



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION
CONSIDERATION REPORT NO. 285

CONSIDERATION OF AN APPLICATION FOR REVIEW OF
ANTI-DUMPING MEASURES

HOLLOW STRUCTURAL SECTIONS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

BY

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1 SUMMARY AND RECOMMENDATIONS

This report outlines the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Steelforce Australia Pty Ltd and Steelforce Trading Pty Ltd (referred to collectively as Steelforce Australia) for a review of the dumping duty notice and countervailing duty notice applying to its imports of certain hollow structural sections (HSS)¹ produced by Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce) and exported from the People's Republic of China (China).

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 the amount of countervailable subsidy received in respect of the goods. The application states that the normal value and export price have changed. Further, the applicant maintains its position that countervailable subsidies, in the form of hot rolled coil (HRC) purchased at less than adequate remuneration, do not exist.

The anti-dumping measures applying to 'selected cooperating exporters' of HSS from China applies to Dalian Steelforce. The applicant imported HSS to Australia during the original investigation period. Therefore, Steelforce Australia is not eligible to apply for an accelerated review of the measures under Division 6 of Part XVB of the *Customs Act 1901* (the Act).²

1.1 Recommendation

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

1.2 Application of law to facts

Division 5 of Part XVB of the Act sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the review of anti-dumping measures.

Division 5 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 variable factors relevant to the taking of the measures have 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

In 2011, following assessment of an application made by OneSteel Australian Tube Mills Pty Ltd, the then International Trade Remedies Branch (ITRB) of the Australian Customs and Border Protection Service (ACBPS) initiated investigations into:

- the alleged dumping of HSS exported to Australia from China, the Republic of Korea (Korea), Malaysia, the Kingdom of Thailand (Thailand) and Taiwan; and
- the alleged subsidisation of 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, and Australian Customs Dumping Notice 2011/43, providing further details of the investigation, was issued on the same day.

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

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

- HSS exported from China to Australia was dumped with margins between 10.1 and 57.1 per cent;
- HSS exported from Korea to Australia was dumped with margins between 3.2 and 8.9 per cent;
- HSS exported from Malaysia to Australia was dumped with margins between 3.0 and 20.0 per cent;
- HSS exported from Taiwan to Australia was dumped with margins between 2.4 and 5.3 per cent;
- 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 177³, which rendered domestic sales of HSS in China unsuitable for use in determining normal values under s. 269TAC(1) of the Act⁴. This finding was due to significant government influence in the domestic iron and steel market.

³ 1 July 2010 to 30 June 2011.

⁴ This is because there was a finding that a 'particular market situation' existed in the Chinese HSS market (see s. 269TAC(2)(a)(ii)).

In relation to countervailing, the ACBPS concluded that 26 countervailable subsidies had been received by Chinese exporters of HSS. Subsidy margins of between 2.2 and 54.8 per cent 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 Taiwan and a countervailing duty notice imposing countervailing duties on the goods exported to Australia from China (excluding Qingdao and Huludao) in *The Gazette* and *The Australian* on 3 July 2012.

The notice also converted dumping securities taken on HSS into interim dumping duties (IDD). Following a preliminary affirmative determination, dumping securities were taken on HSS exported from the subject countries entered for home consumption from 10 January 2012. However, only securities pertaining to goods in relation to the dumping of HSS from the subject countries that were exported after this date were converted to IDD.

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 was the subject of review by the then Trade Measures Review Officer and subsequently, reinvestigation by the ACBPS.

The reinvestigation resulted in the ACBPS recommending to the Minister that the dumping duty notice and countervailing duty notice remain in place with an alteration of the amount of IDD applicable to the exports of one Chinese exporter (Dalian Steelforce). The Minister accepted this recommendation (see Australian Customs Dumping Notice no. 2013/35).

2.2 Previous reviews

At the time of preparing this consideration report there are three ongoing reviews or inquiries in respect of HSS:

- an investigation into the alleged dumping of HSS exported from Thailand (investigation no.254 refers);
- a review of the anti-dumping measures as they relate to exports by Tianjin Youfa Steel Pipe Group Co., Ltd from China (case no.267); and
- a review of the anti-dumping measures as they relate to exports by Kukje Steel Co., Ltd. from Korea (case no.266)

2.3 The current review application

On 13 March 2015, Steelforce Australia lodged an application requesting a review of the anti-dumping measures as they apply to its imports of HSS to Australia from China, manufactured by Dalian Steelforce. Steelforce Australia claim that certain variable factors relevant to the taking of the anti-dumping measures have changed.

The application is not precluded by s. 269ZA(2)(a), 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 the publication of a notice declaring the outcome of the last review of the dumping or countervailing duty notice.

As entities directly concerned with the importation of HSS to Australia, Steelforce Australia are affected parties as defined in s. 269T(1) of the Act and are 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 April 2015.

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 Commissioner must reject the application.

2.4 The goods subject to the measures

The goods subject to the anti-dumping 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 21 millimetres (mm) 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 China are subject to a 5 per cent rate of Customs duty.

2.6 Australian industry producing like goods

During the original investigation, the 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
- 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

With regards to the applicant's claims and other relevant information, the Commission is satisfied that the application complies with s. 269ZB and there appear to be reasonable grounds for asserting that variable factors relevant to the taking of anti-dumping measures have changed.

