



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION
CONSIDERATION REPORT NO. 266

CONSIDERATION OF AN APPLICATION FOR REVIEW OF
ANTI-DUMPING MEASURES

HOLLOW STRUCTURAL SECTIONS
EXPORTED FROM THE REPUBLIC OF KOREA

BY

KUKJE STEEL CO LTD

APPLICANT: STEMCOR AUSTRALIA PTY LTD

2 September 2014

CONTENTS

CONTENTS	2
1 SUMMARY AND RECOMMENDATIONS	3
1.1 Recommendation	3
1.2 Application of law to facts.....	3
1.3 Findings and conclusions.....	3
2 BACKGROUND	4
2.1 Existing measures	4
2.2 Previous reviews	5
2.3 The current review application	6
2.4 The goods subject to the measures	6
2.5 Tariff classification.....	7
2.6 Australian industry producing like goods	7
3 CONSIDERATION OF THE APPLICATION.....	9
3.1 Findings.....	9
3.2 Legislative framework	9
3.3 Compliance with section 269ZB.....	9
3.4 Variable factors	10
3.5 Conclusions and recommendations	11

1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Stemcor Australia Pty Ltd (Stemcor) for the review of the dumping duty notice as it applies to exports to Australia of certain hollow structural sections (HSS)¹ from the Republic of Korea (Korea) by Kukje Steel Co., Ltd. (Kukje).

The application is based on a change in the variable factors. The variable factors relevant to the review are the normal value, export price and non-injurious price. The application states that the normal value and export price have changed.

Kukje has its own rates of interim dumping duty specified in the dumping duty notice.

1.1 Recommendation

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) decide not to reject the application and initiate a review into the current anti-dumping measures as they relate to Kukje.

1.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901*² (the Act) sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the review of measures.

The Division empowers the Commissioner to reject or not reject an application for review of anti-dumping measures.

If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed that the Commission review the measures covered by the application.

1.3 Findings and conclusions

The Commission is satisfied that:

- the application complies with s. 269ZB of the Act; and
- there appear to be reasonable grounds for asserting that a variable factor relevant to the taking of the measures has changed.

¹ Refer to the full description of the goods in section 3.3 of this report.

² A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

2 BACKGROUND

2.1 Existing measures

Following assessment of an application made by OneSteel Australian Tube Mills Pty Ltd,³ the Australian Customs and Border Protection Service (ACBPS) initiated investigations into:

- the alleged dumping of certain HSS exported to Australia from the People's Republic of China (China), Korea, Malaysia, the Kingdom of Thailand (Thailand) and Taiwan; and
- the alleged subsidisation of certain HSS exported to Australia from China.

These investigations were collectively numbered 'Investigation 177'.

Notification of initiation of Investigation 177 was made in *The Australian* newspaper on 19 September 2011,⁴ and Australian Customs Dumping Notice (ACDN) 2011/43, providing further details of the investigation, was issued on the same day.

After earlier terminating the investigation as is related to Thailand and certain Chinese exporters on 7 June 2012, ACBPS provided its final report and recommendations to the Minister (ITRB Report 177) in relation to the remainder of Investigation 177.

In that report, in relation to dumping, ACBPS concluded that:

- HSS exported from China to Australia was dumped with margins between 10.1% and 57.1%;
- HSS exported from Korea to Australia was dumped with margins between 3.2% and 8.9%;
- HSS exported from Malaysia to Australia was dumped with margins between 3.0% and 20.0%;
- HSS exported from Taiwan to Australia was dumped with margins between 2.4% and 5.3%;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

In making its findings in relation to dumping, ACBPS determined that there was a market situation in the Chinese domestic HSS market during the investigation period of Investigation 177,⁵ which rendered domestic sales of HSS in China unsuitable for use in determining normal values under s. 269TAC(1) of the Act.⁶ This finding was due to significant government influence in the domestic iron and steel market.

³ s. 269TB(1).

⁴ s. 269TC(4).

⁵ 1 July 2010 to 30 June 2011.

⁶ I.e. a 'particular market situation' existed in the Chinese HSS market.

In relation to countervailing, ACBPS concluded that 26 countervailable subsidies had been received by Chinese exporters of HSS. Subsidy margins of between 2.2% and 54.8% were found for HSS exported from China to Australia by all exporters except for exports by Qingdao Xiangxing Steel Pipe Co., Ltd (Qingdao) and Huludao City Steel Pipe Industrial Co., Ltd (Huludao) (see termination discussion above).

The then Minister for Home Affairs accepted the recommendations contained in ITRB Report 177, including the reasons for the recommendations, the material findings of fact on which the recommendations were based, and the evidence relied on to support those findings.

Consequently, the Minister published a dumping duty notice imposing dumping duties on the goods exported to Australia from China, Korea, Malaysia and Taiwan⁷ and a countervailing duty notice imposing countervailing duties on the goods exported to Australia from China (excluding Qingdao and Huludao)⁸ in *The Gazette* and *The Australian* on 3 July 2012.

