secretary, the Australian Workers' Union, *Committee Hansard*, 1 April 2016, p. 18.

44 See, for example, Mr Tom Antonio, Acting Mayor, City of Whyalla, *Committee Hansard*, 5 April 2016, p. 27.

45 Arrium Ltd, *Submission 16*, p. 10.

46 Department of Industry, Innovation and Science, *Submission 18*, p. 6.

2.37 The Bureau of Steel Manufacturers of Australia in its submission outlined the current largest market sectors for steel:

The two biggest market sectors for steel used in Australia are steel reinforcement and associated steels used in concrete buildings and structures, and structural steel and associated steels used in steel framed buildings and structures.⁴⁷

2.38 Australian steel production mainly uses the Blast Oxygen Furnace (BOF) method.⁴⁸ The weighted capacity utilisation of the BOF in Australia (74 per cent) is relatively low compared to the weighted world average (81 per cent). Of those plants that use the Electric Arc Furnace (EAF) method, the capacity utilisation is very high (97 per cent).⁴⁹ Capacity utilisation 'is calculated as the ratio of actual output to the reported total (maximum) available productive capacity at each plant'.⁵⁰ These ratios are outlined further in Figure 2.2.

Figure 2.2: Available capacity and capacity utilisation for crude steel production, by method in 2015⁵¹

	Blast Oxygen Furnace (BOF)		Electric Arc Furnace (EAF)		Notes
	Available Capacity ('000 tonnes)	Capacity Utilisation (%)	Available Capacity ('000 tonnes)	Capacity Utilisation (%)	
Australia	6,556	74	1,558	97	Available capacity includes inactive or mothballed lines.
World (n=677)	970,816	81	354,595	89	

Source: MCI Steel Consultants and Department calculations; capacity utilisation is output divided by total available plant capacity.

Trends in exporting and importing

2.39 Australian steel output has varied across different decades, from 7.6 million tonnes in 1980, to a peak of 8.9 million tonnes in 1998, to 7.3 million tonnes in 2010.⁵² In recent years, steel production in Australia has fallen significantly, to a low of 4.6 million tonnes in 2014,⁵³ with a slight increase in production in 2015 to

47 Bureau of Steel Manufacturers of Australia Ltd, *Submission 6*, p. 2.

48 This method involves oxygen being blown into molten iron and scrap from a blast furnace.

49 This method involves melting scrap steel or direct reduced iron in an electric arc furnace.

50 Department of Industry, Innovation and Science, *Submission 18*, p. 8.

51 Department of Industry, Innovation and Science, *Submission 18*, p. 9.

52 Department of Industry, Innovation and Science, *Submission 18*, p. 6.

53 Australian Steel Institute, webpage, 'Steel Indicators', <http://steel.org.au/about-our-industry/steel-indicators/#overview-1> (accessed 24 November 2017).

4.9 million tonnes.⁵⁴ Recent output has been affected by global conditions. The Department of Industry submitted that:

Australian steel exports have been negatively affected by the Global Financial Crisis and, until recently, the high exchange rate, with the export index falling almost two thirds since 2005–06. Imports of steel into Australia have been less affected, which may be due to some combination of price effects, the import of varieties not produced in Australia and the continuing investments in the mining and gas sectors.⁵⁵

2.40 Figures provided by the Department of Industry show that in 2014–15, Australia exported steel to the value of \$692.5 million, and imported \$1.7 billion worth of steel. While the export value of Australia's steel had declined since 2006/07, thanks to the effects of the Global Financial Crisis and, until recently, a high exchange rate, the import value of steel had also declined, though to a lesser extent (see Figure 2.3).

Figure 2.3: Indices of Australian steel exports and imports – 2006-07 to 2015-16⁵⁶

Iron and Steel Exports	2006/07	2008/09	2010/11	2012/13	2014/15
Export Value (AU\$ million)	1,742.8	1,363.0	1,303.0	820.4	692.5
Export Quantity Index (2005/06 = 100 or 2.4 Mt)	109.1	71.7	73.5	40.9	35.0
Iron and Steel Imports	2006/07	2008/09	2010/11	2012/13	2014/15
Import Value (AU\$ million)	2,479.3	3,191.0	2,121.5	1,755.0	1,731.3
Import Quantity Index (2005/06 = 100 or 2.2 Mt)	105.8	95.0	85.2	76.5	71.8

Source: Economic and Analytical Services, Department of Industry, Innovation and Science – Resources and Energy Statistics

2.41 Further figures in the Department of Industry submission sourced from the ABS suggest that the raw materials used to create steel are primarily sourced locally. The figures also show that Australia is a net exporter of flat-rolled products of iron or non-alloy steel that are not clad, plated or coated. These products accounted for the largest share of total sales revenue from major iron/steel products in 2014–15. However, Australia predominantly imports rather than exports first transformation

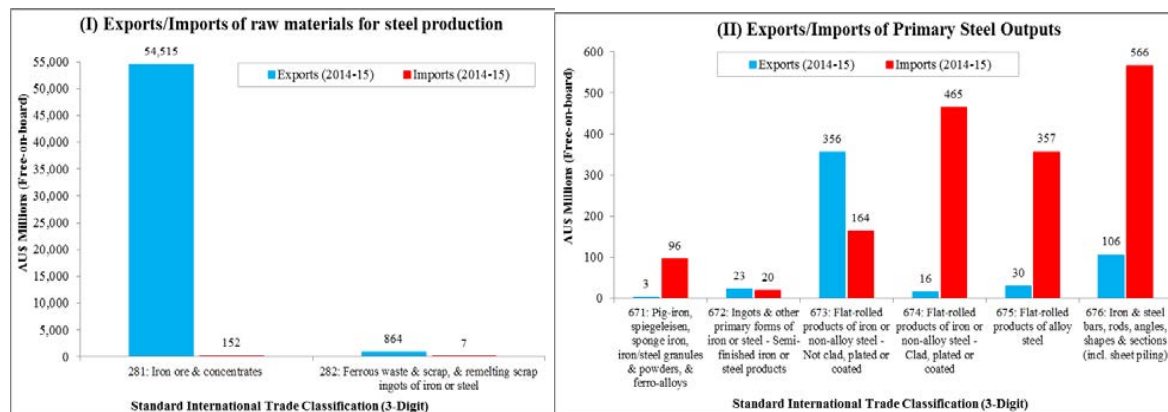
54 Worldsteel Association, *Steel Statistical Yearbook 2016*, p. 2. Figures from the Office of the Chief Economist, Department of Industry, Innovation and Science, shown on a financial year basis, show further modest increases in production, to 5 million tonnes in 2015–16, and to 5.4 million tonnes in 2016–17. Department of Industry, Innovation and Science, *Resources and Energy Quarterly: September 2017*, Historical Data, available at <https://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/ResourcesandEnergyQuarterlySeptember2017/index.html>.

55 Department of Industry, Innovation and Science, *Submission 18*, p. 13.

56 Department of Industry, Innovation and Science, *Submission 18*, p. 14.

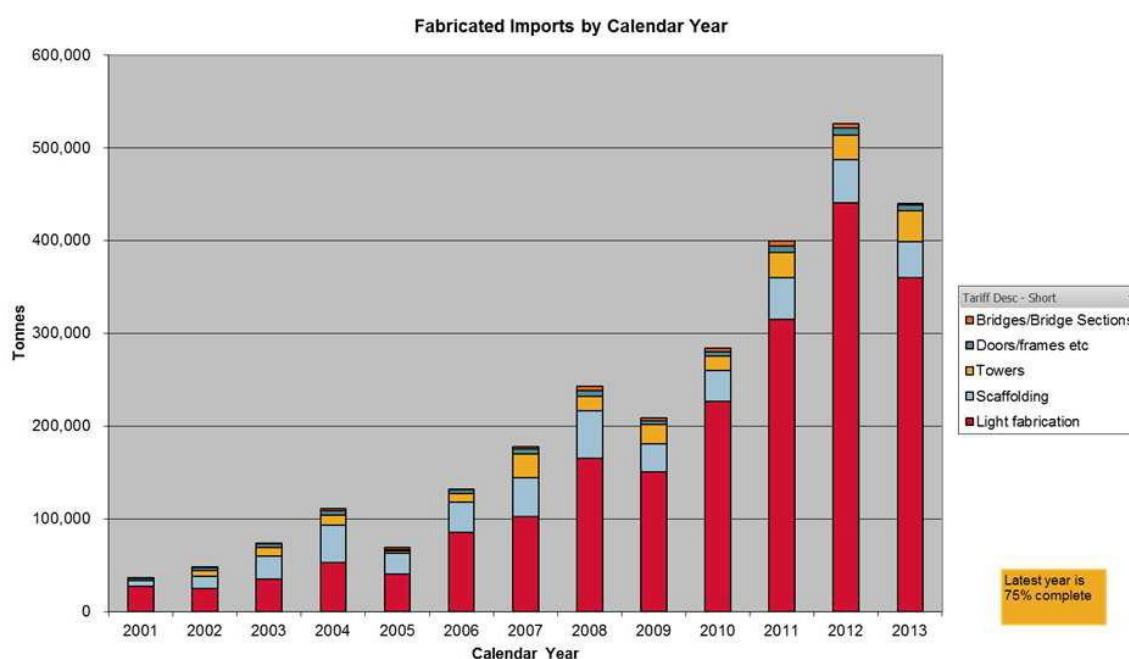
steel products that are clad, plated/coated or steel alloys, as well as iron and sheet bars and rods (see Figure 2.4(I) and (II)).⁵⁷

Figure 2.4(I) and (II): Australian imports and exports of steel in 2014–15: (I) raw materials and (II) primary steel outputs⁵⁸



Source: ABS (2016) International Trade in Goods and Services, Australia. Catalogue No. 5368.0

Figure 2.5: Fabricated imports by calendar year⁵⁹



Source: OneSteel, in Australian Steel Association

⁵⁷ Alloyed steels have a larger proportion of elements in them than carbon steel, such as manganese and silicon. Coated steel is steel coated through a heat process or through electrolysis to protect its metal base against corrosion. Flat-rolled steel is produced by rolls with smooth surfaces and different ranges of dimension that vary in thickness. Clad steel is steel bonded with dissimilar metals. See ArcelorMittal, *A guide to the language of steel*, <http://corporate.arcelormittal.com/news-and-media/factfile/steel-terminology> (accessed 15 November 2017).

⁵⁸ Department of Industry, Innovation and Science, *Submission 18*, pp. 14–15.

⁵⁹ Australian Steel Association, *Submission 24*, p. 7.

2.42 The Australian Steel Industry provided figures showing a dramatic increase in the number of fabricated imports between 2001 and 2013 (Figure 2.5). As outlined in chapter 6, the global oversupply of steel has led to a significant increase in imports and this has impacted the Australian steel industry.

Employment

2.43 Arrium commented in their submission that annual industry revenue in the last five years had fallen by an annualised rate of 7.5 per cent.⁶⁰

2.44 Employment in the steel industry in Australia has been declining steadily since 2006. Between 2006 and 2011, both full-time and part-time employment in steel production was above 40,000, but since 2012 has remained below 40,000. The decline in employment between 2012 and 2015 was around 26 per cent, compared with 12 per cent in manufacturing for the decade. Figure 2.6 outlines changes in employment in the steel industry between 2006 and 2015.

Figure 2.6: Changes in employment for the steel industry, manufacturing and all industries between 2006 and 2015 (total employment)⁶¹

Employment, levels and	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Steel Production ('000)	45.5	42.3	48.8	40.9	43.1	45.4	36.2	35.7	39.7	33.8
Manufacturing ('000)	1,009.	1,027.	1,044.	998.2	978.7	947.3	947.8	920.1	921.7	888.6
All industries ('000)	10,088	10,408	10,695	10,775	10,991	11,178	11,315	11,425	11,536	11,770
Steel as a percentage of manufacturing (%)	4.5	4.1	4.7	4.1	4.4	4.8	3.8	3.9	4.3	3.8

Source: Economic and Analytical Services, Department of Industry, Innovation and Science; ABS, Labour Force, Australia, Detailed, Quarterly, Nov 2015, cat.no. 6291.0.55.003

2.45 Despite a global glut in steel supply, and recent falling commodity prices in the mining sector, demand for domestic steel products remains considerable. This demand comes primarily from construction services (25.9 per cent of use as a share of total supply), structural metal product manufacturing (17.3 per cent), heavy and civil engineering construction (8.2 per cent) and residential building construction (6.1 per cent).⁶²

2.46 The Australian Workers' Union in their submission cited figures indicating that even though:

...total steel consumption has been fairly stable over the past seven years, local steel makers have lost a significant share of the total Australian steel market to imports, falling from a peak of over 62 [per cent] in 2009/10 to below 56 [per cent] in 2014/15.⁶³

60 Arrium Ltd, *Submission 16*, p. 2.

61 Department of Industry, Innovation and Science, *Submission 18*, p. 15.

62 Department of Industry, Innovation and Science, *Submission 18*, p. 20.

63 Australian Workers' Union, *Submission 25*, p. 17.

Competitiveness of Australian steel production and utilisation

2.47 Factors that make steel competitive include how innovative or cutting-edge the product is, its value for money and the quality of the finished product. Factors that influence how cost competitive steel is compared with steel produced in different contexts include costs involved in production technology, the regulatory environment, location and demand.⁶⁴

2.48 The Australian Industry Group argued that local steel manufacturers have several key advantages over international competitors. These include:

- access to high quality reserves of iron ore and coking coal;
- the ability to respond quickly to local demand requirements;
- relatively short lead times;
- less likelihood of reworks because of misinformation and mistakes;
- reduced whole-of-life costs, including maintenance and technical support;
- a skilled labour force trained in the latest steel fabrication techniques and welding processes;
- strong brand recognition of several product lines; and
- products that comply with established Australian standards.⁶⁵

Innovation and emerging steel technologies in Australia

2.49 Several submitters highlighted that one of the strengths of the Australian steel industry is its track record of producing new and cutting-edge steel products. These may contribute to the long-term competitiveness of Australian steel products. The Australian Industry Group submitted:

The Australian steel industry has a long-standing reputation for producing high quality products and services backed by a commitment to investing in technology, innovation and skills development. Modern steel products are highly sophisticated with new lightweight steel allowing lighter and more flexible applications that are utilised in the design of cars and transport equipment, cutting edge medical equipment, defence applications, and building and construction applications.⁶⁶

2.50 Around 75 per cent of modern steels have been developed in the past 20 years. This indicates the importance of technology and innovation in the steel industry, and also the potential for specialisation and niche production.⁶⁷

64 Department of Industry, Innovation and Science, *Submission 18*, p. 4.

65 Australian Industry Group, *Submission 10*, pp. 9–10. See also Bureau of Steel Manufacturers of Australia Ltd, *Submission 6*, p. 9.

66 Australian Industry Group, *Submission 10*, p. 9.

67 Department of Industry, Innovation and Science, *Submission 18*, p. 18.

2.51 Mr Kenneth Watson, the Executive Director of the National Association of Steel-Framed Housing, gave evidence outlining Australia's position in terms of steel innovation:

Australia is seen around the world as a leader in the design and construction of steel-framed buildings using cold-formed steel. The technological basis for this has been led by BlueScope, with support from many universities and industry associations around Australia. Due to this leading technology, Australian companies are exporting products and technology overseas, particularly to the South-East Asian and African regions. These technologies include the use of high-strength steels and the development and application of sophisticated CAD/CAM systems to manufacture steel frames. [However], recently the overseas countries have been catching up with their technology and, in some cases, surpassing Australia's leading position.⁶⁸

2.52 The Department of Industry noted in its submission that businesses classified by the Australian Bureau of Statistics under the *Primary Metal and Metal Product Manufacturing* subdivision have a higher level of research and development (R&D) activity than other industries. For example, between 2008–09 and 2013–14, R&D expenditure as a share of value added for the primary metal and metal product manufacturing industry ranged from 5.9 to 7.4 per cent; this compared to expenditure between 4.0 to 4.8 per cent for the manufacturing industry and 1.4 to 1.5 per cent expenditure for all industries over the same period. This was likely because of 'the increasingly technology intensive production of transformed steel products, as well as the continued improvements in production technology'.⁶⁹

2.53 Collaboration between iron and steel manufacturing and downstream steel product manufacturers in Australia has led to the creation of specialised high strength steel products. These include military products and products for high-rise construction, storage bins, cement rotating mixers, compactors, tanker vessels, refinery and petrochemical equipment.⁷⁰

2.54 Other innovations in the Australian steel industry include new technologies adopted to improve energy efficiency and reduce emissions, and improvements in plant-heat recovery and air-leakage reduction that have resulted from technological changes in the sintering stage of the steel production process. The Australian Industry Group submitted that 'Australia's leading steel detailing businesses are also at the forefront of international developments in data interfacing'.⁷¹

2.55 Liberty OneSteel's recently announced 'green steel' project provides an example on continuing innovation in the industry. Mr Sanjeev Gupta, Chairman and

68 Mr Kenneth Watson, Executive Director, National Association of Steel-Framed Housing Inc, *Committee Hansard*, 6 April 2016, p. 43.

69 Department of Industry, Innovation and Science, *Submission 18*, p. 18.

70 Department of Industry, Innovation and Science, *Submission 18*, p. 20.

71 Australian Industry Group, *Submission 10*, p. 19.

CEO of GFG Alliance (owner of the Liberty OneSteel steelworks), announced in September 2017 that ZEN Energy (also controlled by Mr Gupta) would deliver renewable energy to power the Whyalla steelworks. The multi-pronged project will include a mix of solar panels in and around the Whyalla steelworks, and battery storage and pumped hydro storage in the surrounding region. Mr Gupta explained:

These first steps in SA will improve reliability and greatly reduce costs of electricity in our own steelworks at Whyalla, and provide competitive sources of power for other industrial and commercial users.

This will be followed by early steps to lower Liberty OneSteel's electricity costs in NSW and Victoria, and to provide power at lower cost to other industrial enterprises in these states and Queensland.⁷²

2.56 BlueScope noted that its operations include innovation and product development facilities at Port Kembla that employ approximately 70 people, including around 30 PhD qualified scientists, and at Minchinbury that employ a further 12 people. It highlighted a new steel coating technology as an example of an innovative product it had recently developed, which significantly improved the product's performance and resistance to corrosion, and reduced its environmental footprint.⁷³

2.57 Arrium's Chief Executive of Strategy highlighted:

...the importance of a domestic industry in terms of research and development, particularly in relationship to new and innovative processes and technologies...Arrium partners with multiple universities and research institutions across the country. These partnerships provide us with access to some of the brightest minds in Australia, and in turn we provide access to hands-on development.⁷⁴

2.58 Several submitters commented on the work of the Australian Research Council Research Hub for Australian Steel Manufacturing at the University of Wollongong, established in 2014.⁷⁵ The Hub's partner is BlueScope Steel, and supporting partners include Arrium, Bisalloy Steels, the Australian Steel Institute and Lysaght. The University of Wollongong outlined in its submission the potential benefits of the Steel Research Hub for the Australian steel industry:

[T]he Australian Research Council Research Hub for Australian Steel Manufacturing (the hub) is a research hub bringing together the best and brightest scientists and engineers from Australia's steel manufacturers and research institutions to drive industry innovation in product development and

72 Ben Potter, 'Sanjeev Gupta's \$700 million solar-battery-hydro bet to power Whyalla's green steel', *AFR*, 30 October 2017, <http://www.afr.com/news/sanjeev-guptas-700-million-solarbatteryhydro-bet-to-power-whyalla-steel-20171029-gzaqfe> (accessed 24 November 2017).

73 BlueScope Steel Ltd, *Submission 4*, pp 4–5.

74 Ms Naomi Margaret James, Chief Executive, Strategy, Arrium Mining and Materials, *Committee Hansard*, 6 April 2016, p. 26.

75 See, for example, Australian Industry Group, *Submission 10*, pp 19–20; BlueScope Steel Ltd, *Submission 4*, p. 5.

improve global competitiveness. The hub conducts research and development programs that address manufacturing techniques and best-practice pathways for bringing new ideas to market...

UOW researchers, in a long-standing collaboration with hub partner BlueScope Steel Ltd, are drawing on expertise in microbiology, surface engineering, and molecular dynamics to make paints and coatings for steel sheeting that prevent bacterial growth. Product innovations include a project to develop a self-cleaning, anti-microbial organic coating for painted sheet steel to prevent the build-up of mould, algae and other bacteria on roofs, particularly in humid environments.⁷⁶

Cost-competitiveness

2.59 The Department of Industry in its submission presented figures from 2015 showing how costs in Australian steel plants compare to the rest of the world. On average, Australian plants using the Blast Oxygen Furnace (BOF) method have a material cost that is about 10 per cent lower than other plants using the BOF method in the world in terms of raw materials. However, they also have significantly higher average labour and overhead costs (54 per cent) and capital charges (40 per cent). Overall, the cost per tonne output for Australia on average is about 14 per cent higher than elsewhere in the world.⁷⁷ Input costs are outlined further in Figure 2.7.

Figure 2.7: Contribution of input costs to total product costs – total plant (Blast Oxygen Furnace), 2015⁷⁸

	Raw Materials	Energy & Reductants	Labour & Overheads	Capital Charges	Total Cost
Australian input cost relative to weighted world average input cost	-10%	+6%	+54%	+40%	+14%
Component share of Australian total cost	31%	25%	28%	15%	100%
Weighted world average component share of total cost	40%	27%	21%	12%	100%

Source: MCI Steel Consultants and Department calculations

2.60 It might be noted that since this data was collected in 2015, energy costs have increased substantially. Underscoring the challenge for Australian steel producers in this regard, Bluescope recently reported that its Australian electricity costs have increased from \$59 million in 2015–16, to a projected \$113 million in 2017–18, a 93 per cent increase. Bluescope further reported that its Australian gas costs have increased an estimated 33 per cent over the same period, from \$24 million to \$32 million. Overall, Bluescope's forecast \$145 million energy bill in 2017–18 represents a 75 per cent increase over a two-year period.⁷⁹ Given the large increases in energy costs since the collection of the data presented in Figure 2.7, it is almost

76 University of Wollongong, *Submission 9*, pp. 2–3.

77 Department of Industry, Innovation and Science, *Submission 18*, p. 9.

78 Department of Industry, Innovation and Science, *Submission 18*, p. 10.

79 See Matthew Dunkley, *Sydney Morning Herald*, 'Bluescope's power price shock triggers share slide', 21 August 2017, <http://www.smh.com.au/business/mining-and-resources/bluescope-taps-new-ceo-warns-earnings-set-to-slide-20170820-gy0hq.html> (accessed 29 November 2017).

certain the proportionate input cost attributable to energy will have also increased significantly.

