THE MCKELL INSTITUTE

Trading in Confidence

IMPROVING AUSTRALIA'S ANTI-DUMPING FRAMEWORK

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Background

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Foreword

Australia is a proud and thriving trading nation. While notable for its resource exports, Australia maintains a diverse trading economy with strong and growing relationships with trading partners across the world and in the Asia-Pacific region. The last decade has seen strong bi-partisan advocacy for opening Australia's markets to the world, and has resulted in a growing number of free trade agreements with some of Australia's largest trading partners – in particular, China and the United States. However, in order to ensure the benefits of free, open and fair trade are realised, and that confidence in the system is maintained, it is vital that appropriate safeguards are in place to give Australian producers a fair go in an increasingly competitive domestic marketplace.

Predatory dumping, or the practice of exporters flooding foreign markets with products at below-market prices in an attempt to damage competitors' business prospects and/or clear excess production, has sparked growing concern among major Australian industries since the Global Financial Crisis of 2008-9. Products dumped in this manner range from industrial steel and glass to consumer products such as canned tomatoes and pineapples.

Despite governmental precautions designed to limit such activity – in the form of the anti-dumping framework – the occurrence of predatory-dumping is common. While the proliferation of global trade has real benefits for Australia's economy and working Australians, it is important that confidence is bolstered in the system, as too often, breaches of the system the Australian government has put in place occurs.

In 2015 Australia's two-way trade in goods and services was worth nearly $670 billion[1]. Australia's GDP expanded by 1.1% in the March quarter of 2016 (its biggest expansion in three years), and the economy advanced 3.1% from 2015-2016 (displaying its fastest expansion since the third quarter of 2012). Furthermore, long-term trade data identifies the average rate of Australian GDP growth at 0.87% from 1959 until 2016. It is no coincidence that in approximately that same period of time, two-way trade of goods and services increased from $6.1 billion or 28.7% of Australia's Gross Domestic Product (GDP) to $669.2 billion, or 42.3% of GDP (1964-2014).

It is indisputable that trade is central to the future of Australia's economy. But in order to ensure the ongoing benefits of a connected global economy are realised within Australia, the appropriate defences against unfair and illegal trading practices must be in place. The anti dumping framework provides this defence, and this report reiterates its importance to Australia's economic future.

Executive Summary

Contemporary Australia is entering a new period of economic transition. The realities of an increasingly globalised international economy bring to Australia both great opportunities and great challenges. In ensuring that the benefits of a more connected global economy in Australia are realised, however, robust regulatory mechanisms must be in place to ensure international entities trading within the Australian market are doing so in a way that is consistent with Australian and international law, and the spirit of the trade deals Australia has entered into.

This report examines Australia's anti-dumping framework, the regulatory system that enables the Federal Government to monitor and respond to cases of predatory dumping in the country. Predatory dumping, the act of a country or entity flooding a foreign market with excess products at below-market cost in order to limit long-term competition in that market[2], has been a challenge for the international trading system for generations.

Indeed, the multilateral agreements at the heart of the the global trading system – those that form the basis of the World Trade Organisation – recognise the need for countries to have robust mechanisms in place to respond to cases of predatory dumping. In doing so, countries are not only able to ensure that fairness in the global trading system is maintained, they are similarly able to promote confidence in this trading system to their own population. Bolstering public confidence in trade is essential to its ongoing success, and anti-dumping frameworks are central to maintaining this public confidence.

This report begins by outlining 10 key recommendations aimed at improving Australia's anti-dumping framework, which is limited in its ability to adequately support Australian industries subject to predatory dumping. The recommendations include calls for greater resource allocation, better data collection and publishing, as well as granting the Anti-Dumping Commission – the body charged with overseeing Australia's anti-dumping regulations – greater abilities to punish entities circumventing Australian law.

The five key findings of this report are then outlined. This report has identified that characterisation of China as a Full Market Economy has severely curtailed Australia's ability to respond to predatory dumping emanating from the Chinese market. Another impediment to the system is the overall lack of resources allocated towards it, and the challenge the Anti-Dumping Commission faces when intending to impose interim duties on entities circumventing Australian trade law. Additionally, this report has found that the process for average Australian businesses wishing to pursue an anti-dumping case can be extremely expensive, which limits the equitable access to the system.

The report then outlines in further detail the impediments to the system, this history of anti-dumping in Australia, the importance of maintaining the integrity of Australia's trading system, and the challenge the predatory dumping imposes on Australian industries. In particular, the flooding of Australia's steel and aluminium markets by foreign competitors with products priced significantly below the competition has significantly challenged those industries within in Australia, resulting in job losses and economic decline across certain areas of Australia.

The key to arresting this decline is ensuring that Australia's trading framework maintains the necessary defences against foreign entities wishing to subvert Australian and international law to benefit their own competitive interests. While trade is essential in boosting Australia's economy over the long term, ensuring this is achieved in a sensible and fair way is vital. A robust anti-dumping framework is essential in achieving equity in Australia's trading economy, safeguarding vulnerable Australian industries from the subversive practices that undermine the international trading system, and in boosting public confidence in Australia's engagement with the global economy.

Recommendations

Recommendation 1: Australia's anti-dumping framework should be granted more federal resources

Australia's anti-dumping commission is currently significantly under-resourced. In the 2012-13 budget, the Federal Government committed a total of $27.7 million over a four-year period. This is a budget of only $6.9 million per year. The limited resources of the Anti-Dumping Commission means its ability to conduct investigations and and ensure compliance is curtailed. This report recommends allocating further resources to the Anti-Dumping Commission or enable it to more effectively respond to cases of predatory dumping.

Recommendation 2: The Federal Government should consider alleviating the costs of the anti-dumping process, enabling smaller industry stakeholders full access to the system.

Conducting an anti-dumping review can be extremely costly for Australian industries, and particularly, for small to medium sized enterprises already suffering from the economic effects of predatory dumping. The Government should consider the implementation of a legal-aid style system that enables affected industry stakeholders to fully access the Anti-Dumping Commission.

Recommendation 3: Harsher penalties should be considered for those who circumvent the anti-dumping provisions

Overseas exporters and Australian importers that engage in activities that circumvent anti-dumping duties undermine the relief that the duties provide to Australian manufacturers and producers.

A new regulation has been created to address emerging behaviours relating to overseas exporters slightly modifying their goods in order to circumvent anti-dumping duties that are currently in place or otherwise avoid paying anti-dumping duties through transshipment through a third country, incorrectly declaring the type (tariff code) or value of their goods etc. The Government will monitor closely the effectiveness of this new regulation.

As the EU steel industry is learning the hard way that government indecision and inaction will be to the detriment of domestic production. Australian trade policy is currently attempting to keep all parties happy, however its failed attempt at “people pleasing” has, in fact, led to fewer benefits for all.

Recommendation 4: Australia’s anti-dumping framework must be flexible enough to monitor rapidly changing international market conditions

The maintenance of a tripartite, bi-partisan approach to the issue of dumping has proven to be successful and should be maintained.

Recommendation 5 – The Anti-Dumping Commission should enforce interim duties that can be imposed throughout the duration of an Anti-Dumping investigation.

Currently, the Anti-Dumping Commission has the authority to impose interim duties 60 days after a violation has been flagged, with retrospective duties theoretically allowed. However, this lever is used extremely rarely, and the 60-day time period between the flagging of a violation and the Commission’s imposition of a duty is considerably long. The Anti-Dumping Commission’s unwillingness to use this mechanism suggests to foreign enterprises that Australia is ineffective in combating dumping practices, and therefore makes Australia a more enticing market to offload excess capacity. Consideration should be given to bringing forward this 60-day timeline.

Recommendation 6 – The Anti-Dumping Commission should be given the authority to ban companies that repeatedly circumvent Australian anti-dumping provisions from trading within Australia.

Recommendation 7 – The Australian Bureau of Statistics (ABS) should develop the capability to accumulate more detailed, more granular and more accessible data on imports into Australia

The ABS does not currently provide highly granular trade data to the extent required by many industry stakeholders. Greater resources should be allocated to the ABS in order to increase its ability to compile and publish highly detailed trade data.

Recommendation 8 – Industry-wide class actions should be enabled in order to allow impacted industries the opportunity to collaborate on anti-dumping procedures.

Recommendation 9 – Certain Australian duties should be benchmarked against those levied in comparable nations.

Duties imposed by the Anti-Dumping Commission are often significantly lower than those imposed by other jurisdictions, such as the United States, Canada and the European Union. This results in Australia being a more desirable market for foreign entities to offload excess capacity.

Recommendation 10 – The Australian Government should re-consider China's 'market economy' status at the conclusion of 2016, when China's formal ascension period to the World Trading Organisation concludes.

Key Findings

Finding 1 – Australia's categorisation of China as a 'Full Market Economy' has severely curtailed Australia's ability to adequately prevent and react to predatory dumping.

In the international trading system, countries are cetegorised as either a 'market economy', a 'non-market economy' or an 'economy in transition'. The difference of categorisation makes a significant difference in how a country can be treated under international trade law. A 'market economy' – the type of categorisation most advanced countries are within – is subject to fewer restrictions and less oversight than non-market economies and economies in transition, which tend to have a heavier state-interference within their economies. In 2004, as an pre-condition to the free trade negotiations between Australia and China, the then Australian Federal Government decided to pre-emptively categorise China's economy as a 'market economy'. This decision has had serious ramifications for Australia's anti-dumping framework in regards to goods imported from China. The 2004 re-categorisation means China's dominance in certain industries that have a high prevalence of dumping in Australia – such as steel and aluminium manufacturing – are more difficult to remedy against for Australian regulators. It is important to note that of 196 recognised sovereign states, only 41 per cent, or 80 countries, recognise China as a market economy. This places Australia in the minority of global opinion on this matter, and means that Australia maintains a different perspective than countries and regional groupings such as the United States, the European Union[3] and Canada. The 2004 decision, while being important in leading to an eventual free trade agreement – some 12 years later – has nevertheless significantly undermined Australian regulator's ability to stop predatory dumping emanating from certain Chinese industries.

It is worth noting that China's admission to the WTO came with a 10-year period where nations could continue to treat China differently, or what is known as the 'China Ascension' protocol. The protocol expires at the end of 2016.

Australia's negotiations in granting Market Economy Status were concluded on the basis that all nations would eventually join Australia in dealing with China in these terms. The expiry is causing immense concern amongst developed economies already suffering from low prices, closures and job losses. With an eye to the Australia experience, developed world economies are reluctant to give away their domestic policy levers in dealing with Chinese oversupply. Australia should keep an eye on these developments to ensure its policy settings are consistent with global developments and that trade negotiations conducted in 2004 do not lead to unintended consequences or the granting of benefits beyond what was intended.

While acknowledging the damage that the 2004 recategorisation of China's economy by Australia has had on its ability to regulate predatory dumping, this report also acknowledges the reality of the political economy in which Australia finds itself. Overturning the market categorisation of China may be difficult in Australia due to the centrality of China-Australia relations in the future of Australia's economy, and regional security in the Asia Pacific, and the risk that overturning this decision would have on both Australia's relationships with China and Australia's economy overall.

However, given the impending expiry of the China Ascension Protocol and the reluctance of many developed economies to grant China Full Market Economy status in the context of global oversupply, Australia should at the very minimum have a national discussion about its policy settings in dealing with China as a trading partner.

