

# STAUGHTONS

Independent trade advisory group on anti-dumping & customs issue solutions

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February 26, 2013

Mr John Bracic  
Director, OPS 1  
International Trade Remedies Branch  
Australian Customs & Border Protection  
Canberra ACT 2601

CC: Ms Lydia Cooke

Dear Mr Bracic

**Re: ACDN NO. 2013/07  
CERTAIN HOLLOW SECTIONS  
REINVESTIGATION**

I am writing on behalf of the Australian importer Stemcor Australia Pty Ltd (Stemcor) being in relation to the abovementioned re-investigation and on the basis that the following claims be taken into consideration by the re-investigation team.

## DETAILS

### **Case**

ACDN No 2013/07  
Investigation No. 177

### **Goods**

Certain HSS imports by Stemcor from:

- **Korea**
- **China**

### **Company**

Stemcor Australia Pty Ltd

### **Person**

M J Howard  
Representative for Stemcor

### **Contact Details**

[jack@itada.com.au](mailto:jack@itada.com.au)  
ph: 0459 212 702

### **Role**

Stemcor is an Australian importer of the subject goods and was investigated pursuant to Investigation No. 177.

### **Introduction**

The TMRO Report contained references to Stemcor, inter alia, at ***paras 170 to 178***.

The TMRO at ***para 179*** recommended that the “Minister direct the CEO of Customs to re-investigate the methods of the calculation of the Export Prices for Alpine and all other affected exporters such as those from whom Stemcor imports HSS in line with the above conclusion”.

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## Direction (3)

The Minister, as published in ACDN No. 2013/07, at **para 3**, has directed the CEO of Customs to re-investigate the finding that:-

“The calculation of the Export Price, and if necessary the Dumping Margin, for Alpine and all other relevant exporters such as those from whom Stemcor imports HSS”.

## Detail

Stemcor imported from:

- Kukje, Korea
- Qingdao, China
- Shandong Fubo – China
- Zibo Fubo – China
- Zibo Litong – China

## Background

The Importer Visit Report, Feb 2012, to Stemcor formed part of the No. 177 Investigation.

Meeting details are recorded on **pages 4& 5, para 2.3.2** of that Report.

## Claims Para 5.2 Ordering

**Para 5.2.1** of that Report outlined Stemcor's ordering and sales process.

Importantly it states, inter alia,

“Stemcor's purchases from the overseas steel mill are in US\$ and this is set at the date of order.

If the currency moves between the offer and the date of order, Stemcor advises the customer of this variation.

At the date of order, Stemcor hedges the currency required and this is the amount the customer pays at the date of invoice (which is roughly the date of export, approximately 3 months later)”.

## Date of Sale

**Para 5.2.2** details that Stemcor's price between it and its customers (Australian) and its overseas suppliers is “set at the date of order confirmation, not at the date of invoice.

At the date of order Stemcor hedges the currency required and this is the amount the it (sic) pays approximately 3 months later at the date of invoice”.

## Relevance

**Para 5.2.2**, on date of sale concluded:-

**“We consider that further consideration of this issue is warranted by case management”.**

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## Conclusion Date of Sale

1. The commercial reality is that the date Stemcor's sale to its Australian customers takes place is the order confirmation date.

## Export Price

2. The price paid by Stemcor to its overseas suppliers is the US\$ amount it has contractually agreed to pay at the order confirmation date.

## A\$ Price

3. The A\$ amount Stemcor factually pays to its overseas suppliers is the hedged (FEC) amount at the order confirmation date.

## Customs Acceptance

4. Case Management undertook to give this issue further consideration but in our opinion, failed to do so.

## s 269 TAB (1)

5. Instead of calculating the actual prices paid by Stemcor to its overseas suppliers, being the price paid by the importer in accordance with s 269 TAB (1) (a), the Case Management Team calculated Stemcor's Export Prices as being:-  
the amount the overseas suppliers accounted for in their functional currency at their invoice date.

## s 269 TAF

We claim that the Case Management Team should have had regard to s 269 TAF (1) and (2) in calculating Stemcor's actual Export Prices in A\$ currency.

The A\$ price paid for the exports is also relevant to "injury" considerations.

## AEPs

The "Customs" manual states that **generally** (meaning normally), any consequent Ascertained Export Prices (AEPs) should be determined in the transaction A\$ currency derived from average exchange rates for RMB (China) and KWN (Korea), etc.

## US\$ Transactions

Importers such as Stemcor "deal" in US\$ as that is the currency overseas mills/suppliers "deal" in..