2.61 The Electric Arc Method (EAM) on average is more expensive than the Blast Oxygen Furnace method, in which crude steel is recovered from recycled steel. On average, Australian plants using the EAM method have a material cost that is about 4 per cent lower than other plants using the EAM method in terms of raw material. Like plants using the BOF method, however, they also have significantly higher labour and overhead costs than other countries (18 per cent – see Figure 2.8).⁸⁰

Figure 2.8: Contribution of input costs to total product costs – total plant (Electric Arc Method)⁸¹

	Raw Materials	Energy & Reductants	Labour & Overheads	Capital Charges	Total Cost per tonne
Australian input costs relative to weighted world average cost	-4%	-7%	+18%	-34%	-4%
Weighted input cost share of Australian total cost	66%	13%	16%	5%	100%
Weighted world average input cost share of total cost	65%	14%	13%	8%	100%

Source: MCI Steel Consultants and Department calculations

Factors influencing the recent cost competitiveness of Australian steel

2.62 The Chief Executive of the Australian Steel Institute gave evidence in the Canberra hearing outlining some of the factors highlighted by submitters leading to a current crisis in the Australian steel industry:

The crisis is a global crisis and it is manifest and very strong in Australia... When you go right through the value chain, all of our members—fabricators, galvanisers, all of them—are saying that they are underutilised and suffering profitability strain... What we are sitting in at the moment is almost a perfect storm for our manufacturers, where the dollar has stayed stubbornly high, the margins, because of the glut of steel, have shrunk quite aggressively and the market share is under threat because of the volume that is available globally. This is a very unique time and it is a perfect storm... The process is broken.⁸²

2.63 BlueScope Steel, in a previous submission to the Productivity Commission's inquiry into Productivity and the Australian Workplace Relations System, also commented on recent changes to the global market and how this had impacted its activities:

At the time of the de-merger [from BHP in 2002], world steel production stood at around 905 million tonnes. BlueScope manufactured about 5.2 million tonnes of steel per year in Australia. The company's Port Kembla Steelworks was a low-cost producer, operating in the lowest

80 Department of Industry, Innovation and Science, *Submission 18*, p. 11.

81 Department of Industry, Innovation and Science, *Submission 18*, p. 11.

82 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, pp. 7–8.

quartile of the world steel production cost curve. The average Australian dollar (AUD) – US dollar (USD) exchange rate was AUD \$0.54 cents.

Since then... BlueScope's Australian steel manufacturing capacity has halved to approximately 2.6 million tonnes per annum, after the company closed one of two blast furnaces in 2011 as a result of financial losses, particularly in export markets. The majority of the company's Australian production is now sold in the domestic market, with approximately 480,000 tonnes (down from 2.6 million) of exports in FY2014 or about 20 per cent of Australian production and despatches. Import competition has risen steeply in the domestic market. There has been a significant rationalisation of businesses in the Australian steel industry.⁸³

2.64 The committee also heard from the Bureau of Steel Manufacturers of Australia that dumping, or the offloading of surplus or subsidised products by selling them into foreign markets at reduced prices, may create issues for the cost-competitiveness of Australian-produced steel.⁸⁴

2.65 Besides global conditions, the Department of Industry in its submission stated that government policy reforms over the past few decades have also impacted the domestic steel industry. These include a phased reduction in tariffs on imported steel, and the implementation of a flexible exchange rate system, both of which have increased steel manufacturers' exposure to direct competition from foreign markets. Free Trade Agreements with China, Japan, Korea and Trans-Pacific Partnership countries, which aimed to increase Australian access to key markets and reduce import costs for Australian businesses, have further opened up the market.⁸⁵

2.66 The Chief Executive Officer of the Welding Technology Institute of Australia gave evidence that, in his opinion, the impact of global conditions on the Australian steel industry may mean that 'within five years we may not have a steel industry or a fabricator in Australia'.⁸⁶ These conditions appear to have contributed to Arrium's collapse, as outlined in chapter 3, and remain a major contributing factor to the uncertainty surrounding the future of the Australian steel industry.

2.67 International conditions, including the global glut in steel, dumping, subsidies and other trade measures from foreign governments and their impact on Australian steel are outlined further in chapter 6.

Energy costs and security

2.68 When this inquiry commenced, energy affordability was not a key focus of submitters and witnesses. Previously, Australian steel manufacturers had a relative competitive advantage because of low energy costs compared to the current

83 BlueScope Steel Ltd, *Submission 58 to the Productivity Commission's inquiry into Productivity & the Australian Workplace Relations System*, March 2015, p. 2.

84 Bureau of Steel Manufacturers of Australia Ltd, *Submission 6*, p. 6.

85 Department of Industry, Innovation and Science, *Submission 18*, p. 7.

86 Mr Geoff Crittenden, Chief Executive Officer, Welding Technology Institute of Australia, *Committee Hansard*, 6 April 2016, p. 38.

environment. However, recent increased energy prices have affected the viability of energy-intensive manufacturers like steel.⁸⁷

2.69 BlueScope's chief executive noted that escalating energy costs have contributed to its decline in underlying earnings in 2017. He predicted that BlueScope's electricity costs will have almost doubled over the two years to June 2018, and gas costs will have increased by a third during the same period.⁸⁸ This changed situation led the new owner of the Whyalla steelworks, Mr Sanjeev Gupta, to declare in October 2017 that Australia has the highest energy costs in the world:

Over the last year, energy prices have doubled and continue to remain high and, apart from the price increase, the volatility of prices is intense...It makes Australia the highest-cost energy environment in the world.⁸⁹

2.70 Mr Gupta declared that Australia's high energy costs had led GFG Alliance to consider ways in which to make the Whyalla steelworks self-sufficient, and assist in providing solutions nationwide.⁹⁰ This could prevent a situation such as the state-wide power outage that occurred in South Australia from recurring and impacting the operations of the Whyalla steelworks.⁹¹

Committee view

2.71 The committee notes the important role to be played by governments in defending Australia's steel manufacturing value chain, from steel makers to steel fabricators, recognising that it is a strategic national asset. The steel industry supply chain accounts for tens of thousands of jobs nation-wide, with every dollar of steel production generating an additional gross output of \$2.30 across the Australian economy. Further, Australia is a global leader in innovation and cutting-edge products in particular steel sectors. The committee considers that securing the future of the steel industry is essential for the broader Australian economy.

2.72 Steel manufacturers are heavy consumers of energy and extremely susceptible to price volatility. The evidence provided to this inquiry largely concerned conditions during the 44th Parliament and did not focus on energy. However, because of recent

87 Carrie Fellner, 'Soaring prices a "killer blow", industry warns', *Newcastle Herald*, 24 August 2017, p. 4.

88 Herald Sun, 'Rising costs give steel giant the blues', *Herald Sun*, 12 October 2017, p. 26.

89 Matt Chambers, 'Australia has highest power costs in the world: Gupta', *The Australian*, 31 October 2017, <http://www.theaustralian.com.au/business/mining-energy/australia-has-the-highest-power-costs-in-the-world-gupta/news-story/3f54bd44b3916127d9e085b5160cc8b0> (accessed 25 November 2017).

90 Cameron England, 'Arrium's Zen moment to reduce power costs', *The Advertiser*, 21 September 2017, p. 4.

91 Cameron England, 'The state's two blast furnaces are in serious trouble following the storm, with the Port Pirie smelter out of action for up to two weeks', *The Advertiser*, 29 September 2016, <http://www.adelaidenow.com.au/business/the-states-two-blast-furnaces-are-in-serious-trouble-following-the-storm-with-the-port-pirie-smelter-out-of-action-for-up-to-two-weeks/news-story/c7b496663e93c6bf55cddf8e0c9f7ca2> (accessed 25 November 2017).

price increases in electricity, the committee is of the view that energy security and affordability is now the biggest policy issue concern for energy-intensive manufacturers, including steel. Given the centrality of this issue to the future of the steel industry, the committee recommends that a bipartisan solution be formulated that will reduce energy prices and secure supply for steel manufacturers.

Recommendation 1

2.73 The committee recommends that the Australian Government develop a bipartisan solution to high energy costs that will reduce energy prices and secure supply for steel manufacturers.

2.74 The most obvious casualty of the recent decline in the revenue and size of the Australian steel industry is the collapse of Arrium, as discussed in the following chapter. The committee is concerned that without remedial measures and a tenable bipartisan plan to reduce energy costs, the future of the Australian steel industry remains in doubt.

Chapter 3

The collapse and sale of Arrium

3.1 The inquiry's interim report, tabled in December 2016, focused on the collapse of Arrium and made several recommendations regarding Government support to ensure the success of the sale of Arrium.

3.2 This chapter summarises the key developments set out in the interim report that led to Arrium being placed in voluntary administration. It provides an update on the outcome of the sale, and sets out its immediate impact on the Whyalla community.

3.3 Arrium Limited (Arrium) was an international diversified mining and materials company, consisting of three business segments: Arrium Mining Consumables (Moly-Cop), Arrium Mining and Arrium Steel (previously OneSteel).

3.4 On 7 April 2016, Arrium was placed into voluntary administration.

3.5 The purchase of Moly-Cop by the United States-based private equity firm American Industrial Partners was announced in November 2016 and completed in January 2017.¹ GFG Alliance formally acquired Arrium Mining and Arrium Steel on 1 September 2017. Arrium mining was renamed SIMEC Mining and Arrium Steel was renamed Liberty OneSteel.²

Events leading up to voluntary administration

3.6 As outlined in chapter 2, the Australian steel industry is currently facing difficulties largely brought on by global conditions. The committee heard evidence from representatives of Arrium suggesting that the collapse of Arrium Steel was caused, in part, by global conditions, including a global oversupply of steel.

3.7 Arrium's Chief Executive of Strategy, Ms Naomi James, outlined some of the conditions that had led to Arrium's financial crisis:

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.³

3.8 The inquiry also heard evidence that a number of other factors may have impacted Arrium's financial position. Some witnesses expressed their concern about the expansion of operations into other parts of South Australia, which they suggested may have contributed to Arrium's financial problems.

1 Department of Industry, Innovation and Science, *Submission 41*, p. 2.

2 Liberty OneSteel, 'GFG Alliance has completed the acquisition of the Arrium Mining and Steel businesses', <https://www.libertyonesteel.com/announcement/> (accessed 12 September 2017).

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

3.9 Mr Stephen Young, the Managing Director of E&A Ltd, a South Australian company that owns three businesses in the construction and engineering industry in Whyalla, stated that:

I am obviously not involved in the management of the business. I sit outside the business and do not have detailed firsthand information...Having said that...the decision that was made in different times by the Arrium board to expand the company's operations in the Middleback Ranges and then to acquire the Peculiar Knob iron ore facility has, with the benefit of hindsight, been a mistake. The debt that was incurred in making those acquisitions is currently not repayable, or would not appear to be repayable, and my understanding is that those operations have been running on a cash-flow-negative basis....

It is always easy to be wise with the benefit of hindsight...I am always somewhat reluctant about criticising businesspeople who try and make good decisions at the time. They obviously thought that the decision to expand iron ore would protect the steelmaking business.⁴

3.10 Mr Scott Martin, the Whyalla and Eyre Peninsula Branch Organiser for the Australian Workers' Union, gave evidence that in his opinion:

...the reason the company is in the position they are in has nothing to do with the carbon tax being in place or being taken out of place. It is to do with what they did up at Southern Iron—establishing a mine up there that basically had to collapse as soon as they got the thing up and running. They spent \$600 million of capital expenditure that they had to go to the market to get. They built that mine and the rail lines, expanded the port and put ore sheds in out here. Within five minutes of doing that it was gone. That is what has put the company in this position.⁵

Cost reduction measures

3.11 The committee received evidence explaining what cost reduction measures Arrium had taken in response to the challenges it faced.

3.12 Arrium outlined in a submission provided to the committee before it went into administration that:

...since 2009 we have reduced our total delivered cost of steel per tonne by 24 per cent after inflation, as well as improving productivity and reducing margins wherever possible.

Overall, Arrium achieved an annualised cost base reduction of \$40m in 2014–15...Further, Arrium has identified a cost reduction and efficiency target of \$100m for our Whyalla operations for the 2016 financial year. To date, approximately \$100m of this has been identified, and unfortunately has included approximately 200 job losses, with an additional 50 losses

4 Mr Stephen Young, Managing Director, E&A Ltd, *Committee Hansard*, 5 April 2016, p. 34; E&A Limited, *Submission 34*, p. 1.

5 Mr Scott Andrew Martin, Branch Organiser, Australian Workers' Union, *Committee Hansard*, 5 April 2016, p. 15.

likely from contractors. The continued deterioration of the market, however, has now increased the required target to \$160m.

Despite these significant efforts, Arrium cannot continue with the status quo.⁶

3.13 Mr David Gabb, an Australian Workers' Union delegate and steelworker, outlined some of the measures that employees had agreed to in order to ensure Arrium's survival, and the personal impact of these measures:

We made a sacrifice to save \$100 million, and that target, apparently, has been achieved. We have done that. But then they came back and said, 'No, we need another \$60 million.' That \$100 million, by the way, we got from restructuring wage cuts, shift changes, overtime bans and other cost-saving measures, so we all hurt to get that. That was only six months ago that they came out with that, and we did it. We got it. And myself, I suffered a great financial loss through these changes and, because we now have less people, I do the work of two people compared to what I used to do.⁷

Arrium placed into voluntary administration

3.14 In February 2016, Arrium announced an operating loss of \$43 million in its Whyalla steelworks.⁸ This was followed by the announcement of a recapitalisation plan for Arrium, including up to \$US927 million in funding from United States group GSO Capital Partners.⁹

3.15 Arrium was placed into voluntary administration on 7 April 2016. KordaMentha Restructuring were appointed as voluntary administrators of Arrium and its 93 subsidiaries on 12 April 2016.¹⁰

3.16 During its administration, the company came close to collapsing several times.¹¹ Among the measures the administrator recommended was a 10 per cent pay cut for employees, which was agreed to in September 2016.¹²

6 Arrium Mining and Minerals, *Submission 16*, pp. 7–8.

7 Mr David Gabb, AWU Delegate/Steelworker, Onesteel, *Committee Hansard*, 5 April 2016, p. 8.

8 Michael Janda, *ABC Online*, 'Arrium, Mt Gibson iron ore losses remain large; Whyalla steelworks future in doubt', 17 February 2016, <http://www.abc.net.au/news/2016-02-17/arrium-mt-gibson-iron-ore-losses/7175698> (accessed 9 August 2017).

9 Tim Binstead, *The Sydney Morning Herald*, 'GSO Capital extends \$US957m lifeline to Arrium as subs builders look to Whyalla', 22 February 2016, <http://www.smh.com.au/business/gso-capital-extends-us957m-lifeline-to-arrium-20160221-gmzw2z.html> (accessed 12 September 2017).

10 KordaMentha, 'KordaMentha Restructuring appointed as Voluntary Administrators of Arrium Limited', <http://www.kordamentha.com/News-and-Insights/KordaMentha-Restructuring-appointed-as-Voluntary-A> (accessed 12 September 2017).

11 KordaMentha, 'Arrium sale proceeds start to flow', 8 September 2017, <http://www.kordamentha.com/News-and-Insights/Arrium-sale-proceeds-start-to-flow> (accessed 12 September 2017).

Impact of Arrium's collapse on Whyalla

3.17 The Government of South Australia outlined in its submission some of the impacts the continuing uncertainty surrounding the future of Arrium had on Whyalla, including the following:

- the rate of closures of small business has escalated with more than half of the 700 small businesses in Whyalla closed since Arrium entered administration;
- there are approximately 800 properties either for sale or vacant rentals which are adversely impacting house prices and owner options;
- apprenticeships have almost stopped and the businesses still operating remain primarily focused on Arrium; and
- sporting clubs are failing due to the inability of the community to cover fees and costs and the impact of a reduced available population.¹³

3.18 Evidence given to the committee indicated that if Arrium were to close, the town's economy would likely collapse, meaning Whyalla could become a 'ghost town'. The CEO of a local business, ICE Engineering and Construction, outlined in further detail what this would mean:

Should the steel industry close, our local branch would cease to exist here in Whyalla... [T]he current skilled workforce of our business will be forced to leave the town to look for work. I feel that the skilled employees in nearly all Whyalla businesses currently dependent on Arrium will do the same, leaving a town mostly with unskilled people dependent on the government for an income. We have already witnessed many companies, both larger and smaller than ICE, go into administration due to the current dire economic conditions... Unfortunately, the survival of Whyalla and its people is dependent on the local steel industry, and without it we would soon become the largest ghost town in the country.¹⁴

3.19 Whyalla's Acting Mayor also noted the social and economic impact that job losses had had on community and recreational activities:

It is estimated that in recent times Arrium and the contractors have shed their workforce by more than 900. It is estimated that this has resulted in a further 800 to 1,000 job losses indirectly. With significant job losses in the sector, the social and economic impact is being widely felt in the community, with falling membership of sporting clubs and community clubs and falling participation in many activities that help to create the sense of community. There are business closures, stalled investments and

12 *ABC Online*, 'Arrium steelworks employees accept administrator's bid for pay cut', 29 September 2016, <http://www.abc.net.au/news/2016-09-29/arrium-steelworks-employees-accept-planned-paycut-whyalla/7890960> (accessed 12 September 2017).

13 Government of South Australia, *Submission 44*, p. 4.

14 Mr Nicholas John Bindi, Chief Executive Officer, ICE Engineering and Construction Pty Ltd, *Committee Hansard*, 5 April 2016, pp. 1–2.

falling school enrolments, and the brightest and best are leaving our community.¹⁵

3.20 Submitters and witnesses to the inquiry stated that the measures undertaken by Arrium to ensure its survival had impacted the town's economy. For example, the branch organiser of the Australian Workers' Union outlined how these measures had affected the local property market:

The housing properties have dived 20 per cent in recent times. There are over 600 properties on the market in Whyalla at the moment... [N]obody wants to buy into a town that does not have a future... Rentals have dropped, so people cannot rent their houses now... And there are people who have just invested in housing... who are now contemplating selling it or giving it back to the bank. We have heard stories of banks reclaiming housing and we have had houses... in a half-built state that have not been completed because of people losing their jobs and the downturn in the industry.¹⁶

Commitments to support Arrium

3.21 The South Australian Government, the Australian Government and the Federal Opposition made a number of commitments to ensure the survival of the Whyalla steelworks owned by Arrium.

South Australian Government measures

3.22 Prior to Arrium's collapse, the South Australian Government established a Steel Task Force in November 2015, which aimed to secure the future of steelmaking in South Australia.¹⁷ The South Australian Government stated in its submission that it would allocate the Task Force \$2.7 million over four years, and had mandated the use of Australian standard steel in South Australian government projects.¹⁸

3.23 After Arrium entered voluntary administration, the South Australian Department of State Development established a Whyalla Response Office for community and businesses to access financial and other support services.¹⁹ The South Australian Government also outlined in its submission that in its 2016–17 State Budget it had allocated 'nearly \$70 million to support steelmaking, businesses and the community in Whyalla', including a small business loan scheme and a foodbank.²⁰

15 Mr Tom Antonio, Acting Mayor, City of Whyalla, *Committee Hansard*, 5 April 2016, p. 27.

16 Mr Scott Andrew Martin, Branch Organiser, Australian Workers' Union, *Committee Hansard*, 5 April 2016, p. 16.

17 Department of State Development South Australia, 'High-powered Steel Taskforce to secure Whyalla's future', <https://statedevelopment.sa.gov.au/news-releases/all-news-updates/high-powered-steel-taskforce-to-secure-whyallas-future> (accessed 14 September 2017).

18 Government of South Australia, *Submission 44*, pp. 4, 8.

19 Government of South Australia, *Submission 44*, p. 4.

20 Government of South Australia, *Submission 44*, p. 4.

3.24 The South Australian Government also made a commitment of \$50 million for the future owner of Arrium Whyalla 'for capital investment'.²¹ Media reports indicated that this commitment would include renewable energy projects and increased access to Arrium's port facility.²²

Australian Government measures

3.25 The Department of Industry, Innovation and Science (Department of Industry) stated in its submission that the Australian Government had undertaken a number of measures to support Arrium and its workers. For example, in March 2016:

...the Prime Minister, the Hon Malcolm Turnbull MP announced that the Australian Rail Track Corporation would fast track a project to upgrade 1200 kilometres of rail between Adelaide and Tarcoola in partnership with Arrium.²³

3.26 The government also announced in May 2016 that it would provide \$1.1 million to assist workers who may lose their jobs at Arrium, 'in addition to a previously announced \$270,000 package of measures to support retrenched Arrium workers.'²⁴

3.27 The Department of Industry outlined in its submission that in accordance with a Coalition election promise, the government had provided Arrium with a \$49.2 million loan to purchase beneficiation equipment that would enable Arrium 'to process iron ore to export quality.'²⁵

3.28 In April 2016, the Opposition Leader, the Hon. Bill Shorten MP, announced a Plan for Australian Metals Manufacturing and Jobs, which included six policies aimed at supporting the Australian steel industry.²⁶ The Opposition Leader further announced in June 2016 that a Labor government would establish a joint Steel Reserve with the South Australian Government to support Arrium, including \$100 million from a Labor Government to support this Steel Reserve.²⁷ In September 2016, the Opposition Leader repeated his commitment to support Arrium and called on the Government to match the Opposition's commitment.²⁸

21 Government of South Australia, *Submission 44*, p. 5.

22 *SBS News Online*, 'SA looks to leverage Arrium cash', 10 July 2017, <http://www.sbs.com.au/news/article/2017/07/10/sa-looks-leverage-arrium-cash> (accessed 14 September 2017).