The US Presidential election should be viewed in this context, with the comments of Hillary Clinton particularly instructive:

"I went to the AFL-CIO convention in Pennsylvania and said that I would not tolerate attempts by China to solve its growing economic problems on the back of American workers.

A few days later, they announced plans to keep propping up significant overcapacity in their steel production – meaning that they'll keep unloading artificially cheap steel into global markets at the expense of countries and workers that play by the rules. As President, I'll aggressively pursue trade cases and impose consequences when China breaks the rules by dumping its cheap products in our markets. And I'll oppose efforts to grant China so-called "market economy" status, which would weaken our tools for dealing with this behaviour."

By identifying the damage that the 2004 decision has made to certain industries within Australia, and the manner in which Australia has been subject to enhanced predatory dumping as a result of the 2004 decision, adequate steps can be taken to ensure similar mistakes are not repeated, and that the impacted industries are at the very minimum adequately granted access to a fully resourced and highly capable Anti-Dumping Commission that is operating at world's best practice. At a minimum Australia should use its current legal powers to find a 'Particular Market Situation' when dealing with Chinese dumping more fully with this process allowing a more rigorous investigation and remedying of Chinese subsidies and dumping activities.

Finding 2 – The Anti-Dumping Commission remains significantly underfunded, despite recommendations in the 2012 Brumby Review that aimed to increase funding.

Despite calls in recent years for Australia's anti-dumping framework to be allocated greater resources, its funding is still significantly constrained. This has resulted in the Anti-Dumping Commission – the body in charge with overseeing Australia's responses to cases of predatory dumping in Australia – conducting fewer inquiries, and conducting inquiries over long time frames that does not adequately assist Australian industries that require government intervention to end the damage caused by predatory dumping. Total government funding for the Anti-Dumping Commission is only $6.9 million per annum. The lack of funds and resources has meant that foreign entities interested in flooding Australia's markets are more easily able to breach Australia's and the World Trade Organisations' anti-dumping regulations.

Finding 3 – The Anti-Dumping Commission's inability to sufficiently impose interim duties on entities involved in predatory dumping limits Australian industry's ability to survive the pressures of ongoing predatory dumping

Because of the extended time period the Anti-Dumping Commission requires to conduct reviews into cases of predatory dumping, it is vital it has the ability to impose interim duties that restrict the impact of legitimate dumping cases during the review period. Most other anti-dumping frameworks allow for interim duties to be placed on certain products when this eventuality occurs. However, Australia rarely imposes interim duties, despite having a mechanism that allows for this eventuality to occur. This means that for many businesses or industries damaged by predatory dumping, there is no immediate relief from the moment the predatory dumping is detected. Australian regulators responsible for monitoring and enacting remedial action to restrict the damage of predatory dumping should have the ability to impose interim duties with more ease. This will discourage circumvention of the system, and bring Australia's anti-dumping system in line with international norms.

Finding 4 – The overall cost of pursuing a successful case of dumping through the anti-dumping commission is prohibitive for industry.

While no formal costs are involved with initiating a case with the Anti-Dumping Commission, Australian businesses already impacted by predatory dumping find it difficult to afford the legal and administrative costs of doing so. The implementation of a legal-aid type framework, one that provides expert legal assistance to industries impacted by predatory dumping, would assist in enabling equitable access to the anti-dumping framework.

Finding 5 – The Australian steel and aluminium manufacturing sector is particularly burdened by the prevalence of predatory dumping in Australia.

While predatory dumping has the potential to impact a range of industries within the Australian economy, steel and aluminium manufacturers have been particularly adversely affected. These industries are large employers within Australia, and contribute to a significant portion of Australian exports. In 2014-15, the aluminium industry in Australia produced $3.8 billion worth of exports, and employed 17,000 Australians[4]. Total sales income for the steel industry in Australia in 2013-14 was $11.1 billion, with that industry employing approximately 18,500 Australians[5]. Simply, the production of aluminium and steel products in Australia is a vital component of the national economy. However, it is becoming increasingly clear that these two industries suffer most significantly from predatory dumping engaged in by international competitors seeking to flood the Australian market with lower grade good at significantly below market rates. While the Anti-Dumping Commission focuses a large percentage of its resources towards investigating dumping within these industries, the efforts to date have not been significant enough to safeguard Australian industries from this practice.

A recent report of the ADC has found that:

> *"Asian government subsidisation of input costs and support for loss-making state-owned enterprises has resulted in unsustainably low export prices. The Australian industry cannot compete on a level playing field with dumped and subsidised Asian exports."*[6]

The report found that while other countries have always acted to promote their domestic manufacturing sectors, the size and scope of the intervention from Asian players – particularly China – was unprecedented.

According to the ADC main forms of assistance to Asian steel and aluminium industries have included:

• subsidisation of the costs of inputs used in making steel and aluminium products, such as raw materials, power, and land
• tax rebates and export taxation arrangements
• sustained support for loss-making state-owned enterprises
• cheap finance for investments in steel furnaces and aluminium smelters
• financial support to maintain large stockpiles, especially of aluminium.

A recent meeting of the G20 has set up a specific ‘Steel Forum’ which will monitor oversupply in the steel market and the efforts of countries in addressing state subsidies. The OECD, EU and the US have previously urged China to reduce their oversupply, with estimates suggesting China exported 100-150 million tonnes of surplus product in 2015-16 to deal with their domestic oversupply. This steel glut has collapsed prices around the world.

Introduction

Australia's has a fundamentally strong economy – the 12th largest in the world[7]. This strong economy is becoming increasingly diversified as the global resource boom comes to an end and advanced economies shift to more creative, innovative and service oriented economies. The opening of the Australian economy since the 1980's has brought challenges and opprtunities for all Australian industries – particularly within the manufacturing sector. However, dozens of Australian industries have been negatively affected by a flood of cheap foreign products entering their domestic market over recent years.

This practice, known as 'dumping', is defined as "when the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country." The World Trade Organisation refers to the practice as 'international price discrimination'[8]. Put simply, companies that dump their products in a foreign country's marketplace do so with the intention of flooding that marketplace with cheaper, over supplied products, resulting in local businesses being forced to vacate the market place, minimising competition overall perhaps with the intention of increasing prices after local competitors have been eliminated and can no longer apply competition to imports. To combat this, governments across the world implement anti-dumping frameworks, which are systems of laws that aim to curtail predatory dumping.

Affected industries within Australia are diverse, but perhaps the sector that has been most impacted is Australia's manufacturing sector, which has voiced the greatest support for maintaining a strong anti-dumping framework in Australia.

It is necessary for Australia's trade policy to strike a reasonable balance between enabling the benefits of free trade, while ensuring Australian industries are not unfairly targeted through malicious practices such as predatory dumping. Achieving this balance is not only important for securing the future economic growth of Australia, but for building the confidence within Australian industry in their government’s commitment and ability to ensure a level playing field for Australian businesses. The potential financial benefits associated with fair and free international trade, both regionally and globally, as well as with, are significant and have therefore encouraged the implementation of larger agreements.

The most prominent free trade agreements that have been legislated or are in the process of being negotiated include the China-Australia Free Trade Agreement (ChAfta), the Korea-Australia Free Trade Agreement (KAFTA), the Trans-Pacific Partnership (TPP), and the ambitious Regional Comprehensive Economic Partnership (RCEP). Considering these significant trade deals are becoming an established component of Australia’s trade system, the need to reassess the robustness of Australia’s current anti-dumping framework to ensure Australian industry’s confidence in it, is critical. This report examines Australia’s current anti-dumping framework and offers policy recommendations aimed at increasing industry and public confidence in it, and ultimately, extending this confidence to Australia’s trade policy more broadly.

In February 2016 the Productivity Commission – the Federal Government's independent research and advisory body - released a self-initiated research paper evaluating the current state of the Australian anti-dumping framework. The Commission’s report analyses the recent increased usage of anti-dumping measures (or penalties placed on foreign exporters); key changes that have been made to the anti-dumping system since the Commission’s last 2009 report; the effects of those changes; and the future outlook of the system.

In analysing the Productivity Commission’s findings, this report offers solutions which attempt to bridge some of the more obvious and outstanding differences that persist among the public and private perceptions surrounding Australia’s anti-dumping framework

Section 1 - A History and Overview of the Australian Anti-Dumping System

Since federation in 1901, Australia's economy has matured from an relatively insular and protectionist minded one, to an internationally competitive, diversified and powerful modern advanced economy[9]. The weight of Australia's modern economy – the world's twelfth largest – is largely thanks to an embrace of the benefits of global trade and investment, whilst continuing to ensure that every day Australians benefit from this increase in commercial interaction with the world. It is in finding this delicate balance between opening the Australian economy to the benefits of the global economy, whilst ensuring the maintenance of a strong social safety net and improving opportunity for all Australians, that Australia has thrived as a nation in recent decades.

However, it is important to similarly recognise that with an increasingly connected global economy, the fairness of the international trading system must be upheld. This can be done in a multitude of ways, including through strong trade negotiations and multilateral agreements between trading partners. But a central tool governments across the world can use is an anti-dumping framework – a framework that enables local industry participants within a country to inform their government of trade violations effecting their local industries. These frameworks are common across the world. While many opponents of anti-dumping frameworks often argue that they merely represent a protectionist tendency, this misidentifies the true intention of anti-dumping frameworks, which is to uphold the integrity of the international trading system, and ensure that all industry participants benefit equally without fear of unfair and predatory violations.

Australia's trading history has evolved significantly since the early years of Federation. The legislative history of Australia's anti-dumping framework dates back to the earliest days of federation, but two key acts form the current basis of the existing Australian framework.

- The Customs Tariff (Anti-Dumping) Act 1975 (Dumping Duty Act) and
- The Customs Tariff (Anti-Dumping) Regulation 2013 (Dumping Duty Regulation).

As a result of the anti-dumping reform in 2012, the current Australian anti-dumping authority, or the administrative body responsible for handling predatory-dumping investigations, is the Anti-Dumping Commission (AD Commission). It is an independent agency which reports to the Minister for Industry and Science with recommendations on whether an anti-dumping measure (a penalty in the form of an import-duty) should be put in place.

- Once an application for investigation is received, the AD Commission must determine whether to initiate the investigation within 20 days.
- 60 days after the initiation has been initiated the AD commission can make a Preliminary Affirmative Determinations to whether there are sufficient grounds for the publication of a dumping duty notice[10]. Subsequently the Commonwealth may, at the time that determination is made or at any later time during the investigation, require and take securities under section 42 of the Customs in respect of interim duty that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues. On October last year a Miisertai Direction was made that at Day 60 the Commissioner must either:
  - make a preliminary affirmative determination under section 269TD; or
  - publish a Status Report providing reasons why a preliminary affirmative determination was not made.

noting that that the desirability of providing relief to an injured Australian industry, where warranted, as quickly as possible and in considering whether or not to have regard to a late submission consideration of a preliminary affirmative determination should be treated as a priority.

- Within 110 days after the initiation of an investigation, the AD Commission must publish a Statement of Essential Facts (SEF) setting out the facts on which recommendations to the Minister is to be based, unless an extension has been granted by the Minister.

- The AD Commission is mandated to complete its investigation and report to the Minister by day 155 after initiation unless the timeframe is extended by the Minister.

- Once the final report of the AD Commission is received, the Minister must decide whether to impose an anti-dumping and/or countervailing measure within 30 days unless the Minister decides that a longer period is required in special circumstances.

