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Mr Gary Banks
Chairman
Productivity Commission
PO Box 80
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Dear Mr Banks

AUTOMOTIVE INDUSTRY INQUIRY

BHP Steel has reviewed the Review of Automotive Assistance Position Paper released by the Commission on 27 June 2002. We have some comments on the issues raised in the Position Paper, which are in addition to those set out in our submission to the Review, lodged with you on 4 June 2002.

We commend the Commission for the Position Paper's balanced and considered presentation of key issues and preliminary recommendations. In our view, based on a review of the Position Paper and the various submissions to the Commission, there appears to be a relatively strong consensus amongst major players in the industry around the majority of key issues facing the industry.

As stated in our initial submission, BHP Steel has an overriding concern that the outcomes of the Commission's Review should support an environment conducive to planning certainty for our customers in the automotive industry. We believe that policies should take a strategic and longer-term perspective in line with the industry's normal commercial planning timeframes.

The automotive industry is an important customer sector for BHP Steel, accounting for annual sales revenues in excess of \$300 million, and about 14% of our annual steel sales (in tonnes) into the Australian market.

BHP Steel wishes to make additional comments to the Commission in the following areas arising from the Position Paper:

1. Spillover Effects
2. Tariffs
3. Workplace Relations

1. Spillover Effects

The Position Paper considers that spillover effects to other industries are an important factor in support of providing assistance levels to the automotive industry in excess of those provided to other industries. The Commission has expressed reservations about the extent of the spillover effects generated by the automotive industry.

BHP Steel notes the Commission's three suggested criteria for assessing whether spillovers generated by the automotive industry are justifications for specific policy settings for the automotive industry:

- (i) The magnitude of the spillovers extending to other industries – as distinct from benefiting firms within the automotive industry itself;
- (ii) Whether firms would appropriate sufficient benefit from the activities which generate inter-industry spillovers to encourage them to undertake those activities without assistance; and
- (iii) Whether such spillovers are significantly greater than those generated by other high skill/technology-based activities that must compete in the marketplace without the sort of support currently directed to the automotive industry.

As a diversified steel manufacturer, BHP Steel is in a good position to evaluate the significance of the spillovers generated by the automotive side of our business against the Commission's three criteria.

In terms of the level of service and the quality of products provided to our customers, there is no doubt that learnings from our automotive business have been adapted and applied to the benefit of our non-automotive customers. For example, logistical and inventory efficiencies relating to the use of Kanbans have been replicated in our building and construction markets. Similarly, quality systems introduced to meet the needs of our automotive customers have generated tangible benefits for our non-automotive customers in the building and manufacturing sectors.

For BHP Steel, very significant spillover benefits are generated in the automotive part of our business. These advances in turn drive our competitors, both automotive and non-automotive, to match these innovations. Hence, these spillovers find form both within BHP Steel and in other firms outside of BHP Steel. BHP Steel contends, therefore, that there is compelling evidence that encouraging innovation in the automotive sector, will tend to generate a "hothouse" effect leading to greater technology take-up and adaptation in other manufacturing industries.

Another area where BHP Steel has observed classic "public benefit" spillovers is in relation to technical collaboration between BHP Steel and universities, the CSIRO and associations such as the Society of Automotive Engineers of Australia SAE(A). Such collaboration sees leading-edge automotive steel technologies diffused back into the broader engineering community and, ultimately, into other industries.

2. Tariffs

BHP Steel's initial Submission made the following points:

- BHP Steel favours the Australian automotive tariff rate being set a level that supports continuing investment and competitiveness of the automotive industry in Australia; and
- Any further reduction in Australia's automotive tariffs should be linked to firm and unequivocal commitments from key trading partners to substantially reduce their own tariff and non-tariff barriers relating to automotive products.

We note the Commission's recommendation that tariffs be held at 10% from 2005-2010, then reduced in one further step to 5% and held at that level from 2010-2015.