23 Department of Industry, Innovation and Science, *Submission 41*, p. 2.

24 Department of Industry, Innovation and Science, *Submission 41*, p. 3.

25 Department of Industry, Innovation and Science, *Submission 41*, p. 3.

26 The Hon. Bill Shorten MP, 'Labor's positive plan to secure Australian metals, manufacturing and jobs', *Media Release*, 14 April 2016.

27 The Hon. Bill Shorten MP, 'Backing Australian steel, backing Australian jobs', *Media release*, 16 June 2016.

28 The Hon. Bill Shorten MP, 'Mr Turnbull: Don't wait until it's too late for Arrium', *Media release*, 21 September 2016.

The sale of Arrium

3.29 On 4 November 2016, KordaMentha announced the sale of Moly-Cop to American Industrial Partners.²⁹ The acquisition was completed in January 2017.³⁰

3.30 On 15 June 2017, KordaMentha announced that a Korean consortium led by Newlake Alliance Management and JB Asset Management was the preferred bidder for Arrium, while UK-based Liberty House was short-listed.³¹

3.31 However, after financing issues emerged and a deal was not brokered within the exclusivity period, Liberty House under the umbrella of GFG Alliance emerged as the preferred bidder.³²

3.32 The sale of Arrium Mining and Arrium Steel was announced in July 2017. GFG Alliance formally acquired both businesses on 1 September 2017, announcing that Arrium Mining would be renamed SIMEC Mining and Arrium Steel would be re-branded as Liberty OneSteel.³³

Immediate effects of the sale

In the month after the announcement of the purchase of Arrium by Liberty House, news reports indicated that the Whyalla property market experienced a 'mini boom'. One local real estate manager reporting double the average monthly sales from previous months when Arrium's future had been unclear.³⁴ Local businesses also experienced an upturn in trade.³⁵

29 KordaMentha, 'Arrium announces sale of Moly-Cop', 4 November 2016, <http://www.kordamentha.com/News-and-Insights/Arrium-announces-sale-of-Moly-Cop> (accessed 12 September 2017).

30 Department of Industry, Innovation and Science, *Submission 41*, p. 2.

31 KordaMentha, 'Korean group is preferred bidder for Arrium', 15 June 2017, <http://www.kordamentha.com/News-and-Insights/Korean-group-is-preferred-bidder-for-Arrium> (accessed 12 September 2017).

32 Luke Griffiths, 'Inside the Arrium sale: How steely nerves overcame catastrophe', *The Advertiser*, 1 September 2017, <http://www.adelaidenow.com.au/business/inside-the-arrium-sale-how-steely-nerve-overcame-catastrophe/news-story/e6abe8e44e897b3b66faeb6d316f4362> (accessed 12 September 2017).

33 Liberty OneSteel, 'GFG Alliance has completed the acquisition of the Arrium Mining and Steel businesses', <https://www.libertyonesteel.com/announcement/> (accessed 12 September 2017).

34 Simon Evans, 'Liberty House triggers real estate flurry in Whyalla', *Australian Financial Review*, 31 July 2017, <http://www.afr.com/business/mining/iron-ore/liberty-house-triggers-real-estate-flurry-in-whyalla-20170730-gxlxyj> (accessed 1 August 2017).

35 Luke Griffiths, 'GFG Alliance takes ownership of Whyalla's steelworks, plans huge increase in production', *The Advertiser*, 1 September 2017, <http://www.adelaidenow.com.au/business/gfg-alliance-takes-ownership-of-whyallas-steelworks-plans-huge-increase-in-production/news-story/fb7e04fe01916b8cf9ed35a22eec70b3> (accessed 14 September 2017); Khama Reid and Annabelle Regan, 'Whyalla steelworks purchase completed by GFG Alliance, with big investment promised', *ABC Online*, 1 September 2017, <http://www.abc.net.au/news/2017-08-31/whyalla-prepares-to-celebrate-arrium-steelworks-sale/8860998> (accessed 14 September 2017).

3.33 On 8 September 2017, KordaMentha reported that former Arrium employees who had been let go had been paid their accrued leave, superannuation and other entitlements, totalling over \$7.1 million.³⁶

3.34 GFG Alliance's Executive Chairman Sanjeev Gupta outlined in August 2017 that GFG Alliance intended to invest up to US\$1 billion in the former Arrium steelworks and mining division. This would involve modernising the steel plant, increasing its steel-making capacity and improving its energy generation to reduce high energy costs, such as generating power through the use of waste gases and using pumped hydro-electricity. GFG Alliance also indicated that it was considering investing in solar energy, as part of what it terms its 'Greensteel' strategy.³⁷

3.35 Media reports in late September 2017 indicated that Mr Gupta had bought a 50.1 per cent stake in renewable energy company Zen Energy to set up renewable energy to power Liberty OneSteel's mills.³⁸

Committee view

3.36 The committee considers the sale of Arrium to Liberty House to be a favourable outcome and an important step towards securing the future of the steel industry as a whole in Australia. While the sale took place privately, the South Australian and Australian governments had a key role in securing the future of Arrium and the South Australian steel industry through their financial support.

3.37 However, the deeper structural issues that led to Arrium's collapse have not disappeared. High energy prices remain, as do inconsistent standards, problems in Commonwealth procurement policies, and unfair import competition. Although pleased with this outcome, the committee is of the opinion that a similar crisis could arise again, leading to negative impacts on the Australian and local economies, job losses and the end of a crucial component of Australian industry.

3.38 Given that these broader issues have not resolved, the committee has devoted the remainder of this report to outlining proposed solutions to the problems still facing the steel industry in Australia. Without timely and considered action and leadership on the part of governments, the future of the Australian steel industry remains uncertain.

36 KordaMentha, 'Arrium sale proceeds start to flow', 8 September 2017, <http://www.kordamentha.com/News-and-Insights/Arrium-sale-proceeds-start-to-flow> (accessed 12 September 2017).

37 Michael Owen-Brown, Lauren Novak and Sheradyn Holderhead, 'Arrium steelworks to be sold to GFG Alliance, saving thousands of jobs in Whyalla', *The Advertiser*, 5 July 2017, <http://www.adelaidenow.com.au/news/south-australia/state-government-announces-official-sale-of-the-arrium-steelworks/news-story/3e049ffb3ad49a0266a2896256e3511f> (accessed 14 September 2017); GFG Alliance, 'GFG Alliance completes landmark acquisition of Arrium', 31 August 2017, <http://www.gfgalliance.com/media/gfg-alliance-completes-landmark-acquisition-arrium/> (accessed 14 September 2017).

38 David Lipson, 'Steelmaker Sanjeev Gupta teams with Ross Garnaut to run factories using renewable energy', *ABC Online*, 21 September 2017, <http://www.abc.net.au/news/2017-09-20/steel-maker-teams-with-ross-garnaut-to-run-factories-using-rene/8965240> (accessed 21 September 2017).

Chapter 4

Steel standards, certification and non-conforming products

4.1 This chapter outlines the background to steel standards and third-party certification in Australia, and discusses issues raised by submitters in relation to inconsistent standards and certification requirements expected of steel fabricated in Australia compared to imported steel.

4.2 The chapter also examines the financial and other impacts that, according to some inquiry participants, result from a lack of clarity on standards. It further looks at examples of non-compliant steel products, and outlines evidence given to this inquiry regarding the lack of monitoring and a reporting scheme for Australian companies to report non-complying products.

Senate inquiry into non-conforming building products

4.3 There is some overlap in this chapter with the concurrent Senate inquiry into non-conforming building products, due to report on 30 April 2018. This overlap includes, for example, the economic impact of non-conforming products on Australian industry.

4.4 However, this chapter focuses broadly on steel—not just steel used in the building industry—and the issues that submitters raised in this inquiry regarding, in particular, standards and certification of steel used in Australia.

Defining standards, certification and product conformity

4.5 Some of the primary concerns expressed by a range of inquiry participants related to standards, certification and product conformity in the steel industry and market. These three areas, while interrelated, have distinct functions.

4.6 The World Trade Organisation defines standards as follows:

Standards are approved by a recognized body which is responsible for establishing rules, guidelines or characteristics for products or related processes and production methods. Compliance is *not mandatory*. They may also deal with terminology, symbols, packaging, marking and labelling requirements.¹

4.7 Certification is 'a form of conformity assessment' carried out by a third party.² Certification indicates that a product 'is compliant with a mandatory standard like the

1 World Trade Organisation, *The WTO Agreements Series: Technical Barriers to Trade*, 16 December 2013, p. 14, emphasis in original.

2 World Trade Organisation, *The WTO Agreements Series: Technical Barriers to Trade*, 16 December 2013, p. 15; Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 7.

Australian Standards or a voluntary third party certification scheme...which confirms that a required standard has been met'.³

4.8 Non-conforming products are 'products and materials that are not of acceptable quality, do not meet Australian standards, are not fit for their intended purpose, or contain false or misleading claims'.⁴ These false or misleading claims may include falsified certification that a product conforms to a required set of standards when it does not.

4.9 Also relevant to this inquiry are non-compliant building products—that is, products that, while not necessarily non-conforming, are used in situations that do not comply with the requirements of the National Construction Code.⁵ Evidence to this inquiry did not focus on non-compliant products, but some submitters and witnesses mentioned these in passing in relation to non-conforming products.

International obligations

4.10 Australia is obligated to adhere to the World Trade Organisation's Agreement on Technical Barriers to Trade (TBT), including the requirement that '[m]embers shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade'. The agreement states that technical regulations should 'fulfil a legitimate objective, taking account of the risks non-fulfilment would create', and they should 'not be more trade-restrictive than necessary'.⁶

4.11 Examples given in the TBT of legitimate objectives that could lead to the implementation of technical regulations include 'protection of human health or safety'. However, the agreement stipulates that the assessment of such risks should draw on, for example, 'available scientific and technical information, related processing technology or intended end-uses of products'.⁷

3 Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, p. 25.

4 Senior Officers' Group, *Non-conforming building products*, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 27 September 2017). See also Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, p. 3.

5 Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, pp. 3–4.

6 World Trade Organisation Agreement on Technical Barriers to Trade, 1 January 1995, Article 2.2.

7 World Trade Organisation Agreement on Technical Barriers to Trade, 1 January 1995, Article 2.2.

Standards in Australia

4.12 Australian standards are developed and adopted by Standards Australia, the peak standards organisation.⁸ These are then available for purchase through SAI Global Limited.⁹

4.13 Standards Australia is a not-for-profit and non-government body, comprised of governments, industry peak bodies and other stakeholders who contribute on a voluntary basis to the creation of standards in a variety of fields, including fabricated steel.¹⁰

4.14 Mr Adam Stingemore, the General Manager of Stakeholder Engagement and Public Affairs at Standards Australia, emphasised the non-mandatory nature of Standards Australia's work:

[T]here is a great misunderstanding in the Australian community that Standards Australia is the standards police, that we get out there and inspect, licence, watch, audit and certify...We are not the police. We are not an enforcement agency. We are not an agency of government. We bring people together to set a particular level.¹¹

4.15 Mrs Kareen Riley-Takos, the General Manager of Standards Development at Standards Australia, outlined that Standards Australia has no role in how its standards are certified or enforced:

In terms of how we develop standards, we have this principle of impartiality, which means that we are not to define in our standards how compliance with the standards shall be achieved. That means that it can be a self-declaration or it could be a third-party certification or an independent body undertaking that certification. We do not define that in the document.¹²

4.16 Most steel fabricated in Australia complies with appropriate standards, whether on a voluntary basis or as required in contract terms and conditions. The Welding Technology Institute of Australia (WTIA) submitted that:

...over 90% of steel structures fabricated in Australia [comply] with Australian standards and...a significant proportion is subject to independent

8 Standards Australia, *What We Do*, <http://www.standards.org.au/OurOrganisation/AboutUs/Pages/default.aspx> (accessed 26 September 2017).

9 Standards Australia, *Search and buy a standard*, <http://www.standards.org.au/SearchandBuyAStandard/Pages/default.aspx> (accessed 9 October 2017).

10 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 52.

11 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, pp. 54-55.

12 Mrs Kareen Riley-Takos, General Manager, Standards Development, Standards Australia, *Committee Hansard*, 6 April 2016, p. 56.

inspection during manufacture, at completion and prior to commissioning. Nevertheless, all fabricated steel made in Australia will require a compliance certificate.¹³

4.17 However, despite widespread certification at the level of steel fabrication to the set of standards produced by Standards Australia, Mr Stingemore said that different states have different 'standards and specifications, and some enforce them and some do not'.¹⁴

4.18 In its submission, the WTIA claimed that Standards Australia's work was unduly influenced by Australia's international trade obligations, leading to decreased quality:

The quality of technical Standards published by SA [Standards Australia] has fallen dramatically over the past 5 years...SA has become a puppet of the Federal bureaucracy rather than an organisation representing its members who in turn represent the industry. Much needed revision to important Standards now has to be funded by industry associations, whose members freely give their time to SA for development. These same members then purchase the Standards they have written from SAI Global at an onerous price. This approach has created enormous animosity, which SA seems to hope will simply go away.¹⁵

4.19 In response, Standards Australia submitted that the contention of decreased quality in its published standards had 'been provided without substantiation'. Standards Australia emphasised that it must 'align with public policy with respect to trade, as determined by the Government of the day', including the requirement of the TBT that 'Standards do not result in technical barriers to trade'. It also stated that the 'federal bureaucracy' is treated as any other stakeholder, and the organisation's objectives do not extend to representing its members but, rather, require it to 'facilitate consensus in alignment with our rules for the benefit of the Australian community'.¹⁶

4.20 The Senate inquiry into non-conforming products received evidence indicating that the cost of purchasing Australian Standards may deter companies from ensuring their products comply with relevant standards. In its interim report for the inquiry, the Economics References Committee recommended 'that the Commonwealth government consider making all Australian Standards and codes freely available'.¹⁷

13 Welding Technology Institute of Australia, *Submission 40*, pp. 3–4.

14 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 56.

15 Welding Technology Institute of Australia, *Submission 32*, p. 8.

16 Standards Australia, *Response to Submission 32 made by Welding Technology Institute of Australia*, pp. 1–2.

17 Senate Economics References Committee, *Non-conforming building products interim report: Aluminium composite cladding*, September 2017, pp. 49–51.

Imported steel and Australian standards

4.21 Evidence provided to this inquiry suggested that while most Australian steel has been certified as conforming to Australian standards, legal loopholes in contracts and gaps in regulatory regimes in some instances may allow imported fabricated steel to avoid complying with the same standard as steel made in Australia.

4.22 The Welding Technology Institute of Australia claimed that '[w]hen fabricated structural steel is inspected[,] as much as 80%, predominantly imported structures, is found to be non-compliant with Australian standards'.¹⁸

4.23 Some types of imported steel are covered by well-regarded third-party compliance schemes, such as the Australasian Certification Authority for Reinforcing and Structural Steels, and the National Structural Steelwork Compliance scheme for fabricated steel:

Steel reinforcing and structural steel product manufactured in or imported into Australia is covered by a compliance scheme managed by the Australasian Certification Authority for Reinforcing and Structural Steels (ACRS). This scheme seeks to certify compliant structural and reinforcing steel by auditing at the steel mill level. We should clarify that this scheme covers 'mill gate' products and not manufactured or fabricated products.¹⁹

4.24 Some imported steel meets the standards of other countries which, it should be noted, may be the same or more comprehensive than Australian standards. Mr Mark Vassella, the Chief Executive of BlueScope Australia and New Zealand, gave evidence stating that '[s]teel can come into the country meeting a different standard...It can meet a JSA Japanese standard or it can meet a US standard...it complies to an external standard'.²⁰

'Australian standards or equivalent'

4.25 However, the committee received evidence indicating that inconsistent application of standards requirements can be problematic. The use of the phrase 'Australian standards or equivalent', according to some witnesses and submitters, allows room for certification to standards that may pose a safety risk.

4.26 Mr Geoff Crittenden, the Chief Executive Officer of the WTIA, suggested that even where contracts specify that a product must conform to Australian standards, this requirement is often expressed in vague terms like 'to be built to an Australian standard or equivalent. What does that mean?'²¹

18 Welding Technology Institute of Australia, *Submission 40*, p. 1.

19 Australian Steel Institute, *Submission 19*, p. 34.

20 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *Committee Hansard*, 1 April 2016, p. 4.

21 Mr Geoff Crittenden, Chief Executive Officer, Welding Technology Institute of Australia, *Committee Hansard*, 6 April 2016, p. 39.

4.27 Mr Tony Dixon, Chief Executive of the Australian Steel Institute, also highlighted that the vagueness of the phrase 'or equivalent' often found in legal documents 'leaves enough room to drive a truck through'.²²

4.28 The Australian Industry Group observed that the resulting 'uneven approach to standards...often allows foreign suppliers to avoid the same quality and performance assessment that is applied to local producers'.²³

4.29 Mr Ian Nightingale, the South Australian Industry Participation Advocate, also was of the opinion that inconsistent standards requirements is a major issue. Mr Nightingale argued:

...there is a gap in Australia's certification of Australian standards. The advice I have received is that in the statement around Australia standards or equivalent there seems to be a fairly big hole around the word equivalent.²⁴

4.30 He further outlined that he had advised the South Australian Government to avoid using the term 'or equivalent' when requiring Australian standards in its contracts:

It is really a cracker trying to get through that equivalent argument rather than prescriptively meeting Australian standards...Because we use 'Australian standards or equivalent' because there are so many other mechanisms to meet Australian standards it leaves the door open. That is why the advice I gave the government was to look at another mechanism for certification.²⁵

4.31 Mr Stingemore from Standards Australia argued that 'the equivalence issue, the use of trusted international standards in areas, is largely a matter of Commonwealth policy, not a matter of standards development'.²⁶

4.32 In response to inconsistencies in standards requirements, and reports of first-party certification, the Chief Executive of the Australian Steel Institute recommended that 'steel companies supplying need to be third-party certified to ensure that they supply to the standard, and the fabrication company needs to be third-party certified' to ensure that products meet Australian standards.²⁷

22 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2017, p. 7.

23 Australian Industry Group, *Submission 10*, p. 34.

24 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 19.

25 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, pp. 25–26.

26 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 53.

27 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2017, p. 7.

4.33 When outlining the financial and safety impact that differing sets of standards had on the Australian steel industry, Mr Crittenden from the WTIA stated: 'I am...here to ask...that we all comply with the same set of rules'. He suggested that 'every piece of fabricated steel erected in Australia needs to comply with Australian standards' so that 'we are all working on a level playing field' in terms of competitiveness. The way to do this, he suggested, would be 'regulation to make every piece of fabricated steel imported into or manufactured in this country comply with the appropriate standards for pressure vessels and structural steel'.²⁸

4.34 It should be noted that the *Code for the Tendering and Performance of Building Work 2016* requires Commonwealth funding entities to only enter into building contracts with preferred tenderers where code-covered businesses can prove that their products comply with Australian standards.²⁹ The 2017 Commonwealth Procurement Rules also require, if contracts are above a certain threshold, that if an Australian standard exists for particular goods or services being procured, 'tender responses **must** demonstrate the capability to meet the Australian standard, and contracts **must** contain evidence of the applicable standards'.³⁰ The issue of standards in government procurement is outlined further in chapter 5.

Allegations of knowingly falsifying standards certification

4.35 Besides vague interpretations of what 'equivalence' with Australian standards means, evidence that the inquiry received indicated that fraudulent standards certification was also a key area of concern for the Australian steel industry.

4.36 Mr Stingemore from Standards Australia noted that 'when you are dealing with issues of fraud, technical standards come nowhere near being able to deal with those issues'.³¹

4.37 The South Australian Industry Participation Advocate said that he had 'seen evidence from people in the steel industry where, quite clearly, the documentation is fraudulent at worst, and vague and misleading at best. That concerns me'.³²

4.38 The Executive Director of the National Association of Steel-Framed Housing gave evidence that he had seen first-hand a forged compliance certificate:

One of the issues we have had is with getting test certificates from overseas. I got some overseas steel test certificates from one member to see whether it was compliant, and it was missing the basic information like who made the

28 Mr Geoff Crittenden, Chief Executive Officer, Welding Technology Institute of Australia, *Committee Hansard*, 6 April 2016, p. 35.

29 Department of Industry, Innovation and Industry, *Submission 41*, p. 4.

30 Department of Finance, *Commonwealth Procurement Rules*, 1 March 2017, clause 10.10 (emphasis in original).

31 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 52.

32 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 20.

steel. It looked like it had just been typed in... basically it was a counterfeit certificate.³³

4.39 The Australian Steel Institute in its submission provided an example of a welding quality statement for an imported product, which 'promised' the welding was performed in accordance with the requirements of a particular Australian standard even though it had failed relevant tests (Figure 4.1).³⁴

Figure 4.1: Weld quality statement accompanying goods manufactured overseas³⁵



Source: Australian Steel Institute

Non-complying steel

4.40 The Australian Constructors Association drew attention to the importance of product conformance in its submission, making the point that '[s]teel products that are defective, or do not otherwise meet the relevant manufacturing standard, may potentially place many lives at risk'.³⁶

33 Mr Kenneth Watson, Executive Director, National Association of Steel-Framed Housing Inc., *Committee Hansard*, 6 April 2016, p. 37.

