



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

FINAL REPORT NO. 291

ANTI-CIRCUMVENTION INQUIRY

**HOLLOW STRUCTURAL SECTIONS EXPORTED FROM THE
PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA,
MALAYSIA AND TAIWAN**

29 February 2016

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
the Act	Customs Act 1901
ADN	Anti-Dumping Notice
Alpine	Alpine Pipe Manufacturing SDN BHD
AS	Australian Standard
ATM	Austube Mills Pty Ltd
Chengda	Chengda Steel Co. Ltd
China	People's Republic of China
CHS	Circular hollow sections
circumvention goods	goods subject of the anti-circumvention inquiry
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 291	Consideration report 291
Dalian Steelforce	Dalian Steelforce Hi-Tech Co., Ltd
DIBP	Department of Immigration and Border Protection
Dumping Duty Act	Customs Tariff (Anti-Dumping) Act 1975
the goods	the goods the subject of the original application
HDG	hot-dipped galvanised
HRC	hot rolled coil
HSS	hollow structural sections
Huludao Steel Pipe	Huludao City Steel Pipe Industrial Co., Ltd
ICD	interim countervailing duty
IDD	interim dumping duty
ILG	inline galvanised
Inquiry 291	the inquiry undertaken by the Anti-Dumping Commission concerning the alleged circumvention of the goods
Investigation 177	Investigation into hollow structural section from China, Korea, Malaysia, Taiwan and Thailand
J Steel	J Steel Australasia Pty Limited
Korea	Republic of Korea
original notices	Subsection 269TG(2) and TJ(2) notices following Investigation 177
PAD	preliminary affirmative decision
PAD 177	preliminary affirmative decision 177
PAD 177A	preliminary affirmative decision 177A
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
Professor Dunne	Emeritus Professor Druce Dunner

PUBLIC RECORD

Qingdao XiangXing	Qingdao XiangXing Steel Pipe Co., Ltd
Q&T	Quench and Tempered
the Regulation	Customs (International Obligations) Regulation 2015
REP177	Anti-Dumping Commission Report No. 177
REP203	Reinvestigation Report 203
Review 285	Review 285 of Dalian Steelforce Hi-Tech Co.
RHS	rectangular or square hollow sections
Roswell	Roswell S A R L Limited
SEF	Statement of Essential Facts
SEF177	Statement of Essential Facts 177
Senturion	Senturion Steel Supplies Pty Ltd
Steelforce Trading	Steelforce Trading Pty Ltd
the Tariff Act	Customs Tariff Act 1995
Tianjin Friend	Tianjin Friend Steel Pipe Co., Ltd
Tianjin Ruitong	Tianjin Ruitong Iron and Steel Co., Ltd
TMRO	Trade Measures Review Officer

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This final report relates to the investigation by the Commissioner of the Anti-Dumping Commission (the Commissioner) into allegations made by Austube Mills Pty Ltd (ATM) that circumvention activities (provided for in section 48 of the Customs (International Obligations) Regulation 2015 (the Regulation)) have occurred with respect to certain hollow structural sections (HSS) exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan. ATM alleged that circumvention of the anti-dumping measures applying to HSS occurred through the slight modification of those goods.

Certain non-alloyed HSS (referred to as “the goods”) is currently subject to anti-dumping measures specified by public notices published in the Australian Government Gazette on 3 July 2012 (the original notices) and referred to in Australian Customs Dumping Notice (ACDN) No. 2012/31.¹ ATM alleged that these measures have been circumvented by certain exporters through the slight modification of the HSS exported to Australia, namely, by the addition of alloys. This report refers to alloyed HSS as “the circumvention goods”.²

This final report sets out the findings on which the Commissioner has based his recommendation to the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)³ in relation to ATM's application.

1.2 Recommendation to the Parliamentary Secretary

Based on the findings in this final report, the Commissioner recommends that the Parliamentary Secretary amend the notices published under subsections 269TG(2) and 269TJ(2) of the *Customs Act 1901* (the Act)⁴ in respect of HSS exported to Australia by certain exporters from certain countries.