However, BHP Steel's view is that a further reduction in tariffs to below 10% from 2010 should be subject to a further review "check-step", perhaps best undertaken during calendar 2007. This would enable an assessment, closer to the time of the proposed reduction, of international trade policy settings at that time in comparator and competitive economies. Our observation has been that over the past decade, in various manufacturing industries, tariff settings have proven to be dynamic and somewhat unpredictable.

Our own recent experience as a participant in the international steel industry is a case in point. 2002 has been marked by a wave of new tariff and quota measures throughout the global steel industry, sparked initially by President Bush's implementation of "Section 201" tariff measures in the US. Other countries have followed suit.

The real world experiences of the last 10-15 years in a range of industries bear witness to an unstable and changing tariff environment including:

- Periodic protectionist surges (eg. Malaysia);
- Globalisation of manufacturing industries;
- Unexpected economic or political shocks; and
- The emergence of regional multi-member trade agreements.

In our view, a major policy decision such as a reduction in Australian automotive tariffs from 10% to 5% should take account of the policy settings in other countries with which Australia competes for scarce automotive capital resources. Ideally, an assessment would be made at a point in time close to the time frame proposed for a reduction.

A further review undertaken in 2007 would enable an assessment of progress made by other countries, particularly within APEC, on market liberalisation.

In our view, the Commission's Position Paper may have too lightly dismissed the suggestion made by ourselves and others that future tariff reductions should be linked to progress by other countries in reducing their tariffs – "The Australian vehicle market is small and automotive tariffs are relatively low, so that the practical value of any bargaining coin would be limited" (Position Paper at p.116).

3. Workplace Relations

BHP Steel agrees with the Commission's preliminary finding set out in the Position Paper p.49 that "Appropriate regulatory changes to constrain the scope for 'protected' industrial action, and to provide for speedier and more effective reduction of disputes causing significant damage in particular industries or firms, would be beneficial for the automotive industry".

BHP Steel has within the past six months, experienced two significant, high profile industrial disputes governed by the federal workplace relations system – at the Wingfield Service Centre in South Australia and Western Port Works in Victoria. Although these disputes were related to enterprise bargaining agreement (EBA) negotiations in the steel industry, they adversely impacted BHP Steel customers in the automotive industry. Both disputes occurred during protected bargaining periods.

For our Company, some fundamental issues were at stake during the Western Port dispute. The tough decisions the Company had to make during this dispute have enabled us to achieve some important outcomes and long-term benefits for our business:

- We have in place an innovative 27-month EBA, effective from the end of March 2002;
- Upon signing this new EBA, BHP Steel secured an agreement with all parties to maintain continuity of supply to customers. This means that the Company will have the ability to dispatch critical product to our customers during industrial disputes;
- A management of change clause and an agreed dispute resolution procedure in the EBA will enable us to progress productivity improvements swiftly and without constant threat of industrial disputation;
- The company secured agreement and the cooperation of all parties to undertake a Maintenance Review to determine the most efficient maintenance operations for our plant and the Company will determine the outcomes of that Review.
- The clause in the EBA dealing with security of employment allows for forced redundancies in six months time following the completion of a formal Maintenance Review process, that is, should the need for redundancies be recommended by the Review.

An additional issue at stake was the basis on which BHP Steel will have the right in future to select contractors to work at Western Port – historically (at least over the past two decades) the Australian steel industry had permitted unions a right of veto over contractor engagement.

- The outcome at Western Port has "normalised" the position on contractors so that it is in line with the position that would apply in most major industrial workplaces in Australia – that is, BHP Steel will have the ability to determine which contractors are engaged on the Western Port side (although we will be assessing the industrial relations record of contractors so as not to import problem contractors).

For BHP Steel, the issues at stake at Western Port were critical – we are very focused on securing our ongoing competitiveness in a tough global steel industry. We endured a 25-day

strike by members of the AMWU and CEPU and illegal picket activity in order to achieve the outcomes summarised above.