34 Australian Steel Institute, *Submission 19*, Attachment 3.

35 Australian Steel Institute, *Submission 19*, Attachment 3.

36 Australian Constructors Association, *Submission 13*, p. 2.

4.41 The WTIA summarised the regulatory gap between the issuing of standards and checks of whether imported products comply with these standards:

Australian Standards are as good, if not better, than any in the world but very few are supported by regulation and are therefore only applied on a voluntary basis. Without any compulsion to manufacture or procure products to a recognised Standard companies take the lowest cost option which is often detrimental to public safety.³⁷

4.42 The WTIA provided the committee with figures suggesting that the extent of non-compliance in imported steel products is significant, stating: '[f]eedback from our members suggests up to 80 [per cent] of imported fabricated steel does not comply with Australian Standards'.³⁸

4.43 Other parliamentary inquiries have also received evidence from witnesses and submitters expressing frustration that imported steel is not required to conform to the same standards as steel fabricated in Australia.

4.44 The Joint Select Committee on Government Procurement received evidence outlining the growing market penetration of non-conforming products, referring to an Australian Industry Group report based on a national survey.³⁹ This report found that 95 per cent of respondents in the steel product sector indicated that their market featured non-conforming products, 'with 64 [per cent] basing their assessment on building site product failure or visual inspections'.⁴⁰

4.45 The Senate Foreign Affairs, Defence and Trade References Committee's inquiry into the impact of defence training activities and facilities on rural and regional communities heard evidence from the managing director of a local engineering company in Katherine, Mr Geoff Crowhurst, that:

There are companies in Darwin that when we see them on a tender, we close that tender straightaway and do not go near it...We know that they will buy the steel out of China or overseas somewhere...There is a prime example that [an] INPEX server stack fell off the crane because the lift lines were not welded on properly and the whole stack hit the ground. You cannot get much more proof than that. But the outcome of that...was that they just got it made again by the same company. They had to make it again to the right standards. Why was it not given to an Australian company that would have done it to the right standards in the first place? We have all these rules and regulations that we have to comply to in the construction

37 Welding Technology Institute of Australia, *Submission 40*, p. 2.

38 Welding Technology Institute of Australia, *Submission 32*, p. 7.

39 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, pp. 43–44.

40 The Australian Industry Group, *The quest for a level playing field: The non-conforming building products dilemma*, November 2013, p. 11.

space yet you can put stuff on a ship, bring it in and it has no checks and balances on it. Really, that there are two totally different tiers is crazy.⁴¹

4.46 However, Mr Crowhurst also noted that not all imported steel is of a poorer quality compared with Australian steel:

[T]here's a perception out there that all steel from overseas doesn't marry up to the Australian [steel]. That's not true. A lot of the steel is coming out of a lot higher grade steel manufacturing facilities—a lot more state of the art than we are here in Australia. That's one of our problems. If you buy from the right place, the quality's there. The problem is that you can buy very low grade overseas as well. That product makes it in already in a finished form, and the checks and balances aren't done. That's the bit that's the problem coming in, not the raw product. The raw product, in most cases, is actually a good product.⁴²

4.47 Best Bar Reinforcements in their submission also made a similar argument, stating that some imported steel conforms to Australian standards, and further contended that international standards are not necessarily inferior:

Best Bar is aware of comments in the media regarding imports of low quality steel, however it is trite to think that all imported steel is low quality. As noted at the opening of this submission, the rebar imported by Best Bar from Singapore conforms to Australian Standards. However there are other international standards that require equivalent properties, characteristics and quality.⁴³

Examples of non-conforming steel

4.48 The inquiry received a number of concerning allegations about non-conforming steel products. It should be noted that the Senate Economics References Committee inquiry into non-conforming building products received many more submissions on this issue, including from several organisations in the Australian steel industry.

4.49 The Australian Steel Institute argued that the safety risks caused by non-conforming steel products were considerable, and needed to be dealt with:

[T]here have been numerous instances where non-compliant construction products have caused the collapse of buildings, motorway signs, glass panels and more. The risk of loss of life and severe injury should not be underestimated. The quality and compliance of construction projects is a major risk management issue which needs to be addressed. It is vital that we create an environment in Australia in which all stakeholders in the building and construction process, including the community, are assured

41 Mr Geoff Crowhurst, Managing Director, Crowhurst Goodline, *Committee Hansard*, Senate Foreign Affairs, Defence and Trade References Committee, 23 August 2017, p. 20.

42 Mr Geoff Crowhurst, Managing Director, Crowhurst Goodline, *Committee Hansard*, Senate Foreign Affairs, Defence and Trade References Committee, 23 August 2017, p. 20.

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

that all construction products meet a minimum acceptable level of performance and are fit for the purpose to which they are intended.⁴⁴

4.50 The WTIA reported that in the preceding three years, 'the number of reports of unsafe steel structures received by the WTIA from its Certified Welding Inspectors has increased exponentially'.⁴⁵ The main reasons for safety concerns were welding that was not fit for purpose or did not comply with recognised international standards. Examples that the WTIA gave of unsafe structures included:

- pedestrian, road and rail bridges;
- light poles and gantries used in road infrastructure;
- welded steel beams used in the construction industry;
- oil and gas industry safety structures; and
- caravans, domestic and commercial trailers and boat trailers.⁴⁶

4.51 Mr Ian Waters, who appeared as a witness on behalf of 63 businesses, also told the committee about specific non-conforming products:

We have had personal experience where businesses have imported overseas steel that does not comply... We had a large steel pipe with a partial hole in the wall thickness, about that big, filled up with body filler in China and then painted black, like the rest of the steel pipe. It was presented as a brand-new piece of pipe that was going to go into a pressurised water situation.⁴⁷

4.52 The Australian Steel Institute outlined multiple examples of non-conforming steel that had been fraudulently certified as meeting Australian standards. These examples covered quality issues and what appeared to be deliberate fraud:

Testing by the steel industry has also identified metallic coated and pre-painted steels that do not meet Australian Standards and regulations. Examples include substandard metallic coating and paint thicknesses and non-conforming levels of lead in paint.

The non-compliances are not limited to poor quality and bad workmanship but extend to deliberate fraudulent behaviour with examples such as falsified test certificates, welds made with silicone rubber and then painted, attachment of bolt heads with silicon rather than a through bolt and water filled tube to compensate for underweight steelwork with fraudulent claims that their products meet particular Australian Standards.⁴⁸

44 Australian Steel Institute, *Submission 19*, p. 15.

45 Welding Technology Institute of Australia, *Submission 40*, p. 2.

46 Welding Technology Institute of Australia, *Submission 40*, p. 2.

47 Mr Ian Waters, on behalf of 63 businesses, *Committee Hansard*, 6 April 2016, p. 44.

48 Australian Steel Institute, *Submission 19*, p. 33.

Figure 4.2: Steel cracking on imported fabricated product⁴⁹



Source: Australian Steel Institute

Figure 4.3: Diagonal chords on a bridge truss filled with water⁵⁰



Source: Australian Steel Institute

49 Australian Steel Institute, *Submission 19*, Attachment 3.

50 Australian Steel Institute, *Submission 19*, Attachment 3.

4.54 The Australian Steel Institute provided the committee with photos of steel cracking on imported fabricated product (Figure 4.2), and diagonal chords on a bridge truss filled with water that were 'thought possibly to have been deliberate to build up the weight of the structure to have a mass within overall specification' (Figure 4.3).⁵¹

Impact on Australian businesses

4.55 The committee received evidence indicating that the impact on Australian businesses of imported non-compliant products is considerable. These impacts range from decreased competitiveness when competing for contracts, to lost revenue, to a corresponding decline in the quality of Australian steel, to increased whole-of-life costs involved in rectifying products found to be non-conforming.

4.56 Some submitters suggested that the costs involved in ensuring conformity to rigorous Australian standards may preclude Australian steel manufacturers from winning contracts because of an emphasis on upfront costs. For example, the Illawarra Business Chamber contended that:

High volumes of non-compliant imports...are placing pressure on these domestic manufacturers. Australian steel companies are often locked out of lucrative contracts due to an undue emphasis on upfront costs, rather than whole of life costs. Competitors are able to offer a lower price point, in many cases due to savings achieved through not meeting the rigorous requirements of Australian Standards.⁵²

4.57 Mr Vassella from BlueScope Steel also emphasised the cost burdens involved in conforming to Australian standards that international competitors are not always required to meet:

Our contention is that all of the products we make meet Australian standards and the cost base that we incur to ensure that they meet those standards is not necessarily applied to our competitors.⁵³

4.58 The Australian Industry Group provided figures from a report it published in 2013, in which 40 per cent of businesses 'reported lost revenue/margin and reduced employment numbers' because of non-conforming products.⁵⁴

4.59 Further outlining the impact of non-conforming products on Australian businesses, the Australian Industry Group also reported, based on the same study, that businesses 'say they are downgrading their product quality and service offer in order to remain viable'.⁵⁵ It suggested that Australian steel manufacturers may have to cut corners to be cost competitive against competitors who do not have to meet Australian standards or obtain third-party certification:

51 Australian Steel Institute, *Submission 19*, Attachment 3.

52 Illawarra Business Chamber, *Submission 5*, p. 3.

53 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *Committee Hansard*, 1 April 2016, p. 5.

54 Australian Industry Group, *Submission 10*, p. 38.

55 Australian Industry Group, *Submission 10*, p. 38.

Relevant to this Committee's term of reference, there also is a price depressing effect from these imports that affects a sector of local fabricators that are forced to chase price at the expense of maintaining their quality systems and procedures.⁵⁶

4.60 The Illawarra Business Chamber argued that ultimately non-conforming products place significant burdens on the Australian steel industry and the broader Australian economy:

...poorly manufactured, nonconforming steel products place significant cost burdens on the purchaser. Failed products, components and infrastructure:

- cause project delays due to the need to rework steel components
- substantially increase the whole of life cost, due to the burden of increased maintenance and repairs.

Where the purchaser of low quality steel products is the Australian Government, the cost is to the economy – and the public – as a whole.⁵⁷

4.61 In addition, the Australian Industry Group highlighted the 'safety impact' of non-conforming products on workers, stating that many respondents reported 'that non-conforming steel products and structures can increase the risk of personal injury to employees and has the potential to affect long term building and structure safety'.⁵⁸

Monitoring and reporting non-conforming products

4.62 Many submitters and witnesses to the inquiry stated that there is currently a regulatory gap between the creation of standards, who monitors conformity to these standards, and who businesses can contact to report non-conforming products.

4.63 The Australian Industry Group highlighted that 'the key failure points' in the regulatory system that businesses in the building conformance framework identified were 'gaps and/or weaknesses' that resulted from:

- inadequate surveillance, audit checks, testing, enforcement and an over-reliance on first party certification;
- inadequate clarity on the role of building certifiers; and
- a lack of clarity for stakeholders in terms of how and where to report NCP [non-conforming products].⁵⁹

4.64 The WTIA outlined how goods that do not meet Australian standards are used in most cases without inspection:

On major projects this is often discovered on arrival when the goods are inspected for compliance to the relevant code by a qualified Welding Inspector; in which case they are normally sent to a local fabrication

56 Australian Steel Institute, *Submission 19*, p. 33.

57 Illawarra Business Chamber, *Submission 5*, p. 3.

58 Australian Industry Group, *Submission 10*, p. 38.

59 Australian Industry Group, *Submission 10*, p. 39.

company for remedial work. Unfortunately this is not a satisfactory solution as often the steel is not certified and contractors accept compromise, as often the only alternative is to start again. In the majority of cases low-medium value pressure vessels and structural steel modules are imported, erected, installed or sold without any inspection.⁶⁰

4.65 However, the committee heard that even where non-conforming products were identified, there was confusion as to whom this should be reported to. The Australian Steel Institute emphasised that 'for structural steelwork there is currently no reliable system for surveillance of imported building products apart from product failure'.⁶¹ It noted that even though builders and project managers may take responsibility for site inspection, they 'often do not have the skills or knowledge to understand compliance at a material or fabrication level'.⁶²

4.66 The WTIA explained that often no one is willing to take responsibility for non-compliant products, leading to financial losses and safety issues:

When product is inspected and found to be noncompliant many refuse to accept responsibility for rectifying the structure opting instead to take the risk or try and pass on liability to another part of the supply chain. The resulting merry go round is not only a significant cost to the economy it often remains unresolved leaving an unsafe structure in place.⁶³

4.67 The Australian Steel Institute contended that the use of non-complying products in infrastructure projects is a source of frustration for its members because often they are unable to do anything about the issue besides rectify the product:

[T]hey are unable to safely report non-compliant product due to confidentiality clauses in construction contracts and sensitivity of relationships in the building products supply chain which may cause them to lose future contracts.

This makes continuous improvement or a 'Safety Alert' process impossible. The key to the success of reporting non-compliant product is the ability for anonymity of the person reporting, coupled with qualified review of the matter reported.⁶⁴

4.68 As mentioned earlier, Standards Australia is not responsible for third-party certification of its standards or monitoring product non-conformance. However, the committee heard that people often try to report non-conforming products to Standards Australia in the absence of a reporting scheme. Mr Stingemore told the committee that:

Someone will come to us and say, 'I've bought a dodgy widget, and there's a certificate here that says that it meets the standard'...We will say to them,

60 Welding Technology Institute of Australia, *Submission 32*, p. 7.

61 Australian Steel Institute, *Submission 19*, p. 33.

62 Australian Steel Institute, *Submission 19*, p. 35.

63 Welding Technology Institute of Australia, *Submission 40*, p. 2.

64 Australian Steel Institute, *Submission 19*, p. 35.

'Go and talk to the fair-trading department in your state,' and then they will come back and say, 'They say that's not their job.' And then we say, 'Well, you might want to go and talk to the ACCC.' And then they go to talk to the ACCC, who say, 'Go and talk to the fair-trading department in your state,' and they come back to us. We actually have a call centre where we deal with these kinds of circumstances.⁶⁵

4.69 The South Australian Industry Participation Advocate was of the opinion that 'our Commonwealth agencies do not have the resources, the time or the energy to investigate whether or not steel coming into this country is fully certified'.⁶⁶

4.70 The Chief Executive of the Australian Steel Institute contended that it is unrealistic to expect Customs to examine whether imported products comply with Australian standards before they enter Australia:

My view is that it is almost impossible for us to have Customs stop and check product at the borders. That is why we advocate third-party-certification programs to make sure that the suppliers have been certified such that their process delivers to the Australian standard, and therefore we advocate third-party-certification schemes, both for steel and for fabrication.⁶⁷

4.71 On the question of how standards could be enforced, Mr Stingemore proposed:

...getting the governments, plural, to move, because it is such a multifaceted beast that people are trying to deal with. The industry frustration that we see in our organisation around this issue is not getting any better. It is not directed at anybody or any agency or any government, but the challenges that are faced particularly within the construction sector at the moment with all of the trading conditions and the economic issues and this on top of it—it is a first-priority issue to be dealt with, and getting the right people in a room would be a good start.⁶⁸

4.72 The South Australian Industry Participation Advocate gave evidence that the South Australian government now requires that:

...all steel, the source of the steel, the mill...be certified by the Australasian Certification Authority for Reinforcing and Structural Steels. They do that globally. There are many steel mills globally that are accredited by this body, but equally so are BlueScope and OneSteel. What you can then be assured of is that the steel itself is certified by that particular body...What

65 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 55.

66 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 20.

67 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 7.

68 Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs, Standards Australia, *Committee Hansard*, 6 April 2016, p. 56.

the state government has now done is that the fabrication of steel will also be certified by the National Structural Steelwork Compliance Scheme. Again, it is available to other businesses overseas so we do not interfere with any free trade agreement issues, but it will assure the government that the fabricators that are delivering on government projects are delivering on a fair and competitive basis.⁶⁹

4.73 The Australian Steel Institute recommended that as a first step compliance with Australian standards be made compulsory to resolve the current problems caused by inconsistent standards requirements:

The implementation of a system that requires the supplier and all stakeholders in the construction chain to ensure that the products that they are selling are certified to comply with relevant standards and fit-for-purpose responsibilities within their scope will be good for Australia.⁷⁰

4.74 They further outlined that they believe that 'for specific identified products or processes (such as welding, galvanizing and painting)', standards certification is not sufficient, and:

...there should also be conformance testing—that is, a regime that tests whether Australian standards are in fact being met by product supplied and being used for a particular project.⁷¹

4.75 The WTIA also proposed that regulation be introduced 'to ensure that all fabricated steel manufactured locally or imported in Australia is fit for purpose by subjecting it to conformity assessment'. They expressed their willingness 'to ensure compliance to the proposed regulation by introducing a risk-based industry managed scheme through a suitably accredited third party compliance organisation'. They further suggested that compliance certificates be 'lodged on a national database'.⁷²

Senior Officers' Group on non-conforming building products

4.76 On 31 July 2015, the Building Ministers' Forum (a ministerial-level body consisting of Commonwealth, State and Territory Ministers responsible for building and construction industries) established a Senior Officers' Group (SOG) 'to investigate and develop a national strategic response to the issues of non-conforming building products' (NCBPs).⁷³

69 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 19.

70 Australian Steel Institute, *Submission 19*, p. 33.

71 Australian Steel Institute, *Submission 19*, p. 35.

72 Welding Technology Institute of Australia, *Submission 40*, p. 1.

73 Department of Industry, Innovation and Science, *Building and construction*, <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx> (accessed 29 September 2017). The SOG consists of senior officers from the Department of Industry, Innovation and Science and each State and Territory building regulator.

4.77 The SOG released its *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products* in September 2017, including a number of recommendations relevant to this inquiry. These recommendations included the following:

- Improve 'the regulatory framework to enhance the powers of building regulators to respond to incidents of NCBPs e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing'⁷⁴
- Establish 'a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions'⁷⁵
- Improve 'collaboration between building and consumer law regulators and consistency in the application of the "false and misleading claims" aspect of the Australian Consumer Law'⁷⁶
- Develop 'a "one-stop-shop" national website to provide a single point of information for consumers and building product supply chain participants, including examining arrangements for hosting and maintaining a website'⁷⁷
- Develop 'mechanisms that ensure that, where all states and territories prohibit the use of a NCBP, evidence is provided to the Commonwealth enabling proportionate action to be taken based on the risk posed by the product'⁷⁸
- Implement 'an information sharing arrangement where import data collected by the Department of Immigration and Border Protection can be provided to state and territory regulators to facilitate compliance and enforcement activities for NCBPs'⁷⁹
- Initiate 'a review, with the ABCB [Australian Building Codes Board] and Standards Australia, of Australian Standards related to high risk building products referenced under the NCC [National Construction Code], including

74 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 2, p. 3.

75 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 3B, p. 5.

76 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 2, p. 3.

77 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 3D, p. 6.

78 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 4A, p. 7.

79 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 4B, p. 7.

assessing the costs and benefits of mandating third party certification and establishing a national register for these products.⁸⁰

Committee view

4.78 The committee recognises that Australia is obligated, under its commitment to the World Trade Organisation's TBT agreement, not to prepare, adopt or apply technical regulations with the intention or effect of creating obstacles to international trade, beyond those necessary to avoid particular risks.

4.79 However, the committee considers that the current system, in which Australian fabricated steel generally is required to conform to Australian standards while imported steel often is not, has created an unequal playing field that has negatively impacted the Australian steel industry, in terms of both product safety and cost competitiveness.

4.80 This inquiry and other Senate inquiries have received evidence indicating that some imported products pose a considerable safety risk because they do not comply with Australian standards, or their certification certificates stating compliance are fraudulent.

4.81 Without a clear and enforceable requirement to adhere to Australian standards or to provide evidence of third-party certification, companies may cut corners and choose the cheapest methods to produce and supply steel.

4.82 Evidence provided to this inquiry demonstrates that a number of third party certification schemes to Australian standards operate globally, meaning that foreign companies providing steel to Australian markets are able to obtain this certification. The TBT allows space for technical regulations aimed to protect human health or safety, and third party certification schemes exist that would not preclude foreign companies from obtaining certification meeting Australian standards.

4.83 The committee notes the recent recommendation of the SOG group to initiate a review of Australian Standards related to high risk building products. This review would assess the costs and benefits of mandating third party certification, and look to establish a national register for these products.

4.84 The committee is of the view that the government should also investigate the possibility of making third-party certification of steel, where relevant standards are available, compulsory for structural and fabricated steel used in Australia.

Recommendation 2

4.85 The committee recommends that the Australian Government investigate the possibility of making third-party certification of steel compulsory for structural and fabricated steel used in Australia where relevant standards are available.

80 Senior Officers' Group, *Implementation Plan: Strategies to Address Risks Related to Non-Conforming Building Products*, September 2017, Recommendation 5, p. 8.

4.86 The committee is also concerned about the impact on the steel industry of inconsistencies and differing standards regimes across jurisdictions. As such, the committee considers that the Commonwealth Government should continue to encourage state and territory governments to apply consistent standards across jurisdictions and different regulatory bodies.

Recommendation 3

4.87 The committee recommends that the Australian Government work with the states and territories to improve consistency in standards between different Australian jurisdictions and regulatory bodies, with a view to harmonising current standards requirements.

4.88 The committee notes that recommendations arising from the Senate inquiry into non-conforming building products are yet to be finalised. Dependent upon these recommendations, the committee further supports the recommendation from the SOG that mechanisms be developed to ensure that evidence is provided to the Commonwealth about non-conforming building products, including steel, and proportionate action is taken based on the risk posed by the product. Currently, reporting mechanisms are available through the Australian Building Codes Board, but submitters must provide various forms of identifying information. The committee is of the view that there should be an option for confidential reporting so that businesses are not accused of breaching contracts.

Recommendation 4

4.89 Subject to forthcoming recommendations from the Senate inquiry into non-conforming building products, the committee recommends that the Australian Government develop a confidential reporting mechanism through which industry and other stakeholders can report non-conforming steel products so that the Commonwealth Federal Safety Commissioner can take proportionate action based on the safety risk posed by the product.

