



Non-Confidential:

CONTRIBUTION to PRODUCTIVITY COMMISSION RESEARCH PAPER
ON
DEVELOPMENTS in ANTI-DUMPING ARRANGEMENTS.

1. INTRODUCTION:

Commercial Metals Pty.Ltd. (CMC) is a major Australian importer of intermediate steel products on behalf of domestic steel users and welcomes this opportunity to contribute to the Productivity Commission's research paper.

CMC's contribution is based on its decades of experience and is respect to the Australian sector of steel products.

2. CONTACT DETAILS:

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3. CMC and Steel Industry Sector 'Flash' Profile.

3.1. CMC's Australian operations include:

- A National presence.
- Acting as an intermediary between Australian steel users and overseas mills in supplying intermediate steel products requiring re-dimensioning, (cut to length, slit to width) processing, roll forming, fabrication, welding and value adding into finished products and the Provision of finance, warehousing and logistical services for CMC steel user customers.

3.2. CMC's Australian operations also included two decades of Nationally based Steel Distribution and Processing assets which sourced their requirements predominantly from Australia's two monopoly steel producers. CMC's parent Company however decided to divest all but one of those assets some 18 months ago for reasons of a challenging financial environment.

3.3. CMC Australian operations comprise investments in land, buildings, plant, equipment and people. Importantly it needs to be understood that CMC does not import any steel products on a speculative or opportunistic basis, in that all imports are on 'back to back' orders received from local steel users.

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CMC Contribution to P.C Research Paper on Anti-Dumping Arrangements.

- 3.4. For more than 16 years, CMC's Australian operation of importing intermediate steel products on behalf of its steel user customers has been intimately involved in defending anti-dumping actions initiated by Australia's two upstream producers-Bluescope Steel and Arrium's Onesteel/Australian Tube Mills.
- 3.5. CMC's parent company has six steel making operations in the USA including the very latest state of the art *Micro Mill Technology (*Arizona & Oklahoma). There is also one steel making facility in Europe using the EAF process (scrap based steel.)

4. Australian Steel Sector.

- 4.1. Australia has two upstream steel producers, namely:-
 - Bluescope Steel @ Port Kembla using locally sourced iron ore, coking coal to make steel for what is termed **Flat Steel** Products for use in building, rainwater, products; whitegoods; automotive; etc.
 - Arrium's Onesteel that produces **Long Products** for use in concrete construction; steel structural beams, columns; rail; steel pipes/tubes; wire; grinding media for mining.
 - Onesteel produces steel @ Whyalla using captive iron ore, locally sourced coking coal, And has two EAF, steel making operations using captive scrap @ Laverton, Vic., and Rooty Hill , NSW.
- 4.2. Importantly, from a competition perspective, Bluescope and Arrium are not only the sole producers of their respective product type, but both are also vertically and horizontally integrated.
- 4.3. Being vertically integrated, both steel producers are in competition with their respective downstream customer base, and in terms of their being horizontally integrated, both dominate the National Distribution of steel products being the competitive market for steel users not able to source directly from either Bluescope's or Onesteel's steel mills.
- 4.4. Third party Imports of the Bluescope and Onesteel intermediate steel product range are the only alternative source of supply for Australian steel users, many of whom are in competition with Bluescope and Onesteel on finished product.

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5. INTEREST and RELEVANCE:

- 5.1. Third party Imports of the steel products in question such as those sourced by CMC provide the only discipline of market competition since they are the only alternative source of domestic supply.
- 5.2. Anti-Dumping activity initiated by the two local upstream steel producers has had an adverse affect on the market supply of imported steel products and in CMC's experience, any reduction in the import supply has only led to a lessening of market competition.
- 5.3. Both Bluescope and Arrium's Onesteel obviously possess the market power, and both have adopted business models based on using the anti-dumping system. Since the creation of the Anti-Dumping Commission (ADC) we have experienced an unprecedented level of anti-dumping/countervailing action on imported steel products which may have been motivated by the two 'applicants' entitlement and ready access to the system. (tick a box access)
- 5.4. Based on the ADC's website listing of 'current cases' it would seem that Bluescope and Arrium's Onesteel account for around 24 of an apparent 46 'current cases'.
- 5.5. TABLE No 1. ADC's Current Case Load as per website.

Product SECTOR	Applicant Company	Number of Current cases
CMC Sector	Bluescope/Onesteel	*24 = 52% of cases
Steel Products	Bluescope Steel	*14
	Arriums Onesteel/ATM	*10
Aluminium Profiles	Capral + others	7
Prepared Foodstuffs	Various	7
Other sectors	Various	8
TOTAL CASES		46

6. CMC EXPERIENCE & OPINIONS:

- 6.1. The Australian market for intermediate steel products is a relatively small but mature one dominated by the two local producers.

