



Australian Government
Anti-Dumping Commission

Application for an
anti-circumvention inquiry

Hollow Structural Sections

Required Information

1. Applicant

Provide details of the name, street and postal address, of the applicant seeking the inquiry.

Name: Austube Mills Pty Ltd ("ATM")
Address: 146 Ingram Road, Acacia Ridge, QLD, 4110
P O Box 246, Sunnybank, QLD 4109
ABN: 21 123 666 679

2. Contact persons

Provide details of the name of a contact person, including their position, telephone number and facsimile number, and email address.

ATM Contact details:

Contact Name: Brett Willcox
Company and position: Manager – Strategy and Business Planning
Address: 146 Ingram Road, Acacia Ridge, QLD 4110
Telephone: (07) 3909 6130
Facsimile: (07) 3909 6677
E-mail address: Brett.Willcox@austubemills.com

Contact Name: Mr Matt Condon
Company and position: Manager Trade Development, OneSteel Manufacturing Pty Ltd
Address: Level 6, 205 Pacific Highway, St Leonards, NSW 2065
Telephone: (02) 8424 9880
Facsimile: (02) 8424 9885
E-mail address: matt.condon@OneSteel.com

ATM representative (Authority to Represent enclosed at Confidential Attachment 1):

Name: Mr John O'Connor
Representative's business name: John O'Connor & Associates Pty Ltd
Address: P.O. Box 329, Coorparoo Qld 4151
Telephone: (07) 3342 1921
Facsimile: (07) 3342 1931
E-mail Address: jmoconnor@optusnet.com.au

3. Other interested parties

Provide known names, addresses, telephone and facsimile numbers of other parties likely to have an interest in this matter, e.g. Australian manufacturers, importers, exporters and end-users.

ATM considers the following *exporters* of goods the subject of this anti-circumvention application would likely have an interest in this matter:

(i) People's Republic of China

Dalian Steelforce Hi Tech Co., Ltd
A-7 DD Street, DD Port
Dalian Development Zone
Liaoning Province, P R China 116620
Tel: +86 411 87549597
Fax: +86 411 87549537

(ii) Malaysia

Alpine Pipe Manufacturing SDN BHD
Lot 6085, Jalan Abdul Manan, Batu 5 ½,
Jalan, Meru 41050
Klang Selangor Danul Ehsan, Malaysia
Tel: + 603 3377 8688
Fax: + 603 3392 6820

ATM considers that the following importers of goods the subject of this anti-circumvention application would likely have an interest in this matter:

- (i) Steelforce Australia Pty Ltd
5/7 Osprey Drive
Port of Brisbane, QLD 4178
Tel: (07) 3276 8612
Fax: 1300 961 535
- (ii) CMC (Australia) Pty Ltd
Level 6, 697 Burke road
Camberwell Victoria 3124
Tel: (03) 9805 0400
Fax: (03) 9805 0455
- (iii) GP Marketing International Pty Ltd
Level 4, 160 Pacific highway
North Sydney, NSW 2060
Tel: (02) 9925 0755
Fax: (02) 9925 0909
- (iv) Croft Steel Pty Ltd
Unit 1/26 Newheath Drive
Arundel Qld 4214
Tel: (07) 5500 0260
- (v) ThyssenKrupp Mannex Pty Ltd
Level 1, 267 Pacific Highway
North Sydney NSW 2060
Tel: (02) 9955 0978
Fax: (02) 9925 0084
- (vi) Stemcor Australia Pty Ltd
Level 13, 15 Blue Street
North Sydney NSW 2059
Tel: (02) 9959 3088
Fax: (02) 9925 9844
- (vii) Toyota Toshu Australasia Pty Ltd
231-233 Boundary Road
Laverton North Victoria 3026
Tel: (03) 8368 7900
Fax: (03) 9369 6600
- (viii) MinMetals Australia Pty Ltd
Level 8, 564 St Kilda Road
Melbourne Victoria 3000
Tel: (03) 9520 6800
Fax: (03) 9521 1815

- (ix) Marubeni-itochu Steel Oceania Pty Ltd (MISO)
Level 25, 570 Bourke St
Melbourne Vic 3000
Tel: (03) 9242 1500
Fax: (03) 9242 1599

- (x) Cedex Steel and Metals Pty Ltd
Level 14
10 Market Street
Brisbane Queensland 4000
Tel: (07) 3192 9668
Fax: (07) 3211 9982

4. Goods description

Provide a description of the kind of goods that are the subject of the original notice.

