



Anti-Dumping Commission
Level 35
55 Collins Street
Melbourne VIC 3000

The Hon Christopher Pyne MP
Minister for Industry, Innovation and Science
Parliament House
Canberra ACT 2600

Dear Minister

Economic analysis of Asian steel and aluminium markets and impact on global and Australian markets

On 17 February 2016, you wrote to me requesting that I undertake an economic analysis of Asian steel and aluminium markets and the impact on the global and Australian markets through the Anti-Dumping Information Service (ADIS) within the Anti-Dumping Commission. You indicated that the analysis should:

- identify trends in dumping and circumvention behavior in steel and aluminium markets
- improve the efficiency of investigations of potential dumping and circumvention, and
- inform any recommendations on the most effective form of measures where there is evidence of dumping and circumvention activities.

You asked that I provide a brief to you on the results from the analysis by Monday 4 April 2016.

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

In this letter, I set out the main findings from the Commission's analysis and 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.

I also identify five possible areas for further policy reform which seek to address the priority concerns of the Australian steel and aluminium industries. I have included these comments, and a more detailed list of potential reform options, as my contribution to informing your consideration of the second tranche of policy reforms. I attach my list of potential reform options for consideration (**Attachment B**).

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. This includes the recent completion of six inquiries into the alleged circumvention of steel measures which resulted in alteration of the original notices following the decision of the Assistant Minister for Science (and Parliamentary Secretary to the Minister for Industry, Innovation and Science) to accept my recommendation.

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 growing 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 or the continued operation of inefficient facilities, and continued approvals for new steel facilities.

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.

Asian governments are not unusual in intervening in steel and aluminium markets. Australia, together with many European countries and the United States, have adopted policies to promote the growth, viability, productivity performance and competitiveness of these 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 a level playing field.

While Australia's anti-dumping system is generally effective in addressing proven cases of dumping and subsidisation, the Commission has identified a number of ways to further strengthen the system.

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 of the Commission's investigations and anti-circumvention inquiries, and the effectiveness of the form of measures I recommend to the Assistant Minister for Science (and Parliamentary Secretary).

These operational reforms 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—to be implemented for all new investigations from 1 July 2016
- adopt a more active, risk based approach to address proven circumvention activities, including through:
 - 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
- further improve the timeliness and effectiveness of Preliminary Affirmative Determinations (PADs), including by taking a more measured approach to the form of duties and application of the lesser duty rule at PAD stage
- enhance the market intelligence capability of 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 consulted with the Department of Immigration and Border Protection on the implications of the proposed reforms to circumvention monitoring and compliance, including any resourcing implications.

Potential policy reform options for consideration in the second tranche of policy reforms

In the course of undertaking its analysis of steel and aluminium industries, the Commission's ADIS undertook targeted consultation with industry and had regard to information and views provided by a range of interested parties in representations to you and in a variety of other forums. A summary of industry views is included in the Commission's report.

I have taken these views into account, and drawn on my experience in implementing Australia's anti-dumping system, to prepare a list of potential reform options for your consideration. I have proposed the list as my contribution to the process for developing the second tranche of policy reforms.

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

My potential reform options seek to address the five priority areas of concern raised by industry.

1. 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.

Changes to strengthen the circumvention and compliance framework could be considered in developing the second tranche of reforms. Some of these would require legislative change.

Options to address circumvention more effectively may include: expanding the defined circumvention activities; backdating anti-circumvention measures to the date of the original notice to create a stronger disincentive to circumvent measures; and provisions for extending the description of the goods to capture 'slight modification of goods'.

Consideration could also be given to enforcement options outside the anti-circumvention framework, such as expansion of the infringement notice regime.

Australian industry has highlighted that it currently does not have access to information contained within the Department of Immigration and Border Protection's Integrated Cargo System. While industry can obtain information on imports coming into Australia from the Australian Bureau of Statistics, this data is highly aggregated and typically published with a lag of six months. Having access to data sooner and in a less aggregated form would assist industry in preparing applications and identifying potential cases of circumvention or non-compliance.

I have been advised that more information is available from private and overseas sources than is currently available from official Australian sources. Consideration could be given to whether certain protections could be put in place to allow for the disclosure of additional information while maintaining appropriate levels of confidentiality. This may involve various governmental agencies.

2. Form of measures

The Commission's practice is to choose the most appropriate form of measure for the circumstances. Australian steel and aluminium producers have submitted that they consider the combination method would generally be more effective, given that their products are

more 'commoditised' or homogeneous (that is, there are fewer differences in models or grades).

Consideration could be given to legislative reforms, consistent with Australia's international obligations, that would allow for the 'form of measure' to set different floor prices where there are different models or grades. I consider that such a reform would improve the effectiveness of the combination method.

3. Changes to the lesser duty rule

Steel and aluminium producers have submitted that the application of the lesser duty rule has reduced the effectiveness of measures. Industry has argued that where dumping or subsidisation has been established, it would provide greater relief to industry to remedy the full extent of the dumping or subsidisation.

I note that the lesser duty rule is intended to apply only where the imposition of the lesser amount is sufficient to remove injury to Australian industry. The United States does not apply the lesser duty rule. Removing the requirement for the Minister to consider the lesser duty rule would place Australian industry in a similar position to steel and aluminium industries in the United States. Alternatively, the list of circumstances when the Minister is not required to consider the lesser duty rule could be expanded in the legislation.

4. Governance and review mechanisms

Australian steel and aluminium producers have submitted that exporters and importers routinely use the current review mechanisms as a means of increasing the costs of using the anti-dumping system and that this reduces its effectiveness.

Consideration could be given to replacing the quality assurance role of the Anti-Dumping Review Panel (ADRP) with enhanced quality assurance capability within the Commission. Alternatively, limitations could be placed on the ADRP's jurisdiction or the scope of its recommendations to reduce the costs and uncertainties for Australian industry.

5. Subsidy definition

The definition of 'subsidy' in domestic legislation could better align with the WTO agreement on subsidies and countervailing measures. 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 dumping and circumvention. Based on the Commission's work and my direct experience as Commissioner, I have identified further improvements to enhance the efficiency of investigations and ensure effective forms of measures are in place. I have also identified potential policy reform options.

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

4 April 2016

CC: The Hon Karen Andrews MP, Assistant Minister for Science