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- 6.2. Third party Australian steel users actually cause the imported products and the role of CMC requires their third party overseas steel producers being **induced** to supply the Australian market since our requirements need to be made to order; are subject to minimum order quantities; need to comply with often 'unique' Australian standards/specifications. In essence the Australian requirements more often than not are very different to what the overseas steel producers make for their home markets and the normal lead time from order confirmation to arrival in Australia is around 3 months. The two local producers clearly have a competitive advantage on delivery times.
- 6.3. In CMC's decades of experience with sourcing from overseas steel makers, there has never been an instance of our overseas steel makers wanting to target the Australian market or wanting to engage in any form of predatory pricing behavior.
- 6.4. The two local producers obviously have certain competitive advantages over the imported supplies but they also have acknowledged competitive disadvantages in that they are both high cost producers with critical challenges including high energy costs, scale, product range, distribution and logistical issues.
- 6.5. Bluescope Steel for example has a reported high cost inflexible workforce that could threaten the closure of its remaining steel making facility (blast furnace).

7. CONCLUSIONS :

- 7.1. In CMC's opinion,(and experience in this 'steel sector') the fundamental matters for consideration with respect to the local steel makers anti-dumping activity are that Australia's anti-dumping system is simply anti-competitive and open to micro management by the applicants that only serve to benefit their own commercial self- interests rather than improve their efficiency, productivity, or economic contribution to the wider economy.
- 7.2. Essentially, the local producers entitlement and access to the anti-dumping system means that the Australian taxpayer is funding the existence of uncompetitive, inefficient companies that also have issues with supplying each and every domestic steel user customer. Those steel users are considered to be the most disadvantaged given that most of them, being mostly small to medium sized companies, they, unlike the two upstream producers, are not able to 'readily' access the anti-dumping system. (the tick a box access)

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8. 'CASE HISTORY'

- 8.1. The following is an outline of a case history on how the imposition of 'dumping duty' measures resulted in little or no benefit to the applicant producer, being Onesteel, and the product category was structural beams, columns, etc., produced at Whyalla, South Australia and used in construction.
- 8.2. By world standards the Australian market is not only small but relatively unique in terms of standards/specifications and size range meaning that to supply the Australian market, an overseas producer needed to invest in dedicated tooling for the Australian market. Accordingly there were only four overseas producers prepared to satisfy Australian orders, they being in Korea, Thailand, Japan, South Africa.
- 8.3. Onesteels successful dumping actions against these four 'quality' committed producers resulted in the South African mill 'withdrawing' early. The other three producers, whose long term supplies totaled around a collective 7-9000 tonnes per month, had any future supplies rendered uncompetitive on price, which CMC considers to be contrary to the WTO principles on global trade.
- 8.4. Whilst the outcome of anti-dumping processes naturally result in 'winners and losers' this outcome has opened the door for lower quality, lower cost producers to supply the Australian market to the detriment of all stakeholders with the only alternative now being to import the quality products at inflated, and uncompetitive prices, which in a single Australian market is not a reality.
- 8.5. Accordingly, instead of the dumping duty measures allowing the local producer to raise prices, as happens in other markets such as the USA, it now has to compete with lower priced, lower quality imported product.
- 8.6. The lessons from this and similar experiences in relation to other products subjected to anti-dumping duty measures is that (1) the local applicants injury claims should be objectively, and realistically assessed prior to any investigation is activated on overseas producers and (2) the local producers need to demonstrate, say, to the Productivity Commission, that they are efficient, innovative, productive and economically beneficial and (3) there needs to be a truly competitive market supply of compliant and fit for use imported products to enable all steel users choice and certainty on supply of their 'manufacturing', 'construction', 'resource' inputs.

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9. TRENDS & DRIVERS

- 9.1. As evident from this contribution, CMC's experience with the anti-dumping system has been with the one Australian industry sector producing and supplying intermediate steel products.
- 9.2. Tables No 2.1 and 2.2 detail the range of locally produced steel products currently subjected to dumping/countervailing duty measures.

Table No 2.1 Bluescope Steel product range:(FLAT STEELS)

Product type/finish	Subject to AD	Comments
Plate ex plate Mill	YES	Issue with capacity utilisation
Hot Rolled Coil/Sheets	YES	Volume market-steel pipes etc
Cold Rolled Coil/Sheets	NO	Low volume external market
Zinc Coated –Hot Dipped Galvanised	YES	Volume market-building, rainwater-
Aluminium-Zinc Coated Coil/sheets	YES	Volume market – 'Zincalume'=building; substrate for pre-painted steels 'Colorbond'
PrePainted Coated Steels	NO	Volume, growth market for residential /commercial building, &virtually 'import proof' as NZ only real competition and Bluescope owns NZ Steel.