The goods the subject of anti-dumping measures as described in Trade Measures Report No. 177 ("Report No. 177") are as follows:

"certain electric resistance welded pipe and tube made of certain steel comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include in-line galvanised (ILG), pre-galvanised, hot-dipped galvanised(HDG) and non-galvanised HSS."

A further clarifying statement included the following:

"Sizes of the goods are, for circular products, those exceeding 21mm up to and including 165.1mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3mm. Categories of HSS excluded from the goods are conveyor tube,; precision RHS with a nominal thickness of less than 1.6mm and air heater tubes to Australian Standard AS 2556."

5. Description of original notice

Provide a description of the original notice, including:

- *whether the notice was a dumping and/or countervailing notice;*
- *the tariff classification/s of the goods;*
- *the countries and/or exporters covered by the notice; and*
- *the date of publication of the notice.*

The original notice published on 3 July 2012 in *The Australian* newspaper and the *Government Notices Gazette* was a a dumping notice for goods exported from P R China, Korea, Malaysia and Taiwan, and a countervailing duty notice for goods exported from P R China¹.

The tariff classifications of the goods covered by the notices were as follows:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37);
- 7306.61.00 (statistical codes 21, 22 and 23); and
- 7306.69.00 (statistical code 10).

¹ Refer ACDN No. 2012/31.

6. Detailed Statement

Provide a detailed statement regarding the circumvention activities in relation to the original notice that you consider have occurred. Applicants must provide evidence to support your view that there are reasonable grounds for asserting that one or more circumvention activities in relation to the notice have occurred.

Original investigation

On 12 August 2011, the then Australian Tube Mills Pty Ltd made an application requesting that the Minister publish a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand, and a countervailing duty notice in respect of HSS exported to Australia from China.

Following investigation, the then Australian Customs and Border Protection Service (“ACBPS”) recommended to the Minister that anti-dumping measures be applied to exports of HSS from China, Korea, Malaysia and Taiwan. The ACBPS also recommended that countervailing duties be applied to exports of HSS from China (other than for exports by Huludao City Steel Pipe Industrial Co., Ltd (“Huludao”) and Qingdao Xiangxing Steel Pipe Co., Ltd (“Qingdao Xiangxing”).

Immediately after the imposition of interim duties in June 2012, there was a reduction in export volumes of HSS from China, Korea, Malaysia and Taiwan. In early 2013, however, ATM was alerted by market intelligence that certain exporters were successfully evading the dumping duties that had been imposed.

In late August 2013 ATM obtained import statistics that showed a 1000% increase in volumes of alloyed HSS products that had begun arriving in Australia shortly after the imposition of measures in June 2013. Confidentiality restrictions on the import statistics made it difficult to determine the countries from which the increased alloyed imports were originating. ATM forwarded a copy of the import statistics to the Anti-Dumping Commission.

ATM then sought and obtained [Prima facie evidence] from a number of exporters that showed that foreign exporters were adding micro amounts of boron (8ppm) in order to change the import tariff classification. The [Prima facie evidence] clearly stated that the alloyed products were certified to comply with the same [evidence type] that the measures applied to. Copies of these [Prima facie evidence] were also provided to the Commission at the time.

The addition of micro amounts of boron (or any other alloy e.g. chromium) to the feed steel that is used to manufacture HSS, is a low cost strategy intended only to alter the “definition” of the goods and the tariffs codes under which they can be imported without significantly impacting the performance attributes of the HSS.

