



Anti-Dumping Commission  
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The Hon Greg Hunt MP  
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The Hon Craig Laundry MP  
Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary  
to the Minister for Industry, Innovation and Science  
Parliament House  
Canberra ACT 2600

## IN CONFIDENCE

Dear Ministers,

### **Economic analysis of global steel and aluminium markets and implications for the administration of Australia's trade remedies system**

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On 2 August 2016, you asked me to prepare a new report on global steel and aluminium markets, taking into account developments in those markets since my previous report to the then Minister for Industry, Innovation and Science in April 2016. You directed that the report should inform you about the current state of steel and aluminium markets, particularly in Asia, and recent high-level international discussions and analyses of trading conditions in these markets.

You also asked me to brief you on implications for the administration of Australia's trade remedies (anti-dumping) system, using the information and evidence presented in my report and drawing on my own expertise and experience in implementing the system since 2013.

You indicated that I should give you my report and provide a brief to you on the results from the analysis by 31 August 2016.

Attached is the Commission's report to me on its analysis and findings, which was prepared by the Commission with substantial assistance from other relevant areas of your department (**Attachment B**).

In this letter, I outline the main findings from the Commission's analysis of current market conditions in global and Asian steel and aluminium markets and the economic and financial impacts of these market conditions on the Australian steel and aluminium industries. I identify a set of operational reforms that I propose to implement to improve the efficiency of the Commission's investigations and the effectiveness of measures. (More detail on these proposed reforms is provided in **Attachment A** to this letter.)

I have also listed some potential policy reform options that have been raised by stakeholders, including the Australian steel and aluminium industries, with the aim of improving the administration of Australia's trade remedies system. These options should, in

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my view, be evaluated as part of a policy development process led by your department. Such a process would involve a consideration of a range of policy options, a thorough analysis of those options, consultation with a wider range of stakeholders, and the development of a fully costed set of proposals. As such, the list of options I have identified are provided to you on a confidential basis for consideration within the policy development process led by your department.

In **Attachment A** to this letter, I set out in more detail

I also attach a consultant's report by Cadence Economics commissioned by the Commission on the sectoral and broader economic impacts of dumping/subsidisation and trade remedies (**Attachment C**). The outcomes from the consultant's modelling are discussed in the Commission's report.

In addition, I attach an updated list of recent investigations into the alleged dumping and/or subsidisation of steel and aluminium products, anti-circumvention inquiries relating to steel and aluminium products, and current measures in place for these products (**Attachment D**). I am pleased to advise that the Commission has continued to progress its large workload on these matters in a timely and efficient manner.

### **Main findings from the Commission's analysis of steel and aluminium markets**

Global steel and aluminium markets are cyclical in nature, reflecting the impacts of economic business cycles on demand and the impacts of the capital-intensive, long-lived and sunk nature of production assets on supply. The global steel industry, for example, has experienced a cyclical downturn every decade since the 1970s.

The Organisation for Economic Development and Co-operation (OECD) has identified ongoing excess capacity as one of the most significant challenges currently facing the global steel industry. The large gap between global steelmaking capacity and demand has led to deterioration in the financial situation of steelmakers around the world, and raised concerns about the longer-term economic viability and efficiency of the industry.

The OECD has found that excess capacity has been exacerbated in certain regions by structural factors reflecting government interventions, notably government subsidies for the creation of new capacity and continued approvals for new steel facilities.

At the OECD High-Level Symposium on Excess Capacity and Structural Adjustment in the Steel Sector, held in Brussels on 18 April 2016, which Australia (represented by the then Minister for Science and Parliamentary Secretary for Innovation, Industry and Science) attended as an observer, delegates from many nations raised significant concerns about the detrimental effects of excess capacity. These effects included significant shifts in trade flows, large numbers of job losses, reduced economic viability, and harmful impacts on the environment. The official summary of the event recorded that many delegates noted the 'important role of market based-based restructuring without government interventions that distort markets'.

The situation is similar in the aluminium industry, where government financial support for large aluminium stockpiles has delayed the required supply response to lower demand.

The Commission's analysis has found evidence of market interventions and trade restrictions that influence market behaviours and decision-making by producers in Asian steel and aluminium markets in ways that diverge from competitive market behaviours and normal commercial decisions.

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Asian governments are not unusual in intervening in steel and aluminium markets. Australia, as well as many European countries and the United States, have adopted policies to promote the growth, viability, productivity performance and competitiveness of their domestic industries.