4.90 Given the considerable gaps in the current regulatory framework, including lack of clarity surrounding what can be done once non-conforming steel is discovered and reported, the committee is of the opinion that a clearer regulatory framework should be developed that could include stricter penalties for non-conforming steel products. The Australian Government should consider compiling a database of these products, sharing this information with state and territory regulators, and implementing temporary bans on companies exporting non-conforming or fraudulently certified steel products to Australia.

4.91 The committee commends the recommendation of the SOG that a 'one-stop-shop' national website be established as a single point of information for consumers and building product supply chain participants, and notes that the Australian Building Codes Board now performs this function. However, this website does not provide steel-specific information.

Recommendation 5

4.92 Subject to forthcoming recommendations from the Senate inquiry into non-conforming building products, the committee recommends that the

Australian Government develop a clearer regulatory framework to deal with non-conforming steel products, with consideration given to stricter penalties for non-conforming products or products found to have fraudulent certifications, and the development of a public database of these products and their origin.

4.93 This inquiry heard that very little inspection of suspected non-conforming steel products takes place, partly because inspectors lack qualifications and partly because of the cost involved. The committee considers that the establishment of a confidential reporting system and a public database may not be enough to identify non-conforming steel posing a considerable safety risk.

4.94 Therefore, the committee proposes that the government convene a national steel forum consisting of representatives from industry, government and other stakeholders to investigate the possibility of establishing and funding an industry-managed steel compliance scheme that involves random independent conformity inspections.

Recommendation 6

4.95 The committee recommends that the Australian Government convene a national steel forum comprised of representatives from industry, government and other stakeholders to investigate the possibility of establishing and funding an industry-managed steel compliance scheme that involves random independent conformity inspections.

Chapter 5

Government Procurement

5.1 This chapter outlines the Australian Government's current procurement frameworks and policies in relation to steel, and details issues raised by inquiry participants regarding past and current procurement policies.

5.2 The chapter focuses on issues raised that have not been addressed in the recent revisions to the Commonwealth Procurement Rules, which came into effect on 1 March 2017, and ends with a committee view and recommendations to address aspects of current government procurement policies that continue to disadvantage the Australian steel industry. It should be noted that much of the evidence that this inquiry received related to a previous iteration of the Commonwealth Procurement Rules.

5.3 A number of other recent parliamentary inquiries have considered or are considering the issue of government procurement and local content, including the Joint Select Committee on Government Procurement, which tabled its final report in June 2017; and this committee's ongoing inquiry into the future of Australia's naval shipbuilding industry, which is due to report in June 2018. As appropriate, evidence received and findings made in these inquiries are referred to throughout this chapter.

Current Commonwealth Procurement Rules

5.4 A number of the current Commonwealth Procurement Rules (CPRs) are relevant to the Australian steel industry and set out below.

5.5 Much of the evidence that this inquiry received concerned previous provisions of the Commonwealth Procurement Rules that were in effect from July 2014. These were replaced in March 2017 by the amended current CPRs.¹

5.6 The current CPRs require governments to take into account a range of financial and non-financial costs in making procurement decisions, including quality, fitness for purpose, the supplier's experience and performance, environmental sustainability and whole-of-life costs.

5.7 However, Division 2 of the current CPRs sets financial thresholds at which additional requirements apply for larger projects. These include: the requirement that tender responses demonstrate the capability for goods to meet an Australian standard; the requirement that relevant entities make reasonable inquiries to determine compliance with a standard; and the requirement for Commonwealth officials to take into account economic benefit to the Australian economy for procurements above \$4 million.²

1 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 4.5.

2 Department of Finance, *Commonwealth Procurement Rules*, 1 March 2017, clause 10.10 (emphasis in original), clause 10.30 and clause 10.37.

5.8 The 2017 CPRs stipulate that '[a]ll potential suppliers to government **must**...be treated equitably...and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods and services'.³

Other government procurement policies and instruments

5.9 The Commonwealth Government has a number of other policies and legislative instruments related to government procurement. This inquiry also received evidence outlining the procurement policies of South Australia and Victoria and recommendations that Commonwealth procurement adopt some of these principles. These are outlined below because a number of their features are now evident in the 2017 CPRs.

Australian Industry Participation Framework

5.10 The Australian Industry Participation framework and policies are intended to provide opportunities for Australian industry to compete for or take part in major private and public projects. As the Department of Industry, Innovation and Science (Department of Industry) in its submission explained, the 'key objective of AIP policy is that Australian industry should have full, fair and reasonable opportunity to supply goods and services to major projects'.⁴

5.11 Since the commencement of the *Australian Jobs Act 2013* in December 2013, 'proponents of major private and public projects (\$500 million and above)' have been required to develop and implement AIP Plans ensuring 'full, fair and reasonable opportunity for Australian entities to supply key goods and services'.⁵

5.12 Since 2010, the Australian Government has required that tenderers for government procurements of \$20 million or above develop AIP Plans, including, from 2012, Commonwealth funded infrastructure projects. The Department of Industry explained that AIP plans:

...outline the actions a tenderer will take to provide Australian suppliers, especially small and medium enterprises, with full, fair and reasonable opportunities to supply goods and services on a project.⁶

5.13 In February 2017, the Department of Industry noted that the government is currently working with states and territories to review the Australian Industry Participation National Framework. The review is considering 'opportunities for greater consistency of industry participation requirements between jurisdictions and better information sharing and reporting of outcomes for Australian industry'.⁷

3 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 5.3 (emphasis in original).

4 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

5 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

6 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

7 Department of Industry, Innovation and Science, *Submission 41*, p. 4.

5.14 Australian states and territories also have industry participation policies to assist local businesses to compete for private and public projects. These include, for example, the Victorian Industry Participation Policy, outlined below.

Code for the Tendering and Performance of Building Work 2016

5.15 The *Code for the Tendering and Performance of Building Work 2016* (the Code), which applies to steel used in building work, requires all new tenders for Commonwealth-funded work to provide information on: the extent to which Australian sourced and manufactured building materials will be used; whether the building materials comply with Australian standards; the impact of the project on jobs; whether the project will contribute to skills growth; and the whole-of-life costs of the project.⁸

5.16 The Code requires Commonwealth funding entities to only enter a building contract 'with a code covered business...where that business uses products in building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia'.⁹

5.17 The Code's model clauses for work directly funded by the Commonwealth require tenderers to acknowledge that they will comply with the Code and ensure that their subcontractors do so. Tenderers also must declare that they will only enter into a subcontract in which 'the subcontractor undertakes to only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia'.¹⁰

5.18 The Code is an important instrument for government procurement, but the question of who holds responsibility for the enforcement of compliance with the Code is yet to be determined.

South Australian Government procurement policies

5.19 The committee received evidence outlining the procurement policy of South Australia, aspects of which have been adopted in the 2017 CPRs. The South Australian procurement policy, notably, requires reinforcing and structural steel used in projects that the South Australian Government funds to:

...fully meet the requirements of the relevant Australian Standards. Steelwork procured for public projects must be supplied by independently-verified fabricators who are capable of meeting required standards to ensure its quality and safety.¹¹

8 Department of Industry, Innovation and Science, *Submission 41*, p. 4.

9 Department of Industry, Innovation and Science, *Submission 41*, p. 4.

10 Australian Building and Construction Commission, *Code for the Tendering and Performance of Commonwealth Funded Building Work 2016: Funding Entity Model Clauses: Directly Commonwealth Funded Building Work*, 1 September 2017, https://www.abcc.gov.au/sites/g/files/net2406/f/funding_entity_clauses_1_september_2017.pdf (accessed 24 November 2017).

11 Government of South Australia, *Submission 44*, p. 8.

5.20 The South Australian Government also has a Steel Economic Participation Policy, requiring 'tenderers to commit, through an Industry Participation Plan, to the level of economic benefit the State can expect to receive from packages of work under the contract'.¹²

5.21 South Australia's Steel Task Force was given responsibility for 'the coordination of action across government to give Arrium's mining, smelting and manufacturing operations in and around Whyalla every chance to thrive'.¹³ This has included working with South Australia's Industry Participation Advocate 'to establish a third party audit, to ensure State Government projects use certified Australian standard steel'.¹⁴

5.22 The South Australian Government's *Support Our Steel* website also outlines its steel industry participation initiative, which states that it aims:

...to ensure all South Australian Government projects include contract conditions specifying that:

- Steel must be sourced from mills with Australasian Certification Authority for Reinforcing and Structural Steel (ACRS) third party certification.
- Steelwork must be sourced from steel fabricators independently certified to the recently created National Structural Steelwork Compliance Scheme.¹⁵

5.23 The South Australian Industry Advocate, Mr Ian Nightingale, advised that the reason the South Australian Government had selected ACRS third party certification was because this body provides accreditation to foreign steel mills, thereby not interfering with Australia's trade obligations, and because of the number of audits that ACRS carries out.¹⁶

5.24 Mr Nightingale outlined that the South Australian Government provides financial assistance to steel fabricating businesses so that they can quickly obtain certification and apply for government contracts. He also gave more detail about the South Australian Government's planned third-party audit for 12 months to ensure that contractors are meeting the obligations of their contracts, 'right through from where the steel is being sourced from – is it an ACRS accredited mill? – to the documentation around the steel certification'. This audit would examine a random

12 Government of South Australia, *Submission 44*, p. 8.

13 Government of South Australia, *Steel Task Force*, <http://supportoursteel.com/steel-task-force/> (accessed 6 October 2017).

14 Government of South Australia, *Industry Advocate*, <http://supportoursteel.com/industry-advocate/> (accessed 6 October 2017).

15 Government of South Australia, *Industry Advocate*, <http://supportoursteel.com/industry-advocate/> (accessed 6 October 2017).

16 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 22.

sample of state government projects, followed by investigations of breaches of contract if necessary.¹⁷

5.25 Mr Nightingale explained that the specific approach the South Australian Government takes to defining 'economic value' in procurement involves measuring economic value in terms of 'labour, capital investment and supply inputs'.¹⁸ This means making a distinction between economic benefit and price.¹⁹ He further noted three key elements in the state's industry participation policy: looking at labour issues (for example, employment and where that employment is sourced from); where the supply inputs come from (in this case, steel and the components to the steel); and the capital investment to the state.²⁰

5.26 The Industry Advocate has the power to intervene, Mr Nightingale advised the committee, if there is 'a deviation from the commitments made to the particular tender and when those industry participation plans were assessed'.²¹

5.27 A number of submitters and witnesses to this inquiry emphasised the benefits of the South Australian Government's procurement policies and the positive effects of the Industry Advocate on the South Australian steel industry. For example, the Executive General Manager of Steel Manufacturing and Integration, Arrium Mining and Materials, told the committee that:

the South Australian and Victorian governments...have engaged us very early on projects, and we have been able to work very successfully to maximise local content. It is a benefit to our company, but it is also of tremendous benefit, and has a multiplier effect, to the economy and to federal and state governments.²²

Victorian Government procurement policies

5.28 Some evidence provided to the committee also drew attention to aspects of the Victorian Government's procurement policies that have positively impacted the steel industry. The Victorian Industry Participation Policy for small and medium-sized enterprises (SMEs) sets minimum local content requirements and other conditions,

17 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 19.

18 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 18.

19 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 23.

20 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 18.

21 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 18.

22 Mr Neil Gibson, Executive General Manager, Steel Manufacturing and Integration, Arrium Mining and Materials, *Committee Hansard*, 6 April 2016, p. 32.

determined on a case-by-case basis, for government procurements valued at \$50 million or more.²³

5.29 In some instances, minimum local content requirements have been applied to steel used in Victorian Government projects. The Victorian Government has provided reassurances that its policy framework meets its obligations under Free Trade Agreements.²⁴

5.30 A representative of the Australian Workers' Union highlighted how the Victorian Government had mandated Australian-manufactured steel in some projects:

[I]n Victoria...they are using Australian-manufactured, Australian-made, steel 100 per cent on the rail crossings. A minimum of 86 per cent local content has been used on their projects. That has assisted the construction and manufacturing industry in Victoria that has been suffering, has been going downhill...We would encourage whatever level of government in whatever state to certainly look at what is happening in Victoria and build on it. It is a good thing.²⁵

Issues raised about government procurement

5.31 Submitters and witnesses to the inquiry raised a number of issues that have not been addressed directly by the 2017 amendments to the CPRs. These included calls for government procurement to explicitly favour Australian steel; for all steel used in Defence contracts to only include local content; competitive neutrality; a lower threshold in Australian Industry Participation Plans; consistency across jurisdictions; monitoring of conformance; and accreditation showing commitment to environmental sustainability.

Policies to preference Australian steel

5.32 Mr Michael Zelinsky from the Australian Workers' Union highlighted that more than half of government spending on steel goes to overseas producers:

The net impact has been that basically we are under 50 per cent [that is Australian steel] in terms of overall procurement in this country. In terms of

23 Australian Steel Institute, *Submission 19*, p. 30; Australian Workers' Union, *Submission 25*, p. 21; Department of Economic Development, Jobs, Transport and Resources, *Victorian Industry Participation Policy: Local Jobs First*, https://economicdevelopment.vic.gov.au/victorian-industry-participation-policy#utm_source=economicdevelopment-vic-gov-au&utm_medium=vanity-url-301ssredirect&utm_content=vipp&utm_campaign=/victorian-industry-participation-policy (accessed 24 November 2017).

24 Victorian Government Department of Economic Development, Jobs, Transport and Resources, *Victorian Industry Participation Policy Annual Report 2014–15*, November 2015, p. 6.

25 Mr Wayne Phillips, Branch Secretary, The Australian Workers Union, *Committee Hansard*, 1 April 2016, p. 24.

government spending on steel, less than half of every dollar goes to an Australian producer.²⁶

5.33 The Australian Steel Institute in its submission suggested that the future of the Australian steel industry depended on the domestic market:

For the Australian steel industry to remain viable and profitable, it firstly needs to produce at (or near) capacity and secondly sell as much of its product as possible into the domestic market and sell less into the less profitable (or often unprofitable) export markets where global oversupply has pushed down prices and margins.²⁷

5.34 A number of submitters and witnesses argued that the government should explicitly preference Australian produced steel in its procurement policies so as to increase domestic demand for Australian steel.²⁸

5.35 Mr Geoff Crittenden from the Welding Technology Institute of Australia told the committee that '[w]e would like to see a positive procurement plan that favoured Australian steel and Australian fabricators'.²⁹

5.36 Several witnesses and submitters drew on a report by BIS Shrapnel, commissioned by the Australian Workers' Union, to highlight the positive effects of a government procurement policy that would favour domestic steel. For example, Mr Wayne Phillips from the Australian Workers' Union stated:

...through the BIS Shrapnel report we call on the government for a 90 per cent mandated use—or some other terminology—of Australian steel products in government funded projects. The report clearly indicates to us that that would secure our industry—us and Arrium—in this country and globally. We do not accept that the [World Trade Organisation] blocks that. Currently, we have a Victorian government who has mandated the use of 100 per cent local product for their level train crossings.³⁰

5.37 The BIS Shrapnel report noted an increase in the five years prior to 2015 in the use of imported steel in publicly funded projects:

Over the past five years, the share of imported steel in publicly funded projects has increased steadily from 45 per cent in 2009/10 to 51 per cent in 2014/15, an average increase of 1 per cent per annum. If this trend

26 Mr Michael (Misha) Zelinsky, National Vice President, Australian Workers' Union, *Committee Hansard*, 6 April 2016, p. 15.

27 Australian Steel Institute, *Submission 19*, p. 9, citing a BIS Shrapnel report provided to the committee by the Australian Workers' Union as *Submission 25.1*.

28 For example, Australian Workers' Union, *Submission 25*, p. 5; Australian Manufacturing Workers' Union, *Submission 27*, p. 8.

29 Mr Geoff Crittenden, Chief Executive Officer, Welding Technology Institute of Australia, *Committee Hansard*, 6 April 2016, p. 38. See also Mr Nicholas John, Chief Executive Officer, ICE Engineering and Construction Pty Ltd, *Committee Hansard*, 5 April 2016, p. 2.

30 Mr Wayne Phillips, Branch Secretary, Australian Workers' Union, *Committee Hansard*, 1 April 2016, p. 18.

continues, then the share of imports will increase to 57 per cent by 2019/20 meaning that the proportion of domestically sourced steel will fall to 43 per cent.³¹

5.38 BIS Shrapnel proposed 'a procurement policy which aims to have at least 85 [per cent] to 90 [per cent] of local steel in all publically funded projects', and outlined that a local steel content policy involving 90 per cent of local steel content would cost 'an average of \$61 to 80 million annually in extra costs to the public sector', while adding 'a cumulative \$1.3 billion to real GDP over the next five years'.³²

5.39 The same report estimated that such a policy would lead to an increase in domestic steel used in publically funded projects from the 2014/15 annual volume of 633kt to 1514kt, worth around \$989 million in steel sales. It argued that the extra tonnages in public sector construction would enable Arrium and BlueScope to remain open.³³

5.40 On the other hand, the committee also received evidence arguing against mandated local content. Mr Mark Vassella from BlueScope Australia and New Zealand agreed that domestic steel should be used in government procurement, but highlighted that any such policy would be limited by Australia's obligations to the World Trade Organisation (WTO):

We absolutely support the use of domestic steel—that is vitally important for us. Our view is that it is difficult to have mandated percentages, particularly in relation to the WTO requirements. Any policies that reflect competitive neutrality and take into account the value of domestic manufacturing—those domestic tonnes are vitally important to our business, but we have not gone as far as suggesting mandated percentages, because of the challenges we think that brings governments.³⁴

5.41 Best Bar Reinforcements was strongly against a policy that would prevent any company using imported steel tendering for government projects, arguing:

[T]his would essentially hand OneSteel and BlueScope a regional monopoly in supply of steel for government projects...OneSteel and BlueScope do not produce goods that compete [domestically], so essentially such a requirement would mean that there is no competition for government tenders in the relevant state. The cost of infrastructure projects would increase significantly because, in the absence of any other suppliers, BlueScope and Arrium would be able to win tenders at any price they named.

While this may assist BlueScope and Arrium, it would cause significant injury to the rest of Australia's steel industry, as well as the tax payers who

31 BIS Shrapnel, *Submission 25.1*, p. iii.

32 BIS Shrapnel, *Submission 25.1*, p. i.

33 BIS Shrapnel, *Submission 25.1*, p. ii.

34 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, BlueScope, *Committee Hansard*, 1 April 2016, p. 7.

fund the infrastructure projects. Additionally, such a policy would run the serious risk of breaching the State's obligation not to enter into contracts or arrangements if to do so would have the effect of seriously lessening competition.³⁵

5.42 On the question of whether AIP Plans could be used to increase the use of Australian steel in government contracts, a representative from the Department of Industry stated: 'I think the answer is a fairly clear no, under a provision for the AIP framework being restricted to a full, fair and reasonable opportunity to compete and bid for work'.³⁶

5.43 The Department of Industry in its submission outlined that the AIP Framework does not have mandated minimum local content and is subject to Australia's international trade obligations:

The [AIP National] Framework does not mandate a minimum level of Australian content and Australian suppliers must be competitive in terms of price, schedule and capability to be considered for contract award. Activities under the Framework are consistent with Australia's international obligations, including those under the World Trade Organisation and Free Trade Agreements.³⁷

International obligations

5.44 Australia has a range of specific obligations regarding government procurement practices under a number of international agreements. To the extent these obligations may be relevant to the current Australian Government procurement framework in relation to steel, or to any potential changes to that framework, they are set out below.

5.45 While not yet a signatory, Australia is an observer to the WTO Agreement on Government Procurement (GPA). In September 2015, Australia presented an initial accession offer to the WTO Committee on Government Procurement to become a party to the GPA. As of November 2017, Australia had presented its second revised offer to the Committee but had not yet become a party.³⁸

5.46 Should Australia become party to the GPA, it will be obligated to base its procurement policies on the principles of transparency and non-discrimination, as is

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

36 Dr Gary Richards, General Manager, Advanced Technologies Branch, Department of Industry, Innovation and Science, *Committee Hansard*, 6 April 2016, p. 63.

37 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

38 Department of Foreign Affairs and Trade, *WTO Agreement on Government Procurement (GPA)*, August 11 2017, <http://dfat.gov.au/international-relations/international-organisations/wto/Pages/wto-agreement-on-government-procurement.aspx> (accessed 5 October 2017).

the case in Australia's FTAs, and for foreign parties to the GPA tendering for government contracts be treated equally in government procurement.³⁹

5.47 Currently, Australia maintains exemptions in all free trade agreements, including exemptions for defence and for SMEs. For example, the Australia-United States Free Trade Agreement may allow government procurement policies to preference SMEs.⁴⁰

5.48 However, the Joint Standing Committee on Government Procurement in its inquiry into 2017 Commonwealth Procurement Rules heard evidence expressing concern that by acceding to the GPA, Australia could risk losing its current flexibility to exempt SMEs and support local suppliers in government procurement policies.⁴¹

5.49 Similarly, under the Australia and New Zealand Government Procurement Agreement (ANZGPA), the Commonwealth, states and territories are required to treat New Zealand suppliers on an equal basis to Australian suppliers in making procurement decisions, and vice versa.⁴² The ANZGPA states that value for money should be the primary determinant in all procurement decisions.⁴³

5.50 Australia is also a party to free-trade agreements (FTAs) that include procurement commitments with Singapore, the United States, Chile, Korea and Japan. While Australia's current FTAs with Thailand and China currently do not include government procurement commitments, they allow for the possibility of future negotiations to include government procurement.⁴⁴

Defence procurement to only use local content

5.51 Some of the evidence taken by the committee stressed the importance of steel to the Australian defence industry, and questioned why local content is not mandated in Defence contracts, given relevant exemptions in our trade agreements. Mr Zelinsky from the AWU noted that some countries have legislated that only local steel can be used in Defence contracts:

That lever, the procurement lever, is there for every government around the world, so it comes down to how hard or how vigorously each government wants to pull that lever. The American government makes it very clear in the Buy American Act. I think what is also interesting within that is the so-called Berry amendment, which says if it is for a defence contract it has

39 Department of Foreign Affairs and Trade, *WTO Agreement on Government Procurement (GPA)*, August 11 2017; World Trade Organisation Agreement on Government Procurement, Article IV(1).