¹ A copy of the notice is included at Appendix 1.

² Further detail concerning the non-alloyed HSS that is subject to measures and the circumvention goods can be found in Chapters 3 and 4.

³ On 23 December 2014, the then Minister for Industry and Science delegated his powers and functions under Part XVB of the *Customs Act 1901* to the Parliamentary Secretary to the Minister for Industry and Science. On 20 September 2015, the Department of Industry and Science became the Department of Industry, Innovation and Science. The titles of the Minister and Parliamentary Secretary also changed to the Minister for Industry, Innovation and Science, and the Parliamentary Secretary to the Minister for Industry, Innovation and Science. On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

⁴ A reference to a part, division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

1.3 Application of law to facts

1.3.1 Authority to make decision

Division 5A of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting anti-circumvention inquiries in relation to goods covered by an application for the purpose of making a report to the Parliamentary Secretary.

1.3.2 Application

On 7 April 2015, ATM, a member of the Australian industry producing HSS, lodged an application under subsection 269ZDBC(1) requesting an anti-circumvention inquiry in relation to HSS exported from China, Korea, Malaysia and Taiwan.

The Commissioner was satisfied that each application was made in the prescribed manner and complied with section 269ZDBD.⁵

1.3.3 Initiation of inquiries

After examining each application, the Commissioner was satisfied that there appeared to be reasonable grounds for asserting a circumvention activity in relation to the original notices had occurred.⁶

The Commissioner decided not to reject the applications, and notice of the initiation of an anti-circumvention inquiry into HSS exported from China, Korea and Malaysia was published on 11 May 2015 (leading to this Inquiry 291). The Commissioner was not satisfied that there appeared to be reasonable grounds for asserting that a circumvention activity had occurred in relation to exports from Taiwan, and the Commissioner decided to reject the application in so far as it related to exports of HSS from Taiwan.

Inquiry 291 has been conducted at the same time as Inquiry 290 (alleged circumvention of anti-dumping measures relating to zinc coated (galvanised) steel exported from Korea and Taiwan) and Inquiry 298 (alleged circumvention of anti-dumping measures to zinc coated (galvanised) steel exported from China). Due to the similar nature of the alleged circumvention activity, the Anti-Dumping Commission (the Commission) has conducted these three inquiries in parallel.

1.3.4 Statement of essential facts

The Commissioner published the Statement of Essential Facts 291 (SEF 291) on 5 November 2015.⁷

⁵ Section 269ZDBD.

⁶ Subsection 269ZDBE(2).

⁷ 020 on public record <http://adcommission.gov.au/> .

1.4 Findings and conclusions

The Commissioner has made the following findings and reached the following conclusions based on all available evidence.

1.4.1 The goods subject to measures (the goods) (Chapter 3 of this report)

The goods subject to the original notices 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.

Further, the goods subject to the original notice are subject to the below additional descriptive information:

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 inline 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. 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.

The goods are generically referred to as non-alloyed HSS.

1.4.2 The circumvention goods (Chapter 4 of this report)

The goods subject to the anti-circumvention inquiries (the circumvention goods), for the purposes of subsection 48(2)(a) of the Regulations, are described as:

Certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

For the purposes of this report, the circumvention goods are referred to as 'alloyed HSS' or as 'the circumvention goods' unless defined otherwise.

1.4.3 Submissions received in response to SEF (Chapter 5 of this report)

The Commission received a number of submissions in response to the findings of SEF 291 from interested parties.

1.4.4 Circumvention of the anti-dumping measures (Chapter 6 of this report)

The Commissioner has examined the available evidence concerning exports of the goods and the circumvention goods by exporters subject to the original notices.

PUBLIC RECORD

The Commissioner has found that the circumvention goods exported by certain exporters:

- have been exported from a foreign country in respect of which the notice applies;
- were slightly modified before that export;
- the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- would have been subject of the notice if they had not been so slightly modified; and
- the scope of the goods did not include alloyed HSS and therefore sections 8 and 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) do not apply to the export of the circumvention goods to Australia.