The published dumping duty notice imposed interim dumping duty (IDD) on future imports of HSS from the subject countries.

The notice also 'converted' dumping securities taken on HSS into IDD. Dumping securities were taken on HSS exported from the subject countries entered for home consumption from 10 January 2012 up to and including 2 July 2012.⁹ However, only securities pertaining to goods that were exported after the date that the CEO made a preliminary affirmative determination (PAD)¹⁰ in relation to the dumping of HSS from the subject countries were converted to IDD.¹¹

Countervailing securities were not taken in relation to HSS.

The decision by the Minister to publish a dumping duty notice and a countervailing duty notice has since been the subject of review by the Trade Measures Review Officer and subsequently, reinvestigation by ACBPS.

The reinvestigation resulted in ACBPS recommending to the Minister that the dumping duty notice remain in place with an alteration of the amount of IDD applicable to the exports of one Chinese exporter (Dalian Steelforce Hi-Tech Co Ltd). The Minister accepted this recommendation.

2.2 Previous reviews

The anti-dumping measures applying to HSS have not been reviewed under Division 5 of the Act since they were imposed.

⁷ ss. 269TG(1) and 269TG(2).

⁸ s. 269TJ(2).

⁹ s. 42.

¹⁰ s. 269TD.

¹¹ s. 269TG(1)(d).

2.3 The current review application

On 13 August 2014, Stemcor lodged an application requesting a review of the anti-dumping measures as they apply to Kukje's exports of HSS to Australia from Korea. Stemcor claims that certain variable factors relevant to the taking of the anti-dumping measures have changed.

The application is not precluded by s. 269ZA(2), which requires that an application for review must not be lodged earlier than 12 months after the publication of a dumping duty notice, countervailing duty notice or a notice declaring the outcome of the last review of measures.

As an importer of HSS, Stemcor is an affected party as defined in s. 269T of the Act and is therefore entitled to apply for a review.

Pursuant to s. 269ZC(1), the Commissioner must examine the application and, within 20 days after the lodgement date, decide whether to reject the application. The decision must be made no later than 2 September 2014.

If the Commissioner is not satisfied, having regard to the application and to any other relevant information, of one or more matters referred to in s. 269ZC(2), the application must be rejected.

2.4 The goods subject to the measures

The goods subject to the measures (the goods) are:

certain electric resistance welded pipe and tube made of carbon 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.

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.

The following additional information is provided to clarify the goods covered by the measures.

- **Finishing**

All HSS regardless of finish is included in the goods.

Non-galvanised HSS is typically of painted, black, lacquered or oiled finished coatings.

Circular hollow sections with other than plain ends (such as threaded, swaged and shouldered) are also included in the application.

- **Standards**

HSS is generally produced to either the British Standard BS 1387, the Australian Standard AS 1163 or international equivalent standards (including ASTM International, Japanese Industry Standards and Korean Industrial Standards).

HSS can also be categorised according to minimum yield strength. The most common classifications are 250 and 350 mega Pascals.

HSS may also be referred to as extra-light, light, medium or extra heavy according to its wall thickness.

- **Excluded goods**

The following categories are excluded from the goods:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation);
- precision rectangular or square hollow sections with a nominal thickness of less than 1.6mm (is not used in structural applications); and
- air heater tubes to Australian Standard 2556.

- **'Structural' sections**

For clarification, the goods subject to the measures include all electric resistance welded pipe and tube made of carbon steel meeting the above description of the goods (and exclusions), regardless of whether or not the pipe or tube meets a specific structural standard or is used in structural applications.

2.5 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37);
- 7306.61.00 (statistical codes 21, 22 and 25); and
- 7306.69.00 (statistical code 10).

The goods exported to Australia from Korea are subject to a 5% rate of duty.

2.6 Australian industry producing like goods

During the original investigation, ACBPS found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods;
- the like goods were wholly manufactured in Australia; and

PUBLIC RECORD

- there was an Australian industry consisting of four Australian companies that produce like goods in Australia.

The Commission remains satisfied that, although there may now be only three Australian HSS manufacturers, there is an Australian industry producing like goods.

3 CONSIDERATION OF THE APPLICATION

3.1 Findings

Having regard to the applicant's claims and other relevant information, the Commissioner is satisfied that the application complies with s. 269ZB and there appear to be reasonable grounds for asserting that a variable factor relevant to the taking of anti-dumping measures has changed.

3.2 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires, and be signed in the manner indicated by the form.

Subsection 269ZB(2) states that the application must include:

...

- (a) *a description of the kind of goods to which the measures the subject of the application relate; and*
- (b) *a description of the measures the subject of the application; and*
- (c) *if the application is based on a change in variable factors—a statement of the opinion of the applicant concerning:*
 - (i) *the variable factors relevant to the taking of the measures that have changed; and*
 - (ii) *the amount by which each such factor has changed; and*
 - (iii) *the information that establishes that amount;*

...

