



CUSTOMS ACT 1901 - PART XVB

# **STATEMENT OF ESSENTIAL FACTS NO. 266**

**REVIEW OF ANTI-DUMPING MEASURES  
HOLLOW STRUCTURAL SECTIONS  
EXPORTED FROM THE REPUBLIC OF KOREA  
BY  
KUKJE STEEL CO LTD**

4 March 2015

**SEF 266 Hollow Structural sections – Korea**

**CONTENTS**

**CONTENTS..... 2**

**ABBREVIATIONS..... 3**

**1 SUMMARY AND RECOMMENDATIONS ..... 4**

1.1 SUMMARY.....4

1.2 PROPOSED RECOMMENDATION.....4

1.3 FINAL REPORT .....4

**2 BACKGROUND..... 5**

2.1 INITIATION.....5

2.2 PREVIOUS CASE .....5

2.3 REVIEW PROCESS .....6

2.4 RESPONDING TO THIS SEF .....7

**3 THE GOODS AND LIKE GOODS ..... 9**

3.1 FINDING.....9

3.2 LEGISLATIVE FRAMEWORK.....9

3.3 THE GOODS .....9

3.4 TARIFF CLASSIFICATION .....10

3.5 LIKE GOODS PRODUCED BY THE AUSTRALIAN INDUSTRY.....10

3.6 LIKE GOODS PRODUCED BY KUKJE .....11

**4 VARIABLE FACTORS..... 12**

4.1 FINDING.....12

4.2 KUKJE’S EXPORTER QUESTIONNAIRE RESPONSE.....12

4.3 EXPORT PRICE.....12

4.4 NORMAL VALUE.....12

4.5 DUMPING MARGIN.....13

4.6 NON-INJURIOUS PRICE .....13

**5 EFFECT OF THE REVIEW ..... 15**

**6 LIST OF APPENDICES..... 16**

## PUBLIC RECORD

### ABBREVIATIONS

|                             |  |
|-----------------------------|--|
| ACBPS                       | Australian Customs and Border Protection Service                   |
| The Act                     | <i>Customs Act 1901</i>  |
| ADN                         | Anti-Dumping Notice  |
| the applicant               | Stemcor Australia Pty Ltd  |
| ATM                         | Australian Tube Mills Pty Ltd                                      |
| the Commission              | the Anti-Dumping Commission  |
| the Commissioner            | the Commissioner of the Anti-Dumping Commission                    |
| Dumping Duty Act            | <i>Customs Tariff (Anti-Dumping) Act 1975</i>                      |
| Korea                       | The Republic of Korea  |
| Minister                    | The Minister for Home Affairs                                      |
| Orrcon                      | Orrcon Operations Pty Ltd  |
| SEF                         | Statement of Essential Facts                                       |
| the goods                   | Hollow Structural Sections as described in section 3.3             |
| the Parliamentary Secretary | the Parliamentary Secretary to the Minister for Industry & Science |

## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Summary

This review is in response to an application from Stemcor Australia Pty Ltd (Stemcor) to review the anti-dumping measures as they apply to exports to Australia of certain hollow structural sections (HSS)<sup>1</sup> from the Republic of Korea (Korea) by Kukje Steel Co., Ltd. (Kukje).

The application for review 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 (NIP). The application states that the normal value and export price have changed.

Kukje has its own rates of dumping duty specified in the Report to the Minister No. 177 (REP 177). <http://www.adcommission.gov.au/cases/documents/410-Reportno177.pdf>.

This Statement of Essential Facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary)<sup>2</sup>.

### 1.2 Proposed recommendation

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Kukje, as if different variable factors had been ascertained.

### 1.3 Final report

The Commissioner's final report and recommendations must be provided to the Parliamentary Secretary by **20 April 2015** or within such longer period as the Minister allows.

---

<sup>1</sup> Refer to the full description of the goods in section 3.3 of this report.

<sup>2</sup> The Minister for Industry and Science has delegated responsibility for anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision-maker for this review of anti-dumping measures.

## 2 BACKGROUND

### 2.1 Initiation

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 under Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>3</sup>. Stemcor claims that certain variable factors relevant to the taking of the anti-dumping measures have changed.

Stemcor's application sought to review the variable factors pertaining to Kukje only. The Commission examined the application and decided not to reject the application. As a result Consideration Report 266 (CON 266) was published on the Commission's website.