The degree of modification has been examined in light of the non-exhaustive list of criteria outlined in subsection 48(3) of the Regulation. The Commissioner has compared the goods and the circumvention goods and determined that the circumvention goods have been slightly modified through the addition of alloys.

Accordingly, the Commissioner considers that a circumvention activity⁸ has occurred with respect to certain exporters.

1.4.5 Recommendations (Chapter 7 of this report)

Following the finding that a circumvention activity has occurred in relation to the original notices, the Commissioner recommends that, because of this activity, the original notices should be altered.⁹

The Commissioner recommends that the Parliamentary Secretary declare that the original notices be altered to specify that different goods exported by the specified exporters or supplied by the specified suppliers are to be the subject of the original notices.

Table 1 summarises the exporters that the Commissioner recommends be specified in the Parliamentary Secretary's declaration.

Exporter	Country of export	Original Notices
Dalian Steelforce Hi-Tech Co., Ltd	China	Subsections 269TG(2) and TJ(2)
Tianjin Ruitong Iron and Steel Co., Ltd	China	Subsections 269TG(2) and TJ(2)
Tianjin Friend Steel Pipe Co., Ltd	China	Subsections 269TG(2) and TJ(2)
Roswell S A R L Limited	China	Subsections 269TG(2) and TJ(2)
Alpine Pipe Manufacturing SDN BHD	Malaysia	Subsection 269TG(2)

Table 1 – Exporters and suppliers recommended to be specified

⁸ Subsection 48(3) of the Regulation.

⁹ Subsection 269ZDBG(1)(d).

1.5 Public Record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's reports and other publically available documents. It is available by request in hard copy in Canberra or Melbourne (phone 03 8539 2440 to make an appointment), or online at www.adcommission.gov.au.

This final report should be read in conjunction with the documents on the public record.

2 BACKGROUND

2.1 History of measures – original investigations

2.1.1 Original dumping investigation

On 12 August 2011, ATM lodged an application¹⁰ for the publication of 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 an examination of the application, the then Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) decided not to reject the application, and an investigation into the alleged dumping and subsidisation of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand was initiated on 19 September 2011.

This investigation was numbered case 177 (Investigation 177).

2.1.2 Partial termination

Following publication of SEF177, and consideration of submissions received in response to SEF177, the CEO of Customs and Border Protection was satisfied that grounds had been established that:

- Huludao Steel Pipe and Qingdao XiangXing Steel Pipe Co., Ltd had not received an above-negligible level of subsidisation; and
- the volume of HSS exported to Australia from Thailand during the investigation period that had been dumped was negligible.

Consequently, on 5 June 2012, the CEO terminated:

- the countervailing investigation so far as it related to Huludao Steel Pipe and Qingdao XiangXing Steel Pipe Co., Ltd; and
- the dumping investigation in relation to the goods exported from Thailand.

Reasons for these decisions are outlined in Termination Report 177, which is available on the public record. Consequently, this report has limited discussion of the investigation into the alleged dumping of HSS exported to Australia from Thailand.

Public notification of these terminations was made in *The Australian* on 6 June 2012, and in ACDN 2012/25 and ACDN 2012/26.

2.1.3 Final report and Minister's decision

On 3 July 2012, following consideration of Anti-Dumping Commission Report No. 177 (REP177), the then Minister for Home Affairs published:

¹⁰ Section 269TB.

PUBLIC RECORD

- dumping duty notices under subsections 269TG(1) and TG(2) imposing anti-dumping measures in the form of interim dumping duty (IDD) on HSS exported to Australia from China, Korea, Malaysia and Taiwan; and
- a countervailing duty notice under subsection 269TJ(2) imposing anti-dumping measures in the form of interim countervailing duty (ICD) on HSS exported to Australia from China, excluding HSS exported by:
 - Huludao Steel Pipe; and
 - Qingdao XiangXing Steel Pipe Co., Ltd.