Recent reviews into the anti-dumping framework haven't led to reform

In 2006 a joint study by Customs and Border Protection and various Federal Government departments was undertaken to ensure that Australian anti-dumping administration reflected best practice and ensuring the system remained efficient. Following this the Government in 2009 requested the Productivity Commission investigate the system (again focusing on its effectiveness, economic benefits) and make recommendations for improvement. The investigation also aimed to improve outcomes for industry, importers and consumers. Following this and inquiry into a private member's bill moved by Independent Senator Nick Xenophon the Government then released its policy statement, *Streamlining Australia's antidumping system: an effective anti-dumping and countervailing system for Australia (2011*) to reform access, resources, consistency and transparency based on the Productivity Commission's recommendations.

The most recent review in 2012 by the Hon. John Brumby into anti-dumping arrangements was commissioned to examine the current model of administration and to more specifically determine the feasibility of a new operation. Administers of legislation and regulation have changed hands throughout history from Customs and Border Protection to the creation of the Anti-Dumping Authority, which was later disbanded. This review recommended a new body be established to combat international dumping. It proposed a new body under Customs and Border protection as the most effective and efficient system. This would require less funding and new resources than a completely separate body, but still remaining an independent authority. The review found dumping widely affected Australia, and the impacts were highly likely to increase in coming years. The review therefore recommended that more resources need to be injected into administration, including the hiring of more skilled workers and consulting experts.

These recent reviews, however, have not led to lasting reforms of the anti-dumping framework in Australia. Rather, the system continues to remain under-resourced and ill-equipped in dealing with predatory dumping into Australian markets due to fundamental points of weakness highlighted in the final section of this report.

Australia is not unique in having an anti-dumping framework

Australia's contemporary anti-dumping framework is not unique. Almost all countries have a similar system that aims to defend local industries from the challenges associated with predatory dumping. The Productivity Commission, while often critical of anti-dumping provisions, has acknowledged that Australia's anti-dumping framework is part of a broader global trend:

> *"Australia's anti-dumping system is based on internationally agreed rules and procedures under the auspices of the World Trade Organization (WTO)…Nearly all other developed, and increasingly, many developing, countries have anti-dumping regimes, though usage and design varies widely."* [11] The World Trade Organisation

Anti-dumping provisions are essential to ensuring international trade is conducted in a fair and reasonable fashion that benefits not only individual countries, but the international economy overall. Central to the success and ongoing public support of deepening economic relations internationally is the fair and consistent compliance with trade deals that have been negotiated in good faith. When nations, or individual companies, violate the conditions of trade agreements through predatory dumping practice and this activity causes material injury to local industries, it is reasonable and diligent for national governments to have a mechanism that detects and responds to these incidences. Australia’s anti-dumping framework, while under-resourced, is a similar regulatory framework to that used by most countries across the world.

Section 2 - Anti-Dumping Frameworks and the International Trading System

Free trade is a central component of the contemporary international economy. Since the signing of the General Agreement on Tariffs and Trade (GATT) in 1947, the international community has been gradually moving towards an increasingly harmonised trading framework that lowered tariffs internationally and fostered considerable economic growth. The World Trade Organisation (WTO) – the successor international organisation to GATT – came into effect in 1995 and has since expanded to include 162 of the world's 193 recognised states, or 84 per cent of the international community. Central to the WTO's remit is not only the expansion of freer trade practices that remove protectionist barriers, but also the assurance that international trade is conducted in a fair and equitable manner. Anti-dumping provisions have been central to multilateral trading agreements dating back to the 1947 ratification of GATT, and maintain an important place in the contemporary WTO framework. While the use of anti-dumping frameworks has only proliferated in recent decades, they are consistent with the ethos and legal framework of the WTO. In short, anti-dumping provisions have a long history as a part of the international trade system, and have helped free trade proliferate by ensuring confidence in global trading agreements for all signatory states.

Anti-dumping frameworks boost confidence in trade and multilateral trading frameworks

"A free trade regime that does not rein in or seek to regulate artificial subventions will likely help trigger its own demise" – Jagdish Bhagwati[12]

Reducing the threat of predatory dumping is important in bolstering public, government and industry confidence in free trade around the world. The robustness of international trading frameworks relies upon general agreements of most of the world's countries to ensure overtly protectionist barriers are not the fist response to international economic challenges.

Indeed, it is frequently argued that the impact of the Global Financial Crisis of 2008-9 could have been significantly worse had the international community not already established and agreed to general principles surround trade and protection. While there is a clear and accepted benefit to opening Australia's economy to the world, doing so in a reckless manner that undermines public confidence and negatively impacts Australia's economic future is likely to undermine the potential benefits of international trade. A properly resourced and responsive anti-dumping framework is a key mechanism to achieve this confidence. The absence of it of course had the inverse effect. Even the Productity Commission in 2010 acknowledged this conceding:

> *"The capacity for the Australian Government to point to the existence of an appropriately configured anti-dumping system may continue to be helpful in dealing with aspects of protectionist sentiment within industry and the community, especially during downturns in the economy. Accordingly, removal of an anti-dumping 'safety valve' could make it more difficult to address remaining tariff and related reform issues. In this regard, it is important to recognise there is still a considerable degree of domestic support for the anti-dumping system, including from some who have been disadvantaged by particular anti-dumping measures* [13]

Anti-dumping frameworks enable diversity in domestic economies

While a strong and fairly negotiated multilateral trading framework is important in fostering a competitive and productive international economic environment, it is also sensible that domestic economies maintain an element of diversity to safeguard against future economic challenges that might face the international economy. It is important for Australia to retain highly diversified economy that remains adaptable to the unpredictable nature of the economy. It is folly for Australian economic policy to allow for the degradation of industries, such as manufacturing, that can otherwise be maintained through reasonable and active public policy decision making. Governments should have a view to the market interventions of other nation states – many of which directly own or subsidise their firms – that are increasingly manipulating the cost structures of their domestic industries, particularly in manufacturing, with a view to tilting the field in favour of their domestic firms. As previously noted, the steel and aluminium industries alone in Australian employ over 35,000 Australians.

Recent criticisms of Australia's anti-dumping framework ignore global trends

Anti-dumping provisions have been subject to significant criticism in Australia in recent years. Notably, the Productivity Commission, a federal government agency, argued against the maintenance of Australia's anti-dumping framework as previously highlighted. However, it must be noted that Australia's anti-dumping regulations are significantly less strict than comparable countries and jurisdictions, such as the United States, Canada and the European Union. While anti-dumping measures were not used as frequently in the international trading system prior to the turn of the century, they now form an established part of the system, with an increasing number of countries implementing their own framework. Indeed, the vast majority of major economies, including the aforementioned countries as well as New Zealand, Japan, China, South Korea, India, South Africa, Brazil, Indonesia, Taiwan and numerous others all maintain a robust anti-dumping framework[14]. Advocates for Australia's unilateral degradation of its anti-dumping framework are often out of step with international norms, and are advocating for the dismantling of a key regulatory framework that is established in international and Australian law. This would amount to unilateral trade disarmament and cannot be advocated in any reasonable policy discussion.

Section 3 - Australia's Trade Economy

Although Australia's early history was dominated by a relatively insular trading framework, in the last 60 years, Australia has embraced the global marketplace to improve its economic standing. In the 1960's, in response to global economic shifts taking place in Europe, and in recognising the depleting trade opportunities with the United Kingdom (once serving as Australia's most lucrative trading partner), Australia began to foster a stronger trading relationship with regional countries in Asia. In successfully doing so, Japan quickly became Australia's leading merchandise export destination by 1966-1967 and remained so until 2009-2010, when the role was overtaken by China. As a result of such innovative maneuvering, up from 32.8% in 1963-64, Asia accounted for 83.0% of Australia's merchandise exports by 2013-2014 and over 60% of all Australia's two-way goods and services trade.

Appropriate policy choices are continually required for Australia to display its resilience and adaptability in the global market. This report suggests that such insight into future trends can be found within the usage patterns of the Australian anti-dumping framework. An instinct to diversify trade more than fifty years ago cemented Australia's proud position within today's international trade regime. Similarly, trade policies today require the necessary foresight to ensure the equitable distribution of the benefits of trade are extended throughout the Australian economy.

The state of Australia's trade economy can best be described through an overview of its key attributes:

- Australia's two-way trade in goods and services was worth nearly $670 billion in 2015.
- Top Australian imports included personal travel services (7.6% of import share in 2015), passenger motor vehicles (5.8% share), and refined petroleum (5.2% share).

- Australia's most crucial exports included iron ore (15.5% of export share in 2015), coal (11.7%), and education-related travel services (5.9%) It should be noted that Australia's most valuable export (iron ore and concentrates) saw -25.7% growth from 2014-2015.

- The total value of outward investment from Australia passed $2.1 trillion at the end of 2015. The United States and the United Kingdom were the two largest destinations for outwards investment at $594 billion and $353 billion respectively. Australian outwards investment to major Asian economies (China, India, Hong Kong (SAR of China), Japan, Republic of Korea, Taiwan and all ASEAN members) has increased from $70 billion in 2005 to $346 billion in 2015. In 2014 Australia ranked 17th in global foreign direct investment.

- China, the United States and Japan respectively served as Australian's top two-way trading partners in 2015 with Japan contributing to 9.7 % of all Australian trade, the US contributing to 10.5% and China contributing to a staggering 23.2% with an anticipated 8.4% growth over the next five years. US/Australian trade too, is forecasted to expand by 5.9% by 2020 with a predicted downturn on Japan/Australian trade displaying - 0.6% growth.

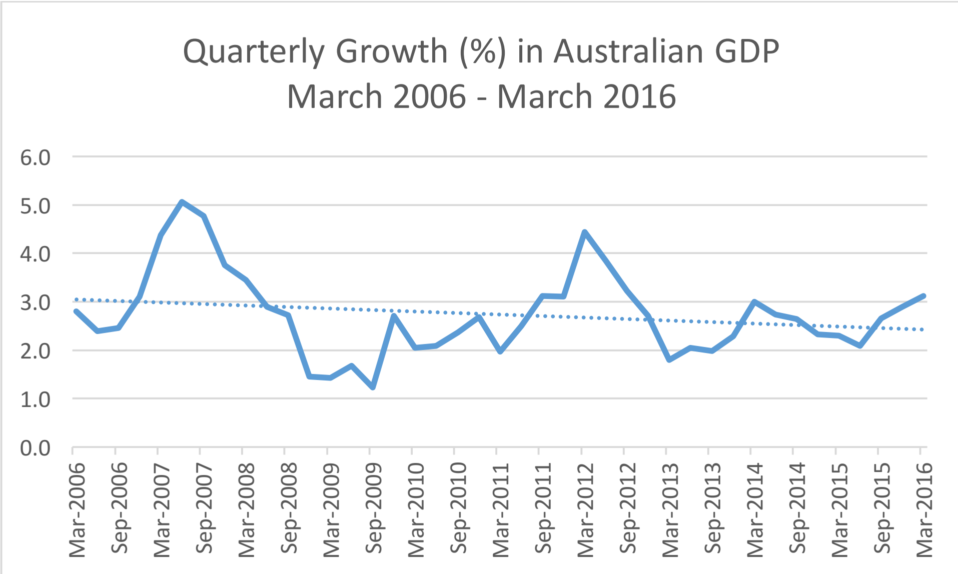

Figure 3.1 – Quarterly Growth in Australian GDP over the last decade.

