

February 22, 2018



Automatic sunseting of legislative instruments

Proposal to remake the Statistics Determination 1983

Consultation paper

***Submission by
BlueScope Limited***

February 2018

February 22, 2018

BlueScope Steel Limited (hereafter “BlueScope”) welcomes the opportunity to provide a submission to the Treasury consultation paper, Proposal to remake the Statistics Determination 1983.

BlueScope provides the following comments on the Consultation paper:

Introduction

BlueScope is the only manufacturer of flat steel products in Australia – all other flat steel sold in Australia is imported.

BlueScope employs approximately 6,500 people in Australia, with a manufacturing, logistics and distribution footprint comprising over 100 sites across the country. The company’s largest manufacturing facilities are the Port Kembla Steelworks and adjacent Springhill plant (NSW), Erskine Park (NSW) and Acacia Ridge (Qld) COLORBOND® steel manufacturing plants, and the Western Port coating and painting plant at Hastings (Vic).

The company manufactures approximately 3 million tonnes of steel products per annum in Australia, of which up to 800,000 tonnes is exported each year and the balance sold in the domestic market. Annual capital and investment expenditure in our Australian Steel Products business is in excess of \$200 million.

The company is one of Australia’s largest manufacturing investors in research & development, with a product development facility at Port Kembla employing approximately 70 people, including 35 PhDs. The company has an R&D intensity of 8 per cent (eligible R&D expenditure as a proportion of total costs in Australia), and is one of the largest private sector patent applicants in Australia.

BlueScope is an active stakeholder in Australia’s Anti-Dumping System (“System”). As a large import-competing manufacturer, BlueScope relies on an efficient and effective System that addresses unfair trading practices in a timely manner. A robust, effective, WTO-compliant anti-dumping system is essential in underpinning our confidence to continue investing in Australia.

The Australian Bureau of Statistics (“ABS”) plays a critical role within the overall framework of an effective anti-dumping system in Australia as the pre-eminent source of trade data for all interested parties.

We welcome the opportunity to provide input to the Proposal to remake the Statistics Determination 1983 Consultation paper. We are available to provide further information or clarification of the matters included in the submission as required. Any questions regarding this submission should be directed to **Alan Gibbs**, International Trade Affairs Manager on (02) 4240 1201, or **David Jenkins**, Manager Government Relations on (03) 9666 4022.

Background

The Census and Statistics Act 1905 (“the Act”) provides the Australian Statistician with the authority to collect, compile and publish statistical information. Section 13 of the Act provides for the Minister to make determinations allowing for the release, with the approval in writing of the Statistician, of certain information¹ collected under the Act. Section 13 also contains a provision that information of a personal or domestic nature cannot be released or otherwise disclosed in accordance with a determination in a way that is likely to enable the identification of a person.

The Determination is made under Section 13 and complements the Act by setting out additional circumstances under which the ABS may release statistical information collected under that Act.

The Determination sets out:

- what information can be released;
- whether the information can be released publicly, or released to select recipients only; and
- any conditions that apply to how recipients may use that information.

The Determination enables the ABS to release detailed statistical information to a wide range of users for analysis and to input into the decision-making processes of governments, businesses and individuals. In specific circumstances, the Determination allows for the public² or limited³ release of statistical information that may identify a business or organisation, but this is done within a set of controls that will not be changing as a part of the proposed remaking of the legislative instrument. For example, the current Determination enables the ABS to release, to certain government entities only, lists containing certain business characteristics, such as names and addresses, if those entities use that information for statistical purposes only and do not on-disclose this information.

The Determination is a necessary and useful part of the ABS’ legislative framework, was last updated in 2004 and needs to be remade in a new instrument prior to its sunset on 1 October 2018.

The consultation paper sets out proposed changes to the Determination to ensure it remains fit-for-purpose and is aligned with the Government’s Public Data Policy Statement to:

“...optimise the use and reuse of public data; to release non sensitive data as open by default; and to collaborate with the private and research sectors to extend the value of public data for the benefits of the Australian public.”⁴

The proposed changes to the Determination do not substantially alter the intent or design of the current Determination or the strict controls that govern the specific circumstances under which information may be

¹ Under Section 13 of the Act, determinations may provide for ‘...the disclosure, with the approval in writing of the Statistician, of information included in a specified class of information furnished in pursuance of this Act.’

² A public release of information is done without restriction and can be used, re-used and on-disclosed for any purpose. Public releases include ABS publications, info graphics and supporting commentary.

³ A limited release of information comprises any release of statistical information that is to select recipients only and may include restrictions on how that information may be accessed, used, re-used or on disclosed to additional parties. Limited releases may be for a finite time only and depending on the circumstances, recipients may be specified individuals or entities, or may be any person who satisfies an assessment or suitability check. Limited releases include lists of business characteristics and confidentialised unit record files.

⁴ Australian Government Public Data Policy Statement, 7 December 2015, (www.pmc.gov.au).

February 22, 2018

released on a public or limited basis. The proposed changes provide further enabling authority for the ABS to increase the value of statistical outputs pertaining to businesses and organisations.