However, the nature and extent of Asian government interventions have 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.

In advocating government actions to address market distortions that underpin sustained global overcapacity, the OECD has highlighted that ‘excess capacity in one region can displace production in other regions, thus harming producers in those markets’, including through ‘unfair trade practices such as dumping’.

The increasing use of trade remedies in all regions around the world has the potential to further displace production, and increase the injury caused by dumping and subsidisation to domestic industries in jurisdictions with less effective trade remedies systems. It is important therefore that the Australian trade remedies system is as effective and efficient as possible to ensure that Australian industries can compete on their merits with foreign imports.

While Australia’s anti-dumping system is generally effective in addressing proven cases of dumping and subsidisation, I have identified a number of operational reforms to improve the efficiency of the Commission’s investigations and anti-circumvention inquiries, and the effectiveness of Australia’s trade remedies in remedying material injury from dumping and/or subsidisation.

A strong and effective anti-dumping system will support other government policy measures implemented to strengthen the competitiveness of Australia’s steel and aluminium industries and to support their adjustment to changed market conditions.

### **Operational reforms to improve efficiency and effectiveness**

I propose to implement a set of reforms to improve the efficiency and timeliness of, and robustness of the evidence base for, the Commission’s investigations and anti-circumvention inquiries. This set of reforms will also enhance the effectiveness of measures that are imposed following investigations and inquiries by strengthening compliance and reducing circumvention.

These operational reforms form part of the Commission’s commitment to continuous improvement.

The Commission has already achieved a significant increase in its its verification capability through a comprehensive training and accreditation program. By the end of 2016, the Commission will have increased from five to 17 its number of qualified verification leaders. Verification is an essential element in ensuring that the Commission’s conclusions from its investigations and inquiries are robust and evidence-based.

The further operational reforms that I propose are to:

- implement a new investigations model that improves the timeliness, quality and evidence base for my decisions and recommendations on dumping and subsidisation matters
- adopt a more active, risk based approach to address proven circumvention activities, including through:

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- retrospective implementation of anti-circumvention measures (to the date of initiation of the inquiry)
- sufficiently broad modifications to the goods description to address proven circumvention methods
- facilitate a stronger whole of government approach to compliance, including enhanced collaboration between the Commission and the Department of Immigration and Border Protection (DIBP)
- enhance the Commission's market intelligence capability (through its Anti-Dumping Information Service, the ADIS) to conduct targeted research and market analysis, support investigations, strengthen the evidence-base for my decisions and recommendations, and pro-actively identify issues relevant to the effectiveness of the trade remedies system
- strengthen access to and use of international information by developing international information sharing protocols
- strengthen access to and use of Australian industry expertise in investigations by engaging an independent steel and aluminium industry expert to provide technical and market advice to the Commission.

Some of these measures have resourcing implications. The timing for the Commission's implementation of these reforms will therefore depend, in part, on sufficient funding being available or my capacity to re-direct funds from lower-priority activities. The Commission has commenced planning for the implementation of these operational reforms, including identifying the resources required to fully implement these reforms by mid-2017.

I seek your endorsement for my proposed operational reforms. Subject to your endorsement, I will discuss with the Secretary of your department how best to ensure sufficient resourcing for the reforms.

The Commission has consulted with the DIBP on the implications of the proposed reforms to circumvention monitoring and compliance. I note that there may be resourcing implications for DIBP.

In addition, two further operational reforms could reduce the Commission's timeframes and achieve efficiencies:

- delegating investigation time extension powers from the Minister to the Commissioner to place greater responsibility for investigations timelines on the Commission
- delegating duty assessment decisions (which are technical and routine in nature) from the Minister to the Commissioner to reduce timeframes for these assessments, saving time for stakeholders.

### **Potential policy reform options identified by steel and aluminium industry stakeholders**

While Australia's trade remedies system is generally effective in remedying material injury caused by proven cases of dumping and subsidisation, I consider that ensuring my administration of the system remains fit for purpose and reflects international best practice rests on a process of listening to stakeholder feedback and promoting continuous improvement in the Commission's operational policies and practices.