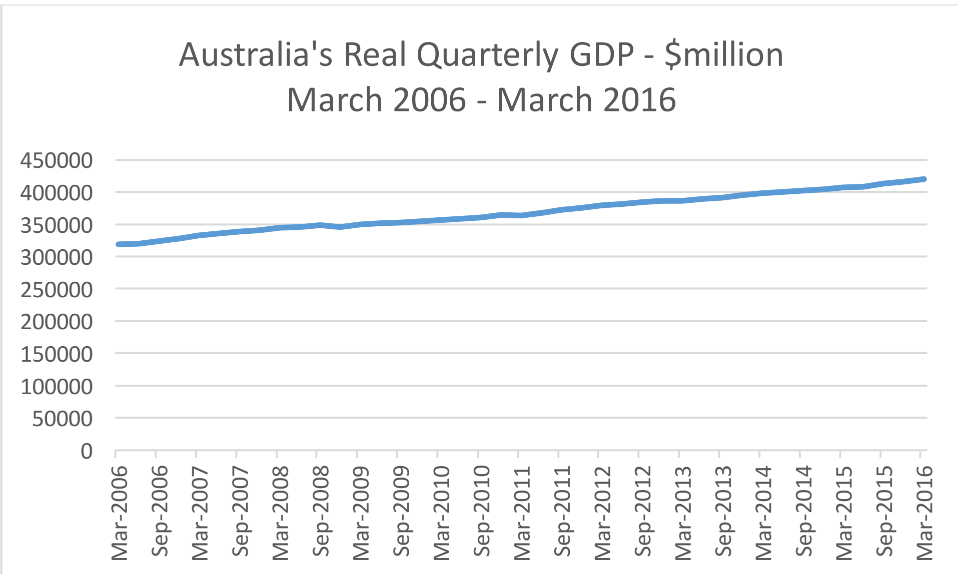

Figure 3.1 – Australia's real quarterly GDP growth over the 2006-2016 decade.

Figure 3.3 – Australia's trading economy.

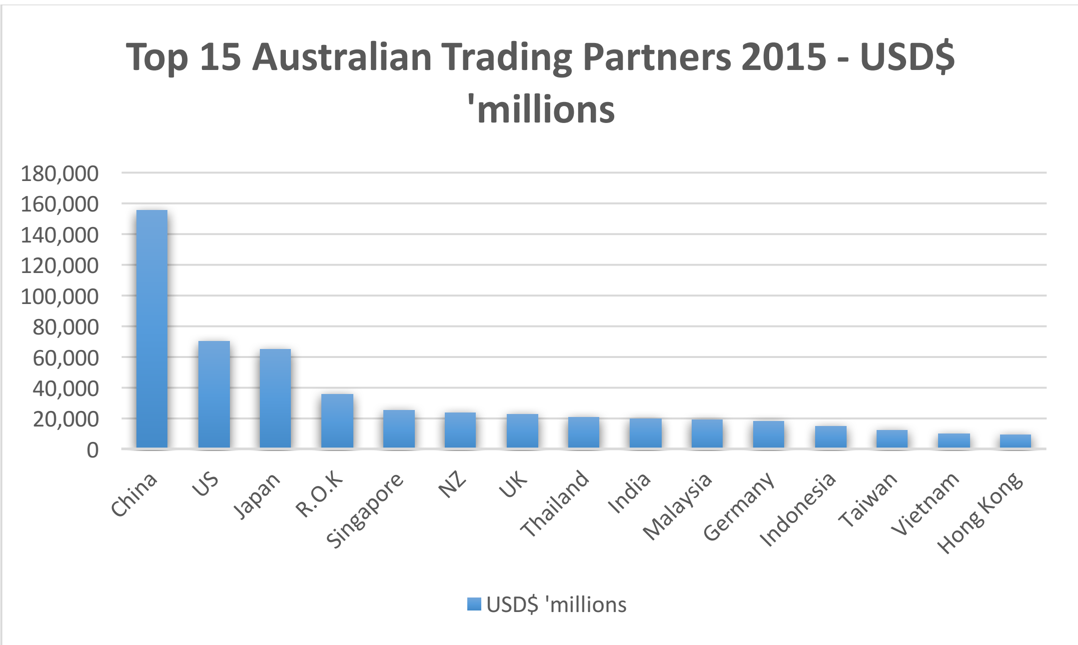

Figure 3.4 – Australia's top trading partners.

Australia's Trade Agreements

Australia currently partakes in ten free trade agreements, with the recently negotiated Trans-Pacific Partnership set to be entered into if legislated by all participant countries. Additionally, it has seven other agreements under negotiation.

Figure 3.5 – Australia's Trade Deals

Australian FTA's		
In Force	**Under Negotiation**	**Negotiations Concluded**
ASEAN-AUS-NZ	AUS-GULF Cooperation Council (GCC)	Trans-Pacific Partnership Agreement (TPP)
AUS-Chile	AUS-INDIA Comprehensive Economic Cooperation Agreement	
AUS-NZ Closer Economic Relations	Environmental Goods Negotiations	

Australian FTA's		
AUS-US	INDONESIA-AUS Comprehensive Economic Partnership Agreement	
JAPAN-AUS Economic Partnership Agreements	Pacific Agreement on Closer Economic Relations (PACER) Plus	
KOREA-AUS	Regional Comprehensive Economic Partnership (RCEP)	
MALAYSIA-AUS	Trade in Services Agreement	
SINGAPORE-AUS		
THAILAND-AUS		
CHINA-AUS		

China is Australia's leading trading partner

China has been Australia's largest trading partner since 2006-07 on a financial year basis, with two-way trade valued at $150 billion in 2014-15. Furthermore, goods trade with China accounted for approximately: 41% of total Western Australian trade; 25% of total New South Wales trade; 20% of total South Australian trade; 23% of total Victorian trade; 19% of total Tasmanian trade; 21% of total Queensland trade; and 20% of total Northern Territory trade.

China is currently Australia's largest goods export destination ($81 billion in 2014-15), and largest source of merchandise imports ($57 billion in 2014-15). In 2014-15, China bought $90 billion of Australian exports, more than a quarter of Australia's total exports to the world, and was Australia's top overseas market for agriculture, resources and services exports. China also buys more of Australia's agricultural produce than any other country, with this market worth $9 billion to Australian farmers and the broader agricultural sector in 2014-2015.

Additionally, China is also by far Australia's largest market for resources and energy products. In 2014-15, Australia exported more than $70 billion worth of resources, energy and manufactured products to China. Continuing to highlight the trend, China's is also Australia's largest services market, with exports in services valued at $8.8 billion in 2014-15.

Additionally, Chinese investment in Australia has been growing strongly in recent years, reaching almost $65 billion by the end of 2014.

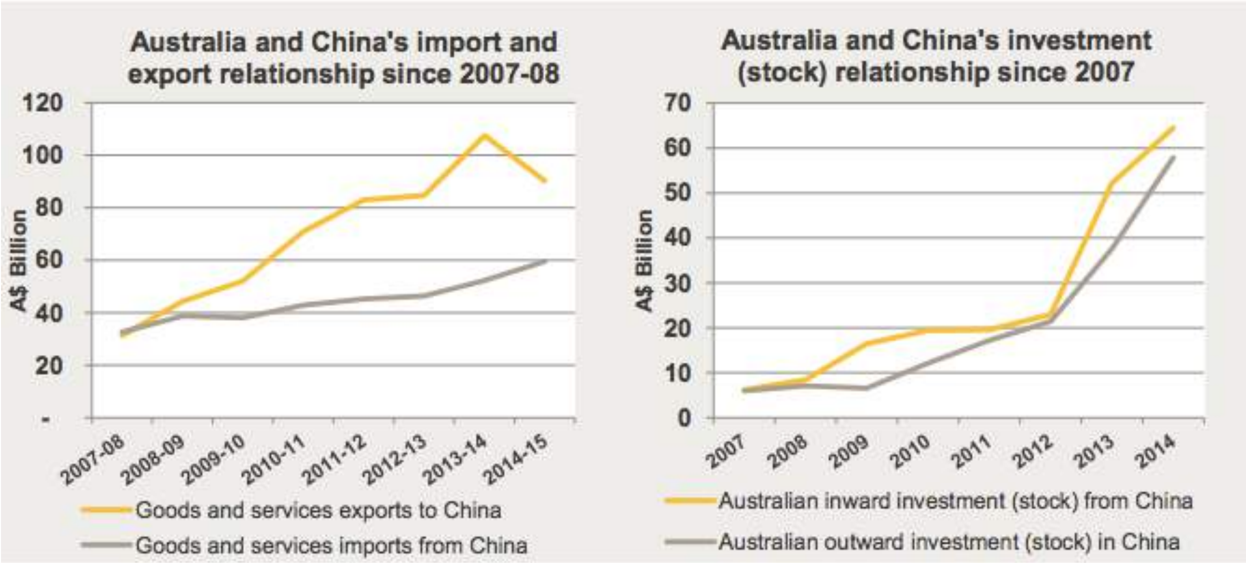

Figure 3.6 – Australia-China two-way trade since 2007-8.

If we use this data to make reasonable assumptions about the future of Australia, its place in the global economy, and the utility of its relationship with China, the issue of regulation emerges as a pressing matter. The vitality of this trading relationship is indisputable, however, to deepen the trading relationship into the future, and to foster a popular confidence in the Australia-China trading relationship trade must be fair.

The establishment and maintenance of anti-dumping frameworks by trading nations throughout the globe has largely been the response to this very issue; an ever-evolving, highly integrated international economy with a large degree of variance between the least and most developed nations. The past three decades of unprecedented Asian growth has proven the Australian economy to be adaptable and resilient. However, acclimating to the macro-level shifts that have been occurring in our global economic system since the Global Financial Crisis, has created inevitable turbulence. The anti-dumping framework has offered the best solution, as of yet, to maintaining domestic stability in an era of liberalised trade.

Two of Australia's more nascent FTA's will check that stability in the near future. Those agreements include The China-Australia Free Trade Agreement (ChAfta) and The Regional

Comprehensive Economic Partnership (RCEP). In order for Australian industry to survive, let alone thrive in the approaching storm of Pacific free-trade, the ADC best batten down the hatches of the framework before the tidal-wave of anticipated agreements hit Australia. These agreements exist into the present economic context of global oversupply of many manufactured goods, particularly steel and aluminium.

China-Australia Free Trade Agreement (ChAfta)

Starting on 20 December 2015, The China-Australia Free Trade Agreement (ChAFTA) allows 92.8% of China’s imports of resources, energy and manufactured products from Australia to enter duty free. Most remaining tariffs will be removed by 1 January 2019. On full implementation of the Agreement (1 January 2029), 99.9% of Australia’s resources, energy and manufacturing exports will enjoy duty free entry into China.

Economic circumstances setting the stage for such an agreement included Australia’s $57.9 billion stock of investment in China (2014), as well as Chinese investment in Australia, up from $2 billion 10 years ago, to around $65 billion by the end of 2014. ChAFTA, seeking to further promote Chinese investment in Australia, attempts to do so by liberalising the Foreign Investment Review Board (FIRB) screening threshold for private Chinese investors in non-sensitive sectors from $252 million to $1,094 million. Furthermore, the Australian Government will continue to screen Chinese investments at lower thresholds for agricultural land and agribusiness, and in sensitive sectors, including media, telecommunications and defense-related industries.