40 Australian Steel Institute, *Submission 19*, p. 17.

41 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, pp. 89–90.

42 Australia and New Zealand Government Procurement Agreement, September 2013, Article 4.

43 Australia and New Zealand Government Procurement Agreement, September 2013, Article 2.

44 Department of Foreign Affairs and Trade, *Submission 25* to the Joint Standing Committee on Government Procurement, p. 2.

to be 100 per cent American produced steel. We are having a very large debate at the moment around submarine contracts and around various other maritime acquisitions in our Navy. There is going to be a lot of steel used in that. Some form of Berry amendment in the Australian legislative procurement mechanisms would be very welcome.⁴⁵

5.52 The South Australian Industry Participation Advocate also mentioned this issue in his evidence, stating that in the United States, '[t]here is a clear piece of legislation that affects that 100 per cent [American] steel for Defence contracts and that may be something that the Australian Government needs to consider'.⁴⁶

5.53 The BIS Shrapnel report highlighted the Buy American Act and the benefits that a local steel content policy in Defence contracts would bring to the domestic industry:

If these projects were also subject to a local steel content policy, then there is upside to the above tonnages from the construction sector. It should be noted that under the US 'Buy American Act', the Berry Amendment requires certain purchases to be 100% American in origin. If the Commonwealth aimed for a high level content for Australian defence expenditure, it would have significant benefits, to not only the steel sector, but other suppliers. If the next round of submarines are built in Australia, and further major defence projects are undertaken, then a local content policy would realise further tonnages for domestic steelmakers.⁴⁷

5.54 The Whyalla Branch Representative of the Australian Workers' Union also contended:

Part of our mantra here is that Defence spending should be looking at Aussie steel as well. If you are spending money on Aussie defensive devices, and they need steel to be made, I do not see what reason you could come up with to give it to another country to supply other workers with work and to bring the steel back into the country and use it here. It is crazy to me.⁴⁸

5.55 The Australian Manufacturing Workers' Union highlighted the risks of relying on imported steel in the defence industry, arguing that 'complete reliance on imported steel for the nation's defence industry represents an existential threat in any scenario where the defence forces are called upon to defend Australia'.⁴⁹

45 Mr Michael (Misha) Zelinsky, National Vice President, Australian Workers' Union, *Committee Hansard*, 6 April 2016, p. 24.

46 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 24.

47 BIS Shrapnel, *Submission 25.1*, p. 14.

48 Mr Scott Andrew Martin, Branch Organiser, Australian Workers' Union, *Committee Hansard*, 5 April 2016, p. 16.

49 Australian Manufacturing Workers' Union, *Submission 27*, p. 3.

5.56 Currently, Australian Industry Capability plans are required for Defence procurements above \$20 million or where procurements will impact Sovereign Industrial Capabilities. The Australian Industry Capability Program under the Department of Defence does not mandate local content. However, its stated aims include providing 'opportunities for Australian companies to compete on merit for defence work within Australia and overseas'.⁵⁰

5.57 The issue of local content in Australia's naval shipbuilding industry has been taken up by the Senate inquiry into the future of Australia's naval shipbuilding industry, due to report in June 2018.

Competitive neutrality

5.58 The committee heard that Australian businesses often incur additional costs than some of their international competitors because they may operate in a stricter regulatory environment. The Chief Executive of the Australian Steel Institute outlined some of the areas that may cause competitive disadvantage:

I want to understand the disadvantages that [the Australian steel industry] has vis-a-vis some of its international competitors, because they do not face any of those issues. It is twofold. The international players get subsidies on land, they are state owned and they get support around power and support around all sorts of issues. Our businesses here have higher levels of standards to meet around occupational health and safety, the environment and payroll tax. We do not argue they should not be there; we think, in a sophisticated developing economy, we want that, but we want it reflected in the way we do our procurement that the people they compete with compete on a level playing field.⁵¹

5.59 The Chief Executive of BlueScope Australia and New Zealand proposed that the principle of competitive neutrality between Australian and foreign businesses be incorporated into government procurement policies to counter this competitive disadvantage:

Major employers such as BlueScope are at a competitive disadvantage with overseas competitors, due to inefficient state taxes, such as payroll tax, and high costs that reduce our competitiveness. This added cost puts us at a competitive disadvantage, especially when we are bidding for government funded infrastructure projects. We would like to see competitive neutrality with foreign suppliers so that when governments are making decisions on local content our higher cost base is taken into account.⁵²

50 Department of Defence, *Australian Industry Capability Program*, <http://www.defence.gov.au/SPI/Industry/AIC.asp> (accessed 10 October 2017).

51 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 8.

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

5.60 The Department of Industry in its submission emphasised its commitment to creating an environment in which Australian businesses are given equal opportunities to tender:

The Australian Government supports an open market economy as the best way to generate investment and employment, and is committed to fostering an environment where Australian businesses have equal opportunities to bid for work on major Australian public and private projects and be evaluated on the merits of their offerings, consistent with Australia's international trade obligations.⁵³

5.61 The Department of Industry drew attention to particular advantages that Australian plants have over international competitors, but also acknowledged the need for further examination of areas that add to domestic costs:

Australian plants appear to have some advantage in terms of raw materials cost for crude steel production...the drivers of labour and overhead costs, and their impacts on cumulative stage costs, are areas that require further investigation.⁵⁴

5.62 It should be noted that the 2017 CPRs explicitly state that environmental sustainability is to be taken into account in procurement decisions.⁵⁵

Lower threshold in Australian Industry Participation Plans

5.63 Some evidence in this inquiry called for a lower threshold for projects to qualify for AIP Plans.⁵⁶ For example, the Australian Steel Institute argued that:

The current threshold of \$500m for a project to qualify for an Australian Industry Participation Plan is too high. This threshold was set amidst the mining boom with \$400b of projects in the pipeline. This threshold should be reduced to a more realistic figure like \$200m.⁵⁷

5.64 Evidence from representatives of the Australian Steel Institute further outlined why, in their opinion, the current threshold for AIP Plans is too high:

...the threshold was set when we had the mining boom...There were \$450 billion worth of projects in the pipeline and that was carved up to say you needed 60 people to maintain all these 60 projects that were coming online. We are living in a different completely different project environment.⁵⁸

The biggest spend going forward is going to be infrastructure and the government funded infrastructure, particularly driving the infrastructure needs right across the country and there have been some good initiatives as

53 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

54 Department of Industry, Innovation and Science, *Submission 18*, p. 27.

55 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 4.5.

56 Mr Stephen Young, Managing Director, E&A Ltd, *Committee Hansard*, 5 April 2016, p. 35;

57 Australian Steel Institute, *Submission 19*, p. 7.

58 Mr Ian Cairns, National Manager, Industry Development and Government Relations, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 4.

part of that. That, to my best estimate, is going to be under \$200 million so the demand curve is significantly lower.⁵⁹

5.65 The Australian Industry Group also proposed that 'a lower threshold than \$500 million should apply, supported by effective monitoring and compliance'. They also urged 'continuing disclosure and greater transparency of the extent of local participation in major projects'.⁶⁰

5.66 Mr Travis Wacey from the Construction, Forestry, Mining and Energy Union suggested that AIP Plans should expressly take into account not just financial cost, but also social, economic and environmental costs:

[The Jobs Act] was ultimately about providing for the full, fair and reasonable participation of Australian industry in not just government projects but private sector projects above a certain threshold—my recollection is that it was \$500 million. Part of that element should be to ensure that providing that full, fair and reasonable participation takes into account the social, economic and environmental costs, not just the price tag.⁶¹

5.67 In its submission, the Department of Industry acknowledged a decrease in recent years in the number of large projects, but argued that projects below the threshold still provided opportunities for the involvement of local businesses:

Since 2013 there has been a reduction in major project activity particularly in the resources sector and an increase in government funded infrastructure projects. Many of these new projects fall below the \$500 million threshold but still present opportunities for local industry involvement. Increasingly, communities are looking to such projects to provide economic growth, particularly in regional areas. Proponents in the resources sector have long recognised the need for a social licence to operate from local communities and a large part of this is achieved through the provision of jobs and opportunities to supply goods and services for a project.⁶²

Consistency across jurisdictions

5.68 The Australian Industry Group called for consistency across jurisdictions, proposing in its submission that 'Procurement agencies at all levels of Government – Commonwealth, State and Territories commit to a consistent approach to purchasing steel product certified to internationally aligned Australian Standards'.⁶³

59 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 4.

60 Australian Industry Group, *Submission 10*, p. 7.

61 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. 16.

62 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

63 Australian Industry Group, *Submission 10*, p. 8.

5.69 The Council of Australian Governments in its Communique on 9 June 2017 stated its agreement on the important role of governments in ensuring the future of the Australian steel industry:

Leaders further agreed that governments have an important role to play in ensuring our funded infrastructure projects use Australian steel and that Australian steel products are not discriminated against in procurement processes.⁶⁴

5.70 The issue of consistency in standards across states and territories was broadly discussed in chapter 4.

Conformance by subcontractors to be monitored and enforced

5.71 The committee heard concerns expressed about the level of monitoring of subcontracting in government projects. For example, Mr Ian Waters, who appeared on behalf of 63 businesses, gave an example of:

...a project that had New South Wales government money in it...It was not totally their project, but it had significant New South Wales government money in it. It was one of those public-private partnerships. This project had a lot of tonnes of steel, the equivalent of 1,000 semitrailers of steel lined up one after the other...A contractor paid by our state government issued specifications for the steel, and the guidance notes in those specifications said, 'For this project, structural steel is intended to be sourced from imported materials and fabricated outside Australia'. And we have found other examples where that is the case.⁶⁵

5.72 In their submission, the same 63 businesses outlined this issue in greater detail and argued that subcontracting of government contracts may lead to safety concerns if these are not properly regulated:

Businesses in our group who are intimately involved with fabrication and steelmaking have observed that the NSW and other Governments' implementation of large Infrastructure projects involves 'handing over' the responsibility of procurement to the tier 1 Contractors. This 'handing over' includes every aspect of the procurement including price, delivery, decision on who the supplier is and most importantly – quality...We have no issue with Contractors engaging whoever they wish – from any country in the world – as partners. This is a normal business decision. We do have an issue though with the NSW and other Governments' management of some contractors where the financial need of the contractor to get the cheapest price/support their partner overrides the need of the taxpayer to have safe structures erected and the need of hundreds of fabricators and the two steelmakers in the nation to survive.⁶⁶

64 Council of Australian Governments, COAG meeting Communiqué, 9 June 2017, <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communicue-9-june-2017> (accessed 4 October 2017).

65 Mr Ian Waters, on behalf of 63 businesses, *Committee Hansard*, 6 April 2016, p. 50.

66 Joint submission from 63 Australian businesses, *Submission 31*, p. 9.

5.73 The committee notes that this issue informed one of the recommendations (4) made by the Joint Select Committee on Government Procurement in its inquiry into the new CPRs. Specifically, the report recommended that 'good procurement practices are implemented down through the supply chain so that both prime and subcontractors:

- Implement best practice terms and conditions; and
- Are contractually obligated to report on those terms and conditions'.⁶⁷

5.74 The committee also notes that the government recently rejected this recommendation in its response to the inquiry's report.⁶⁸

5.75 The Department of Industry in its submission stated that the AIP Authority currently monitors compliance with legislation for projects required to use AIP Plans: '[t]he Jobs Act created the statutory position of the AIP Authority to monitor compliance with the legislation and provide guidance to proponents'.⁶⁹

5.76 According to a representative from the Department of Industry, enforcing compliance with standards would be antithetical to the principles of the AIP Authority:

An Australian industry participation plan will typically address the standards to be applied and the AIP authority, if you like, will monitor compliance with those standards, but the authority is not in a position to enforce standards—there are no powers to enforce which particular standards are used. That would go significantly beyond the remit of full, fair and reasonable, and I think you would want to have a look at the destruction that they would cause within the general procurement framework. At the moment, there is a clear delineation, separation and synergy of the role of AIP. I think if you are doing such a fundamental revisit of the role of AIP and those national frameworks then it would need to be a holistic review including the procurement policy and the complementary AIP and any standards.⁷⁰

5.77 The Head of the Sectoral Growth Policy Division in the Department of Industry gave evidence suggesting that ultimately responsibility for enforcement of non-conforming products should lie with states and territories:

With issues around conformance, the federal government chairs the Building Ministers Forum and, not only in relation to steel but more broadly with building products, it has been looking at ways in which

67 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, pp. iii–iv.

68 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 9.

69 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

70 Dr Gary Richards, General Manager, Advanced Technologies Branch, Department of Industry, Innovation and Science, *Committee Hansard*, 6 April 2016, pp. 63–64.

information can be better shared between agencies so that better enforcement responses can be delivered. As well as that, the key enforcement of those issues actually falls with the states and territories. My feeling is that that is something that is not widely accepted, but it is a fact that the states and territories are responsible for the use of the product that goes into building their structures.⁷¹

5.78 The Australian Steel Institute submitted that procurement policies should require a compliance management plan that sets out the steps taken to ensure products conform to standards:

The steps taken to ensure that only products meeting Australian standards are being used in infrastructure should...be recorded in a compliance management plan. This should be a mandatory requirement imposed in the procurement framework document.

This is an important management tool for complex infrastructure projects such as the development of freeways, where no one standard or construction code can act as a normative document to guide the development of a quality project.⁷²

Environmental accreditation

5.79 Some of the evidence that the committee received concerned the competitive advantage that the Australian steel industry has over some imported steel because of its greater attention to environmental issues.⁷³

5.80 The Australian Steel Institute proposed that 'all steel products [should] be procured from businesses accredited under the steel industry's Environmental Sustainability Charter'.⁷⁴ Members of this Charter declare that they will commit to operating their businesses to reduce their environmental footprint, increase the efficiency of their resource use, demonstrate environmental responsibility and share their knowledge of sustainability with others. In addition, they commit to using these principles when choosing their sub-contractors and suppliers as well.⁷⁵ Accreditation is used to demonstrate companies' commitment to environmental sustainability, especially if they are required to demonstrate this commitment in contracts, as well as by regulators and environmental rating agencies and bodies.⁷⁶

5.81 Although the 2017 CPRs do not mention certification of environmental standards, they do require that the 'environmental sustainability of the proposed goods

71 Mr Peter Chesworth, Head of Division, Sectoral Growth Policy Division, Department of Industry, Innovation and Science, *Committee Hansard*, 6 April 2016, pp. 57–58.

72 Australian Steel Institute, *Submission 19*, p. 35.

73 For example, Bisalloy Steel Group Limited, *Submission 33*, p. 5.

74 Australian Steel Institute, *Submission 19*, p. 6.

75 Australian Steel Institute, *The Environmental Sustainability Charter (ESC)*, p. 3, http://steel.org.au/media/File/Environmental_Sustainability_Charter_info_sheet_rev1.pdf (accessed 25 November 2017).

76 Australian Steel Institute, *Australian Steel Institute Environmental Sustainability Charter*, p. 1.

and services', including energy efficiency and environmental impact, be taken into account.⁷⁷

5.82 However, the committee notes that the government has recently rejected a recommendation (3) from the Joint Select Committee on Government Procurement that proposed '...the introduction and application of a procurement connected policy requiring Commonwealth agencies to evaluate the whole-of-life environmental sustainability of goods and services to be procured'.⁷⁸

Commitment to research and innovation

5.83 One submission, from a number of academic experts, proposed that the government should consider funding research and development work to further improve the domestic steel industry's environmental sustainability, because this feature of Australian steel gives it a competitive advantage:

We would argue that, as countries around the world, including Australia, seek to decrease their emissions in an effort limit climate change impacts...the projected emissions from iron and steel production are going to become increasingly problematic, and their mitigation will result in significant investment....

Where other countries might currently have an advantage because of lower costs of labour, we would argue that as the requirements for reduced environmental emissions gradually become more stringent, our natural resources advantage will play an increasing role in our ability to compete.

We believe that, alongside the other incentives required to sustain our local iron and steel industry, the Australian Government should look to establish programs to support this research and development work, in collaboration with technology companies, universities and CSIRO.⁷⁹

5.84 The South Australian Government called for the development of a National Steelmaking Road Map to identify 'key strategies to ensure steel makers and supply chain participants remain globally competitive by adopting world-best practice'. This proposed Road Map 'would consider research and development activities, the uptake of and commercialisation of new technology and innovation [and] development of new materials and application'. The South Australian Government also highlighted 'significant opportunities for productivity improving investment by industry that will

77 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 4.5.

78 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, p. iii; Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 8.

79 ANU Solar Thermal Group, Swinburne University of Technology and University of Adelaide, *Submission 43*, pp. 1–2.

reduce emissions from steel productions, such as harnessing significant waste heat to generate power'.⁸⁰

5.85 The Department of Industry outlined in its submission recent measures that it has undertaken to fund innovation and research to strengthen collaboration between the steel industry and research:

The Government is supporting the deepening of collaboration between Australia's steel industry and the research sector. The Government, through the Australian Research Council, has provided \$5 million to the Steel Research Hub, launched on 4 September 2014. The Steel Research Hub, based at the University of Wollongong, brings together the Commonwealth, universities and industry partners to develop cutting-edge processes and product innovations. This will enable steel industry partners to improve their global competitiveness.⁸¹

Re-establishment of a Steel Supplier Advocate

5.86 The Australian Industry Group called in its submission for the 're-establishment of a dedicated Steel Supplier Advocate to improve opportunities for Australian steel and fabrication businesses to access and supply to major projects'. They also proposed that a major role of the Steel Supplier Advocate could be 'to champion industry innovation and process improvements throughout the steel supply chain' by working closely with the steel industry, industry associations and research organisations.⁸²

5.87 The Australian Steel Institute also called for the Australian Government to:

commit resources to ensure...that a properly resourced steel supplier advocate is allowed to operate properly to assist SME businesses operating in the steel supply chain to identify business opportunities and to generally champion the Australian steel supply chain...⁸³

5.88 The Chief Executive of BlueScope Australia and New Zealand noted that '[a]nything that advocates and assists us with domestic use of steel—domestically manufactured steel—is a positive from our perspective'.⁸⁴

5.89 The call for the re-establishment of a Steel Supplier Advocate was echoed by the Australian Workers' Union, the Australian Workers' Union Victoria and the Australian Manufacturing Workers' Union.⁸⁵

80 Government of South Australia, *Submission 44*, pp. 6–7, 9, 10–11.

81 Department of Industry, Innovation and Science, *Submission 18*, p. 27.

82 Australian Industry Group, *Submission 10*, p. 7.

83 Australian Steel Institute, *Submission 19*, pp. 38–39.

84 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, BlueScope, *Committee Hansard*, 1 April 2016, p. 9.

85 Australian Workers' Union, *Submission 25*, p. 6; Australian Workers' Union Victoria, *Submission 26*, p. 2; Australian Manufacturing Workers' Union, *Submission 27*, p. 10.

Issues raised by submitters addressed in current procurement rules

5.90 The evidence that this inquiry received was provided prior to the 2017 revisions to the CPRs. A number of the issues raised in this evidence were directly or indirectly addressed in the amended 2017 CPRs. These include standards, third-party certification and calls for a revised understanding of the concept of value for money, as outlined briefly below.

5.91 Several submitters and witnesses requested that government procurement policies explicitly require the use of steel that conforms to Australian standards.⁸⁶ For example, the Australian Industry Group argued that 'an uneven approach to standards...often allows foreign suppliers to avoid the same quality and performance assessment that is applied to local producers'.⁸⁷

5.92 Several submitters proposed compulsory third-party certification attesting that standards are met in all steel used in government procured contracts.⁸⁸ This call was echoed in evidence from Mr Tony Dixon of the Australian Steel Institute:

ASI [the Australian Steel Institute]...believes that all Australian governments should have in place a system to ensure that products that are used in government projects meet the standards promised. Therefore, procurement documentation should specify that steel and steel products should only come from suppliers who are accredited by third party programs certifying that the supplier has in place procedures that will meet the quality and environmental standards expected by Australian taxpayers.⁸⁹

5.93 It should be noted that at present standards compliance ascertained by assessing relevant certifications is compulsory only for large contracts above certain thresholds, as outlined in Division 2 of the 2017 CPRs, and these standards may be international (see chapter 4).⁹⁰

5.94 Submitters called for Commonwealth procurement principles that included a focus on whole-of-life costs, rather than the lowest immediate financial cost when determining 'value for money'. For example, the Australian Industry Group proposed that:

86 For example, Illawarra Business Chamber, *Submission 5*, p. 1; South Coast Labour Council, *Submission 23*, p. 8; Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, BlueScope, *Committee Hansard*, 1 April 2016, p. 3.

87 Australian Industry Group, *Submission 10*, p. 34.

88 Australian Steel Institute, *Submission 19*, p. 34; Welding Technology Institute of Australia, *Submission 32*, p. 2.

89 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 2.

90 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 10.37.