BlueScope response on the proposed changes to the Determination

Access to ABS trade data is vitally important for interested parties seeking to apply for anti-dumping and/or subsidy measures and to make submissions in Anti-Dumping Commission cases. Transparency of trade data also assists stakeholders to assess the impact and effectiveness of anti-dumping and countervailing measures, including the identification of non-compliance and circumvention of measures.

The ABS is a critical source of trade data for interested parties. The ABS' approach to the release of data is subject to legal constraints under the *Census and Statistics Act 1905* and the *Statistics Determination 1983*.

BlueScope firmly contends that the unduly restrictive suppression of import trade data by the ABS on confidentiality grounds imposes critical time constraints, additional costs and increased difficulty for Australian manufacturers and producers in:-

- The assessment and preparation of an application for anti-dumping measures;
- The investigation phase of an anti-dumping inquiry; and
- Following the imposition of measures, the assessment of the effectiveness or otherwise of any imposed measures, including the detection of circumvention activities.

BlueScope is also concerned with the current process for the requesting and granting of the suppression of import statistics. Respectfully, the current process lacks both transparency for all parties' involved and procedural fairness for the impacted domestic manufacturing industry as it is not afforded the opportunity to provide input into whether or not the data may already be available in the public domain- a key determinant in the granting of import data suppression orders.

The ABS information paper, *International Trade - Requests to confidentialise data*, explains that one of the accepted reasons for requesting confidentiality is that "an imported commodity maybe the subject of an anti-dumping inquiry". Just as significant is the promotion of the ability to request confidentiality on import trade that is yet to begin.

The current ABS suppression application process is seen by Australian industry as actively encouraging companies involved in the trade of dumped goods to both apply for confidentiality to disguise unfair trade practises from scrutiny and to hinder the detection of consequent circumvention activity.

It is therefore not surprising many foreign companies have exploited the opportunity to disguise unfair trade, with the Anti-Dumping Commission recently publishing the fact that, approximately 30 per cent of Australia's steel import volumes data is confidential (with no information on country of origin)⁵.

The responsibility of the Statistician not to publish or disseminate information in a manner that is likely to enable the identification of a particular person or organisation is acknowledged by BlueScope however, BlueScope does not agree with the ABS's interpretation of the legislation that import statistics at the tariff commodity level by country would enable the identification of a particular person or organisation. Whilst an importer or exporter may be able to demonstrate to the ABS that in any particular month, all the export statistic data matched the details of their imports, nobody else, apart from the company and Border Force knows this.

To BlueScope's knowledge, no single trader, importer or exporter has, or will ever likely have, exclusive rights to export or import all the possible goods that are encompassed within a tariff code for any particular country.

⁵ Australian Anti-dumping Commission, *Analysis of Steel and Aluminium markets report to the Commissioner of the Anti-Dumping Commission*, (August 2016) Melbourne at p. 24.

February 22, 2018

In 2009, the Productivity Commission⁶ examined the issue of the suppression of trade data in their Report No. 48. The Productivity Commission stated that it did not consider that the ABS “would be undermined by a ‘common sense’ approach to publishing data that is available elsewhere”.

The Productivity Commission proposed at Recommendation 7.9:

“The Australian Government should consult with the Australian Bureau of Statistics on the best way to ensure that import data are not suppressed on confidentiality grounds when the same or similar data can be publicly accessed through other sources.”

There has been limited progress on this issue since the Productivity Commission’s release of this report in 2009.

BlueScope is of the view that the current ABS operating policy is facilitating unfair trade that exacerbates injury to Australian manufacturers and producers. BlueScope strongly contends that the publication of such import data should be included in circumstances where broadly equivalent data is (publicly) available from other sources.

Recommendations

BlueScope recommends to this *Determination* review that the proposed changes include an increased range of de-identified import data statistics to be made available to interested parties in the following manner:-

- (i) The ABS not grant confidentiality restrictions to import trade statistics at a country level by tariff code unless an importer or exporter can demonstrate that they are the sole importer or exporter of all the products within that tariff code from a particular country for a period of at least 12 months.
- (ii) The ABS not make import trade statistics confidential unless Australian industry members have been afforded the opportunity to demonstrate that similar data has been published by, or is available to the public, from a business, organisation or any official or government body.
- (iii) The ABS publish the following aggregated statistics for each good subject to antidumping measures:
 - Volume of goods imported in the previous quarter (subject to interim duties and/or undertakings);
 - Value of goods imported in the previous quarter (subject to interim duties and/or undertakings);
 - Value of duties collected in the previous quarter; and
 - Value of interim duties repaid following the completion of final duty assessments in the previous quarter.
- (iv) Where an interested party can demonstrate detailed export data (including name of exporter and importer, details of volumes and values, etc) is available from an alternate source, the ABS will action the release of the trade data information following application. This will ensure access to trade data in a time and cost-efficient manner than is currently the situation.

The implementation of the above recommendations would move the system towards a more balanced setting in meeting the objectives of both protecting privacy and having a system which allows interested parties to have timely and more cost effective participation in the anti-dumping and anti-circumvention system.

⁶ Productivity Commission Report No. 48 “*Australia’s Anti-dumping and Countervailing System*”, 18 December 2009.

February 22, 2018

BlueScope welcomes the opportunity to participate in further consultation with the ABS in relation to these recommendations before a final decision on a new *Statistics Determination* is remade.