In addition to ChAFTA, The Regional Cooperative Economic Partnership (RCEP), launched by leaders from ASEAN and ASEAN's free trade agreement (FTA) partners, is also gaining way in negotiations. As an ASEAN-centered proposal for a regional free trade area, this agreement will initially include the ten ASEAN member states (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and those countries which have existing FTAs with ASEAN – Australia, China, India, Japan, Republic of Korea and New Zealand.

For Australia, the economic rationale of RCEP participation is seemingly simple:

- The 16 RCEP countries account for almost 50% of the world’s population, 30% of global GDP and more than 25% of the world’s exports.
- Participating members of the RCEP include 9 of Australia’s top 12 trading partners.
- RCEP countries account for around 60% of Australian two-way trade, 70% of Australian exports and over 15% of Australian two-way investment.
- Over the past decade, Australia’s trade with RCEP countries has recorded annual growth of 8.0% compared with Australia’s overall annual growth in two-way trade of 6.1%.
- On services alone, RCEP countries accounted for almost half (46.7%) of Australia’s services exports and 39.6% of two-way trade in services in 2014-15.
- RCEP countries account for 15.2% of total foreign investment in Australia, valued at $423 billion in 2014, and 17.6% of total Australian investment abroad, valued at $337 billion in 2014.

It is important to emphasise that while Australia’s trade relationship with China and other leading regional and global economies is vital to Australia’s economic future, so too is the maintenance of domestic Australian industries – in particularly, those within the manufacturing sector – Reasonable concerns have been voiced about the rapid expansion of the PRC’s global financial power, in addition to questions surrounding the equitability of gains. It is believed by certain analysts, for example, that “China stands to gain far more economic and strategic benefit from the agreement than does Australia, and that China will likely try to use its advantages to dominate Australia economically, which could result in both the hollowing out of domestic industry and increased Australian economic dependency on China...”[15]

The proliferation of FTA's requires a strengthening of the Anti Dumping framework to ensure that the trade deals negotiated not only warrant the maintenance of the existing Australian anti-dumping system, but beg for the system to display greater rigidity toward acts of predatory dumping. It will, after all, be the outcomes produced by these early days of globalised free trade that will set the precedent for trade behavior hereafter.

Section 4 - The Growing Challenge of Predatory Dumping

Australian steel, glass, paper, aluminium and canned food industries (amongst many others), have been significantly impacted by a flood of cheaper foreign imports into the Australian market. The results of such trading practices, and the consequential weakening of key domestic industries, have led to an outcry from Australian industry leaders for greater defence against foreign exporters. Regardless of the government's intentions to control such behavior, predatory trading practices persist. Such governmental inaction undermines the confidence of Australian industry actors and the public alike toward free-trade agreements by fueling the perception that such deals weaken the government's ability to control domestic outcomes. It is the case, however, that Australian participation in such open market endeavors has the potential to directly and positively affect the strength of Australian industries and the broader Australian economy in the coming decades. This report argues that those potential benefits will go unrealised without the support of a strong anti-dumping framework.

The case has been made, by those who oppose the maintenance of an Australian anti-dumping framework, that revisions made to the anti-dumping procedure since its 2009 overhaul have created an over-used and protectionist system, which benefits few at the cost of many. Some have argued that the noticeable increase of anti-dumping investigations is more likely a result of the Global Financial Crisis and the global steel glut than an actual increased occurrence of the practice. In viewing such occurrences as natural economic cycles, the policy approach has shifted toward minimal intervention. From the industry perspective, it is time for the pendulum to swing in the opposite direction. A lack of governmental intervention not only leaves Australian production vulnerable to subsidised foreign competition, but also foreshadows an increasingly pessimistic outlook for that which is Australian-made. Some major issues that have been addressed by those who do not support the maintenance of the anti-dumping framework are further outlined.

It is misguided to compare anti-dumping frameworks to protectionism

Opponents of anti-dumping frameworks have repeatedly misinterpreted their purpose as merely elements of protectionism. In its most basic form, protectionism can be described as the practice of protecting a country's domestic industries from foreign competition by taxing foreign imports. The higher the import-taxes, the more protectionist a nation is said to be. However, while anti-dumping measures often include significant duties placed upon goods, this measure is only pursued when a commodity has been flooded into a foreign market significantly below market value. In essence, anti-dumping measures are only implemented when they are required to halt predatory interferences with global and domestic markets, and are implemented to not only safeguard local industries from illicit trading practices, but also to ensure global confidence in liberalised international trading regimes.

Australia, with its unique geo-political and economic relation to Asia, has and will continue to enjoy a front row view of unprecedented growth in the region. However, this growth has produced a highly competitive trade environment, and furthermore, one in which not all participants play by the same rules. In attempting to catch-up for decades of lagged development, less mature trading nations have developed a growing tendency to test the bounds of those nations that maintain anti-dumping frameworks. In underplaying the importance of protecting our domestic industries, those voices which oppose the maintenance of the framework point to Australia’s import duties of up to 53% on some Chinese steel products. However, it is vital to understand that Australia’s anti-dumping system follows international precedent that lies at the heart of the contemporary international trading system. Ensuring that liberalised international trade agreements do not get exploited by countries contributing to an oversupply of important commodities is at the heart of anti-dumping frameworks. Defence against these nefarious trade practices similarly bolsters the confidence governments and the public have in liberalised trade regimes, benefiting the global trading system overall, and allowing the global economy to grow in an equitable and fair way.

Figure 4.1 - Australian Anti-Dumping System Usage Data 1990-2015 (DATA 5)

When comparing Australian import tariffs with comparable international trading nations, actors, the United States, for example, in May of 2016, increased its tariffs on imports of cold rolled steel from China from 266% to 522%, "citing a refusal to cooperate with anti-dumping investigations." In responding to such bold measures, Britain's steel trade body and unions, who have currently imposed a provisional 16% tariff on Chinese for cold rolled steel, have called on the UK and the EU to "take urgent action to stop Chinese steel dumping". Furthermore, the Director of UK Steel defended such US actions saying: "The United States has quickly identified the problem with China dumping steel and imposed effective and robust trade barriers. The EU has been slower and the result is we're still haggling over tariffs and action to prevent unfairly traded Chinese steel. Britain and the EU need to stop treading on egg shells and take decisive action following America's impressive lead."[16]

China too, who has so often been painted as the predatory-dumping culprit, has imposed a 46% import duty (comparable to Australian measures) on the EU, South Korea and Japan (high-tech steel made by Tata in Wales). From this perspective, anti-dumping measures should be viewed as tools utilised by most trade nations to overcome the inherent uncertainties, imbalances and ongoing subversions of the global financial trade system, and not simply as a protectionist measure used by powerful trade actors to secure their national interests.

The Costs and Benefits of the Anti-Dumping Framework

It has been noted that usage of the anti-dumping system has been concentrated in capital-intensive industries which produce intermediary goods (a good or service that is used in the eventual production of a final good). Steel, for example, accounted for 86% of new investigations in 2014-2015, and by February 2016, accounted for 60% of all measures in force (See notes for Summary of Measures Applied Against Iron and Steel Imports into Australia). Because the system is designed to protect the interests of a small but critical group of Australian industries, it has been suggested that too little attention has been paid to the costs incurred by the wider citizenry in order to maintain the framework. 'Cost's in this sense are narrowly and ideologically defined. For example such thinking if it gained traction could see Australian Government telling a group of workers, retrenched because of the injury dumping was having on their industry, that although the overseas importer has an appalling human rights record, breaches ILO core labour standards, engages in devastating/ unsustainable environmental practices, has been shown to be dumping and causing Australian workers to lose their jobs, that it's in the public interest for this to occur and dumping measures not be imposed.

As has been argued throughout this paper and in the past:

> *"The potential for that sort of an outcome would seriously risk the de-legitimisation of the existing system. It would take use back into the past to the environment surrounding highly politicised cases in the 1980s at a time when Australia's future trade engagement with China, Asia and emerging markets more generally is vital to the national interest."*[17]

Australian made products are desirable and have a strong reputation

However, such criticism is rooted in the false assumption that monetary cost ranks as the highest priority of the Australian people, and neglects to consider the greater social and cultural costs associated with being an import reliant nation. Relevant data suggests that an overwhelming 90.3% of people born in Australia prefer Australian-made goods given the opportunity to buy them. Similarly, 90.3% of Canadians prefer Australian-made goods, while 90.7% of Americans are more likely to buy a product if it's Australian-made. Simply, products manufactured in Australia have a reputation of quality that is rarely seen internationally.

Additionally, in a Roy Morgan Research survey including more than 21,500 Australian people aged 14 years and older, when asked: "For each of the following products — clothes, food, electrical goods, motor vehicles, sporting goods, wine — would you be more likely to buy it if it was labelled 'Made in Australia' or 'Made in China'?", clear trends emerge. Results illustrate a preference for Australian over Chinese goods. The trend persists even in the case of Australian citizens born in Asia, who although more likely to choose Chinese-made products than the average Australian, still prefer products labeled "Made in Australia" over those labeled "Made in China". In interpreting such results, Roy Morgan Research's Industry Communications Director explains:

> *"Whether it's due to the success of the long-standing Australian Made campaign, a genuine quality issue or simply good old Aussie patriotism, an overwhelming majority of Australians are more likely to buy something if they know it's made here."*[18]

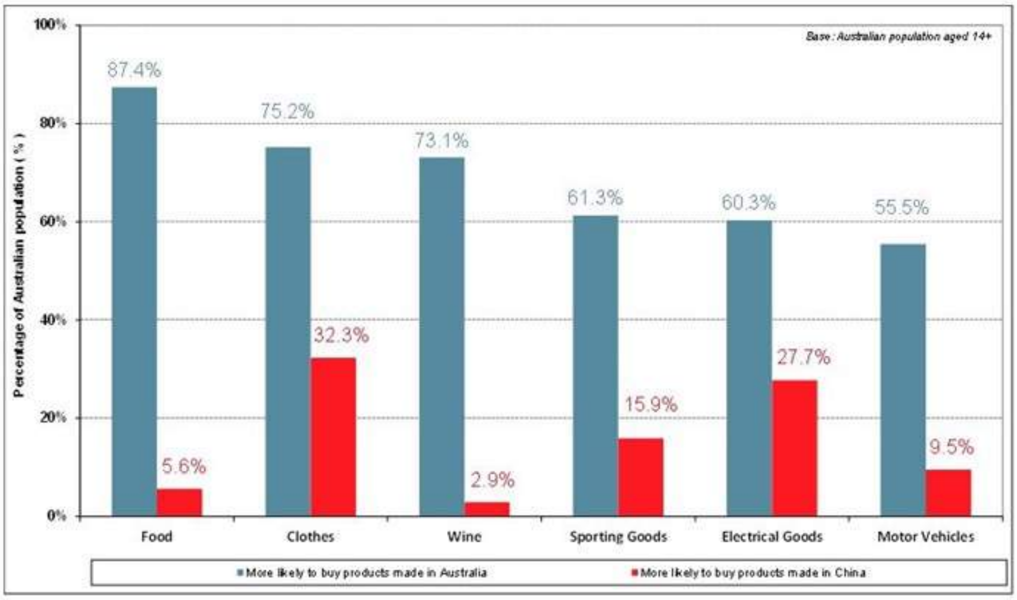

Figure 4.2 - % of People More Likely to Buy Each Product if it was Made in Australia or China

Anti-dumping frameworks deliver economic benefits and assurances

Anti-dumping frameworks can deliver real and lasting long-term economic dividends to domestic economies. Such frameworks help domestic industries maintain local employment, and retain a certain level of diversification within an economy. While a quantitative assessment of direct economic benefits of maintaining a status-quo regulatory framework is inherently challenging, research into Canada's anti-dumping framework has quantified the specific benefit of the country's robust and targeted dumping procedures. In assessing the impact, the anti-dumping framework within Canada has had on local industry, a Canadian International Trade Tribunal report found that, from 1989 to 2014, exports of goods, domestic jobs, *and imports* were all positively impacted. During that period, the report estimates that anti-dumping measures in Canada resulted in 156 per cent of the employment that would have been evident if the measures were not in place. Importantly, the report also demonstrates that anti-dumping measures themselves have decreased, but have become more targeted, and more effective[19].