On 30 September 2014, the Commissioner initiated a review of the anti-dumping measures in respect of HSS exported from Korea by Kukje. The review is limited to examining whether the variable factors, relevant to the taking of the anti-dumping measures as they affect the goods exported from Korea by Kukje, have changed. Notification of the initiation of the review was made in *The Australian* newspaper on 30 September 2014 and Anti-Dumping Notice (ADN) 2014/94. The review period for the purpose of this review is the period from 1 July 2013 to 30 June 2014.

### 2.2 Previous case

On 19 September 2011, following an assessment of an application made by OneSteel Australian Tube Mills Pty Ltd (ATM), 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, 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 it related to Thailand and certain Chinese exporters on 7 June 2012, ACBPS provided its final report and recommendations to the then Minister for Home Affairs (Minister) (ITRB Report 177) in relation to the remainder of Investigation 177.

---

<sup>3</sup> All references to legislation in this report are references to the *Customs Act 1901*, unless otherwise specified.

## PUBLIC RECORD

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.

The ACBPS found that the dumping margin for Kukje was 3.2%.

The Minister 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.

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 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.

### 2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for, or the Parliamentary Secretary may request that the Commissioner conduct, a review of those measures if one or more of the variable factors has changed. The Parliamentary Secretary may initiate a review at any time, however, a review application may not be lodged earlier than twelve months after publication of the notice implementing the original anti-dumping measures or the notice(s) declaring the outcome of the last review.

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review and report to the Parliamentary Secretary on the review of the measures. Within 110 days of the initiation, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record an SEF on which

## SEF 266 Hollow Structural Sections - Korea

## **PUBLIC RECORD**

he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.

In making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the delegate has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the inquiry.

During the course of a review, the Commission will examine whether the variable factors have changed. Variable factors in this particular review are a reference to:

- the ascertained export price;
- the ascertained normal value; and
- the NIP.

At the conclusion of a review, in respect of a dumping duty notice, the Commissioner must provide a final report that makes a recommendation to the Parliamentary Secretary that the dumping duty notice<sup>4</sup>:

- remain unaltered; or
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally, or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

Following the Parliamentary Secretary's decision, a notice will be published advising interested parties of the decision.

### **2.4 Responding to this SEF**

This SEF sets out the essential facts on which the Commissioner proposes to base final recommendations to the Parliamentary Secretary.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

---

<sup>4</sup> s. 269ZDA(1)(a) of the Act

## **PUBLIC RECORD**

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final report to the Parliamentary Secretary. The report will recommend whether or not the dumping duty notice and countervailing duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **24 March 2015**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.

The Commissioner must report to the Parliamentary Secretary by 20 April 2015.

Submissions should preferably be emailed to [operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au).

Alternatively, they may be sent to fax number 1300 882 506 or +61 3 9244 8902 (outside Australia) or mailed to:

Director Operations 1  
Anti-Dumping Commission  
Level 5, Customs House  
5 Constitution Ave  
CANBERRA ACT 2601  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available on the Commission's web site [www.adcommission.gov.au](http://www.adcommission.gov.au).

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. Physical copies of the Public Record can be viewed by request at the Commission's Melbourne office (phone 1300 884 159 to make an appointment) or online at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Documents on the Public Record should be read in conjunction with this SEF.



## 3 THE GOODS AND LIKE GOODS

### 3.1 Finding

The Commission considers the Australian industry produces HSS that have characteristics closely resembling those of the goods under consideration, and therefore, HSS manufactured by the Australian industry are considered like goods<sup>5</sup>.

### 3.2 Legislative framework

The Commissioner must be satisfied that the “like” goods are in fact produced in Australia. Subsection 269T(2) of the Act specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with s. 269T(3) of the Act, for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 3.3 The goods

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.

---

<sup>5</sup> In terms of s.269T.

## **PUBLIC RECORD**

- **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 made 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.

### **3.4 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, 25 and 90); and
- 7306.69.00 (statistical code 10).

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

### **3.5 Like goods produced by the Australian industry**

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;

## **SEF 266 Hollow Structural Sections - Korea**

## **PUBLIC RECORD**

- 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 Commissioner remains satisfied that, although there may now be a reduced number of Australian HSS manufacturers, there is an Australian industry producing like goods.

### **3.6 Like goods produced by Kukje**

During the original investigation, ACBPS found that HSS sold on the domestic market in Korea by Kukje possesses similar physical characteristics and manufacturing processes and is commercially and functionally substitutable with HSS exported to Australia.

## 4 VARIABLE FACTORS

### 4.1 Finding

The Commissioner finds that the variable factors relevant to the determination of duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), have changed.

