



AUSTRALIAN STEEL ASSOCIATION INC.
A0020339V ABN 24 762 435 928

Submission to the Senate Economics Legislation Committee

Inquiry into Anti-Dumping Bills 2015

21st April 2015

In response to the bills proposed to amend the Customs Act 1901 we offer the following comments:

1. Reduced deadlines for submissions to the Anti-Dumping Commission in response to dumping and subsidisation investigations.

The amendment from 40 days to 37 days is not a significant amount in the context of an Anti-Dumping Investigation. We do however register the concern that reduced deadlines are not unduly used as a trigger to deem a respondent non co-operative.

2. Require anti-dumping notices to be published electronically.

We support this amendment.

3. Consolidate lodgement provisions for anti-dumping applications and submissions.

We support this amendment.

4. Provide that the Minister is not required to have concern to the lesser duty rule where a country has not submitted a notification of its subsidies.

The Australian Steel Association agree that all WTO compliant countries should report subsidy programs in accordance with relevant WTO agreements.

Proposed use of the 'WTO Report of the Committee on Subsidies and Countervailing Measures' appears to be an appropriate mechanism to determine this allowing for supplementary notifications.

However, consideration of subsidy declarations should be constrained to Countervailing investigations or to consideration of a Particular Market Situation.

For countervailing investigations the methodology is documented in the ADC Dumping & Subsidy manual S28.1 to S28.3

In the event of a Particular Market Situation for Anti- Dumping applications, the CUSTOMS ACT 1901 - SECT 269TAC reflects WTO principles setting out a clear hierarchy for determining the normal value of goods in a market economy as well as the methodologies to be progressed.



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To this end we do not support the proposed insertion in the Amendment Bill¹:

67 After subsection 269TAC(3)

Insert: (3A) The Minister is not required to consider working out the normal value of goods under paragraph (2)(d) before working out the normal value of goods under paragraph (2)(c).

The Lesser Duty Rule however has a separate and distinct purpose as reflected in WTO legislation, Article VI of GATT 1994 and Australia's Customs Tariff (Anti Dumping) Act 1975 –Sect 8 (5A) which states:

“The Minister must , in exercising his or her powers under subsection (5) in respect of particular goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act, if the non injurious price of the goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of the goods of that kind as so ascertained, or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of :

- (a) the export price of goods of that kind as so ascertained or last so ascertained; and
- (b) the lesser duty;

does not exceed that non injurious price.

The critical aspect of the Lesser Duty Rule that would be lost by the proposed amendment is that it is considered **after** all the elements of determining a prospective dumping duty have been evaluated.

Preferred Approach:

Rather than declaration of subsidies being the basis for removal of the mandatory consideration of the Lesser Duty Rule, the ASA propose that:

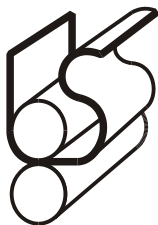
The impacts of non compliance of subsidies be quantified & be an integral input to the determination of duties that are still subject to the Lesser Duty Rule.

Potential Impacts:

The ramifications of removing the Lesser Duty Rule is that duties beyond those determined to remove material injury may be applied.

The consequence would effectively be an excessive tax on the Australian users of the goods affected by the anti-dumping or countervailing application. This would directly affect the ability of these Australian businesses to be internationally competitive.

¹ Customs Amendment (Anti-dumping Measures) Bill (No. 1) 2015; Clause 67



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Case Study:

A recent example where the Lesser Duty Rule has mitigated the duties applicable is Quenched & Tempered Steel Plate (ADC 234). In this instance the LDR had the effect of mitigating the effective duty rate on Q&T Plate from Sweden from 34 per cent to 9.6 per cent.

Whilst there is no suggestion of non declaration of subsidies in this case, sensitivity to applicable duties is critical to retaining an internationally competitive Australian manufacturing sector.

A recent submission to the House Standing Committee on Agriculture an Industry Inquiry into the Circumvention of anti-dumping laws² proposed that the Complainant in the Q& T Plate (with circa 60 employees) “should be provided with more support”for the Minister to not take account of the Lesser Duty Rule.