For the purposes of this inquiry:

- the subsection 269TG(2) notice is the original dumping duty notice (the prospectively operating notice); and
- the subsection TJ(2) notice is the original countervailing duty notice

as set out by subsection 269ZDBB(1).

2.1.4 Reinvestigation

The decision by the then Minister for Home Affairs to publish a dumping duty notice and a countervailing duty notice following Investigation 177 was the subject of review by the former Trade Measures Review Officer (TMRO)¹¹ and subsequently, reinvestigation by Customs and Border Protection (Report 203).

The reinvestigation resulted in Customs and Border Protection recommending to the then Minister for Home Affairs that the dumping duty notice and countervailing duty notice remain in place with an alteration of the amount of combined IDD and ICD applicable to the exports of Dalian Steelforce. The then Minister accepted this recommendation.

2.1.5 Summary of dates – Investigation 177

The below table summarises key dates of the original investigation into HSS for ease of reference, as patterns of trade with reference to these dates are referred to throughout this report in examining whether a circumvention activity has occurred.

Activity	Date
Initiated	19 September 2011
Publication of original notice (interim duties collected from)	3 July 2012

Table 2 – Summary of key dates – Investigation 177

¹¹ The TMRO was the former name of the review body, which is now known as the Anti-Dumping Review Panel.

2.2 Current inquiry

After examining the application, the Commissioner was satisfied that there appeared to be reasonable grounds for asserting a circumvention activity in relation to the original notices had occurred.¹²

In relation to the application concerning exports from China, Korea and Malaysia, the Commissioner decided not to reject the application and initiated an anti-circumvention inquiry on 11 May 2015 (Inquiry 291).¹³

The Commissioner was not satisfied that there appeared to be reasonable grounds for asserting that a circumvention activity had occurred in relation to exports from Taiwan, and the Commissioner decided to reject the application in so far as it related to exports of HSS from Taiwan.

The Commission's assessment of the application is set out in Consideration Report 291. ADN No. 2015/58 provides further details of the inquiry. Both documents are available on the public record.

2.3 Nature and scope of the inquiry

The inquiry process is outlined below.

2.3.1 Post-initiation meeting with ATM

Following initiation, the Commission met with ATM on 2 June 2015 to gain a better understanding of:

- the process involved in the slight modification of HSS to circumvent anti-dumping measures;
- alloys that may be used for this slight modification; and
- the commercial activities that may surround the circumvention.

The non-confidential record of the meeting can be found on the public record.

2.3.2 Meetings with interested parties

At the request of ATM, the Commission conducted a further meeting with that company on 25 August 2015. The Commission conducted additional meetings with ATM after issuing SEF 291.

Non-confidential records of these meetings is available on the Commission's public record in accordance with subsection 269ZJ(4).

¹² Subsection 269ZDBE(2).

¹³ Subsection 269ZDBE(2).

2.3.3 Identifying possible circumvention

During its consideration of the applications, the Commission accessed import data information (based on import declarations made by importers or their agents) held by the Department of Immigration and Border Protection (DIBP) in its import database.

This data covered the tariff classifications for both the goods and the circumvention goods over the length of the inquiry period. This data forms **Confidential Attachment 1** to this report.

This data was analysed in detail and was used to identify all possible importers and exporters of goods that could have been involved in a circumvention activity during the applicable inquiry periods. This involved:

- identifying possible 'switches' of trade from the tariff classification applicable to non-alloyed HSS to alloyed HSS;
- identifying potential 'start up' circumventors (where there was no history of trade in non-alloyed HSS but trade in alloyed HSS commenced following imposition of the anti-dumping measures); and
- identifying patterns of trade in alloyed goods occurring historically prior to the imposition of anti-dumping measures and continuing after the imposition of these measures at similar rates).

2.3.4 Importer and exporter questionnaires

Once the inquiry was initiated, the Commission disseminated importer and exporter questionnaires to all parties potentially involved in the circumvention activity of the slight modification of goods.

