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RE: Automatic sunseting of legislative instruments Consultation Paper: Proposal to remake the *Statistics Determination 1983*

Liberty OneSteel welcomes the opportunity to make a submission in relation to the Consultation Paper, -'**Proposal to Remake the *Statistics Determination 1983***' and supports the aim of the proposal to modernise the *Statistics Determination 1983 (Determination)* to provide a more flexible scheme under which the Australian Bureau of Statistics (**ABS**) can release, on a public or limited basis, business information in sufficient detail to meet the analysis and decision making needs of governments, businesses and other stakeholders.

Liberty OneSteel is Australia's largest manufacturer of steel long products, producing a wide range of steel products that include reinforcing bar and mesh, railway lines, pipe and tube, structural steel and wire products, that service the Australian construction and rural markets. We have major investments in manufacturing sites located in Whyalla (SA), Rooty Hill (NSW), Laverton (VIC) and Newcastle (NSW) and employ over 5,000 people, many of these in regional locations. Our owner, GFG Alliance (Chaired by Mr Sanjeev Gupta) is continuing to invest in Australian businesses where opportunities exist.

Access to accurate and transparent trade statistics is essential for understanding market trends and assisting informed evidence based investment decisions. In an era of globalisation and expanding free and fair trade, access to transparent data should be one of Australian industries' comparative competitive advantages. Unfortunately the ABS' overly conservative application of the existing *Determination* impedes informed business decisions by allowing entities to mask trade commodity statistics, not only from entire countries, but (in some cases) all commodities details from *every country*.

For the purposes of responding to the Consultation Paper, Liberty OneSteel's comments relate to trade data described in clause (2)(b) of the *Determination* and not to data relating to individual persons nor government agencies.

information in the form of statistics relating to foreign trade, being statistics derived wholly or in part from customs documents¹

Liberty OneSteel's recommendation is that the proposed changes to the *Determination* should go further to empower the ABS to provide a greater level of business information.

¹ Statistics Determination 1983 p.5

The Legislation

In relation to International Trade statistics, the relevant ABS legislation which makes provision for the protection of confidential data is:

- (a) the *Census and Statistics Act 1905* (**Statistics Act**), subsection 12(2), and subsection 13(1); and
- (b) the *Statistics Determination* under section 13 of the *Statistics Act*.

In relevant parts,

clause 2 of the *Statistics Determination* under section 13 of the *Statistics Act* provides that:

information in the form of statistics relating to foreign trade, being statistics derived wholly or in part from Customs documents [Clause 2(2)(b)]

...may, with the approval in writing of the Australian Statistician, be disclosed except where -

- (a) in the case of information relating to a person, being an individual – that person;*
- (b) in the case of information relating to an official body - the responsible Minister in relation to that official body; or*
- (c) in the case of information relating to an organisation - a responsible officer of that organisation, has shown that such disclosure would be **likely** to enable the identification of that particular person or organisation.* [Clause 2(1)]

clause 3 provides that

Information in the form of statistics relating to a business or organization may, with the approval in writing of the Statistician, be disclosed where that information has been published by, or is available to the public from, that business or organization, or any official body.

Proposed changes to the Determination

Proposed change a) Release of information already available to the public (Clause 3)

The first proposal that Liberty OneSteel comments on is *Proposed change a) Release of information already available to the public (Clause 3)*.

Liberty OneSteel has previously expressed its disappointment that the ABS rarely if ever uses Clause 3 of the Determination to either test or reject claims of confidentiality for trade statistics when the information is available through public or other legitimate business sources. Liberty OneSteel is also not aware of a contestable or transparent process to allow affected stakeholders the opportunity to provide input into the ABS assessment of this criteria.

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In most instances, import or export statistics (at least) at the country level are available from other sources, but obtaining this information increases the time and cost for Australian businesses. The Productivity Commission recognised this in 2009 when it recommended that:

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

-for example, from the export statistics of other countries. In these circumstances, suppression serves no useful confidentiality purpose, but can make it more time consuming and costly...²

Liberty OneSteel's recommendation in relation to proposed change a)

ABS establish a transparent process to ensure that statistics relating to foreign trade not be confidentialised unless stakeholders have the opportunity to demonstrate that like information has been published by, or is available to the public from a business, organisation or any official body.