...the value for money principle in Government procurement must look beyond 'least cost', and bring to bear and make more transparent, a broader cost-benefit equation or value model that considers whole-of-life costs.⁹¹

5.95 The Australian Industry Group expressed concern that there was currently 'an undue emphasis on upfront costs rather than whole of life costs in public sector procurement' that does not take into account maintenance and through-life support. As a result, the Australian Industry Group stated, its member companies 'increasingly report being locked out of contracts'.⁹²

5.96 The Australian Steel Institute suggested that the concept of value for money should take into account 'the cost to Government involved in purchasing the good judged on a whole-of-life basis' and 'the environmental costs and benefits of purchasing the good'.⁹³

5.97 The National Vice President of the Australian Workers' Union proposed that a revised definition of the concept of value for money take into account economic benefit:

The government could still demand value. The government is still able to go into the market and look at what the price is and then make an assessment. If you look at the Victorian model they make an assessment of the price that they would be charged and they calculate the value based on the economic value that is generated throughout the economy and the multipliers, which are spelled out within various documents. The government is not a passive actor there where: 'We've now made commitments to procurement and now we are simply bound by price'.⁹⁴

5.98 Mr Vassella from BlueScope Australia and New Zealand also recommended that '[t]he value of local production and the contribution we make' be taken into account in government procurement, 'rather than just a flat "dollar per tonne"'.⁹⁵

5.99 It should be noted that the 2017 CPRs only require an assessment of economic benefit for procurements greater than \$4 million.⁹⁶

Joint Select Committee on Government Procurement

5.100 Many of the issues raised with the committee were also brought before an inquiry into the amendments of the 2017 CPRs by the Joint Select Committee on Government Procurement (JSCGP). The JSCGP published its report in June 2017,

91 Australian Industry Group, *Submission 10*, p. 7.

92 Australian Industry Group, *Submission 10*, pp. 33–34.

93 Australian Steel Institute, *Submission 19*, p. 5.

94 Mr Michael (Misha) Zelinsky, National Vice President, Australian Workers' Union, *Committee Hansard*, 6 April 2016, p. 24.

95 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *BlueScope, Committee Hansard*, 1 April 2016, p. 7.

96 Department of Finance, *Commonwealth Procurement Rules*, 1 March 2017, clause 10.30.

including a number of recommendations that addressed some of the areas of concern brought before this inquiry. These are presented below.

5.101 Although the JSCGP did not publish recommendations related to product compliance, the inquiry received evidence strongly encouraging:

...the use of suitably endorsed accreditation bodies to oversee compliance with the standards required...for both clauses 10.10 and 10.37. Tenderers should be expected to provide evidence of third-party certification and third-party audit reports should form part of the 'reasonable enquiries' undertaken when determining compliance.⁹⁷

5.102 The JSCGP received evidence arguing that the Australian Government should follow the example of the United Kingdom by setting a target for SME participation in procurement, surveying supply chains to assess the extent of SME participation in government procurement, and requiring the terms and conditions of primary contracts to be applied equally to subcontractors, up to three levels removed.⁹⁸

5.103 The JSCGP report noted inconsistencies in the 2017 CPRs between 'the new clause 10.10 and existing clause 10.9(c) which requires technical specifications to be based on international standards'.⁹⁹ However, the Department of Finance highlighted that internationally recognised standards are rarely different from Australian standards, and clarified that 'international standards' refers to standards published by international standards organisations, not the standards of other countries.¹⁰⁰

5.104 Because of this inconsistency, the JSCGP recommended that 'the Department of Finance revise clause 10.9(c) of the Commonwealth Procurement Rules to require all goods purchased by the Australian Government to comply with Australian standards unless none are applicable'.¹⁰¹ In its response to the JSCGP report, the Australian Government rejected this recommendation.¹⁰²

5.105 The JSCGP inquiry recommended, in response to concerns that the requirement to prove economic benefit only applies to prime contractors and not subcontractors, that clause 10 of the Commonwealth Contracting Suite become mandatory for all Commonwealth contracts, no matter their size. This clause currently

97 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, p. 79.

98 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, pp. 96–97.

99 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, p. 56.

100 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, p. 81.

101 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 1, p. 129.

102 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 8.

stipulates that the obligations of prime contractors also apply to all subcontractors in contracts less than \$1 million.¹⁰³ The government indicated its in principle support for this recommendation in its response to the report.¹⁰⁴

5.106 A further recommendation from the JSCGP to address the issue of the extent of Australian industry participation was that the Department of Finance and the Department of Industry 'develop and implement a framework to collect relevant data' on the extent to which Commonwealth procurement projects are supplied by Australian-owned businesses, contain Australian-manufactured goods, or use Australian-based services.¹⁰⁵ The Australian Government rejected this recommendation in its response to the JSCGP report.¹⁰⁶

5.107 The JSCGP recommended that the Government create an Australian Industry Advocate as a statutory authority under the responsibility of the Minister for Industry, Innovation and Science. The objectives of the proposed Australian Industry Advocate would be, among others, to assist Commonwealth agencies to create procurement processes that 'maximise benefits to the Australian economy'; provide support to Australian businesses so that they could access Commonwealth procurement; and 'monitor suppliers' delivery of contracted economic benefits'.¹⁰⁷ The Australian Government in its response to the JSCGP report rejected this recommendation.¹⁰⁸

Committee view

5.108 The committee notes that a number of the amendments to the Commonwealth Procurement Rules, implemented in March 2017, address some of the concerns raised to this inquiry. The unanimous and bipartisan recommendations put forward by the Joint Standing Committee on Government Procurement would have created the framework for the effective implementation of the new Commonwealth Procurement Rules and evened the playing field for thousands of local Australian firms. However, the majority of the recommendations from the report of the Joint Standing Committee

103 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 5, pp. 133–34.

104 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 4.

105 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 7, p. 135.

106 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 10.

107 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 14, p. 141.

108 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 11.

on Government Procurement were rejected by the Australian Government in its response to the inquiry, tabled in Parliament on Tuesday 10 November 2017.

5.109 The committee is concerned that the Australian Government's decision on a number of the recommendations will undermine the intent of the new Commonwealth Procurement Rules, negatively impacting job creation, and disadvantaging local businesses. The Minister for Finance, Senator the Hon. Mathias Cormann, cited cost and red tape as the basis for the rejections of the recommendations from the Joint Standing Committee on Government Procurement.

5.110 It is clear, based on the evidence provided to this committee, that in some instances the amendments to the Commonwealth Procurement Rules do not go far enough, and further action is required to secure the future of Australia's steel industry. The Australian Government should lead the way by considering how the use of locally made steel can be maximised in Commonwealth funded projects, without compromising Australia's international obligations.

Recommendation 7

5.111 The committee recommends that the Australian Government maximise the use of locally made steel in Commonwealth funded projects.

5.112 Without an overarching steel policy, the committee is concerned that efforts to defend Australia's steel manufacturing value chain will be fragmented, given that the issues impacting the sector are multifaceted and spread across a number of different portfolios and government jurisdictions. Given this, the committee proposes that consideration should be given to creating a comprehensive, all-government approach that coordinates efforts across procurement, policy, trade measures and other relevant areas.

Recommendation 8

5.113 The committee recommends that the Australian Government develop an overarching steel policy that would form the basis for decision-making and initiatives affecting the industry.

5.114 Evidence given to this inquiry highlighted the important role that the South Australian Industry Participation Advocate has had in supporting the steel industry in South Australia. The committee is of the view that a national Steel Supplier Advocate should be established to support Australian businesses, particularly SMEs, to compete for procurement contracts. The responsibilities of the Steel Supplier Advocate would include: advising the government on challenges and opportunities facing the Australian steel industry; helping Australian steel manufacturers to obtain major contracts and identify opportunities for improved competitiveness; and working with state counterparts to develop future industry initiatives.

Recommendation 9

5.115 The committee recommends the establishment of a national Steel Supplier Advocate, which will:

- **provide strategic advice to the Australian Government on the challenges and opportunities facing the industry;**

-
- **assist Australian steel manufacturers to win major contracts and identify opportunities to improve competitiveness; and**
 - **work with state government counterparts to plan for the sector and develop future industry initiatives.**

5.116 The committee supports a number of recommendations from the Joint Select Committee on Government Procurement regarding the 2017 CPRs. Given the extra cost base incurred by Australian products to meet Australian standards, and the alarming body of evidence that this inquiry received regarding steel that poses safety risks (as outlined in chapter 4), the committee recommends that all procured steel should be required to meet Australian standards, whether it is procured by a prime contractor or subcontractor. Further, the committee also agrees with the JSCGP recommendation that Commonwealth procurement policies should play an active part in supporting Australian small and medium enterprises.

Recommendation 10

5.117 The committee recommends that the Australian Government reconsider its decision to reject Recommendation 1 of the Joint Standing Committee on Government Procurement report and request the Department of Finance revise clause 10.9(c) of the Commonwealth Procurement Rules to require all goods purchased by the Australian Government to comply with Australian standards unless none are applicable or it is inappropriate to do so.

Recommendation 11

5.118 The committee recommends that the Australian Government reconsider its decision to reject Recommendation 4 of the Joint Standing Committee on Government Procurement report and commit to enhancing the procurement-connected policy for Australian Industry Participation plans so that good procurement practices are implemented down through the supply chain, so that both prime and sub-contractors:

- **implement best practice terms and conditions; and**
- **are contractually obligated to report on those terms and conditions.**

Recommendation 12

5.119 The committee recommends that the Australian Government reconsider its response to Recommendation 8 of the Joint Standing Committee on Government Procurement report and ensure that, in negotiating future trade or World Trade Organisation agreements, Australia does not enter into any commitments that undermine the Australian government's ability to support Australian businesses.

Recommendation 13

5.120 The committee recommends that, in light of the evidence provided to this inquiry by the Australian Steel Institute relating to the steel industry's Environmental Sustainability Charter, the Australian Government reconsider its decision to reject Recommendation 3 of the Joint Standing Committee on

Government Procurement report and facilitate the introduction of a procurement connected policy requiring Commonwealth agencies to evaluate the whole-of-life environmental sustainability of goods and services to be procured.

5.121 The committee is of the view that current exemptions in free trade agreements for SMEs and Defence are being underutilised. The US-Australia Free Trade Agreement, for example, may allow provision for procurement preferences to benefit SMEs. The government should investigate ways in which SME carve outs in free trade agreements can be better employed so that SMEs in the steel industry are better equipped to compete on a level playing field.

Recommendation 14

5.122 The committee recommends that the Australian Government better utilise the small and medium-sized enterprise provisions in free trade agreements.

5.123 The committee notes that changes to Commonwealth Procurement Rules include the requirement for tenderers to provide evidence of proposed economic benefit, for those projects that meet the thresholds outlined in Division 2 of the 2017 Commonwealth Procurement Rules. The committee is concerned that the Government's procurement coordinator's guidance on the recent changes relating to economic benefit explicitly reference pricing as an example of elements to be considered when determining economic benefit of a procurement. This committee therefore shares the view of the Joint Standing Committee on Government Procurement which warned, '[r]ather than supporting successful implementation, the Committee is concerned that the current guidelines developed by the Department of Finance have the potential to undermine the intent of the new CPRs'.¹⁰⁹

Recommendation 15

5.124 The committee recommends that the Department of Finance reconsider its current procurement implementation guidelines, noting the concerns of the Joint Standing Committee on Government Procurement that the current guidance may undermine the intent of the new Commonwealth Procurement Rules, specifically clause 10.30 relating to economic benefit.

5.125 The committee is concerned that in the absence of a compliance regime, steel is being used in government-funded projects that does not meet appropriate standards and may pose a public safety risk. Although the *Code for the Tendering and Performance of Building Work 2016* (the Code) requires products used in Commonwealth-funded building work to comply with relevant Australian standards, responsibility for the enforcement of compliance with the Code is yet to be determined. The committee view is that this should be clarified as soon as possible to ensure that it is clear who will audit the compliance of building materials with Australian standards.

109 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 5, p. 137.

5.126 Currently, clause 10.37 of the 2017 CPRs requires relevant entities, when applying a standard for goods procured above relevant thresholds, to make reasonable enquiries to determine compliance with a relevant standard, which can include examining evidence of certification and periodic independent auditing. In tandem with the committee's recommendations regarding compulsory standards certification outlined in chapter 4, the committee considers that this requirement to examine evidence that an Australian standard has been met should be extended to all goods procured in Commonwealth funded projects, where a standard is available.

Recommendation 16

5.127 The committee recommends that relevant entities should be required to make reasonable enquiries to determine standards compliance in all Commonwealth funded projects involving steel, not just those above relevant thresholds.

5.128 The committee notes the importance of federal Australian Industry Participation (AIP) plans in increasing the use of Australian made steel in procured projects. Given this importance, the committee considers that funding for the Australian Industry Participation Authority should be increased, and compliance with AIP plans should be monitored and audited. Further, the requirement in legislation that all tenderers for Commonwealth projects should submit AIP plans, not just the successful tenderer, should be reinstated.

Recommendation 17

5.129 The committee recommends that the Australian Government review the level of funding to the Australian Industry Participation Authority to ensure it is adequate, and that compliance with Australian Industry Participation plans should be monitored and audited.

Recommendation 18

5.130 The committee recommends that the Australian Government restore the requirement in legislation for all tenderers for Commonwealth projects to submit Australian Industry Participation plans, not just the successful tenderer.

5.131 Much of the evidence concerning the AIP plans that this inquiry received argued that the current threshold of \$500 million to qualify for an AIP plan is too high. This evidence included an admission from the Department of Industry, Innovation and Science that the threshold had been developed during the mining and resources boom, with a subsequent reduction in major project activity since mining has slowed down. The committee does not accept the Department of Industry, Innovation and Science's reassurances that projects below the \$500 million threshold provide enough opportunities for local industry, and recommends that the government review the threshold for AIP plans, with a view that they should be significantly reduced.

Recommendation 19

5.132 The committee recommends that the Australian Government review the thresholds for Australian Industry Participation plans, with a view that they should be significantly reduced to take into account recent changes in industry.

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'.¹ 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.²

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

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.³

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.⁴

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...⁵

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.⁶

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.⁷

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.⁸

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.⁹

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*.¹⁰

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.¹¹

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

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.¹²

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.¹³ 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.¹⁴

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.¹⁵

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'.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹

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.²⁰

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.²¹

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.²² 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.²³

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

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.²⁴ 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.²⁵

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.²⁶

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.²⁷

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'.²⁸

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.²⁹

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.

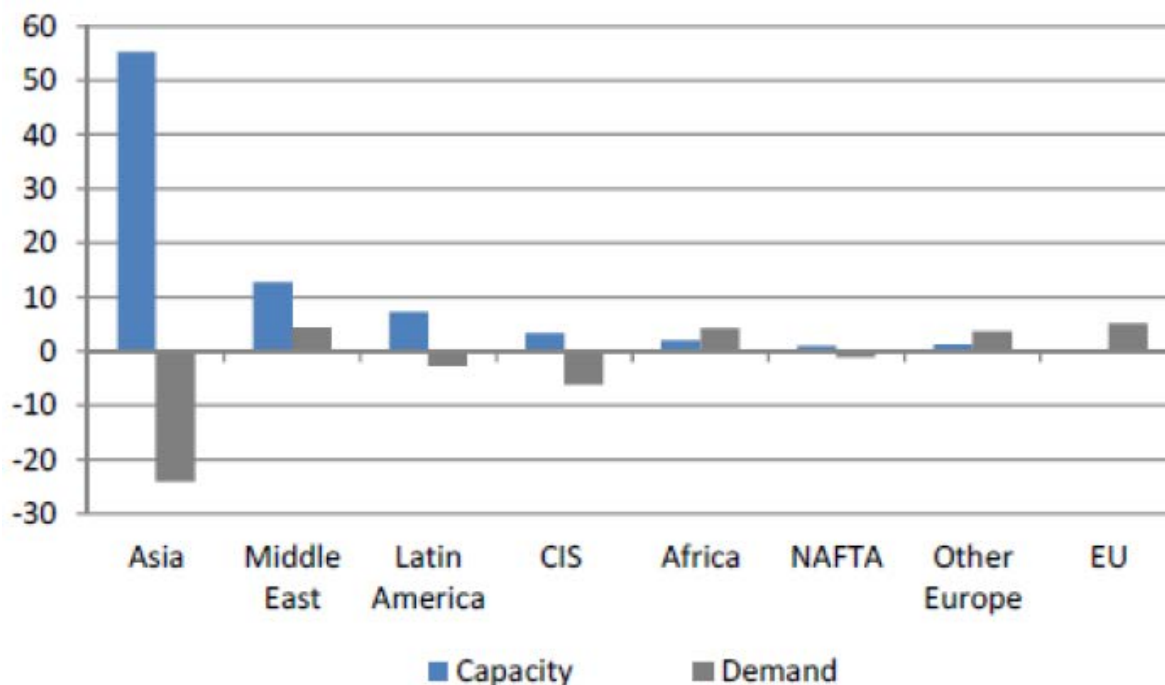
27 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission*, August 2016, p. 5.

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)³⁰



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.³¹

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.³²

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.³³

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.³⁴

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 2014.³⁵ Arrium highlighted a global increase since 2010 in 'anti-dumping activity which has been reflected in an increase in Australian cases'.³⁶

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

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).

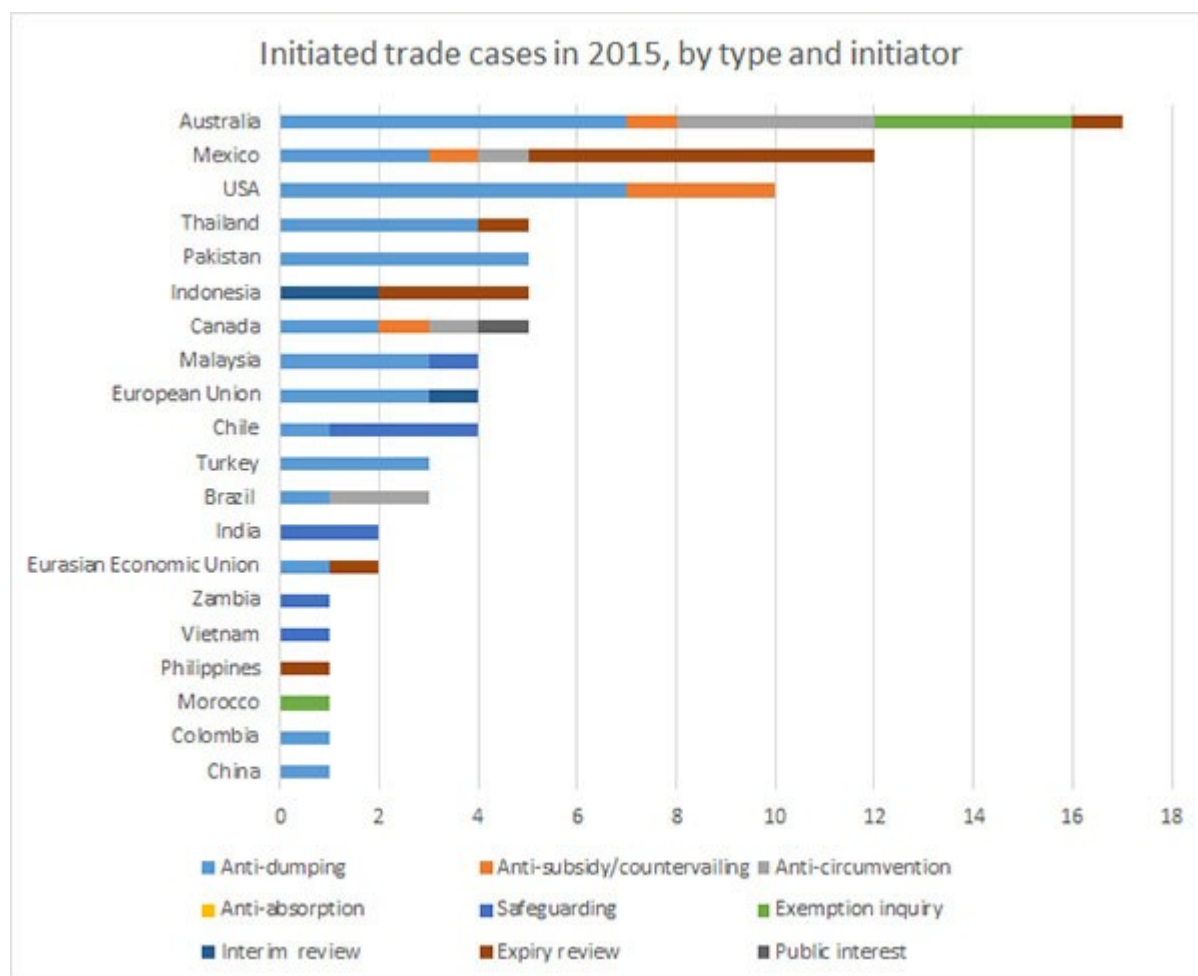
34 Arrium Mining and Minerals, *Submission 16*, p. 6.

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 indicator³⁸



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.³⁹

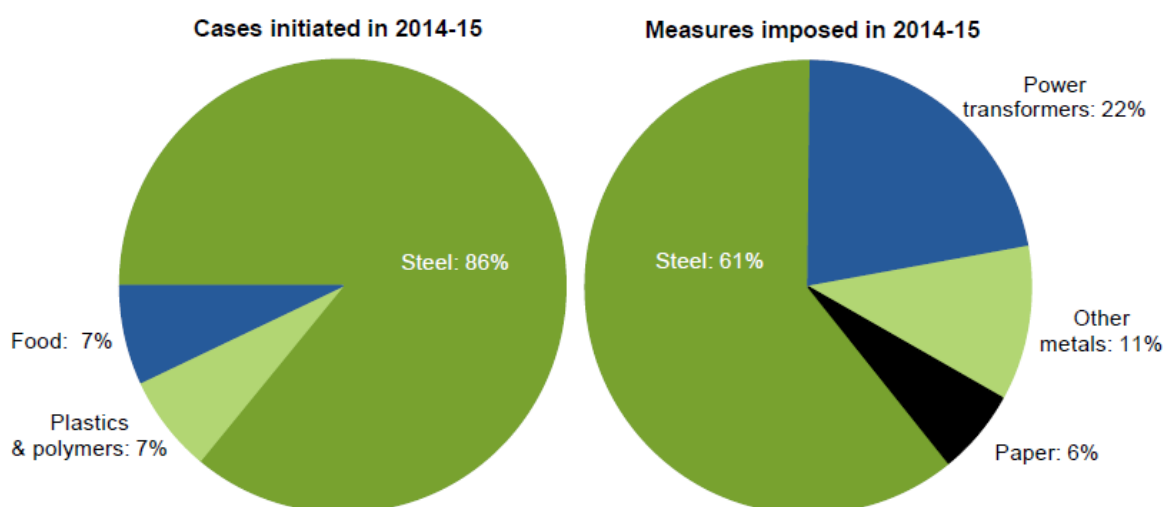
6.38 As of 17 January 2017, 35 of the 45 (77 per cent) anti-dumping measures in place on steel applied to products also produced by Arrium and BlueScope.⁴⁰

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, 2014-15⁴¹



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'.⁴² 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'.⁴³ 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'.⁴⁴

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.