Importer questionnaires were sent to seven entities declared in the DIBP data as an importer of potential circumvention goods. Several unsuccessful attempts were made to contact another importer, and a questionnaire was unable to be sent to this party. Responses to the importer questionnaire were received from two importers.

Exporter questionnaires were sent to six potential exporters of circumvention goods.

The below table identifies these exporters and whether they responded to the exporter questionnaire and provides some details about each response.

PUBLIC RECORD

Exporter	Country of supply	Response provided?	Details/additional information
Dalian Steelforce Hi-Tech Co., Ltd	China	Yes	N/A
Tianjin Ruitong Iron and Steel Co., Ltd	China	No	No response or correspondence provided.
Chengda Steel Co., Ltd	China	No	Advised that they had not supplied the circumvention goods to Australia. However, later information supplied showed that Chengda forwarded the exporter questionnaire to Tianjin Friend Steel Pipe Co., Ltd, who supplied the circumvention goods via the company which acted as its agent.
Qingdao XiangXing Steel Pipe Co., Ltd	China	Yes	N/A
Roswell S A R L Limited	China	No	Attempts to contact were unsuccessful.
Alpine Pipe Manufacturing SDN BHD	Malaysia	No	No response or correspondence provided.
J Steel Australasia Pty Limited (J Steel)	Korea	No	No response or correspondence provided

Table 3 – entities that exporter questionnaires were sent to for completion

In addition to the responses identified in Table 3 above, the Commission received the following responses to the exporter questionnaire from entities that it did not contact directly to request completion of that questionnaire:

Respondent	Country of supply	Details
Tianjin Friend Steel Pipe Co., Ltd	China	The company identified that it had supplied alloyed HSS during the inquiry period via Chengda, which acted as its agent. However, the company only provided a confidential version of the response.
Kukje Steel Co. Ltd	Korea	The company submitted a response and identified that it had not exported alloyed HSS to Australia during the inquiry period.

Table 4 – responses to the exporter questionnaire from additional respondents

Excluding the response to the exporter questionnaire provided by Tianjin Friend, non-confidential versions of all responses to the importer and exporter questionnaire are available on the public record.

As identified above, Tianjin Friend only provided a confidential response to the exporter questionnaire. Several attempts were made with that company to obtain a non-confidential response but these attempts were unsuccessful. Consequently no version of this response was placed on the public record.

2.3.5 Submissions received from interested parties

The Commission has received numerous submissions from interested parties during the course of the inquiries. These submissions have been listed in Table 5, below.

Submitted by	Date
Cedex Steel and Metals Pty Ltd	27 May 2015
Kukje Steel Co. Ltd	29 June 2015
ATM	9 September 2015 27 September 2015 23 November 2015 4 February 2016
Dalian Steelforce	25 November 2015 25 November 2015 26 February 2016
Unnamed importer	25 November 2015 18 January 2016
J Steel	25 November 2015

Table 5 – general submissions received

Each submission that was received prior to or no more than 20 days after publishing the SEF (that is, received by 25 November 2015) has been considered by the Commissioner in making the recommendations contained in this final report. The Commissioner has also had regard to all but one submission received from interested parties after that date as the Commissioner is of the opinion that their consideration has not prevented the timely preparation of this report.¹⁴

2.3.6 Submissions following the initiation of inquiries

Following initiation of the inquiry, the Commission received submissions from ATM raising issues surrounding the rejection of the application in so far as it related to Taiwan. This issue was addressed in some detail in the SEF and has been raised by ATM after the SEF and has been addressed further in this report.

2.4 Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows under subsection 269ZHI(3), place on the public record a statement of the essential facts on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary.¹⁵

¹⁴ Subsection 269TEA(4).

¹⁵ Subsection 269ZDBF(1).

PUBLIC RECORD

In formulating the statement of essential facts the Commissioner must have regard to the application concerned, and any submissions concerning publication of the notice that are received within 37 days after the date of initiation of the inquiry, and may have regard to any other matters that he considers to be relevant.¹⁶

The public notice of the initiation advised that the SEF for Inquiry 291 would be placed on the public record by 31 August 2015..