### 4.2 Kukje's exporter questionnaire response

The Commission provided Kukje with an exporter questionnaire to complete. The due date for a response was 10 November 2014. Kukje's response to the exporter questionnaire was received by the Commissioner on that date. The response included information concerning Kukje's domestic sales, export sales to Australia, and cost to make and sell (CTMS) for HSS.

### 4.3 Export price

For this review, export prices were established under s. 269TAB(1)(a), using Kukje's quarterly weighted average export prices provided by Kukje by model, excluding any part of that price that related to post-exportation charges.

The resulting ascertained export price for the goods exported by Kukje has changed since the original investigation.

### 4.4 Normal value

For this review, normal values were established in accordance with s.269TAC(1), using Kukje's quarterly weighted average domestic invoice prices for like goods, by model, where those sales were in the ordinary course of trade.

Adjustments to the normal value were made under s.269TAC(8) for differences in:

- inland transport;
- credit cost;
- handling and other expenses;
- bank charges; and
- physical characteristics (used to determine quarterly weighted average normal values for the one exported model for which there was not a sufficient volume of domestic sales of the corresponding model).

The resulting ascertained normal value for the goods exported by Kukje has changed since the original investigation.

## **4.5 Dumping margin**

A calculation of dumping margins is not required for the purpose of reviewing variable factors. However, for this review a dumping margin for the review period has been calculated by comparing the weighted average of export price of the goods during the review period, with the weighted average of corresponding normal values in accordance with s.269TACB(2)(a) of the Act.

The weighted average dumping margin has been assessed as -6.7%.

A summary of the export price, normal value and dumping margin calculations is at **confidential appendix 1**.

## **4.6 Non-injurious price**

### **4.6.1 General**

Under section 8 of the Dumping Duty Act, the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury or a recurrence of the injury. Subsection 269TACA(a) of the Act identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to the relevant level of trade in Australia.

### **4.6.2 Submissions**

Orrcon Operations Pty Ltd (Orrcon), an Australian manufacturer of the goods, provided a submission stating that an appropriate USP involves the same methodology as applied in the original investigation. Orrcon's submission described the application of that methodology to be the Australian industry's CTMS plus a level of profit.

ATM provided a submission which referred to the methodology used in the original investigation and submitted that the USP should not alter from the Commission's methodology as detailed in REP 177. ATM submitted that the USP should be based on the Australian industry's CTMS in the current review period, plus the industry profit in 2008.

### **4.6.3 Assessment of NIP**

In the original investigation, ACBPS determined the USP based on the Australian industry's CTMS for the investigation period plus an amount for profit based on the period January to September 2008. The period used for a profit amount was found by ACBPS to be a period absent of material injury. This approach was not subject to reinvestigation. Separate USPs were calculated by finish. The NIPs for each finish were then calculated by deducting amounts for post exportation costs.

## **PUBLIC RECORD**

For the purpose of this review, a weighted average USP has been determined based on verified Australian industry CTMS during the review period for ATM plus an amount of profit achieved by the industry in the period January to September 2008. This is consistent with the approach in REP 177. The NIP has been calculated by deducting from the USP amounts for overseas freight, insurance, into store costs, customs duty, importer expenses and profit. These deductions were based on data provided by the Australian importer of the goods.

Preliminary NIP calculations are at **confidential appendix 2**.

## 5 EFFECT OF THE REVIEW

The Commission has found that, in relation to exports to Australia of HSS from Korea by Kukje during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed;
- the NIP has changed; and
- the dumping margin was less than zero.

The Commissioner has also found that the NIP was greater than the normal value of the goods exported by Kukje during the review period and should therefore not be the operative measure<sup>6</sup> for HSS exported by Kukje.

Consequently, the Commissioner proposes to recommend to the Parliamentary Secretary that the interim dumping duty payable is an amount which will be worked out in accordance with the combination of fixed and variable duty method pursuant to subregulation 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. This is consistent with the method used in the original dumping duty notice. Therefore, the dumping duty payable comprises a fixed component that is zero, and a variable component that will be payable if the actual export price is below the ascertained export price which is a specified (confidential) amount per tonne.

---

<sup>6</sup> The operative measure is the lesser of the normal value or non-injurious price.

**6 LIST OF APPENDICES**

|                         |  |
|-------------------------|--|
| Confidential appendix 1 | Export price, normal value and dumping margin summary. |
| Confidential appendix 2 | Non injurious price calculation                        |