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...⁴⁵

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.⁴⁶

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.⁴⁷

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'.⁴⁸

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

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.⁴⁹

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.⁵⁰

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'.⁵¹ 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.⁵²

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.⁵³

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

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.

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

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.⁵⁵

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.⁵⁶

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.⁵⁷

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 2015.⁵⁸

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 2013.⁵⁹ 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).⁶⁰

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

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.

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

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.⁶² 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.⁶³

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

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.⁶⁵ A number of submitters to the current inquiry referenced the circumvention inquiry and explicitly endorsed this recommendation.⁶⁶

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.⁶⁷

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

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.⁶⁸

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.⁶⁹

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.⁷⁰

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 44th 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.⁷¹
- 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.⁷²

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.

- A revised deadline of 37, rather than 40, days for submission of information at the start of investigations.⁷³
- The closure of a circumvention loophole, with galvanised steel and HSS products with dumping duties against them no longer being able to circumvent duties by slight modification.⁷⁴
- 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.⁷⁵

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.

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.⁷⁶

6.70 In its submission to the 45th 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.⁷⁷

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'.⁷⁸

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'.⁷⁹ 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.⁸⁰

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.

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.⁸¹

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.⁸²

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'.⁸³

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.⁸⁴

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.⁸⁵

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.⁸⁶

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'.⁸⁷ 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.⁸⁸

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'.⁸⁹

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.⁹⁰

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

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'.⁹¹ BlueScope also made the same proposal on the same grounds.⁹² 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.⁹³

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.⁹⁴

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.⁹⁵

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.⁹⁶

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'.⁹⁷

6.88 Some evidence concerned the 'lesser duty' rule, calling for it to be removed or to only be used in exceptional circumstances.⁹⁸ 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.⁹⁹

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.¹⁰⁰

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...¹⁰¹

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

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.¹⁰²

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.¹⁰³

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'.¹⁰⁴

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.¹⁰⁵ 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...¹⁰⁶

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.¹⁰⁷

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

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

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.¹⁰⁸

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

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.

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

Additional comments by Coalition Senators

1.1 Coalition Senators feel that the Committee's majority report is inaccurate in many areas and is politically overreaching. Coalition Senators specifically note the following regarding recommendations 17 and 18.

1.2 Coalition Senators disagree with recommendation 17 on the grounds that the Australian Industry Participation Authority is adequately funded through departmental appropriation and is underpinned by the *Australian Jobs Act 2013*.

1.3 Coalition Senators disagree with recommendation 18 on the grounds that Australian Industry Participation (AIP) Plans require a successful tenderer for procurements valued at \$20 million or more to outline the actions they will take to provide Australian suppliers with full, fair and reasonable opportunity to supply to the project. A requirement for all tenderers for Commonwealth projects to submit AIP Plans represents an unnecessary regulatory burden upon prospective tenderers.

Senator Jane Hume
Deputy Chair

Senator Ian Macdonald
Liberal Party Senator for Queensland

Australian Greens Additional Comments

1.1 The economic and environmental sustainability of steelworks is essential to its long-term survival in Australia. Witnesses and submissions to the inquiry documented the many challenges facing the steel industry.

1.2 One such challenge, which has also been reported in the media, is the high cost of energy.¹ BlueScope Steel forecasted its electricity costs will increase 93 per cent over the two years to 2017/18, with gas costs rising 33 per cent over that period.²

1.3 The committee has recommended that the Australian Government develop a solution to high energy costs and secure supply for steel manufacturers.³ The Australian Greens endorse that recommendation but further recommend co-generation be investigated to increase both environmental and economic sustainability. It should be noted that BlueScope Steel had plans to build a co-generation plant in Port Kembla but in 2009 it was reported those plans were abandoned due to the uncertainty of the costs associated with the emissions reduction scheme and the impacts of the financial crisis.⁴

Recommendation 1

1.4 The Australian Government should investigate how it can support steel plants implement co-generation to increase the economic and environmental sustainability of their operations.

Senator Peter Whish-Wilson

1 Chair's report, Chapter 2, p. 20.

2 Matt Chambers, 'BlueScope chief Paul O'Malley calls for 10-year energy transition plan', *The Australian*, 11 October 2017, <http://www.theaustralian.com.au/business/companies/bluescope-chief-paul-omalley-calls-for-10year-energy-transition-plan/news-story/b5d784f1a97d363b2a6daa4813664c20> (accessed 30 November 2017).

3 Chair's report, Chapter 2, p. 24, Recommendation 1.

4 Jamie Freed and Barry FitzGerald, 'BlueScope scraps plans for cleaner, greener power plant', *Sydney Morning Herald*, 6 May 2009, <http://www.smh.com.au/business/bluescope-scraps-plans-for-cleaner-greener-power-plant-20090505-au0y.html> (accessed 30 November 2017).

Additional comments by Senator Rex Patrick

A Stark Choice; Stealing our Jobs or Stealing Our Future

1.1 I appreciate the extensive work of the Committee and Secretariat on this extremely important issue, which goes to the heart of Australia's capacity as a manufacturing nation, and I broadly support the report's recommendations.

1.2 However, the importance of Australia's steel industry, as a fundamental foundation to the existence of manufacturing and the national security imperative of having a vibrant and sustainable industry must be adequately supported by Government policies.

1.3 The report appropriately mentions the immense challenges the Australian Steel industry has faced in recent years. A slashing in local steel production and with it, Australian jobs, a flooding of often sub-standard imported steel products, and a failure of energy policy that has led to a massive spike in the cost of power are just some of the key observations made in the report.

1.4 The difficulties faced by the then Arrium OneSteel in Whyalla, the trauma of administration from February 2016 to September 2017, and the takeover by the GFG Group are in a sense emblematic of the tumult of the industry. Fortunately there is renewed optimism in Whyalla because of GFG's track record overseas and their vision to grow the Whyalla Steel works.

1.5 Despite the justified optimism that has come with GFG's investment in Whyalla, Whyalla is not out of the woods yet. Whyalla, and indeed the entire Australian steel industry would benefit for substantial and real reforms in a number of areas.

Government Procurement Issues

1.6 The Government must ensure that when it spends the tens of billions of dollars of taxpayers money (\$56.9 Billion in 2015-16) it spends it in a way that maximises benefit to the Australian community. Buying the cheapest goods from overseas costs jobs and increases welfare costs and does not serve Australia well.

1.7 In late 2016 the Nick Xenophon Team negotiated sweeping changes to the Commonwealth Procurement Rules, which came into force on 1 March this year. These changes included a requirement that consideration be given to the economic and employment impacts of procurement decisions.

1.8 A joint Parliamentary committee was set up to look at the new rules and how to best implement them. The committee reported in June with both Labor and Liberal members unanimously agreeing the rules and guidelines behind them should be strengthened even more to give full effect to the changes.

1.9 The Government did not agree to the changes.

1.10 This will have a long term detrimental effect on Australia's steel industry. The Government must reconsider its position on the recommendations.

Recommendation 1

The Government must reconsider its response to the Joint Select Committee on Government Procurement in respect of ensuring economic benefit is properly considered in any purchase.

Compliance Issues

1.11 The report makes mention of the problems and dangers of using sub-standard steel in construction projects around Australia. The Senate Inquiry into non-conforming building products is also examining those issues.

1.12 The Australian Government must ensure that when Australian taxpayers money is used for projects that utilise steel, including projects funded by grants to the States, that the steel used in them meets Australian standards. Laws must also be changed to ensure private construction projects also use high quality Australian standard steel.

1.13 Again, the sweeping changes negotiated to the Commonwealth Procurement Rules by the Nick Xenophon Team had a requirement to ensure, where steel was to be used in goods procured, the tenderer must demonstrate the capability to meet Australian steel standards and contracts must contain evidence of those standards.

Recommendation 2

The Government must reconsider its response to the Joint Select Committee on Government Procurement in respect of mandated Australian Standards in Government procurement.

1.14 The Australian Government must also seek to ensure that Australian standard steel is used in all commercial projects.

1.15 Finally, the report identified the fact that some steel that is claimed to be of Australian standard was in fact not. As the eminent jurist Lord Denning once said, "Fraud unravels everything". Where steel is installed under the false pretence of meeting Australia standards, strong civil penalties should apply, and where someone is injured or killed as a result of the use of such steel, strong criminal penalties should apply.

Recommendation 3

Where steel is installed under the false pretence of meeting Australia standards, strong civil penalties should apply, and where someone is injured or killed as a result of the use of such steel, strong criminal penalties should apply.

Dumping Issues

1.16 The impact of dumped steel on Australia's steel industry cannot be understated.

1.17 Australia's anti-dumping and countervailing system has improved over the past few years but there is still much more that can be done, including:

- (a) *An Effective Anti-dumping Advocacy Service for SMEs*: The re-constitution of an advocacy and advisory service similar to the previous International Trade Remedies Advisory Service ('IRTA') is required to assist SME Australian producers to determine whether a prima facie case of dumping, countervailable subsidies or duty circumvention exists, to prepare and lodge an application with the Commission and to support an applicant through the anti-dumping screening and investigation process. A restored advocacy service would not only be of assistance to the Commissioner, but also to SME Australian industry members who will have their best interest represented through an advocate. Such a reconstituted service would need to operate independently of government, possibly hosted by industry advocacy groups, as did the previous ITRA service.
- (b) *A Simplified Application Process for SMEs*: The current application process to complain about dumping has been criticized as "extremely complex, expensive and bureaucratic". Adopting the European Commission's approach would still satisfy the need to be WTO compliant but would reduce the burden on the Australian industry applicant to extract and present – in some case, extraneous and irrelevant – information. A shift to an 'inquisitorial' styled application process would see the Commissioner drawing out the relevant merits of a case without placing a 'blanket' burden on the Australian industry SME applicant to do so. This ensures that the 'best available' information forms the basis of a decision to initiate – what is always – an expensive and time consuming formal investigation process for industry, market stakeholders and the taxpayer. The role and resourcing of the Commissioner's 'Anti-Dumping Information Service' would be central to this reform.
- (c) *An Increased focus on Countervailing*: As Australia has become more effective in tackling dumping of imported goods causing material injury to Australian producers, the role of countervailable subsidies has continued to grow. The investigation of foreign governments' countervailable subsidy programs is extremely expensive and beyond the reach of most Australian industry members. To address this growing problem I suggest the Commissioner direct resources to this; additional resources if necessary.
- (d) *Enhanced Skilling*: Consistent with the recommendations of the 2012 Brumby 'Review into Anti-Dumping Arrangements', the Anti-dumping

Commissioner needs to further address the shortage of staff with appropriate skill sets to execute his functions. The increased use of independent non-government experts, especially during exporter verification visits, needs to be seriously, and rapidly, considered.

Recommendation 4

Australia's anti-dumping and countervailing system must be enhanced with:

- a) Effective Anti-dumping Advocacy Service for SMEs**
- b) A Simplified Application Process for SMEs**
- c) An Increased focus on Countervailing**
- d) Enhanced Skilling within the Anti-Dumping Commissioner's Office**

Energy Issues

1.18 Australia's steel industry requires reliable and affordable power supplies.

1.19 South Australia's state-wide blackout on 26 September 2016 almost led to irreversible damage to the steel works and production facilities were it not for the emergency reconnection of power. Reliable power to Australia's two major steelworks is essential.

1.20 The committee refers to the massive increase in energy costs for such an energy intensive sector with Bluescope's electricity costs almost doubling in the course of two years. This places the long term viability of steel manufacturing in Australia at risk, and reflects poorly on our political leaders for their continued squabbling which has failed to deliver an effective and cost efficient solution. The fact that GFG has elected to go off-grid is an indictment on both State and Federal Governments – it cannot wait for a solution to emerge in several years' time.

1.21 A Frontier Economics report commissioned by Malcolm Turnbull and Nick Xenophon in 2009 recommended Australia adopt an EIS. Government authorities and industry alike have stated a preference for such a scheme but toxic politics in relation to energy policy have prevented this being implemented. A CET has also been proposed as a solution to Australia's electricity woes by Australia's Chief Scientist, but that has also been rejected. Now an NEG is being advanced. Australia must settle on a policy solution to the investment strike and disorder in the electricity industry.

Recommendation 5

Australia's should adopt an EIS, but failing that it must settle on a policy that delivers reliable, affordable and clean energy.

Co-investment

1.22 GFG's purchase of OneSteel does not alone guarantee the long term survival of the steel works or, indeed, the town of Whyalla.

1.23 There is still a requirement for significant government co-investment at a State and Federal level. The economy wide benefits and multiplier effects to such a co-investment are obvious.

Recommendation 6

Government must recognise the need and benefit of co-investment in GFG Liberty OneSteel.

REX PATRICK
Senator *for* South Australia
01 / 12 / 2017

Appendix 1

Submissions received

**Submission
Number** **Submitter**

Received during the 44th Parliament

1	Mr Ryan Scott
2	Regional Development Australia - Illawarra
3	Mr Ross Robinson
4	Bluescope Steel
5	Illawarra Business Chamber
6	Bureau of Steel Manufacturers of Australia
7	Illawarra Innovative Industry Network
8	Mr Geoff Martin
9	University of Wollongong
10	AI Group
11	Steelforce
12	National Association of Steel-framed Housing Inc
13	Australian Constructors Association
14	Mr Stephen Jones MP
15	Standards Australia
	• Supplementary submission
16	Arrium Mining and Materials
17	Mr William Wilkins
18	Department of Industry, Innovation and Science
19	Australian Steel Institute
20	Wollongong City Council
21	Edcon Steel
22	Best Bar Reinforcements
23	South Coast Labour Council

- 24 Australian Steel Association
- 25 Australian Workers' Union
- 26 Australian Workers' Union Victoria
- 27 Australian Manufacturing Workers' Union
- 28 Australian Workers' Union Port Kembla, South Coast & Southern
Highlands
- 29 Australian Workers' Union South Australia
- 30 Mr Peter Corkish
- Supplementary submission
- 31 Joint submission from 63 Australian businesses
- 32 Welding Technology Institute of Australia
- Response to submission no.32 from Standards Australia
- 33 Bisalloy Steel Group Limited
- 34 E & A Limited
- 35 Illawarra Greens
- 36 Mr Andrew Scott
- 37 Mr Stephen Koci
- 38 Mr Christopher Lea Gellie

Received during the 45th Parliament

- 39 Mr Andre Malko
- 40 Welding Technology Institute of Australia
- Response to submission no.40 from City of Busselton
 - Response to submission no.40 from Penrith City Council
- 41 Department of Industry, Innovation and Science
- 42 Mr Charles Law
- 43 ANU Solar Thermal Group, Swinburne University of Technology
and University of Adelaide
- 44 Government of South Australia
- 45 Mr Peter Corkish

Appendix 2

Tabled documents

Received during the 44th Parliament

1. Submission from the International Transport Workers Federation, tabled by Mr Jason Ward at a public hearing held in Wollongong on 1 April 2016.
2. Presentation on South Australian Industry Participation Policy, tabled by Mr Ian Nightingale at a public hearing in Whyalla on 5 April 2016.
3. South Australian Industry Participation Policy, tabled by Mr Ian Nightingale at a public hearing in Whyalla on 5 April 2016.
4. Steel Summit overview, tabled by Mr Ian Nightingale at a public hearing in Whyalla on 5 April 2016.
5. Australian Steel Institute presentation to the Steel Summit, tabled by Mr Ian Nightingale at a public hearing in Whyalla on 5 April 2016.
6. Regional Development Australia Whyalla and Eyre Peninsula Regional Overview, tabled by Mr Dion Dorward at a public hearing in Whyalla on 5 April 2016.
7. Graph showing steel imports into Australia 1988-2015, tabled by Mr Ian Waters at a public hearing in Canberra on 6 April 2016.
8. Update on reforms to the anti-dumping system, tabled by the Anti-Dumping Commissioner Mr Dale Seymour at a public hearing in Canberra on 6 April.
9. Anti-Dumping Commission inquiry talking points, tabled by the Anti-Dumping Commissioner Mr Dale Seymour at a public hearing in Canberra on 6 April.

Additional information

Received during the 44th Parliament

1. Additional information provided by the Department of Infrastructure and Regional Development on 14 April 2016, relating to steel purchasing requirements for Commonwealth-funded infrastructure projects.

Received during the 45th Parliament

1. 'Modelling of the Arrium Closure on the Regional and State Economies', 2016, B Burgan & J Spoehr. Adelaide: Australian Industrial Transformation Institute, Flinders University of South Australia.

Answers to questions on notice

Received during the 44th Parliament

1. Answers to questions on notice from a public hearing held in Wollongong on Friday 1 April 2016, received from BlueScope Steel on 15 April 2016.
2. Answers to questions on notice from a public hearing held in Whyalla on Tuesday 5 April 2016, received from Mr Ian Nightingale, South Australia Industry Participation Advocate, on 22 April 2016.
3. Answers to questions on notice from a public hearing held in Canberra on Wednesday 6 April 2016, received from Arrium on 15 April 2016.

Received during the 45th Parliament

1. Answers to questions on notice from a public hearing held in Wollongong on Friday 1 April 2016, received from Councillor Gordon Bradbery OAM, Lord Mayor, Wollongong City Council on 10 May 2016.
2. Answers to questions on notice from a public hearing held in Wollongong on Friday 1 April 2016, received from Bisalloy Steel on 19 September 2017.

Appendix 3

Public hearings and witnesses

Public hearings during the 44th Parliament

Friday 1 April 2016 – Wollongong

BlueScope Australia and New Zealand

Mr Mark Vassella, Chief Executive

Mr Gerry Tidd, Executive Vice President, Corporate Affairs

Bisalloy Steel Group Limited

Mr Thomas Matinca, General Manager, Sales and Strategy

Mr Greg Albert, Chief Executive Officer and Managing Director

The Australian Workers' Union

Mr Wayne Phillips, Branch Secretary

Mr Glenn Leake, Branch Executive Delegate

Mr Lance Turner, Branch Executive Delegate

South Coast Labour Council

Mr Arthur Rorris, Secretary

Mr Jason Ward, Senior Global Strategist, International Transport Workers Federation

University of Wollongong

Mr Damien Israel, Chief Finance Officer

Mr Oscar Gregory, Director, ARC Research Hub for Australian Steel Manufacturing

Wollongong City Council

Councillor Gordon Bradbery, Lord Mayor

Illawarra Business Chamber

Ms Debra Murphy, Chief Executive Officer

Ms Rebecca Burdick, Policy Manager

Tuesday 5 April 2016 – Whyalla

ICE Engineering and Construction Pty Ltd

Mr Nicholas Bindi, Chief Executive Officer

Australian Workers' Union South Australia

Mr Scott Martin, Branch Organiser

Mr Peter Lamps, Acting State Branch Secretary

Mr David Gabb, AWU Delegate/Steelworker, Onesteel

Australian Manufacturing Workers' Union

Mr Steve McMillan, Organiser

Department of State Development, South Australia

Mr Ian Nightingale, Industry Participation Advocate

City of Whyalla

Councillor Tom Antonio, Acting Mayor

Regional Development Australia Whyalla and Eyre Peninsula Inc.

Mr Dion Dorward, Chief Executive Officer

Mr Alexander Todd, Economic Development Manager

E&A Ltd

Mr Stephen Young, Managing Director

Thursday 06 April 2016 – Canberra

Australian Steel Institute

Mr Tony Dixon, Chief Executive

Mr Ian Cairns, National Manager, Industry Development and Government Relations

Australian Workers Union

Mr Michael (Misha) Zelinsky, National Vice President

Mr Richard Downie, Branch Secretary, Newcastle, Central Coast and Northern Regions Branch

Australian Manufacturing Workers Union

Dr Tom Skladzien, National Economics and Industry Adviser

Mr Daniel White, Organiser

Construction, Forestry, Mining and Energy Union

Mr Travis Wacey, Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division

Arrium Mining and Materials

Ms Naomi James, Chief Executive, Strategy

Mr Neil Gibson, Executive General Manager, Steel Manufacturing and Integration

National Association of Steel-Framed Housing Inc.

Mr Kenneth Watson, Executive Director

Mr John Shayler, National President

Welding Technology Institute of Australia

Mr Geoff Crittenden, Chief Executive Officer

On behalf of 63 businesses

Mr John Doyle

Mr Ian Waters

Mr Jason Leussink

Standards Australia

Mr Adam Stingemore, General Manager, Stakeholder Engagement and Public Affairs

Mrs Kareen Riley-Takos, General Manager, Standards Development

Department of Industry, Innovation and Science

Mr Peter Chesworth, Head of Division, Sectoral Growth Policy Division

Dr Gary Richards, General Manager, Advanced Technologies Branch

Mr Martin Squire, General Manager, Trade and Investment Branch

Dr Anne Byrne, General Manager, Manufacturing and Services Policy Branch

Anti-Dumping Commission

Mr Dale Seymour, Anti-Dumping Commissioner

Dr Annette Weier, General Manager, Advisory