The Parliamentary Secretary granted an extension of 66 days to the date for the publication of the SEF. This extension required the SEF to be published by 5 November 2015, and the final report and recommendations to be provided to the Parliamentary Secretary by 21 December 2015. ADN No. 2015/104 provides further details and is available on the Commission's website at www.adcommission.gov.au.

The SEF was published on 5 November 2015.

Subsequently, the Parliamentary Secretary granted a further extension of time, requiring the Commissioner to provide his final report by no later than 28 February 2016 (ADN No. 2015/147 refers). As this date falls on a weekend, the final report is due to be provided to the Parliamentary Secretary by no later than the next business day, 29 February 2016.

¹⁶ Subsections 269ZDBF(2)(a), (2)(b).

3 THE GOODS SUBJECT TO MEASURES

3.1 The goods

The goods currently subject to measures 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.

Further, the goods subject to the original notice are subject to the below additional descriptive information:

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 inline 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. 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.

A full description of the goods subject to the original notices is available in Australian Customs Dumping Notice (ACDN) No. 2011/43 (relating to the initiation).

This ACDN is available on the Commission's website at www.adcommission.gov.au.

3.1.1 Tariff classification

HSS the subject of the original notice is classified to the following tariff subheadings of Schedule 3 to the Customs Tariff Act 1995 (the Tariff Act):

- 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).

3.1.2 Excluded goods

The following categories are excluded from the goods subject of the original notices:

- 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 RHS with a nominal thickness of less than 1.6mm (is not used in structural applications); and
- air heater tubes to AS.2556.

3.1.3 Exemptions

In addition, the relevant Minister has granted an exemption from the anti-dumping measures imposed by the original notices under subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act in relation to goods subject to Tariff Concession Order (TCO) TC 1333313, which covers the following:

TC 1333313 covers the following:

*TUBES, square OR rectangular, electric resistance welded, complying with Australian/New Zealand Standard 1163:2009 (AS/NZS 1163:2009),
Grade C350L0 OR C450L0, having EITHER (a) OR (b) AND (c), as follows:*

- (a) silicon content plus 2.5 times the phosphorus content NOT greater than 0.09%;*
- (b) silicon content greater than 0.14% and NOT greater than 0.24%;*
- (c) perimeter NOT less than 720 mm.*

4 THE CIRCUMVENTION GOODS

4.1 Legislative framework

Section 269ZDBB(6) of the Act provides that a circumvention activity may occur in circumstances prescribed by the regulations. Section 48 of the Regulation prescribes that the slight modification of goods is a circumvention activity.

4.1.1 Circumvention activity – slight modification of goods

Subsection 48(2) of the Regulation provides that a circumvention activity occurs where there is a slight modification of goods exported to Australia. This circumvention activity occurs if all of the following apply:

- a) goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the dumping and/or countervailing duty notice applies;
- b) before that 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 Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

4.1.2 When is a circumvention good “slightly modified”?

Subsection 48(3) of the Regulations sets out how the Commissioner should determine whether a circumvention good is slightly modified, including a non-exhaustive list of factors that may be examined to determine slight modification.

The Subsection states:

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.*

4.2 Defining “the circumvention goods”

The goods subject to the anti-circumvention inquiry (the circumvention goods, for the purposes of subsection 48(2)(a) of the Regulations, are described as:

Certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

The additional information of the description of the goods subject to the original notice and applicable exclusions and exemptions applies to the circumvention goods.

For the purposes of this report, the circumvention goods are referred to as ‘alloyed HSS’ or as ‘the circumvention goods’ unless defined otherwise.

4.2.1 Tariff classifications of the circumvention goods

Alloyed HSS is classified to tariff subheadings:

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

of Schedule 3 to the Tariff Act.