ATM highlighted with the Commission that circumvention activities involving slight modification was occurring in November 2013. The Commission indicated to ATM that it would exam ATM's claims and address the issue under the “like goods” provisions. To date, ATM has not obtained relief from the ongoing material injury that has occurred as a consequence of the circumvention of the measures applied by the Minister on 3 July 2012.

Like goods

In Trade Measures Report No. 177 (“Report 177”) the ACBPS confirmed that the Australian industry manufactured like goods to the imported HSS. ‘Like goods’ is defined in s.269T(1) of the Customs Act as:

“...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.”

ACBPS concluded that the Australian industry produced like goods to the imported HSS on the following grounds²:

² Trade Measures Report No. 177, P34.

“(i) *Physical likeness:*

Australian industry manufactures a wide variety of HSS, available in multiple shapes or profiles and in various finishes.

(ii) *Commercial likeness:*

Australian industry HSS competes directly with imported goods in the Australian market, as evidenced by the supply of HSS from China, Korea, Malaysia, Taiwan and Thailand to many customers of the Australian industry.

(iii) *Functional likeness:*

Both imported and Australian produced HSS have comparable or identical end-uses as evidenced by Australian industry customers that source equivalent HSS from China, Korea, Malaysia, Taiwan and Thailand.

(iv) *Production likeness:*

Australian industry HSS is manufactured in a similar manner to the imported goods.”

It is noted at Section 4 above that the goods were described by the applicant industry and confirmed by ACBPS in Report No. 177 as “...welded pipe and tube of *certain* steel.....” (emphasis added). The goods description does not specifically exclude alloyed HSS.

The circumvention goods involve “*certain electric resistance pipe and tube made of alloy steel*”. To avoid, or evade, anti-dumping and/or countervailing measures the producer/exporter of the circumvention goods has included boron in the finished HSS so that it may be re-classified to a sub-heading of the Customs Tariff that includes “alloyed” HSS. The minimum level of boron incorporated into the circumvention goods to qualify for re-classification to an alternate subheading is as stipulated by the Chapter Note 72 (1)(f) listing the accepted elements including 0.0008 per cent boron (or 8 parts per million of boron).

The inclusion of the minimum required boron (or any other element for that matter) requires the circumvention goods to be classified (according to whether circular or rectangular/square) as pipe and tube of alloyed product, within the following classifications:

- 7306.50.00 (statistical code 45) - circular; and
- 7306.61.00 (statistical code 90) – rectangular/square.

The circumvention goods are sold against non-alloyed HSS and the like goods produced and sold by the Australian industry, via the same distribution channels, and is consumed in the same end-use applications as non-alloyed (i.e. HSS excluding boron) on the Australian market, and as such the duties should be collected.

ATM contends that the circumvention goods are covered by the measures applied by the Minister to the dumped and/or subsidised goods exported from China, Korea, Malaysia and Taiwan on 3 July 2012.

Circumvention Regulation 183A

Australia’s Anti-Dumping provisions include anti-circumvention activities in Division 5A of the Customs Act. The Division 5A provisions address the following circumvention activities:

- the assembly of parts in Australia;
- the assembly of parts in a third country;
- the export of goods through one or more third countries;
- arrangements put in place between exporters in the exporting country;

- the avoidance of the intended effect of the duties; and
- any additional circumstances prescribed by Regulation.

The provisions do not include an activity associated with the slight modification of the goods as described in the original anti-dumping and/or countervailing notice. The absence of a provision to address the slight modification of exported goods to circumvent anti-dumping and/or countervailing measures has recently been addressed with the introduction of the new anti-circumvention Regulation 183A.