As a result, [of anti-dumping measures] imports of products tend to decrease, while Canadian shipments, investments and employment tend to increase.

–Canadian International Trade Tribunal

The Canadian experience is illustrative of how sensible, targeted anti-dumping measures can have a positive impact on a national economy and local jobs.

Predatory Dumping Impacts Australian Industries

The increasing prevalence of predatory dumping within Australia is having a significant impact on a diverse set of Australian industries. However, the sector of the economy that is perhaps most directly by the flooding of cheaper international commodities at below-market prices is the manufacturing sector – an employer of over 800,000 jobs, or 7 per cent of the Australian workforce. Specifically, Australia's steel and aluminium manufacturers have been particularly damaged by predatory dumping that has resulted from a a significant global oversupply of steel and aluminium products and Australia been seen as having "soft touch" when it comes to anti-dumping in comparison to jurisdictions governing alternative potential markets and therefore a desirable place to offload excess capacity

Maintaining an Australian manufacturing industry is vital, but it is threatened by dumping

The future of Australia's manufacturing sector is subject to enormous challenges in the coming years. A changing and continually evolving economy means that, like all sectors, the manufacturing sector is required to adapt to the contemporary challenges of the Australian economy. Currently, the Australian manufacturing sector employs approximately 860,000 Australians – or 7.2 per cent of Australia's workforce[20]. This is indeed a sizeable portion of the Australian workforce, with only the construction, retail, professional services, healthcare and social services, and education services employing more Australians. Manufacturing in Australia currently employs almost four times the amount of Australians as the mining sector and the arts and recreations sector, more than the public administration sector, and significantly more than the transport sector. Put simply, the manufacturing sector is a vital component of the Australian economy. Its ongoing viability as intrinsically linked to that of the Australian economy more broadly and provides an important structural backbone to many other sectors.

However, it is important to remember that while the sector faces genuine challenges, its viability can be sustained through proactive and informed public policy decisions that provide Australia's manufacturing sector with a fair and equitable access to Australian and international markets. It is also important to recognise that the challenges to Australia's manufacturing sector are not unique: globally, manufacturing today accounts for 15 per cent of global GDP, compared to 1995, when it accounted for over 20 per cent of the global GDP[21]. Australia, however, does today remain significantly below the global average on this measure. In the United States, the manufacturing sector accounts for 12.3 per cent GDP, in the United Kingdom, it accounts for 10.1 per cent of GDP, and in Canada, the manufacturing sector accounts for approximately 11 per cent of GDP. When compared internationally, Australia's manufacturing sector is among the smallest across the developed world.

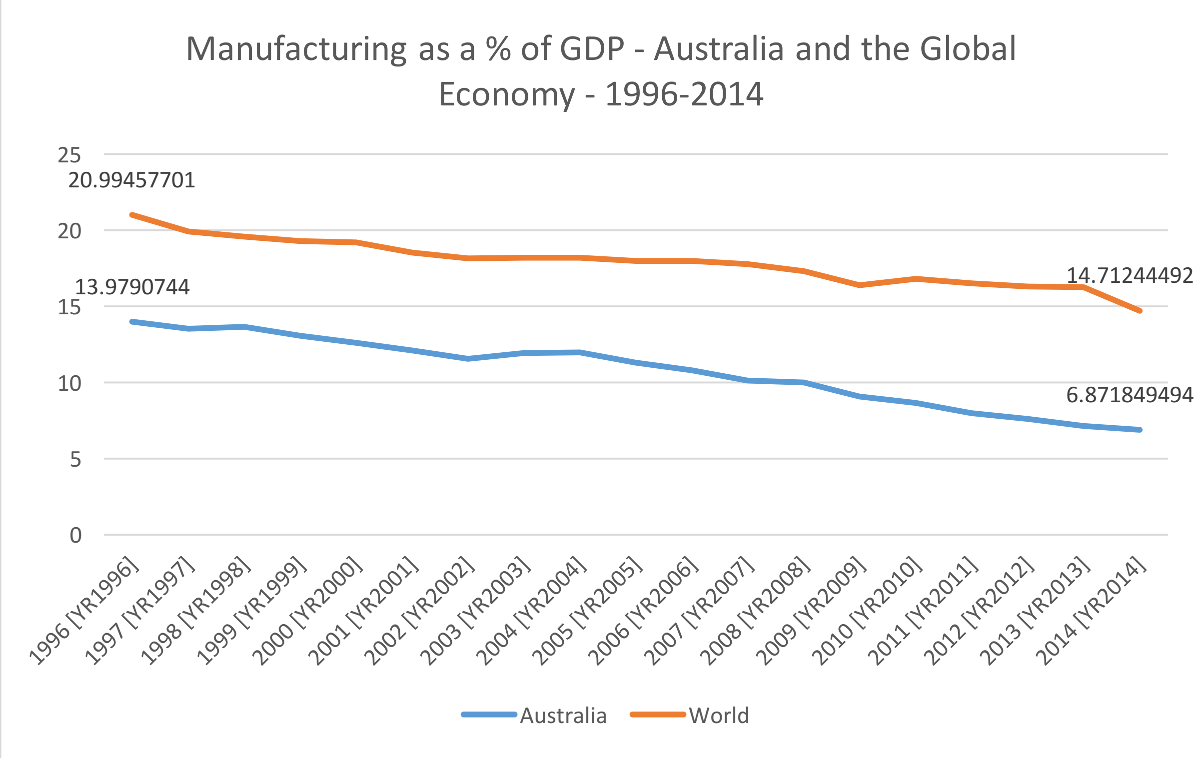

Figure 4.3 – Manufacturing as a percentage of GDP – Australia verses the Global economy.

Australia's manufacturing sector is now well positioned to grow

Despite negative commentary about the fate of Australia's manufacturing sector, its decline seems to have stalled in recent years. Between July 2015 and July 2016, the sector experienced 12 straight months of expansion – the first such period of growth since before the Global Financial Crisis of 2008-9 which severely disrupted the growth of the Australian manufacturing sector and the Australian economy more broadly[22]. Commentary suggesting the more permanent demise of Australia's manufacturing sector ignores the changing nature of Australia's manufacturing sector – one that is shifting towards the production of higher specification, modern and advanced products servicing more niche industrial demands within Australia and globally. The advanced manufacturing sector within Australia can have a bright future if adequate policy measures are in place that enable Australian industry to compete on a level playing field with international competitors that have contributed to a global oversupply of manufactured goods, particularly within the steel and aluminium sectors.

Global competitors are contributing to a significant oversupply of manufactured goods

Predatory dumping has had a real impact on specific industries within Australia in recent years. Challenges to Australian industry are best examined through the comparison of the size of Australia's own manufacturing industries with regional and global competitors. In particular, Australia's own steel and aluminium industries have been dramatically impacted by the over-supply of materials from manufacturers within China, which dominates the global output of both steel and aluminium. In order for Australian industry to fairly compete with these mass-manufacturers contributing to over-supply, it is important that Australian manufacturers are granted equal access to Australia's own market place, and are not forced to lower their prices to below-market rates as a result of the illegal and malicious dumping of excess goods from international competitors.

The global steel & aluminum markets are dominated by Chinese manufacturers

In July of 2016, global crude steel production totaled 133.7 million tonnes[23]. Of that total, 66.8 million tonnes, or 49.96 per cent of global steel production occurred within China. The scale of this production dwarfs that of other regional steel manufacturers, such as Japan which accounted for only 6.6 per cent of global production, India, which accounted for only 6.05 per cent of global production, and South Korea, which accounted for only 4.5 per cent of global production. Other advanced economies, as as Germany and the United States, contributed only 2.5 per cent and 5.2 per cent of global production, respectively. In July, Australia produced only 477,000 tonnes of crude steel, or 0.36 per cent of global production. Put simply, the scale of Australia's steel output is significantly smaller than that of its regional and global competitors, and makes Australia vulnerable to a flood of cheaper international steel products when global demand does not meet the output generated by the world's leading steel producers, such as China where the government itself is a large owner of production. The scale of China's steel production – which is strongly aided by various state sponsored subsidies – is such that in many cases, it is outstripping demand for steel products. Because of the lack of demand for steel at market-prices, many Chinese manufacturers are being encouraged to flood competitor markets with their own steel products, advantaging their own businesses over international competitors – particularly Australia. It must be noted that in doing so, these manufacturers are not complying with the principals laid out in the anti-dumping agreement at the WTO.

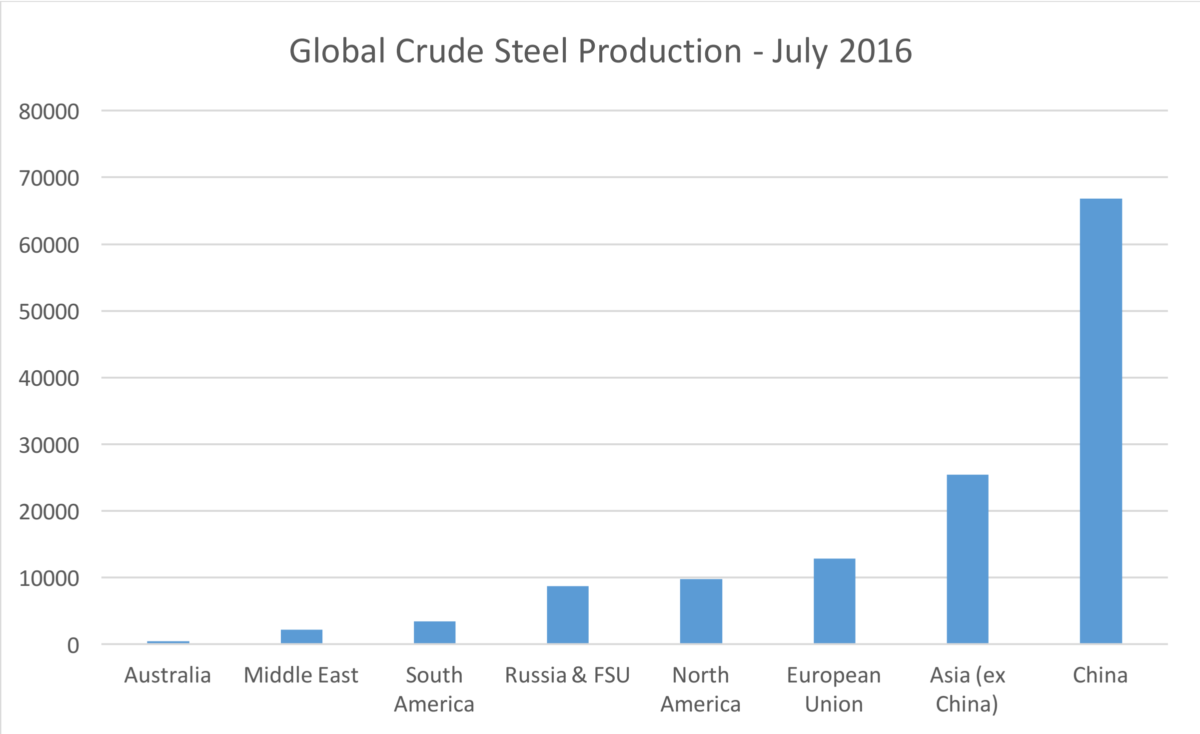

Figure 4.4 – Global crude steel production in July 2016 by country.