## TMRO Findings - Para 177

The TMRO considers, at **para 177** of his Report, that "the contract date is the relevant date for the purpose of the currency conversion".

## - Para 178

The TMRO at **para 178** expressed the view that s269 TAF (1) is relevant for any currency conversion.

## - Para 179

The TMRO recommended that the Minister direct the CEO to re-investigate the methods of calculation of the Export Prices.

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## **Date of Sale**

The United States Court of International Trade has ruled that the date of sale in its jurisdiction, is as the TMRO has determined, namely the order confirmation, or contract date.

## **Consideration**

The issues detailed in this submission turn on whether the “Customs” Case Management Team made the representation to further consider these issues.

We claim this representation was made at the importer visit meeting.

We further claim that the information to support the correct calculation of Stemcor’s paid Export Prices was available for ‘Customs’ consideration.

## **s 269 TEA**

We consider that the importer visit meeting and the subsequent report of the meeting constitutes a submission in the course of the investigation and in accordance with s 269 TEA (3)(a)(ii) the CEO “must” have had regard to this Stemcor submission.

We submit therefore that the CEO “was required to have regard” to this information for the purpose of forming conclusions from submissions received during the investigation.

## **Other issues**

### **- Korea**

In determining factual Export Prices for imports from Stemcor’s Korean supplier two factors need to be taken into consideration, namely:-

- (1) the Stemcor FEC rate;
- (2) actual weight and not theoretical weight

### **- China**

Stemcor’s suppliers “Qingdao” had its Normal Value determined on a constructed, notional basis in that its cost for pre-galvanised narrow strip used to produce the HSS was uplifted by 14.6% because of the so termed Particular Market Situation. (PMS)

For all of the reasons detailed by the TMRO on why there was insufficient information to factually conclude a PMS applied, we submit that the uplift imposed was done so without the necessary and proper authority to do so.

## **Qingdao**

Whilst Customs “excluded” Qingdao from receiving any “pass through” benefit from the nominated Program 20 on Hot Rolled Coil we would like to offer the following comments on the “subsidy” issue.

The apparent identified beneficial (and quantified) subsidy related to the export of coking coal.

It needs to be stated that Coking coal is only used to produce steel via the blast furnace operation which is the normal production process for Hot Rolled Coil.

Steel produced via the Electric Arc Furnace (EAF) method does not use coking coal and is a 'steel scrap' based process.

This process produces skelp or billets which can be 'galvanised' for the production of pre-galvanised HSS.

We claim that whilst Customs may argue it relied on the best information available it did not have any evidence to conclusively include the Qingdao type operation in the subsidy assumption.

## Onesteel – ATM

**Para 25** of the TMRO Report is based on either a misunderstanding by the TMRO or a misrepresentation by Onesteel-ATM in that the Port Kembla facility referred to was more than "mothballed" – it was closed and sold by Onesteel and is no longer in "existence".

## Relevance

Whilst "like goods" is not one of the findings included in this re-investigation, the questions and issues of 'causality' and 'injury' may arise when Export Prices and Normal Values are re-calculated.

We strongly object to Onesteel's assertion in **para 85** of its submission on this re-investigation that "Customs and Border Protection did not have access to verified information to enable it to adjust Alpine's Normal Value (or the Normal Values of Stemcor's suppliers) to take account of adjustments associated with exchange rates and differences between actual and theoretical weights".

Onesteel is a significant importer of the HSS goods in question as well as importing steel feed for its limited local production of HSS goods.

Based on its own import actions Onesteel would have an absolute understanding of what best constitutes its date of sale and the relevance of forward cover, unless of course it simply ignores what is considered good commercial practice in a risk adverse environment.

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Onesteel-ATM also employs the universally accepted HSS industry practice of production based on actual and sales based on theoretical as provided for in the AS-NZ Standard AS1163.

Not only has the 'weight' factor been established in this and previous HSS Investigations for many investigated producers, **(including Onesteel-ATM)**, it is simply public knowledge via the relevant Country Standards, company brochures, etc.

Onesteel's other assertion at **para 61** of its submission that:-  
"to accept unverified information would establish a dangerous precedent that Onesteel –ATM urges the Minister not to accept"  
is a total disingenuous statement.

Customs does of course, in the absence of any factual or evidential data, etc., resort to the best information available practice as it did in respect of its reliance on the Steel Business Briefing "information" on steel price offers.

## Conclusion

We submit that the information to determine the actual paid Export Prices by Stemcor was available during the Investigation and that the CEO should (must) have had regard to that information when making recommendations to the Minister.

Please contact the writer for any clarification relating to this Submission.



**M J Howard**