In light of our experience, we strongly support amendments to the *Workplace Relations Act 1996* ("the Act") along the following lines:

- Providing the Australian Industrial Relations Commission (AIRC) with the capacity to suspend or terminate bargaining periods if a protected action is causing damage to a firm or industry and its employees, rather than only when significant damage is occurring to "the Australian economy or an important part of it".
- Giving the AIRC the discretion to determine whether or not a cooling-off period should be established to assist the resolution of a particular dispute.

(We propose that only a party to the industrial dispute or the AIRC should have the standing to initiate such orders – a corporation which is party to the dispute will find itself under significant commercial pressure from affected customers and suppliers, which will serve as a sufficient spur for action in the AIRC, without third parties having the right to initiate orders.)

- Requiring the AIRC to hear and determine s.127 applications to stop industrial action within 24 hours of lodgement.

(The need for prompt action by the AIRC is supported by our experiences at both Wingfield and Western Port.)

- Requiring a secret ballot before protected action can be taken.

We note that other submissions received by the Commission, including from the Australian Industry Group, have advocated such amendments.

BHP Steel believes the definition of circumstances in which the AIRC is given the power under section 170MW of the Act to suspend or terminate a bargaining period (thereby bringing to an end the opportunity for persisting with protected industrial action) is too inflexible.

Section 170MW of the Act presently permits the AIRC to suspend or terminate the bargaining period in very limited circumstances. The High Court has considered subsection 170MW(3), and it is clear that the threshold required to be reached for resort to this subsection is very high.

The scheme of the Act contemplates agreement-making at workplace or enterprise level. In order to facilitate this, the parties are permitted within defined circumstances to engage in protected industrial action. BHP Steel's experience demonstrates, however, that protected industrial action is often accompanied by associated conduct, or non-industrial claims, which calls into question the legitimacy of the protected industrial action and the efficacy of associated legislative provisions.

For instance, during our Western Port dispute, members of the AMWU and CEPU (Electrical Division) engaged in protected industrial action constituted by a strike. The strike may ultimately

have imposed significant pressure on BHP Steel, but it certainly did not have the capacity to do so in the short term. Recognising this, the two unions and their leaders organised picket action at the entry and exit points around the Western Port plant. Road trucks and rail trucks were illegally prevented from entering or exiting the premises as a result of these pickets notwithstanding injunctions granted by the Federal Court of Australia requiring that the conduct in question cease.

Damage was being inflicted upon the Company and its customers not as a result of the protected action, the strike, but rather the unlawful picketing conduct in breach of Federal Court orders. For the AIRC's powers under section 170MW(3) of the Act to come into effect, the conduct must have threatened significant damage to the economy or an important part of it.

However, there was doubt about whether this provision could have been activated even if great damage to the Australian economy could be demonstrated. One reason for this was because there must be a technical compliance with the strict terms of the section (that is, it must be "*industrial action*" that is threatening to produce the nominated results) and the damage may have resulted not from "*industrial action*" but rather from unlawful *picketing action*. (The law is clear that picketing is not within the statutory concept of industrial action or, therefore, *protected industrial action*.)

BHP Steel proposes a broadening of the circumstances in which a bargaining period may be terminated or suspended. We advocate that some flexibility should be allowed to the AIRC to consider the general circumstances (taking into account both specific and more general public interest considerations) in deciding whether and when resort to protected industrial action should remain legitimate.

We see it as appropriate that the AIRC be given a general power, with relevant but *flexible* guidance, to consider the circumstances in which industrial action ought to be clothed with the legal immunity which comes from protected industrial action, taking into account all of the surrounding circumstances.

We look forward to the opportunity to discuss these issues with you further at the public hearing of the Commission scheduled to be held in Melbourne on 30 July 2002.

Yours sincerely

David Goodwin
Executive Vice President
Corporate Affairs