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In the course of undertaking its initial analysis of steel and aluminium industries earlier this year, the Commission undertook targeted consultation with industry and had regard to information and views provided by a wide range of interested parties in:

- ministerial representations by stakeholders
- submissions to the Commission and other parts of the Department of Industry, Innovation and Science
- the International Trade Remedies Forum
- submissions to other relevant inquiries and reviews, including parliamentary committee inquiries into Australia's anti-circumvention framework in relation to anti-dumping measures and into the future of Australia's steel industry and the Productivity Commission's 2016 research study on anti-dumping arrangements.

Based on these stakeholder views, and my ongoing engagement with stakeholders, I have identified some potential reform options raised by stakeholders for improving the administration of Australia's trade remedies system. I propose that these options be evaluated as part of a policy development process led by your department.

I note that the policy development process will involve a thorough analysis of a range of policy options (including their broader implications), broad stakeholder consultation, and the development of a fully costed set of proposals.

I have grouped these options into five categories. Some of these potential reforms could be implemented without the need for legislative change; others would require legislative change.

### *Circumvention and compliance*

Steel and aluminium producers have submitted that circumvention of measures is common and that monitoring and enforcement of compliance with measures needs to be improved.

An increasing proportion of the Commission's workload relates to anti-circumvention inquiries. Earlier this year, the Commission completed six inquiries into the alleged circumvention of steel measures which resulted in alteration of the original notices following the decision of the then Assistant Minister for Science (and Parliamentary Secretary to the Minister for Industry, Innovation and Science) to accept my recommendations.

While DIBP has legislative responsibility for compliance and enforcement activities, the Commission works closely with DIBP to support a whole-of-government approach. For example, the Commission works with DIBP through the Trade Analysis Capability function, which involves the Commission and DIBP working together and in consultation with key industry stakeholders to monitor trade flows, gather evidence on the effectiveness of trade remedies, and identify potential evidence of non-compliance and circumvention using advanced statistical techniques. In addition, the Commission liaises with the Australian Border Force (ABF), which undertakes risk-based compliance activities to identify and address non-compliance with anti-dumping measures.

Options to address circumvention more effectively may include:

- allowing anti-circumvention inquiries into avoiding the effect of duties to occur concurrently with duty assessments, so that these inquiries could be initiated before completion of the duty assessment (this would require legislative change)

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- allowing calculation of a single dumping margin for related exporters, where necessary to ensure measures are effective (this would require legislative change).

### *Form of measures*

The Commission's practice is to choose the most appropriate form of measure for the circumstances. Australian steel and aluminium producers often submit that they consider the combination method would generally be the more effective form of measure.

To recognise these stakeholder views, I could be given a Ministerial direction, requiring me as Commissioner to adopt the form of duty nominated by the applicant, except where I consider, taking into account the Commission's analysis, that the nominated form would either jeopardise the effectiveness of the measures or lead to perverse consequences.

Another potential reform, subject to consistency with Australia's international obligations, would allow for the 'form of measure' to set different floor prices where there are different models or grades of the goods subject to the application for duties (this would require legislative change). I consider that such a reform would improve the effectiveness of the combination method.

### *Timeliness of investigations and inquiries*

Stakeholders (including Australian industry, importers and exporters) value certainty and timely completion of investigations, inquiries and other reviews by the Commission.

The Commission has already reduced some aspects of its investigation timelines as a result of the Commission's increase in its verification capability mentioned earlier in this letter. Overseas onsite verification visits to check the veracity of exporter data now commence at day 86 of an investigation, a reduction of 52 per cent from the average of case day 180 in the year before the Commission implemented this operational reform. Similarly, overseas verification visit reports (which provide transparency about the Commission's processes and the evidence used in investigations) are now placed on the public record at average case day 124, a 46 per cent reduction from the previous average of case day 267.

Potential reforms to further reduce the Commission's timeframes and achieve efficiencies include:

- establishing a maximum timeframe of 18 months for investigations, consistent with World Trade Organisation rules, to provide greater certainty for stakeholders and support the delegation of investigation time extension powers from the Minister to the Commissioner
- setting a maximum timeframe for the official resumption of investigations following a decision by the Anti-Dumping Review Panel, such as the publication of a planned timeline by the Commission, to provide greater certainty for stakeholders
- creating an automatic exemption from dumping duties for goods covered by a Tariff Concession Order (TCO), removing the need for this type of exemption inquiry (this would require legislative change).

### *Greater transparency*

Australian steel producers have sought greater transparency of the Commission's model matching processes, where there are different models or grades of the goods subject to the application for duties.