3.2 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form for the purposes of s. 269ZB(1), 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 Steelforce Australia:

- is in writing;
- is in the approved form;
- signed in the manner indicated by the form;

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

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 s.269ZB(2)(c) of the Act (reproduced above) 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 (s. 269ZC(2)(b)(i), reproduced above).

3.4 Variable factors

To comply with s.269ZB(2)(c) of the Act, the applicant must provide a statement that demonstrates, in the applicant's opinion, that one or more of the variable factors have changed. The applicant does not have to demonstrate that all the variable factors have changed.

3.4.1 Export prices

3.4.1.1 Applicant's claims

In support of its claim that export prices have changed, Steelforce Australia provided a transactional record of HSS exports to Australia from Dalian Steelforce for the calendar year 2014. The applicant also included commercial documentation for a number of the export transactions. The documents include details of purchase orders and commercial invoices, including product specifications, quantities, unit prices, and gross values.

Specifically, the information provided by Steelforce Australia suggests that Dalian Steelforce's export price has increased since the original findings in 2012.

3.4.1.2 The Commission's assessment

Dalian Steelforce has exported HSS to Australia since the anti-dumping measures were imposed and has provided evidence that its alleged export prices to Australia are different to the ascertained export prices set in July 2012.

Using this data, the Commission was able to establish new export prices for Dalian Steelforce. The new export prices indicate a change from those ascertained in ITRB Report 177.

On the evidence available, the Commission is satisfied that there appear to be reasonable grounds for asserting a variable factor (ascertained export price) relevant to the taking of measures on HSS exported to Australia by Dalian Steelforce has changed.

3.4.2 Normal values

3.4.2.1 Applicant's claims

In a recently completed duty assessment, the Commission used published Steel Business Briefing (SBB) steel pricing data to index the movement in HRC (a major input for the HSS) prices for the purposes of establishing actual contemporary normal values. The Commission considered that East Asia import prices (denominated in US dollars and 'cost and freight' delivery terms) were reasonable for this purpose.

Steelforce has followed this same methodology and used the same data source and series to estimate the normal value for HSS exports over the 12 month period ending December 2014. The data provided to the Commission, regarding East Asia import prices, indicates that prices of HRC have declined since the original findings in 2012.

The applicant also provided a detailed account of Dalian Steelforce's purchases of HRC, which are wholly from Chinese producers. The Chinese price of HRC has fallen relative to the original investigation period used in ITRB Report 177.

3.4.2.2 The Commission's assessment

In the original HSS investigation, the relevant Minister found that a situation existed in the Chinese HSS domestic market that made domestic sales unsuitable for determining normal values. The Minister was also satisfied that the Chinese exporters' HRC and narrow strip costs did not reflect competitive market costs and these costs were replaced by benchmark costs derived from other countries under investigation.

In its application for review, Steelforce Australia provided reliable evidence to support its claim that normal values have changed. The East Asia import prices (SBB data) provided by Steelforce Australia, as well as Dalian Steel's HRC purchase data, both indicate a decline in the price of HRC.

The SBB data alone is not considered sufficient to satisfy the Commission that normal values have changed. While downward movements in the benchmark prices of East Asia import prices for HRC could indicate a change in normal values, movements of other factors could potentially negate a downward shift in the overall normal value for Dalian Steelforce. However, the Commission is currently conducting a duty assessment for Dalian Steelforce and the necessary information to establish normal values has been provided in its response to that process. The Commission considers this information is relevant for the purpose of assessing this application in relation to review of measures.

On the evidence available, the Commission is satisfied that there appear to be reasonable grounds for asserting the variable factor, ascertained normal value, relevant to the taking of measures on HSS exported to Australia by Dalian Steelforce has changed.

3.4.3 Countervailable Subsidy

3.4.3.1 Applicants Claims

Steelforce Australia contends that a countervailable subsidy in the form of HRC purchased at less than adequate remuneration does not exist and as such, Dalian Steelforce does not receive benefits under this program.

Notwithstanding Steelforce Australia's contention about the existence of such a program, it provided a full transactional listing of HRC purchases by Dalian Steelforce during 2014 as well as a calculation of benefits assuming the program was found to exist. Using the prevailing monthly benchmark East Asia import prices for HRCs, Steelforce Australia calculated the amount of benefit received across the 2014 review period by comparing the benchmark price to actual delivered HRC purchases by Dalian Steelforce.

The calculations show that the amount of subsidisation over the review period is estimated to be approximately 2 per cent. This level is lower than that found in the original investigation, which was 11 per cent.

3.4.3.2 The Commission's assessment

On the evidence available, the Commission considers that there appear to be reasonable grounds for asserting that the variable factor, amount of countervailable subsidy received, relevant to the taking of measures on HSS exported to Australia by Dalian Steelforce has changed.

3.5 Conclusions and recommendations

The Commission is satisfied that:

- the application complies with s. 269ZB of the Act⁵; and
- there appear to be reasonable grounds for asserting that variable factors relevant to the taking of the measures have changed.⁶

The Commission recommends that the Commissioner:

- not reject the application and initiate a review into the current anti-dumping measures (both dumping duty notice and countervailing duty notice) as far as they relate to exports to Australia from China by Dalian Steelforce; and
- the review period be set as 1 January 2014 to 31 December 2014.

⁵ s.269ZC(2)(a).

⁶ s. 269ZC(2)(b)(i).