Regulation 183A was introduced as part of the *Customs Amendment (Anti-Dumping Improvements) Regulation 2015* Bill. The new Regulation 183A reads as follows:

“183A Circumvention activities

- (1) *For subsection 269ZDBB(6) of the Act, the circumstances set out in sub-regulation (2) of this regulation are prescribed.*

Slight modification of goods exported to Australia

- (2) *The following circumstances apply:*

- (a) *goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies;*
- (b) *before the export, the circumvention goods are slightly modified;*
- (c) *the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;*
- (d) *had the circumvention goods not been so slightly modified, they would have been the subject of the notice;*
- (e) *section 8 or 10 of the Customs Tariff (Anti-Dumping) Act 1975, as the case requires, does not apply to the export of the circumvention goods to Australia.*

- (3) *For the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors:*

- (a) *each good’s general physical characteristics;*
- (b) *each good’s end use;*
- (c) *the interchangeability of each good;*
- (d) *differences in the processes used to produce each good;*
- (e) *differences in the cost to produce each good;*
- (f) *the cost of modification;*
- (g) *customer preferences and expectations relating to each good;*
- (h) *the way in which each good is marketed;*
- (i) *channels of trade and distribution for each good;*
- (j) *patterns of trade for each good;*
- (k) *changes in the pricing of each good;*
- (l) *changes in the export volumes for each good;*
- (m) *tariff classifications and statistical codes for each good.”*

New Regulation 183A is aimed at addressing circumvention activities associated with the slight modification of goods that are the subject of an anti-dumping and/or countervailing notice. ATM contends that imports of the circumvention goods from China and Malaysia are goods that have been modified with the inclusion of boron with the intended objective of circumventing the goods covered by the notices signed by the Minister on 3 July 2012.

It should also be noted that the addition of boron in Chinese exports of HSS enables the Chinese exporter to benefit from a higher VAT rebate on export than if non-alloyed HSS were exported. There exists, therefore, a double incentive for Chinese producers/exporters to slightly modify HSS for export with the

additive boron.

The attached article "*Chinese Taxes on Semi Finished, Hot Rolled, Colled Rolled and Coated Sheets*" dated 4 November 2014 refers to the tactic of Chinese exporters including the boron in the exported goods and that the cost of doing so is small and it does not impact the "formability" of the steel³. It is also referenced in the article that the US Department of Commerce ("USDOC") has ruled on Chinese exporters circumventing anti-dumping measures on plate steel by incorporating boron into the exported goods. It is noted that the USDOC has found that "the boron-added CTL plate has virtually the same physical characteristics, uses and production processes as CTL plate without boron....Therefore Chinese CTL plate imports including minor amounts of boron will now be held subject to the antidumping duty order".

ATM submits that the circumvention goods exported to Australia from China and Malaysia have essentially the same physical characteristics, uses and production processes as non-alloy HSS.

Circumvention activity

Following the imposition of the measures, exports of the circumvention goods emerged in the Australian market. The goods were sold via the same distribution channels to market, sold in the same end-use applications, and were marketed in the same manner as traditional non-alloy HSS.

ATM is unable to fully access Australian Bureau of Statistics ("ABS") import data due to suppression orders that prevent publication of the import information. Import volumes and values under the non-alloyed sub-headings have been suppressed for extended periods that continue to the present. In respect of ABS import data for the circumvention goods, certain data is available from ABS. For Malaysia, it is evident that prior to the imposition of measures on 3 July 2012, minimal volumes of "alloy" RHS were imported into Australia from Malaysia. However, from late 2013, regularly monthly volumes of RHS commenced, with 7,622 tonnes imported from December 2013 to September 2014 under subheading 7306.61.00 statistical code 90 (i.e. for RHS of alloy steel).

[Confidential - a source for alloy RHS⁴]

In respect of China, ABS import data lacks any transparency concerning importations of alloyed HSS. ATM competes in the market with imported boron-HSS supplied by [Confidential name of exporter] It is ATM's understanding that [Confidential name of exporter] accounts for a significant proportion of the total imports of HSS (alloyed and non-alloyed) from China and that a large proportion of the [Confidential name of exporter] exports to Australia are of slightly modified HSS incorporating boron.

In support of this observation, please refer to [Confidential name of exporter - Prima facie evidence] from 2012 and 2013⁵. The [Prima facie evidence] confirms an absence of boron as tested in the ERW steel pipe. The following [Prima facie evidence] confirm the element boron of 0.001 per cent (i.e. above the minimum requirement of 0.0008 per cent to qualify as "alloyed" steel pipe).