Subsection 269ZC(2) specifies the matters which the Commissioner must consider in making a decision whether to reject the application. These matters are:

...

- (a) *that the application complies with section 269ZB; and*
- (b) *that there appear to be reasonable grounds for asserting either, or both, of the following:*
 - (i) *that the variable factors relevant to the taking of anti-dumping measures have changed; or*
 - (ii) *that the anti-dumping measures are no longer warranted.*

3.3 Compliance with section 269ZB

The application lodged by Stemcor:

- is in writing;
- provides a description of the goods subject to the measures; and
- provides a description of the measures the subject of the application.

As stated above, s. 269ZB(2)(c) of the Act requires that if the application is based on a change in variable factors, the application must also include a statement of the opinion of the applicant concerning:

- the variable factors relevant to the taking of the measures that have changed;
- the amount by which each such factor has changed; and
- the information that establishes that amount.

In addition, the approved form requires that the application include information about the applicant's opinion on the causes of the change in the variable factor(s) and whether these causes are likely to persist.

The Commission's consideration of whether the application complies with subsection 269ZB(2)(c) of the Act and whether it contains all information required by the approved form is addressed in section 3.4 of this report under each variable factor. Section 3.4 also considers whether there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of the anti-dumping measures have changed.

3.4 Variable factors

To comply with s.269ZB of the Act, the applicant must provide information to establish that, in the applicant's opinion, one or more of the variable factors have changed. The applicant does not have to provide information to establish that all the variable factors have changed.

3.4.1 Export price and normal value

3.4.1.1 Applicant's claims

In support of its application for review, Stemcor re-submitted to the Commission data provided in relation to an application for a [REDACTED] for the importation period [REDACTED]. As part of the [REDACTED] application, Stemcor provided the Commission with commercial invoices, bills of lading and packing lists for each shipment. According to Stemcor, the information shows that export prices have [REDACTED] by between AUD\$ [REDACTED] per metric tonne (MT) for [REDACTED] HSS to AUD\$ [REDACTED] per MT for [REDACTED] HSS. Although Stemcor's focus is on a change in export prices, it notes that estimated normal value information is included in its schedule of imports for [REDACTED]. [REDACTED] is still being considered by the Commission.

Stemcor referred to its [REDACTED] application for the importation prior to [REDACTED] for the period [REDACTED] as evidence that its estimates of export price and normal value were reliable and credible. [REDACTED]

Stemcor also provided a schedule of imports by another company in the Stemcor Group, Stemcor (SEA) Pte Ltd, providing export prices for the period since [REDACTED]. Stemcor claims that the schedule shows that export prices have [REDACTED] by [REDACTED]

between AUD\$ [REDACTED] per MT for [REDACTED] HSS to AUD\$ [REDACTED] per MT for [REDACTED] HSS.

3.4.1.2 The Commission's assessment

Three companies in the Stemcor Group have imported HSS from Kukje in recent years. Stemcor applied for a [REDACTED] for the period [REDACTED]. As part of its consideration of [REDACTED], the Commission received an exporter questionnaire response from Kukje which also provided information relating to the subsequent importation period [REDACTED]. The Commission did not conduct a full verification process in relation to information provided by Kukje for the purposes of the [REDACTED].

The three Stemcor Group companies have each lodged [REDACTED] application for the period [REDACTED]. The applications were supported by source documents indicating that export prices in that period had changed since the dumping duties were imposed. Stemcor has also provided information on the export prices of importations in 2014. Although not supported by evidence, the information is consistent with the claim that export prices have changed.

A comparison of export prices for each of the [REDACTED] with the export prices as currently ascertained is at **confidential attachment 1**. The comparison indicates that Kukje's export prices have changed.

Following its acceptance of information provided by Kukje, the Commission established normal values for the purposes of [REDACTED]. Although somewhat dated, the normal values established by the Commission for [REDACTED] for the period [REDACTED], shows that normal values had changed from those imposed in July 2012. The Commission has also verified information for the period covered by the three [REDACTED] applications lodged by the Stemcor Group companies, including Stemcor. A preliminary assessment suggests that the normal value relevant to the taking of the measures for Kukje have changed. A comparison of normal values is at **confidential attachment 2**.

On the evidence available, the Commission is satisfied that there appear to be reasonable grounds for asserting that one or more variable factors relevant to the taking of measures on HSS exported to Australia by Kukje have changed.

3.5 Conclusions and recommendations

The Commission is satisfied that:

- the application complies with s. 269ZB of the Act; and
- there appear to be reasonable grounds for asserting that one of the variable factors (export price) relevant to the taking of the measures has changed.

The Commission recommends that the Commissioner:

- not reject the application and initiate a review into the current anti-dumping measures as far as they relate to exports to Australia from Korea by Kukje; and

PUBLIC RECORD

- the review period be set as 1 July 2013 to 30 June 2014.