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Subject to ensuring appropriate protection of commercially sensitive foreign exporter information, consideration could be given to ways of increasing the transparency of the Commission's model matching criteria, which would allow the Australian industry to provide more informed submissions on those criteria.

### *Subsidy definition*

Another potential reform would be to amend the definition of 'subsidy' in domestic legislation to better align it with the WTO agreement on subsidies and countervailing measures. The current provision is quite broad, so an amendment would provide greater clarity on what subsidies are countervailable and how to determine the total amount of subsidy.

This would improve the effectiveness of measures that address material injury to Australian industry caused by foreign government subsidisation of goods that compete with Australian-produced steel and aluminium products. As noted above, the Commission's analysis of steel and aluminium markets found evidence of significant subsidisation and other government interventions in these markets.

### **Summary and next steps**

The Commission's analysis and findings provide a sound basis for identifying trends in, and drivers of, dumping and circumvention. Based on the Commission's work and my experience as Commissioner, I have identified implications for the administration of the anti-dumping system, including the options for operational reforms to enhance the efficiency and timeliness of the Commission's investigations and inquiries, and the effectiveness of measures in remedying material injury to Australian industry caused by dumping and subsidisation.

I would be pleased to meet with you at your earliest convenience to discuss this advice, including consideration of next steps. I would also be pleased to provide you with any further information that you require.

Yours sincerely



Dale Seymour  
Commissioner of the Anti-Dumping Commission

19 August 2016

## Attachment A – Operational reforms to improve efficiency and effectiveness

### Improved investigation processes

The Commission is currently implementing improvements to its investigation processes to provide a higher quality service to Australian industries that are materially affected by dumping and subsidisation. These improvements will strengthen the evidence base for decision making, reduce the time required to complete investigations, and achieve operational efficiencies.

The Commission will:

- implement a new more efficient, evidence-based investigations model
- enhance the market intelligence capability of the Anti-Dumping Information Service (ADIS) to support investigations and the pro-active identification of issues and market intelligence and analysis within the new investigations model
- strengthen access to and use of international information
- enhance access to and use of industry expertise in investigations, including the engagement of an independent industry expert.

First, the Commission is currently in the process of developing and beginning to implement its new investigations model. Subject to ministerial endorsement, the new model will be implemented for all new investigations from the second half of 2016. The Commission's new investigations model will lead to:

- a more consistent approach to addressing complex issues in investigations through greater integration of quality assurance, policy and legal functions throughout the investigation lifecycle
- early identification of complex and novel issues in investigations to enable allocation of specialised resources to increase the level of confidence in the Commission's investigation analysis and decision-making capabilities, supporting the publication of Preliminary Affirmative Declarations (PADs) as close to day 60 as possible
- greater integration of ADIS market analysis into investigation decisions and identification of areas where a more in-depth understanding of markets would assist analysis
- improved quality assurance throughout investigations, particularly around verification of exporter data, to enable more robust evidence-based decisions
- greater consistency in the application and explanation of the Commission's operational policies and practices, and clearer and more readable reports, which will address concerns around transparency by allowing interested parties to better understand the Commission's analysis and claims made by other parties.

In addition to these immediate operational efficiencies, the Commission is working towards a new 'best practice' case management system. A new case management system, which allows the Commission to collect and use real time information on cases, will support the new investigations model, resulting in operational efficiencies. In developing a case management system tailored to the needs of the Commission and Australian industry, the

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Commission will build on the features of the new World Trade Organization (WTO) case management system.

The Commission also intends to engage with industry through the International Trade Remedies Forum (ITRF) on a strategic digital communication strategy.

These process improvements will allow the Commission to better service the needs of Australian industry by improving investigation efficiency, facilitating the application of learnings from international best practice on case management and reporting, and improving communication with stakeholders. Benefits include: improved reporting capability including around cases in progress; better resource planning; improved external reporting; better management of parallel activities; reduced manual handling and fewer errors, and continuous improvement in case management.

Second, complementing the new investigation model, the ADIS's market research function will provide targeted economic analysis of trends and trading behaviours to provide better information earlier in the investigations processes. Steel and aluminium markets are complex markets, as apparent from the Commission's report. A stronger understanding of these markets will allow the Commission to conduct better informed investigations and to evaluate the effectiveness of trade measures in particular market circumstances. More in-depth market information and analysis will strengthen the evidence base for the Commission's dumping and countervailing investigations and anti-circumvention inquiries.