Table No 2.2 Arrium's Onesteel/ATM product range(LONG PRODUCT STEEL)

Product Type	Subject to AD	Comments
Wire Rod in Coil	YES	For concrete construction products, wire
Deformed Bars	YES	For concrete construction products
Structural Beams, Columns	YES	High rise buildings, construction , mining
Rail	NO	For train tracks-limited capacity
Steel Pipes /Tubes	YES	Small diameter pipes/tubes only
Grinding Media	NO	Moly Corp-'only' real operation of value, but not a general market product
Wire	NO	Product of Wire Rod for rural fencing etc.

CONCLUSION: Most product types are subject to dumping duty or countervailing measures.
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10. OTHER TRENDS –‘OWN IMPORTS of LIKE GOODS’

- 10.1. The WTO Anti-Dumping Agreement allows jurisdictions like the Anti-Dumping Commission (ADC) to decide whether to accept applications from companies who also import the subject goods of their application. Regrettably the ADC’s legislative requirements do not allow it to choose to do so.
- 10.2. CMC is most concerned with the range, level and motivation of imports of the subject goods by the local producers affiliates being either the downstream or distribution operations and the reasons why the local producer applicant does not bring anti-dumping applications against those countries that the applicant or its affiliates are sourcing the ‘same’ like goods.
- 10.3. Given those imports by the applicant or its affiliates enter the same single Australian market as the third party imports targeted by the applicant, they must be non- injurious, and as such constitute the lowest priced ‘non-dumped’ imports.
- 10.4. The ADC should not only factor this trend into its findings, but should reject applications when the applicant itself is an importer.

11. OTHER TRENDS-‘CAPTURE of GOODS not ACTUALLY PRODUCED’

- 11.1. Another increasing trend is what CMC regards to be ‘product creep’ when specific goods not produced by the applicant are captured by the goods coverage because of either an overly broad treatment of ‘like goods’ by the ADC or the unintended inclusion of specific goods because of the goods description being ‘defined’ by a Customs Tariff Heading Description.
- 11.2. CMC accepts there are legislative provisions (after the final decision) to apply for an exemption from dumping duty but the process is impractical as there is no legislative time frame in which the ADC must deal with exemption applications.
- 11.3. The truly inequitable, if not a totally avoidable circumstance, is when specific goods captured by the dumping investigation have been determined by another *jurisdiction (Customs/ABF) to be goods for which no substitute is produced in Australia are required to obtain exemption from dumping duties.(* Commercial Tariff Concession Orders). At best this should simply be a red tape exercise requiring a speedy decision and at worse, a punitive if not ‘illegal’ requirement given they could not be injurious even if imported at totally dumped prices.

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12. Other TRENDS- EARLY PAD's & No IN TRANSIT tolerance.

- 12.1. Another increasing, and a truly disturbing trend is the ADC's intention to publish so termed Preliminary affirmative Decisions (PAD's) at the earliest opportunity being 60 days from the commencement of an investigation without having accorded affected stakeholders such as importers/exporters sufficient due process.
- 12.2. This policy, combined with the ADC dispensing with the conventional provision of 'in transit' shipments being excluded from early provisional measures, smacks of being more a knee jerk protectionist measure, rather than a properly considered measure to prevent any injury being the demonstrable cause of dumped imports. In effect, the ADC is imposing an onus of proof on importers and their local downstream customers, being guilty before being found innocent.
- 12.3. If that is the motivation, then it is contrary to WTO principles and in a very practical sense, it not only ignores the fact that imports have a lead time of circa three months, and unless the exporter producer and the Australian importer are related entities, the Australian importer, eg: CMC, cannot possibly have access to the exporters commercially sensitive and confidential cost and sales data.
13. Win or lose in terms of the final decision, the local applicants achieve their intended objective by disrupting the market supply of goods already contracted with the exporter and, of course, future orders. This is known as the **CHILL factor**.
14. With respect to the process for obtaining dumping duty exemptions, it needs to be understood that for all practical purposes, applications need to proceed with the agreement of the dumping duty applicant, and CMC considers this to be **MICRO MANAGEMENT** of the respective systems.

