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SUBMISSION

TO

AUSTRALIAN SENATE ECONOMICS LEGISLATION COMMITTEE

ON

CUSTOMS AMENDMENT BILL 2011

For information and enquiries re this submission please contact the CEO, David Birell

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INTRODUCTION AND OVERVIEW

The ASA appreciates this opportunity to make a submission to the Senate Economics committee.

On the current Australian Anti-Dumping System the ASA is strongly supportive of the Productivity Commission recommendation to include a bounded Public Interest Test and considers the Commission's Report to be a once in a generation opportunity to improve the balance of the system that would be consistent with and supportive of a broader Public Interest Test.

PROPOSED AMENDMENT BILL

The ASA is fully supportive of any action to place Australian industry 'first'.

Australian industry, however, is not confined to the local upstream producer of the 'goods concerned' and the interests of Australian downstream users of the 'goods concerned' need to be taken into consideration.

Re the proposed amendments, the ASA requests that the real world, market and commercial factors, relating to the cause and need for imports of various intermediate goods such as steel products for value adding in Australia be included in the Committee's consideration and analysis.

Firstly, in respect to the steel sector, Australian users and stockists in competition to Australia's sole upstream, vertically integrated steel producers, factually **cause** the goods to be imported, and as such they have to pay for those goods.

There is no overseas steel producer that has the market presence in Australia to target this market with predatory priced exports of their surplus or incremental production.

Secondly, the imports in question are produced to order and are not supplied ex stock of the overseas mill.

Thirdly, the average lead time from date of order to goods arrival is three to four months compared to the local producers far more frequent and speedier delivery times of one month.

Fourthly, many steel imports are not because of choice or price but because of need due to the local producer's refusal to supply each and every purchaser on a truly competitive basis.

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The reality is that the local upstream producers are in competition with their downstream customers.

Importantly it needs to be recognised that in respect to ASA member steel imports the sales are an ARMS LENGTH transaction and neither the importer or beneficial owner of the imported goods have access to the necessary cost, financial or sales data of their overseas supplier.

EXPERIENCE

The ASA experience is obviously in respect to imports of intermediate steel products requiring further work or value adding in Australia.

There are two broad types of intermediate steel goods namely ‘flat’ and ‘long’ and Australia has only a single upstream producer of each type, being Bluescope and Onesteel respectively.

Imports of either ‘flat’ or ‘long’ steel products provide the only alternative supply option for Australian steel users,stockists and as such they are the only discipline of market competition.

The ASA experience on “defending” competing imports to Bluescope and Onesteel Anti-Dumping Actions over a period of more than 30 years has been:-

- The very chilling effect of initiated Anti-Dumping Actions, let alone the imposition of interim and periodic Measures, has the effect of lessening competition in the Australian market for the “goods concerned”.

- The interests of downstream users of the “goods concerned” and the competitive issues are never taken into consideration.

- The imposition of Anti-Dumping Measures for serial type applicants such as Onesteel has not resulted in the beneficiary making any new investment in production capacity.

- Rather than having a presumption in favour of Measures, repeat applicants should be redirected to more appropriate or suitable assistance mechanisms on the basis of a national or public interest test.

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Current Anti-Dumping Law

the ASA supports the need for Australia to have an effective, legitimate Anti-Dumping System that takes into consideration the legitimate interests of all downstream sectors of the goods concerned and which is consistent with the WTO Agreement.

INDUSTRY STANDING & LIKE GOODS

The ASA considers the most relevant economic debate in Australia is about how we can enhance productivity and the ASA shares the view that because of the benefits of the mining boom, etc., over the past decade Australia has not achieved the desired flow through of productivity improvements.

Upstream producers of intermediate goods such as Onesteel, or Bluescope, have “ready” access to the current system and can use the current system as a strategic marketing action by themselves being an importer of “like goods” from countries other than those named on the Application.

As for the cost factor making applications too expensive, Onesteel and Bluescope are publicly listed companies that have the use of shareholder funds and, importantly other resources, not available to their market competitors on finished goods or at the competitive distribution market.

Value adding downstream users of the ‘goods concerned’ , being small to medium sized enterprises in competition with Onesteel or Bluescope on end product- as both steel producers are vertically integrated on manufacturing- do not have the resources to properly defend their viability and sustainability and are totally reliant on the overseas exporter being fully co-operative to “Customs” satisfaction.

EMPLOYMENT

Employment numbers in the downstream steel user sector is reliably estimated to be at least 80,000.

Bluescope’s Chairman is on record of saying 90,000 people are employed in the Australian steel sector.

As indicated by the ASA ‘Snapshot’ on page, the number of employees directly involved with Australian steelmaking is less than 10,000 and most probably around 5,000 employees.

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STEEL - NOT UNIQUE

By way of observation the Australian steel industry is clearly not unique in terms of only upstream "primary" producers accessing the current Anti-Dumping System.

Australia has single upstream producers in the P.V.C, Glass, Paper, chemical industries, and it would appear they too have 'ready' access to the current system.