Since the application of duties one of the prime Australian users of Q&T Plate has subsequently transferred their Australian manufacturing operations offshore³

The result will be the direct loss of 280 Australian jobs not to mention the Australian jobs at risk in the supply chain from Australian businesses such as Total Steel and Vulcan Steel along with the associated bucket manufacturers and component suppliers.

The issue is one of the balance. The Lesser Duty Rule provides this important balance by ensuring that excessive duties do not result in protection of select Australian business at the expense of a multitude of other Australian businesses.

5. Clarify that the Minister may grant exemptions from dumping duty with limited retrospective effect.

We do not support the proposed introduction of subsection 8A that limits the recovery of paid duties in light of an investigated and granted exemption.

We consider the introduction of this measure at odds to the core intent of anti-dumping regulations being to remedy injurious effects of ‘dumped’ goods on Australian industries.

Where it is can be established that an exemption be granted i.e: that there is no Australian industry for the goods in question, there is no objective basis for limiting, in any manner, the full restitution of duties paid by an Australian business.

6. Introduce a fee and raise procedural and legal thresholds for applications to review anti-dumping decisions.

We question the merit and balance of approach behind this proposed amendment.

7. Streamline merits review processes of the Anti-Dumping Review Panel.

The Australian Steel Association considers that the present regulations in Part 8 of the Customs Act provide a balanced consideration of the merits of any review and the application of duties or otherwise.

² Inquiry into the Circumvention of anti-dumping laws; Submission to the House Standing Committee on Agriculture and Industry: Australian Steel Institute Submission No 18 @page 8

³ The Mercury, April 16, 2015



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The proposed amendments are regressive and detract from this balance.

8. Abolish the International Trade Remedies Forum.

The Australian Steel Association has been supportive of the International Trade Remedies Forum (ITRF) as a means to consider legislation that affects Australia's ability to engage in trade with its neighbours.

The criticism to date has been that the ITRF has been weighted largely toward a raw material producers lobby.

Retention of the ITRF with improved balance of the group to consider other stakeholders such as shipping companies and more downstream Australian users would be a significant improvement.

Useful inputs to the forum would be the rationale behind the cancellation of shipping routes to and from Asia which do not bode well for Australian trade.

Additionally the recent comments of an Australian manufacturer that "the anti-dumping regime in Australia has become so heavily biased toward protecting the interests of complainants, that it represents a serious distortion to the normal operation of markets and normal business practices"⁴ does not appear to be recognised in the policy debate.

In the same forum the steel materials lobby provided no fewer than 6 of the 25 submissions⁵.

Professor Ross Garnault has argued that Australia is unlikely to see another era of extensive micro-economic reform because of the growth in rent seeking behaviour since the days of the Hawke-Keating Government⁶

Part of any strategy to ensure the ongoing operational viability of all Australian businesses should be avoiding them being unduly burdened in response to the demands of a few.

Retention of a more balanced ITRF forum would be supportive of broad inputs to the regulatory environment to facilitate rather than hamper micro- economic reform.

The alternative submitted by an Australian manufacturer is "increased supply chain costs for Australian industries (which) puts Australians out of business and curtails investment and growth"⁷

We welcome the opportunity to discuss this submission.

D. Birrell
Australian Steel Association Inc

⁴ House of Representatives Standing Committee on Agriculture and Industry; Submissions to Inquiry into Circumvention of Anti-Dumping Laws: Submission 1, Cover Letter; page 2

⁵ House of Representatives Standing Committee on Agriculture and Industry; Submissions to Inquiry into Circumvention of Anti-Dumping Laws: Submissions 9,13,14,18,22 and 23.

⁶ 'We're now a nation of rent-seekers' Ross Gittins; Sydney Morning Herald' March 3 2014.

⁷ House of Representatives Standing Committee on Agriculture and Industry; Submissions to Inquiry into Circumvention of Anti-Dumping Laws: Submission 1, Cover Letter; page 2