Third, as part of building the ADIS capability, the Commission proposes greater use of international information. Examples of such information may be general information on subsidy programs or general analysis of the effects of government interventions in markets, where the information is relevant to an Australian investigation. This will complement more general technical exchanges that are already underway. For example, two investigations officers from the Commission participated this year in an international trade conference and a series of technical exchanges with the United States and Canadian anti-dumping authorities. Technical exchanges of this type provide a valuable opportunity to understand the broader international trade environment and allow the Commission to benchmark against international best practices in anti-dumping.

Fourth, the Commission plans to engage an ongoing 'industry expert' to assist in steel and aluminium investigations. While a large body of industry information is available to the Commission, an industry expert could further enhance the Commission's ability to access relevant, targeted, accurate information to improve its understanding of markets. The appointment of an independent expert to provide information separate to Australian industry submissions would assist the Commission in ensuring the robustness of the evidence base for the Commissioner's decisions and recommendations.

As noted in my letter, some of these reforms have resourcing implications.

### **Effectiveness of measures – circumvention and compliance**

When overseas exporters and importers circumvent or fail to comply with trade measures, the effectiveness of those remedies in addressing material injury caused by dumping and subsidisation is undermined.

#### **Circumvention**

The Commission considers that potential circumventers should be 'on notice' that the Commission will strengthen its approach to investigating alleged circumvention behaviour

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and taking steps to remedy proven circumvention activities. This includes examining evidence presented by industry on alleged circumvention of existing measures and further investigating complaints where there is sufficient evidence, potentially through investigations that are initiated by the Parliamentary Secretary.

Within the limits of the legislative framework and Australia's international obligations, the Commission will implement an active, risk-based approach to addressing proven circumvention. This means that the Commission will weigh up the relevant considerations and make an on-balance decision with the aim of maximising the effectiveness of the government's response to circumvention. Specifically, the Commission will adopt this approach, for example, in ensuring the retrospective application of measures (to the date of initiation of the inquiry) and in determining the extent of modification to the goods description in the notice required to effectively address the circumvention activity.

### **Compliance**

A more coordinated whole of government approach to circumvention and non-compliance would boost the effectiveness of measures in addressing material injury caused by dumping.

The Commission administers Australia's anti-dumping system and the Department of Immigration and Border Protection (DIBP) is responsible for enforcement and compliance activities. The Commission currently works closely with DIBP through the Trade Analysis Capability (TAC) function. This function was established in August 2015, and involves the Commission and DIBP working together and in consultation with key industry stakeholders to monitor trade flows, provide evidence on the effectiveness of trade measures, and identify potential evidence of non-compliance with existing anti-dumping measures and possible circumvention, using advanced statistical techniques. In addition the Australian Border Force (ABF) undertakes risk-based compliance activities to identify and address non-compliance with anti-dumping measures.

The Commission considers that there is scope to enhance the circumvention and compliance framework by adopting a stronger whole of government approach.

A greater focus on monitoring compliance with, and the impacts of, measures once they are in place, achieved through stronger collaboration between the Commission and DIBP, should lead to greater confidence within industry that measures are being implemented effectively. This could include closer liaison on the post-implementation effectiveness of measures to identify suspected circumvention and compliance issues.

As noted in my letter, some of these reforms have resourcing implications.

### **Ministerial Delegations**

To enable a more efficient and timely administration of the anti-dumping system, certain functions could be delegated by the Minister to the Commissioner of the Anti-Dumping Commission.

### **Duty Assessments**

Australian importers who have paid interim dumping duty on particular imports can apply, within specified time limits, for an assessment of final anti-dumping duty payable. The Minister may order that the total interim duty overpaid by the importer be repaid or that the total unpaid duty in excess of the interim duty already paid be waived.

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Delegating these powers would reduce workload for the Ministerial decision maker and for the Commission, and allow the Commission to more efficiently administer duty assessments. This delegation is uncontroversial, as it has been delegated in the past with no negative outcomes.

### **Extensions of investigation timeframes**

The Minister can consider requests to extend timeframes for certain investigations and inquiries beyond the statutory period.

Delegating these powers would reduce workload for the Ministerial decision maker and for the Commission, and could drive improvement in investigation timeframes by placing greater responsibility on the Commissioner to manage the conduct of investigations and inquiries by the Commission. This delegation could be supported by subsequent legislative change to place an upper limit on the total investigations timeframe (and therefore on extensions).