4.2.2 Identifying and classifying the circumvention goods

Note 1(f) to Chapter 72 (iron and steel) of Schedule 3 of the Tariff Act provides that, in order for a product to be considered of ‘other alloy steel’ (required to be classified to the above codes relating to alloyed HSS), the below must be satisfied:

Steels not complying with the definition of stainless steel and containing by weight one or more of the following elements in the proportion shown:

- 0.3% or more of aluminium
- 0.0008% or more of boron
- 0.3% or more of chromium
- 0.3% or more of cobalt
- 0.4% or more of copper
- 0.4% or more of lead
- 1.65% or more of manganese
- 0.08% or more of molybdenum
- 0.3% or more of nickel
- 0.06% or more of niobium
- 0.6% or more of silicon
- 0.05% or more of titanium
- 0.3% or more of tungsten (wolfram)
- 0.1% or more of vanadium
- 0.05% or more of zirconium
- 0.1% or more of other elements (except sulphur, phosphorus, carbon and nitrogen), taken separately.

Note (1) to Chapter 72 advises that the definition in note (1)(f) applies to the entirety of Schedule 3 of the Tariff Act, thereby applying the definition of note (1)(f) to Chapter 73 of that schedule and the abovenamed classifications of HSS.

HSS that does not meet the threshold requirements of note (1)(f) should be classified to:

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

4.3 Commission's observation of the circumvention goods

Physical characteristics¹⁷

The Commission notes that ATM's applications and submissions to the investigation on the physical differences between alloyed and non-alloyed HSS have focused on the addition of boron to HSS at a level at or above 0.0008% concentration, but have also referred to the possibility of the addition of other alloys (such as chromium). The quantity and type of alloys present can be established through testing, which routinely occurs at the mill. Variations in the alloys present would not be able to be determined by simply looking at the product; in that sense, the goods and the circumvention goods appear identical.¹⁸ No submissions have been received, nor evidence obtained by the Commission, to suggest otherwise.

Each good's end use¹⁹

In its application, and later in the meeting of 2 June 2015, ATM has submitted that alloyed HSS with small amounts of boron in it would have the same end use as non-alloyed HSS.

No submissions have been received, nor evidence obtained by the Commission to suggest otherwise.

Differences in the processes used to produce each good²⁰

In its meeting with the Commission on 2 June 2015, ATM explained its understanding of the manufacturing process of alloyed HSS. ATM submitted the following:

- to make alloyed HSS that circumvents the measures (i.e. with amounts of boron or other alloys), manufacturers of HSS would need to purchase their steel raw material (hot rolled coil (HRC)) with the requisite amounts of alloy already included in it;
- the HSS rolling and welding manufacturing processes of the HRC would then be performed in the same manner as for non-alloyed HSS; and
- no further changes are needed to be made to the manufacturing process to make alloyed HSS instead of non-alloyed HSS other than the purchase of alloyed HRC.

¹⁷ Subsection 48(3)(a) of the Regulation.

¹⁸ Refer to the ATM Record of Meeting – 2 June 2015.

¹⁹ Subsection 48(3)(b) of the Regulation.

²⁰ Subsection 48(3)(d) of the Regulation.

ATM explained that its suppliers of HRC have advised that the process of adding boron and other alloys to make alloyed HRC occurs when molten steel passes through the ladle treatment station during the steelmaking process, where micro additions of alloys and temperature control is undertaken. No further changes would be made in the manufacturing process to manufacture alloyed HRC with the liquid alloyed steel being cast into slabs and rolled into HRC in the same manner as non-alloyed HRC.

ATM submitted that, once HSS was manufactured using alloyed HRC with small amounts of boron, there is no impact on the finishing of HSS such as subsequent painting and galvanising.

The cost of modification²¹

In the meeting of 2 June 2015, ATM submitted that its supplier had advised the cost that it incurs for the addition of the alloy boron in the concentration of 0.0008%. The specifics of this calculation have been redacted from the public record version of the ATM record of meeting. However, the Commission notes that this boron-addition cost is representative of a negligible amount of the total cost to make and sell HRC that would be incurred by a fully integrated manufacturer of HRC (noting the Commission holds on file significant information in relation to the cost to make HRC, including that gathered during its investigation into HRC from Japan, Korea, Malaysia and Taiwan (Investigation 188)).