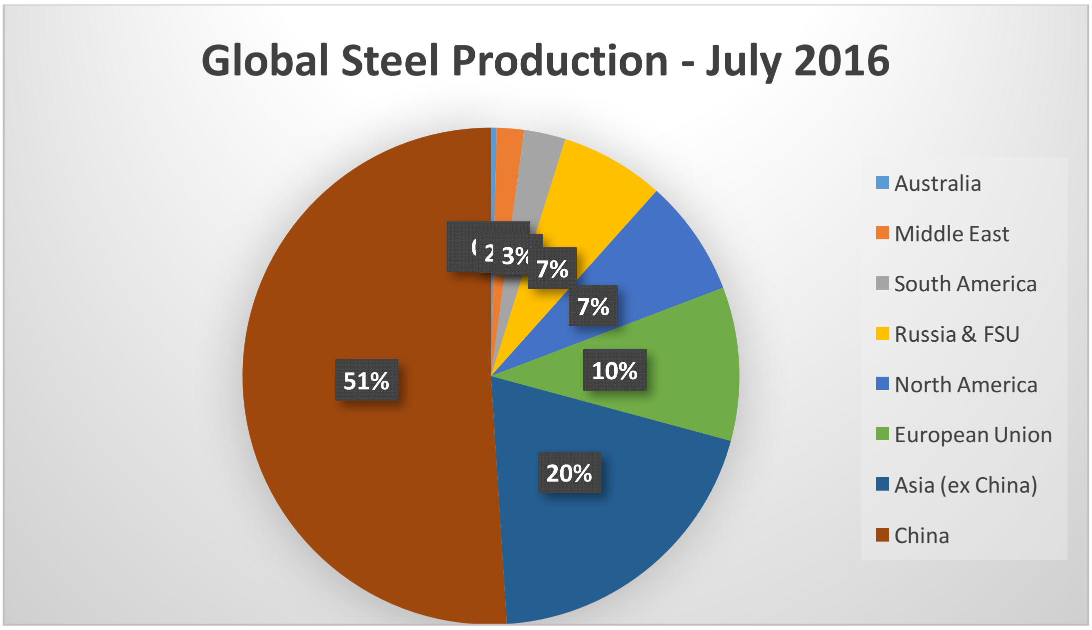

Figure 4.5 – Global crude steel production in July 2016, percentage by country.

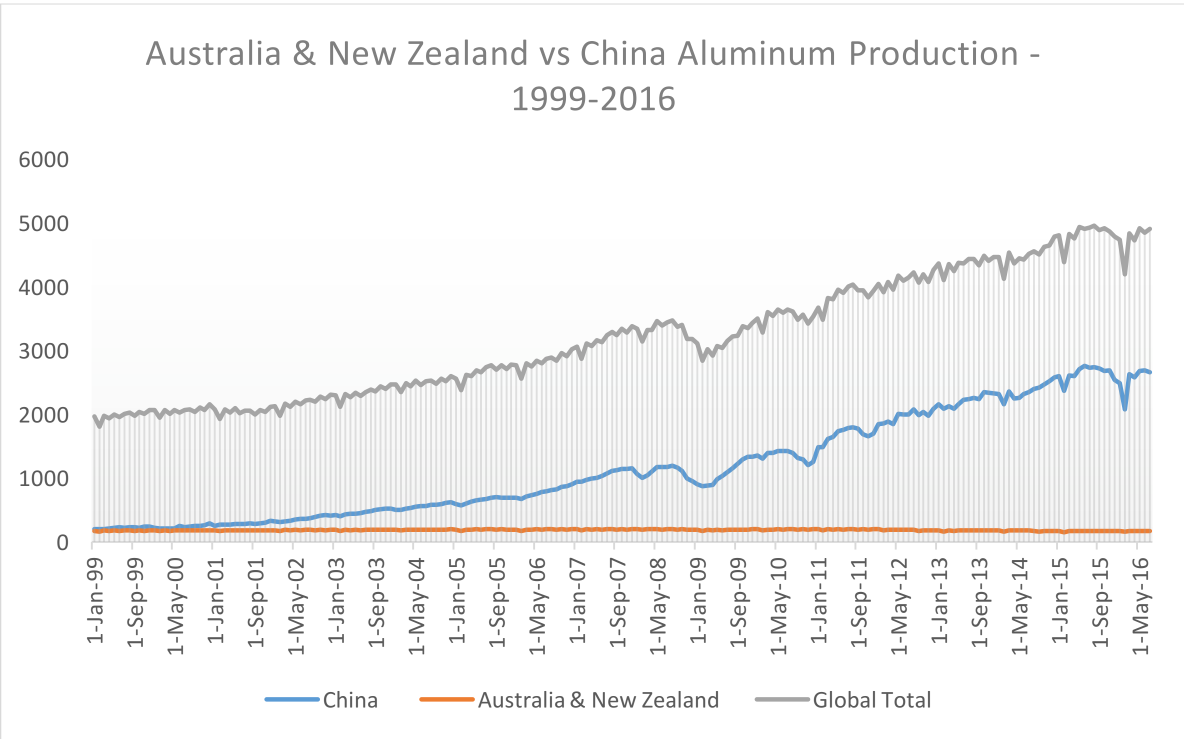

Figure 4.6 – Aluminum production by China and Australia/New Zealand[24], and total global aluminium production, 1999-2016.

In 1999 (when China's aluminium production data was made available), Australia and China were producing a similar volume of aluminum per month. While Australia's total production has remained relatively static, China's production has grown to make up more than 50 per cent of global production.

The aluminium industry is being strained by predatory dumping

The Australian aluminium industry is similarly challenged by an ongoing glut in global production, which is leading to lower international prices for aluminium, and a flood of cheaper aluminium products within the Australian market place. In July 2016, global aluminium production reached 4,897 million tonnes, of which only 4 per cent is produced within either Australia or New Zealand[25]. However, historically, Australia's share of global aluminium production has been noticeably higher. At its peak in July 1986, Australia produced around 7 per cent of the global aluminium output.

While Australia's share of the total global production has decreased significantly as global output has grown, 55 per cent of total global production of aluminium occurs within China, with the increase of China's production since data began being record in 1999 being unprecedented. In that year, China produced 9.89 per cent of the global aluminium output, or 194 million tonnes per month. Within only 17 years, Chinese aluminum manufacturers have dominated the global market, now producing over 2,500 million tonnes per month. Under these pressures, it is understandable that Australia's aluminium industry has been contracting in recent years. Since 2006, aluminium employment has declined 44 per cent (compared to a 13 per cent decline for manufacturing employment in total) while output has remained relatively static. In 2006, aluminium manufacturing accounted for 1.6 per cent of total manufacturing employment in Australia. Today, it only accounts for 1.2 per cent. Simply, aluminium manufacturing in Australia has been decimated.

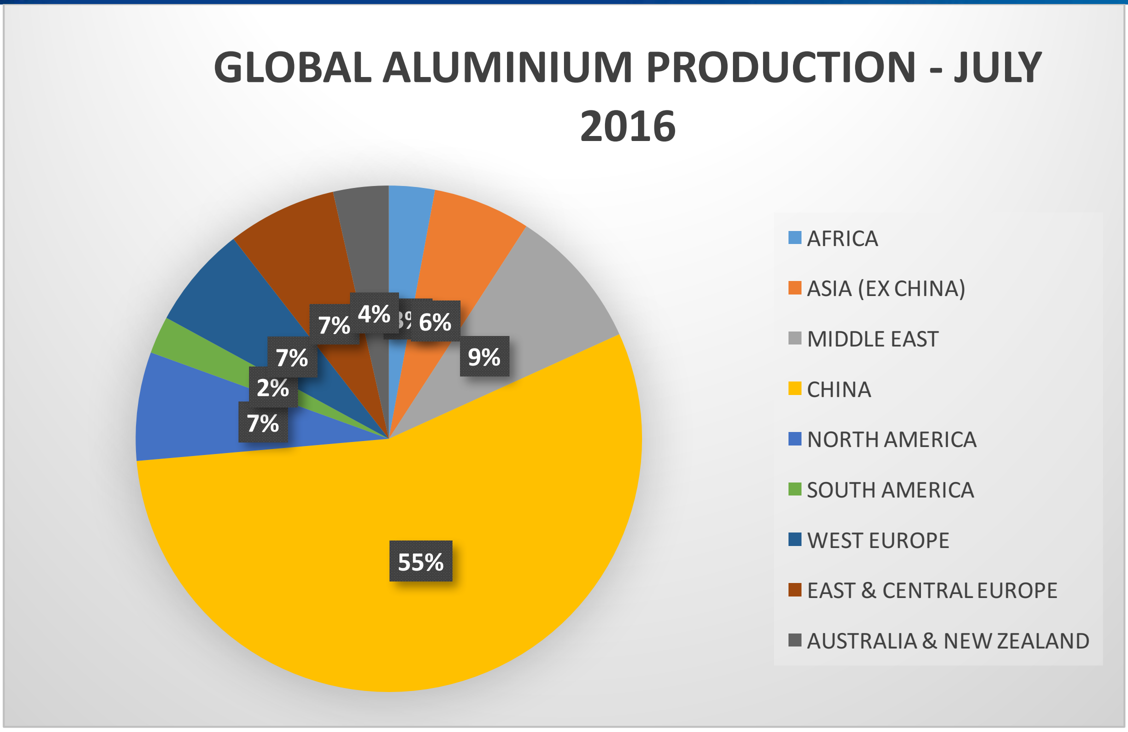

Figure 4.7 – Global aluminium production with the percentage breakdown of each country. China is responsible for 55 per cent of global production.