It is ATM's position that [Confidential name of exporter] continues to import the circumvention goods (i.e. alloyed HSS) from China to the present time.

Sub-Regulation 183A(2) addresses what is considered to involve the slight modification of goods and the associated circumvention activity. Sub-Regulation 183A(2) states:

- (i) *an anti-dumping notice applies in respect of the "circumvention goods" (i.e. the goods);*
- (ii) *prior to export the goods are slightly modified;*
- (iii) *the end-use for the goods is the same as the original non-modified goods; and*
- (iv) *had the goods not been modified, the dumping duty notice would apply.*

As indicated, ATM maintains that the circumvention goods are the subject of the anti-dumping and/or countervailing notice that applies from 3 July 2012, the circumvention goods have been

³ Refer Non-Confidential Attachment 2.

⁴ Refer Confidential Attachment 3.

⁵ Confidential Attachment 4.

modified by the inclusion of boron, the end-use of the circumvention goods is the same as the goods the subject of the notice(s) and, had the goods not been modified, the dumping duty and/or countervailing duty notice would have applied.

Sub-Regulation 183A(3) lists certain factors that are considered when contrasting the circumvention goods and the goods the subject of the notice(s). ATM has examined each factor and has identified whether the imported alloyed HSS and the goods the subject of the notice are comparable. Table 1 below summarizes ATM's assessment:

Table 1 – Contrast of factors identified in Sub-Regulation 183A(3)

Sub-Regulation 183(A) (3) factor	Circumvented Goods	Goods the subject of Notice
(a) Physical characteristics	√	√
(b) End use	√	√
(c) Interchangeability	√	√
(d) Production Process	√	√
(e) Cost to produce	√	√
(f) Cost of modification	Minor	n/a
(g) Customer preferences/ expectations	√	√
(h) Marketing	√	√
(i) Distribution channels	√	√
(j) Patterns of trade	↑	↓
(k) Pricing	√	√
(l) Export volumes	↑	↓
(m) Tariff classifications	X	X

Notes:

1. "√" denotes same or similar.
2. "↑" denotes increasing; "↓" denotes decreasing.
3. The tariff classification for the circumvented goods and the goods the subject of the notice are different.

Table 1 confirms that of the thirteen factors listed at Sub-Regulation 183A(3), it can be argued that all of the factors are considered to be the same or similar when the circumvention goods are contrasted or compared with the goods the subject of the notice(s). For these reasons, it is ATM's assessment that the circumvention goods have the same essential characteristics as the goods the subject of the dumping and countervailing duty notices. Additionally, ATM submits that as the circumvention goods and the goods the subject of the notices possess the same essential characteristics, it may also be concluded that the Australian industry manufactures like goods to the imported circumvention goods.

Evidence that circumvention goods compete with locally produced HSS

ATM is aware that [Confidential name of importer] and [Confidential name of importer] offer boron-HSS supplied by [Confidential name of exporter]. [Confidential name of importer] also markets Malaysian HSS that includes boron. Market offers for imported HSS from China and Malaysia are included at Confidential Attachment 5.

ATM understands from ABS import data that HSS from China has continued under the "non-alloyed" classifications following the imposition of measures. Additionally, imports of the circumvention goods from China have emerged since that time. ATM competes with imports from [Confidential name of importer] , the largest supplier of Chinese HSS onto the Australian market. ATM has demonstrated that with effect from the end of 2012, HSS supplied by [Confidential name of importer] incorporated boron. The circumvention goods, therefore, qualify as alloyed HSS and are likely to be entered under the nominated tariff classifications for alloyed HSS (i.e. 7306.50.00/45

and/or 7306.61.00/90). ATM has observed an increase in import volumes of alloyed RHS from Malaysia under 7306.50.00/45 in 2013/14. This is consistent with ATM's understanding that [Confidential name of exporter] exports predominantly RHS/SHS goods to Australia.