15. **How is the System Operating:**

- 15.1. As expressed throughout this contribution, the likes of Bluescope and Arrium/Onesteel/ATM are considered to have 'ready' access to the anti-dumping system because of their obvious market power. (tick a box). They only need to provide a 'reasonable' case without any evidential base for an application to be accepted by the ADC. Those downstream steel users most affected by anti-dumping duty measures are, in most cases, not eligible to utilize the system.
- 15.2. **In that regard nothing has changed since the P.C's previous inquiry**
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- 15.3. The low level of reasonableness required on injury and causation, and the legislative definition on the 'INDUSTRY' being only the local producer and not the downstream steel users, results in our view, the acceptance of 'repeat' if not capricious applications to the extent that recent applications have contributed to the unprecedented workload for the ADC and this in turn is considered to have caused issues with the ADC's resource capability.
- 15.4. CMC suggests that the ADC would benefit from 'seconding' specialist people to assist on a case by case basis.
- 15.5. CMC's experience from being actively engaged in defending a number of recent (and past) dumping investigations is that the ADC's approach on 'dumping' investigations is totally one-dimensional being focused more on the price comparison of the domestic goods with the price of the export goods at the port of export, referred to as the FOB level(free on board a vessel)
- 15.6. This focus is considered to be at the expense of causation and injury and without sufficient regard to the impact on the wider Australian economy, competition issues or Australia's important trading partners. CMC considers this is relevant to the P.C's previously expressed recommendation on the need for a 'Bounded Public Interest Test'.
- 15.7. In any event, CMC believes the most appropriate level of trade for determining any price comparison is at the ex-works/mill level, being goods that are 'like goods', that are unpacked, and undelivered. The legislation allows for this level of price comparison and the ADC has applied same in Case No 234 of November 2014.
- 15.8. The ADC's methodology for determining Normal Values (NV) is to calculate a 'domestic' sell price and then ADD the expenses incurred in packaging, insuring, export handling, loading expenses, delivery etc., for moving the goods to the port for placing the goods on the export vessel. This methodology, by applying s269TAC(8) of the 'ACT', actually results in the FOB export price being higher than the domestic price which effectively belies the generally advanced and accepted perception that 'dumped' imports are exports sold at below cost. The ex-works price comparison is considered to be a fairer, more appropriate level than FOB.
- 15.9. The injury and causation analysis also has to take into account that the FOB export price has to be increased by all of the costs incurred beyond the FOB level to the final into store cost of the Australian steel user, customer which has to be competitive with the local producers price assuming it is available to buy.

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16. OPPORTUNITIES to IMPROVE OUTCOMES.

- 16.1. The first improvement would be to have an independent jurisdiction to the ADC objectively analyse the injury and causation claims of the applicant before commencing an investigation on price comparisons etc. Alternatively, the ADC should be resourced with the capacity to 'second', on a case by case basis, appropriately qualified, skilled and experienced people from industry, forensic accounting and competition law. Another option should be a requirement for the ADC to at least refer to other authorities such as the ACCC, the P.C., Dept of Trade & Foreign Affairs etc., before, and during the investigation process.
- 16.2. Applicants, which are themselves, importers of the subject goods should be denied access to Australia's anti-dumping system , and only those goods actually produced by a non- importing applicant should be included in the investigation.
- 16.3. Additionally, it would benefit the outcome if the definition of 'industry' was expanded to include those directly involved in downstream use etc.
- 16.4. In support of 16.3, there should be a Public or National test mandated once the imports in question have been found to be, by themselves, the cause of injury to the applicant or the applicant's industry sector. Additionally, there needs to be greater transparency by the ADC on the relevant producers 'economic' performance, competitive market data, and imports not captured or included in the application. The ADC is understood to have 'authority' to examine other importers of like goods not captured or included in the application, but it never does. This relates to the impact of non- dumped imports and the lowest non-dumped source of supply.
- 16.5. The final decision to impose dumping duty/countervailing duty measures should be free of any political involvement in the process, including the removal of a Government 'Minister' from signing off on the final recommendations.
- 16.6. CMC considers a fairer, more appropriate level of trade for any price comparison is the ex-works level of trade and not the FOB level.

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COMMENTARY:

17. The Australian anti-dumping system was never intended to provide unintended market protection to a particular commercial enterprise, especially an exercise funded by the Australian taxpayer.
- 17.1. The reliance by Australia's two upstream steel producers on the anti-dumping system has, in our experience, been totally counter-productive and anti-competitive.
- 17.2. Granted it is based on anecdotal and publicly available information, but the real threat to both of Australia's local steel producers is the increasing volumes and range of fully fabricated imports by Australia's biggest resource projects comprising hundreds of thousands of tonnes to the likes of Onesteel now importing farm gates and Bluescope importing the 'Costco' type ready to erect structures.
- 17.3. We need to question if this increasing trend is the consequence of anti-dumping action measures on the intermediate steel products that demand value adding in Australia.

CONCLUSION.

CMC thanks the Productivity Commission for this opportunity to contribute to its research paper and would welcome any further opportunity to provide a contribution or clarification of this contribution.

Regards,

Mike Minihan
General Manager.