DISTINCTION

The ASA considers the Australian producers of agricultural food products such as olives, mushrooms, fruit concentrates etc. should be a separate case from a national interest factor in that our experience and perspectives are based on what we term intermediate goods and industry inputs requiring further work in Australia.

SUMMARY

The ASA considers the current Anti-Dumping System to be exclusive and anti-competitive.

The ASA genuinely supports the need for Australia to have an effective more balanced and inclusive system by having a bounded public interest test an integral part of the Anti-Dumping process.

The ASA also supports the need for a viable, efficient but customer responsive Australian steel producer sector.

The Anti-Dumping debate in our industry sector is more about competition than imports – its really about big business trying to minimise competition from their smaller market competitors.

REALITY CHECK
"THE REAL THREAT"

The real threat to both the upstream local steel producers and the downstream user, fabrication sectors in Australia is the increasing importation of fabricated, coated steel components for major and other projects.

Chevron's Gorgon Gas Project has contracted 270,000 Tonnes of steel imports – that's equivalent to Onesteel's annual output of Structurals at Whyalla.

The only mining operation utilising local steel value adding appears to be Fortescue.

Others, including the Worsley Alumina Project, the W.A. Government's Western Power and the North West Shelf are importing fully fabricated steel and the portable housing units

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known as “Dongas” are also being imported by the shipload rather than being built in Australia.

The Australian design engineers, fabricators, etc., excluded from this opportunity have no chance of accessing the current Anti-Dumping system by reason of industry standing and “like goods” criteria.

The Amendment Bill.

The Bill seeks to amend Part XVB of the Customs Act 1901.

“Provision No 1”

It wants to provide that the importer of goods which are subject to anti-dumping applications bears the onus of proof to prove that the goods have not been dumped or subsidised to Australia.

Response

Importers of the steel goods produced by the two Australian upstream manufacturers have an arms length supplier, customer relationship with their overseas supplier.

Importers simply do not have access to their suppliers cost to make and sell financial or domestic sales data.

The ASA respectfully submits that this proposal is based on a lack of understanding or appreciation of the real world situation-in our industry sector, importers are totally reliant on their overseas supplier co-operating fully with “Customs”, and for reasons of commercial confidentiality, importers do not get access to this required financial and sales data.

The ASA also believes this proposal to be contrary to the WTO Agreement-Article 3.1 in that “dumping” needs to be proven in a positive rather than any presumptive manner.

It would impose an unreasonable burden on arms length importers and would indicate a denial of natural justice.

What may be practical in terms of alleviating the adverse cost and uncertainty factors resulting from anti-dumping applications is the establishment of a “pre-clearance” process facility . Steel imports for example are subject to a monitoring arrangement by “Customs” and the establishment of specialist industry “cells” in “Industry” , “Customs” or “Trade” in Canberra should be explored.

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As indicated previously, most steel imports are for reasons other than “price”, and the most critical considerations for our importing member companies are certainty, consistency, and reliability.
In more than 30 years practical experience there has never been a case of an overseas steel mill intentionally wanting to cause material injury to the upstream local producers.

“Provision No 2”

The Bill provides a presumption that where dumping and material injury have been proven, the material injury is the result of dumping.

Response

This provision would be contrary to the WTO Agreement.

Organisations such as DFAT are better placed to advise on this but our clear understanding is that the administering authority on “dumping” has a mandatory obligation to determine if any material injury is the cause of factors other than the “proven”, “evidenced” dumping.

One issue relating to this is the absence of any definition on what constitutes material injury, and applicants, being local producers “allowed” access to the anti-dumping system, only need to provide prima facie “evidence’ to support their applications.

Apart from it being “illegal”, this provision would encourage local producers with current industry standing on like goods to make capricious, strategic type applications that result in a tax payer funded fishing expedition.

“Provision No 3”

The Bill would also enable preliminary affirmative decisions to be initiated once an investigation is started and allows consultation with industry experts as part of the investigation and review process.

Response

The definition of industry standing is again the primary issue along with the presumption of dumping .

The presumption of dumping, and thus the collection of cash securities based on a notional unsubstantiated dumping margin from Day “one” is simply unacceptable and contrary to the entitlement of natural justice.

The Productivity Commission’s recommendation of a bounded public interest test would satisfy the inclusion of

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	"industry experts" in the process and the establishment of a pre-clearance option would be a far more equitable, cost effective provision.
"Other Provisions"	The Bill, inter alia, also proposes to broaden the definitions of "affected party" and "interested party" to include trade unions.
Response	This proposal is consistent with our demonstrated advocacy of extending the definition to include the legitimate interests of downstream industries and third party market competitors at the distribution level of trade. The Productivity Commission's recommendation of a bounded public interest test would satisfy this provision, provided that other legitimate interests are taken into consideration and not only those of trade unionists employed by upstream producers.
Further information.	The ASA would appreciate any further opportunity to provide information and data in support of this submission.

Yours Sincerely

David Birrell

Chief Executive Officer
Australian Steel Association Inc