It is acknowledged by ATM that some of the market offers for the imported HSS from China and Malaysia at Confidential Attachment 5 reflect the statement that "Dumping Duty is included". This is inconsistent with ATM's understanding of what is actually occurring with the circumvention goods as measures are not being paid upon importation (and supported by the available evidence demonstrating increasing import volumes under the alloyed sub-headings for HSS from China and Malaysia).

The available evidence supporting ATM's contention that the circumvention goods are alike to the goods the subject of the measures and have been avoiding/evading anti-dumping (and countervailing) measures includes:

- (i) a change in [Confidential name of importer] [Prima facie evidence] for HSS that identified the inclusion of boron above the 0.0008 per cent minimum to qualify as "alloyed" goods from December 2012;
- (ii) a similar change in [Confidential name of importer] [Prima facie evidence] confirming the element boron in the circumvention goods;
- (iii) an increase in imports of alloyed HSS under the sub-headings for alloyed goods from China and Malaysia post the imposition of measures on 3 July 2012;
- (iv) market intelligence confirming the ongoing availability of HSS imported from [Confidential name of importer] and [Confidential name of importer] in significant quantities at prices that do not reflect the inclusion of IDD.

For the foregoing reasons ATM submits that the measures applied by the Minister on 3 July 2012 to HSS exported from China and Malaysia have been evaded by the nominated importers.

Request for Anti-Circumvention Investigation

ATM is seeking the Commission to commence an anti-circumvention investigation into Regulation 183A circumvention activities of importers of the circumvention goods from China and Malaysia. ATM has detailed that anti-dumping and countervailing measures were applied to HSS exported to Australia from China and anti-dumping measures on HSS exported Malaysia from 3 July 2012. Following the decision of the Minister, exports of HSS that were slightly modified to include the low cost element boron emerged from China and Malaysia.

The circumvention goods have the same essential characteristics as the goods the subject of measures. ATM (and the remaining Australian industry producers) manufacture like goods to the imported circumvention goods. The circumvention goods compete directly with goods the subject of the measures and locally-produced HSS in all end-uses. The circumvention goods use the same distribution channels to market as the goods the subject of the measures, and are marketed in the same manner. ATM robustly asserts that the circumvention goods are the subject of measures and that anti-dumping and countervailing measures (where applicable) should apply to alloyed HSS from China and Malaysia.

ATM understands that other suppliers/exporters of the circumvention goods in Korea and Taiwan may also be circumventing measures through the slight modification of the exported goods. ATM requests the Commission to extend an anti-circumvention investigation to the activities of exporters in Korea and Taiwan that may also be evading measures.

An anti-circumvention investigation is urgently required to eliminate the increasing activities of circumvention of measures on HSS the subject of anti-dumping and countervailing measures (including China and Malaysia, and Korea and Taiwan, where applicable). ATM is also seeking the Commission to recommend that the Parliamentary Secretary apply the anti-dumping (and countervailing) measures to exports from the commencement date of an anti-circumvention investigation.

ATM looks forward to responding to any queries that the Commission has in respect of the attached anti-circumvention application.

7. Description of altered notice

Provide a description of the alteration to the original notice that you consider should be made.

ATM proposes that the following alteration to the notice detailing the goods as either of “non-alloy or alloy” steel is required for clarification of the goods the subject of the measures:

*Certain electric resistance welded pipe and tube made of **non-alloy or alloy steel**, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include pre-galvanised, hot-dipped galvanised (HDG), and non-galvanised HSS (emphasis added).*

The goods identified as alloy HSS are classified under the following sub-headings:

- 7306.50.00 (statistical code 45);
- 7306.61.00 (statistical code 90).

The original notice requires amending to include the above sub-heading classifications for alloy HSS.

List of Attachments

- Confidential Attachment 1 – Authority to Represent.
- Non-Confidential Attachment 2 - “Chinese Taxes on Semi Finished, Hot Rolled, Colled Rolled and Coated Sheets” dated 4 November 2014.
- Confidential Attachment 3 – [Prima facie evidence].
- Confidential Attachment 4 – [Prima facie evidence].
- Confidential Attachment 5 – Market Offers from [confidential - importers].