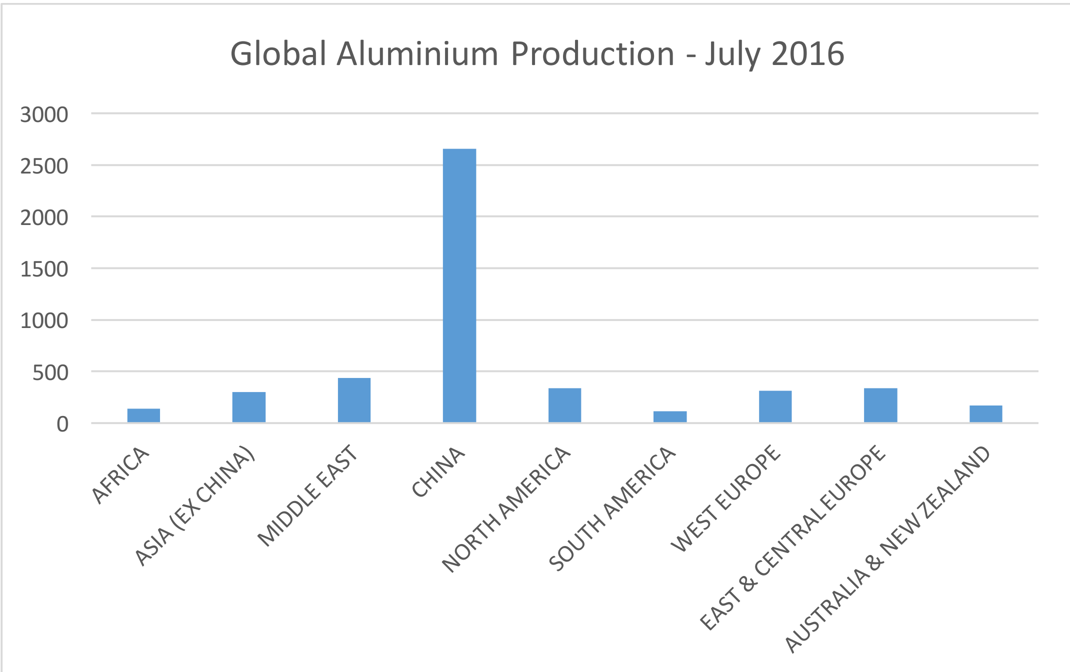

Figure 4.8 – Global aluminium production by region in July 2016. Note China's individual dominance over other entire regions in the level of production.

Case Studies of Affected Australian Businesses

There are currently forty-four Australian anti-dumping measures in place; twelve of those measures are on various steel products. This fact should come as no surprise to those who have watched the fate of Australian steel manufacturers fall into the hands of cheap foreign imports. It goes un-debated however, that it is in every nation's interest (economic and defensive) to maintain domestic steel production. So how then, have we allowed two of Australia's largest steel producer, Arrium and BlueScope, to fall into such dire straits?

Arrium

From June 2014 - June 2015 Arrium posted a $1.92 billion loss, down from a profit of $205.4 million in the year before. Stock prices dropped by 43% in that same period and by December 2015, the company reported $2.8 billion worth of debt. The mining and steel company has blamed "China's shaky economic growth, the weak outlook for iron ore prices and a flooded steel market in Asia" for their business' misfortune. Furthermore, industry representatives have highlighted the fact that "governments in many countries are now intervening to support their domestic steel industries in recognition of the vital role they play in economic health and growth." It has perhaps been the inability of the ADC to respond expeditiously to "competitive developments" in the steel industry that has been most detrimental to Australian steel production. Like, for example, if Arrium had posted a near $2 billion loss in addition to $2.8 billion in debt by mid-2015, and then subsequently announced 250 job cuts by November 2015, why did the ADC not step in until 22 April, 2016, nearly one year after the ship was well on its way under?

BlueScope

BlueScope's Port Kembla steel works currently suffers the same fate as its domestic competitor Arrium. Arrium's 43% stock dip appeared as child's play in comparison to the horrific market wrath experienced by BlueScope as its stocks plummeted by 82% from 2014-2015. Company losses were reported at $2.2 billion between 2011-2014 In its prime, the Port Kembla operation employed approximately 22,000 people (1980's), but today, has been modestly scaled back to 3,500 employees. The operation currently runs on one blast furnace (Furnace No. 5) after BlueScope was forced to mothball Furnace No. 6 in 2011, resulting in the direct loss of approximately 1,500 jobs.

Despite the economic challenges faced by BluesScope's Port Kembla plant, it is worth noting the efforts of employees at the plant in keeping the operation open. In October of 2015, facing the prospect of the overall closure of the Port Kembla steel plant, employees voted in favour of a 'groundbreaking' deal that would see the operation remain open[27]. Facing the closure of the plant that would have resulted in the loss of hundreds of jobs and significantly impacted the economy of Port Kembla and the surrounding Illawarra region, employees accepted a deal that would see wages freeze for three years, as well as up to 500 job cuts. While the outcome was still difficult for many workers, particularly those who did lose their jobs, the process demonstrated the determination by the Australian steel manufacturing sector to retain a viable local industry. That employees were willing to take pay cuts of up to $20,000 and face redundancies in order to keep the plant open and contributing to the local and national economy exemplified this determination to retain the industry's viability within New South Wales and Australia. However, it is important to note that through considered monitoring of predatory dumping practices, similar eventualities in the future become less likely. The Port Kembla steelworks were severely threatened by the impact of a global steel production glut, and the influx of cheaper foreign steel products into the Australian marketplace. Avoiding future circumvention of the anti-dumping framework in the future is vital in ensuring the ongoing viability of the industry, and the maintenance of steel manufacturing jobs within Australia.

Capral Aluminium (Ipswich, QL)

Built as a state of the art facility in 2004, Capral Aluminum (Ipswich, QL), which was once responsible for producing 60% of all Australia's extruded aluminum sold, now, although still Australia's biggest domestic producer, holds just 30% of the market. Capral, like dozens of other Australian industries coping with unfettered Asian pricing, does not lack innovation or work ethic. It did however, and until recently, lack expedited government support against predatory dumping.

Hit hard by predatory dumping in 2014, by 2015 the company was operating at less than 60% capacity. The facility, down to 300 employees from 450 five years earlier (a loss of 150 positions or 1/3 of all jobs) continued to struggle for survival. Nationwide the picture appeared only more grim, with almost 800 positions having been made redundant in that time.

In analyzing these negative trends, one wonders why must Australian industries lie on their deathbeds gasping for governmental resuscitation before intervention? As rational people we regularly apply preventative logic for our own wellbeing; shall it not be applied to the wellbeing of domestic industries? It is, of course, far easier to perform a teeth-cleaning than a root canal! However, there is a positive side to the story of Capral; one which illustrates the potency of the argument surrounding the maintenance of the framework.

In 2015, governmental intervention finally arrived. The year under review saw an improved performance at the operating level. 2015 revenues of $403 million increased over the $375 million reported in 2014. This 7.5% increase in revenues "was primarily driven by favorable anti-dumping outcomes" in addition to a booming residential construction market. Positive net cash flows resulted in year-end net cash on hand increasing by $3.6 million to $20.1 million (2014: $16.5 million) and stock prices rebounded. The company will continue to face competitive challenges, but "volumes of low priced Chinese imports are slowing," resulting in projected increased profits in 2016.

Australian Paper - Maryvale Mill (Latrobe Valley)

Australian Paper, produced at the Maryvale Mill in Latrobe Valley, is Australia's sole producer of uncoated paper and the largest private employer in the Latrobe Valley. The pulp and paper mill which includes a newly commissioned $90 million de-inking and recycling plant employs 1,000 workers directly and almost 6,000 more indirectly. However, four consecutive years of reported profit losses have led to mounting worries concerning the future of Australian-made paper. Inquiries into those losses have determined that in 2015, imported A4 printing paper from Brazil, China, Thailand and Indonesia (constituting 93% of all Australia's office paper imports) had been sold in Australia at below market rate, and more specifically that from April 2015 through April 2016, paper from Indonesia and China was sold on average 73% and 50% (respectively) below "fair" value. Those undercutting rates resulted in a crushing blow to the local mill.

In 2014 an Anti-Dumping Commission investigation where Australian Paper was the applicant was conducted on imports of the products (in addition to A3 paper) from China. The 'Normal Value' of the imports, and thus the dumping margin (when normal value was compared to export price) was determined by the domestic selling prices of similar paper on the Chinese market.

The result was that the Commission determined that the dumping was either non-existent or negligible. In contrast last year the United States investigated paper from China and earlier this year confirmed anti-dumping duties of 149% on Chinese imports. It is apparent that the main difference in the grossly varying result is that US authorities used their rights under China's WTO accession protocol to determine normal values originally based on the default of the Cost to Make and Sell in appropriate surrogate countries where market conditions prevailed as opposed to Cost to Make and Sell or domestic selling prices in China;

In the current investigation Australian Paper has implored the Anti-Dumping Commission to not base 'normal value' on domestic selling prices like they did in 2014 but instead do a cost construction with relevant adjustments where inputs are unfairly subsidised in acknowledgement of “the particular market situation” which see domestic prices significantly influenced and distorted by the Government ‘influence on raw material inputs and subsidies during the investigation period, such that selling prices for the goods are rendered artificially low.’

Early last year the company announced a ‘turnaround plan’ which included the closing of its Shoalhaven Mill in New South Wales (2015), and the loss of its 75 remaining jobs (once employing 600). In a more recent cooperative bid to cut costs at the mill, maintenance workers in March 2016, agreed on the terms of a 38-hour, four-day week while being paid for 35 hours. In return they will receive 52 days off a year. They have also agreed on a wage freeze until April, 2017. As a result of this agreement, the company will save $3 million (AUD). No decision, as of yet, has been made on the level of governmental support, if any, that Australian Paper will receive. For now, the company continues to trim fat even in its emaciated state. As the ADC deliberates on the justification for intervention, the Australian paper industry skirts closer to the brink of its extinction. The result of the current investigation in terms of margins will be iterative in determining whether the current application of “particular market situation” provisions within the Anti-Dumping Commission’s remit are being applied strongly and appropriately enough and/or whether other mechanisms such as reconsidering China’s status a Market Economy for anti-dumping purposes requires further examination.

Conclusion

Australia is entering a new and challenging economic period. The increasing integration of the global economy means that a great deal of opportunities are emerging for Australian industries. However, while increasing Australia's presence in the global economy is essential to the country's future prosperity, it is similarly essential that Australia's integration into the global economy is achieved in a way that ultimately benefits Australian workers, and Australian businesses.

This report has established the integral role a strong and fair anti-dumping framework can play in implementing the appropriate safeguards to help the promises of connected global trade to be realised within Australia. Ensuring that foreign entities are not encouraged to view the Australian market as an attractive destination for predatory dumping is an important role for government. A robust anti-dumping framework that is nimble, well resourced and able to respond quickly to cases of dumping discourages foreign entities from using Australia's market place to offload excess capacity.

It is clear that predatory dumping has had a significantly adverse impact on a range of Australian industries – most notably, the steel and aluminium sector. But Australian manufacturers more broadly have also been impacted by foreign industries nefariously flooding Australia's market with cheaper, excess goods. In these circumstances, a robust anti-dumping framework rooted in Australian and international law should provide the necessary relief to affected industries.

However, the anti-dumping framework in Australia is significantly underfunded, and has five key points of weakness that must be resolved in order for the system to function adequately. These points of weakness allow predatory dumping to target Australia, and prohibit Australian industries from utilising an anti-dumping framework to the extent that is required.

Improving Australia's anti-dumping framework is not only important in safeguarding Australian jobs and and industries, but it is also vital in maintaining public confidence in trade. Without a robust and functional anti-dumping framework, Australian industries are disadvantaged internationally, and are prohibited from accessing the same governmental defences from predatory dumping that many competitor nations maintain. The Anti-Dumping Commission plays an indisputably important role in Australia's economy. Ensuring it is robust, well funded and maintained into the future is essential to enabling Australia to navigate the advantages and challenges of an globalised economy.

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