

CFMEU Submission  
**Customs Amendment (Anti-Dumping Measures) Bill 2017 [provisions]**

Thank you for the opportunity to comment on the **Customs Amendment (Anti-Dumping Measures) Bill 2017 [provisions]** which has been referred to the Economics Legislation Committee for inquiry and report by **6 October 2017**. We support the bill and recommend its prompt passage.

The Construction, Forestry, Mining and Energy Union (CFMEU) has worked closely with the Australian Council of Trade Unions (ACTU) and other manufacturing unions, particularly the Australian Manufacturing Workers Union (AMWU) and the Australian Workers Union (AWU) for a number of years on anti-dumping and countervailing policy. The CFMEU supports the submissions from the ACTU, AMWU and AWU to this inquiry.

Productivity, international competitiveness and fair trade have always been core business for our unions. The workers we represent are employed in industries where their job and income security depend on successful Australian exports and goods and services that are competitive with imports. Maintaining a properly configured anti-dumping and countervailing system is very much a part of that core business.

Our unions appeared together at a public hearing on April 6, 2016 for the Economics References committee's inquiry into the Future of Australia's Steel Industry in the 44<sup>th</sup> parliament (the inquiry has been reconstituted in the 45<sup>th</sup> parliament)

**AMWU:** If I could just make some comments and support a lot of the comments made earlier by my colleagues, the issue around dumping is it is a regulatory arms race—you make some changes to the laws, the dumpers become more sophisticated and you need to revisit the changes and continue.

**Senator KIM CARR:** It is a bit like tax avoidance, is it?

**AMWU:** It is a lot like that, yes. Ultimately, the behaviour gets observed and you need to change the rules or change the laws or change the way that you administer the system. You are never going to get to a position where it is all 100 per cent right because the dumping will continue to get more sophisticated...<sup>1</sup>

It is apparent that this above exchange provides the context for the introduction of the bill. The explanatory memorandum states that the purpose of the bill is to:

“...limit Exporters’ ability to subvert the anti-dumping framework and benefit from inappropriately reduced rates of duty that do not remedy the injurious effects of dumping”<sup>2</sup>

<sup>1</sup> [http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/e546c752-d319-470c-a310-269c0901db56/toc\\_pdf/Economics%20References%20Committee\\_2016\\_04\\_06\\_4344\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/e546c752-d319-470c-a310-269c0901db56/0000%22](http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/e546c752-d319-470c-a310-269c0901db56/toc_pdf/Economics%20References%20Committee_2016_04_06_4344_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/e546c752-d319-470c-a310-269c0901db56/0000%22)

<sup>2</sup> [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982\\_ems\\_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload\\_pdf/646002.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982_ems_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload_pdf/646002.pdf;fileType=application%2Fpdf)

Currently, exporters are benefiting from a loophole by:

“...Receiv(ing) a less effective anti-dumping duty by not exporting, or exporting small volumes at a higher price, for a period of time, before applying for the duty to be reviewed.”<sup>3</sup>

Predictably, opponents of Australia’s anti-dumping system have painted the move to block this loophole through this bill as some sudden lurch to protectionism. For example, long standing opponent of Australia’s anti-dumping system Alan Oxley was reported as saying the new laws were part of a decade-long trend towards protectionism.<sup>4</sup>

This analysis is not supported by the Department which, in the Regulation Impact Statement, states that: “This proposal does not seek to change the policy intent of the anti-dumping system in any way.”<sup>5</sup>

Indeed the policy intent of the Government is clear and long standing:

“Dumping is a tactic that provides the illusion of a short term benefit to consumers. In the longer term international dumping hollows out Australian industry, decreases competition, costs jobs and increases prices.”<sup>6</sup>

As outlined in the Regulation Impact Statement (RIS) provided by the Department:

“Australia’s anti-dumping and countervailing system is intended to provide a market-based remedy to injurious dumping and subsidisation. The remedy provided should be effective at preventing further injury”<sup>7</sup>

Furthermore the RIS suggests that this is a loophole which is being currently exploited by exporters and is subsequently resulting in material injury to Australian industry:

“...it has been identified that the current operation of the system is producing systemic outcomes that do not fulfil the intent of the system.”<sup>8</sup>

It was also reported that Daniel Moulis, a lawyer who often represents foreign exporters said:

“It will make it much more difficult for foreign exports to have dumping measures reviewed to reflect the current cost and price of goods”<sup>9</sup>

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<sup>3</sup> ibid

<sup>4</sup> <http://www.afr.com/news/world/asia/australia-gets-tough-on-china-with-new-antidumping-law-20170914-gyhn95>

<sup>5</sup> [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982\\_ems\\_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload\\_pdf/646002.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982_ems_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload_pdf/646002.pdf;fileType=application%2Fpdf)

<sup>6</sup> ‘The Coalition’s Policy to Improve the Competitiveness of Australian Manufacturing’, August 2013, p 12, (available online@ <http://lpaweb-static.s3.amazonaws.com/13-08-21%20The%20Coalitions%20Policy%20to%20Boost%20the%20Competitiveness%20of%20Australian%20Manufacturing.pdf>)

<sup>7</sup> [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982\\_ems\\_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload\\_pdf/646002.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982_ems_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload_pdf/646002.pdf;fileType=application%2Fpdf)

<sup>8</sup> [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982\\_ems\\_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload\\_pdf/646002.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982_ems_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload_pdf/646002.pdf;fileType=application%2Fpdf)

<sup>9</sup> <http://www.afr.com/news/world/asia/australia-gets-tough-on-china-with-new-antidumping-law-20170914-gyhn95>

However the RIS identifies that:

“In every instance that the low volume export behaviour was identified, and following the zero percent margin there was another process such as a later review or continuation inquiry, the exporters behaviour had led to the subsequent process resulting in a positive dumping margin. These outcomes are evidence that the remedial duties are being undermined.”<sup>10</sup>

This would suggest that “current costs and price of goods” were “current” (in these instances) only for the purpose of achieving lower margin of duty at a later date to circumvent the intent of the anti-dumping duties imposed. While the bill is supported, further regulatory action could need to be implemented in the near future particularly if the exporter behaviour continues or the new approach outlined in the bill to prevent the circumvention of the intent of duties through the review method fails or the circumvention occurs by some other way through the review method. In this regard the CFMEU supports further consideration of “Option 2” outlined in the RIS which would require that applications for review by affected parties be restricted to certain periods and that duties are collected retrospectively.

With the results of the United States’ Section 232 Investigation into steel imports likely to be released soon it is time that Australia strengthens our regulatory arsenal when it comes to the prevention of the dumping of goods which cause material injury to local firms, and certainly prevents the circumvention or other avoidance of anti-dumping duties we have in place. If this does not occur it is conceivable that excess global capacity will find its way to Australian shores, devastating local industry.

This bill is a step in the right direction but there is still a lot more that can and should be done to make Australia’s anti-dumping and countervailing system as responsive to the needs of local industries as systems in the United States, Canada and the European Union.

The CFMEU will continue to work with other unions and employers in our affected sectors and the parliament to ensure that we have an anti-dumping and countervailing system which provides a fair go for our members and their families and communities who rely on a level playing field for their livelihoods. We anticipate we will be in a position to outline specific proposals for further improvement in the coming months.

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<sup>10</sup> [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982\\_ems\\_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload\\_pdf/646002.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5982_ems_6af775a1-7d2d-4240-9eb8-5e4983e6d609/upload_pdf/646002.pdf;fileType=application%2Fpdf)