Proposed change d ii) Access to an increased range of de-identified unit record level of business information

The second proposed reform on which Liberty OneSteel comments, relates to the proposed change d ii) and the ABS' current overly conservative application of Clause 2 of the *Determination*.

Liberty OneSteel's view is that ABS practice currently overreaches in its interpretation of the term "likely to" when deciding to restrict data to the severe levels of either "no state details", "selected country details", "no country details" and 'no commodity details"³

information in the form of statistics relating to foreign trade, being statistics derived wholly or in part from Customs documents [Clause 2(2)(b)]

...may, with the approval in writing of the Australian Statistician, be disclosed except where -

.... (c) in the case of information relating to an organisation - a responsible officer of that organisation,

*has shown that such disclosure would be **likely to enable** [emphasis added] the identification of that particular person or organisation. [Clause 2(1)]*

Liberty OneSteel's view is that the current ABS interpretation of clause 2(1) appears more closely aligned to the term "may enable" the identification of an organisation as opposed to "likely to enable". The term "may" implies a

² Productivity Commission 2009, *Australia's Anti-dumping and Countervailing System*, Report no. 48, Canberra at p. XXIII

³ ABS International Trade Requests to Confidentialise Data p4

possibility that something could occur whereas the actual term “likely to” imputes a *strong likelihood* of an occurrence. The reasons that Liberty OneSteel holds this view emanates from the language contained in the procedures that the ABS follows in undertaking a confidentiality investigation as set out in its *Information Paper (2001)*:

- (a) *All trade transactions, for the commodity for which a restriction has been requested, are listed for each of the previous 12 months. This shows, for each importer/exporter as well as in aggregate:*
- *the names of individuals and organisations trading in the commodity;*
 - *countries of origin/final destination for imports and exports respectively;*
 - *state of final destination/origin for imports and exports respectively; and*
 - *value and quantity of the imports/exports.*

This listing is used to confirm (or otherwise) the claimant's concerns. The assumption is made that future trade will be similar in significance and distribution to that of the previous 12 months period.

- (b) *If some of the claimant's trade is identifiable in the aggregates, the next step is to determine, in consultation with the claimant, what type of restriction will satisfy its concern. In doing so, in addition to suppressing a particular aggregate directly, care is taken to make sure that the aggregate is not derivable from other cross-classifications. The aim is to always use the restriction which maximises data availability but which still provides confidentiality to the claimant.*

Liberty OneSteel contests the ABS assumption that simply because the claimant can recognise some of their own transactions in the aggregate of the ABS published data, this does not *ipso facto* translate to mean that other persons or organisations are likely to know that the data identifies the claimant’s identity or their confidential information, unless of course the claimant itself makes this fact public. For most commodity products, there are multiple producers in each of the exporting countries, all of whom have the ability to export to Australia at any point in time. Whilst Liberty OneSteel accepts that there may be genuine sensitivities relating to details such as “port of loading” it does not concede that such sensitivities can reasonably be claimed with respect to the level of “state of entry details” or ‘country of origin’ details.

The other assumption that ABS uses in its decision making process that is erroneous for commodity products is the assumption that future trade will be similar in significance and distribution to that of the previous 12-months. Following the Global Financial Crisis, internationally traded goods have experienced marked volatility in terms of volume and prices.

Liberty OneSteel’s recommendation in relation to proposed change d ii) is as follows

That ABS revise its guidelines setting out that a claimant's trade is not identifiable in aggregate, simply because it is the only individual organization trading in the commodity for a particular period of time. If the claimant still considers that its trade is identifiable in aggregate, simply because its trade is the only one to occur in a particular period of time, then the following restrictions only may be applied for:

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- **No Overseas Port Details:** suppress all details of source countries' overseas port details for imports; and

Only in circumstances where the claimant can identify that they are the sole organisation from a particular country trading in commodity for a 12-month period, into a specific port or state, should the ABS consider applying a suppression of details at either port, state or country level.

For and on behalf of Liberty OneSteel

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