No submissions have been received, nor evidence obtained by the Commission to suggest otherwise.

Differences in selling price²²

During the meeting of 2 June 2015, ATM submitted that, due to the insignificant quantum of the cost difference incurred by its supplier, it would be unlikely that its HRC supplier would charge extra for a boron-added HRC as opposed to HRC not containing alloys. This is discussed in more detail in Chapter 6.

²¹ Subsection 48(3)(f) of the Regulation.

²² Subsection 48(3)(k) of the Regulation

5 SUBMISSIONS RECEIVED IN RESPONSE TO SEF

As highlighted above, the Commission received two submissions from Dalian Steelforce and Steelforce on 25 November 2015, an unnamed importer on 25 November 2015 and 18 January 2016, J Steel on 25 November 2015 and ATM on 23 November 2015 and 4 February 2016.

5.1 Goods are not slightly modified

5.1.1 Matters raised in submissions

Dalian Steelforce, Steelforce Trading and an unnamed importer contend that the alloyed HSS is not a slightly modified good of non-alloyed HSS. It is submitted that it is not the non-alloyed HSS itself that is modified but it is the HRC that is different between the non-alloyed and alloyed HSS manufacture. The HRC for alloyed HSS contains boron and/or other alloys which result in the manufacture of alloyed HSS. Each type of HRC is manufactured using a discrete process with the inclusion of specific raw material inputs designed to meet certain technical specifications and international standards relevant to either non-alloyed or alloyed steel. Dalian Steelforce submits that it does not undertake any modification of its non-alloyed HSS product and transform them into alloyed HSS. HRC materials are purchased from HRC manufacturers unrelated to Dalian Steelforce.

5.1.2 Commission's assessment

Although HRC is the prime raw material used in the manufacture of HSS, this raw material is slightly modified, whether it be by Dalian Steelforce or by the manufacturer of the HRC, to manufacture alloyed HSS as opposed to non-alloyed HSS. The only difference between the HRC used for non-alloyed HSS and alloyed HSS is the addition of boron, and/or any other alloy which result in the tariff classification changing and not being subject to the original anti-dumping measures. This is considered to be a slight modification of the non-alloyed HSS. No circumvention activity has occurred prior to 1 April 2015

5.1.3 Matters raised in submissions

Dalian Steelforce and an unnamed importer submit that the anti-circumvention framework cannot apply to goods exported prior to the date that the relevant Regulation commenced. Prior to 1 April 2015, the alleged "circumvention activity" did not exist. The only option available to the Commission is to terminate the inquiry under subsection 269ZDBEA(1) because no circumvention activity can be found to have occurred during the period of inquiry.

5.1.4 Commission's assessment

The investigation period differs from the period from which the anti-circumvention measures are imposed.

The inquiry period was established to examine patterns of behaviour to assess whether the tests in subsections 48(2) and 48(3) of the Regulation can be met. Behaviour occurring prior to 1 April 2015 is not addressed in the alterations to the original notice. The alterations will only have effect at a date post the Regulation.

The purpose and intent of the anti-circumvention regulation is to stop circumvention behaviour. The inquiry process involved the analysis of data from the beginning of the inquiry period of the original investigation. This information was only used for the intent of reaching a conclusion as to whether circumvention activities took place.

5.2 ATM's view regarding rejection of application in so far as it related to exports from Taiwan

5.2.1 Matters raised in submission

In its submission dated 27 October 2015, ATM raised their concerns with the Commissioner's decision to reject the anti-circumvention inquiry application in so far as it relates to HSS exported from Taiwan.

ATM supports their concerns with submissions that section 269ZDBE only authorises the Commissioner to reject an application or to accept it rather than partially reject or accept.

In its submission dated 23 November 2015, ATM again raised their concerns with the Commissioner's decision to reject the anti-circumvention inquiry application in so far as it relates to HSS exported from Taiwan. ATM submits that the Commission's decision that there were no grounds for the initiation of an anti-circumvention inquiry into exports from Taiwan betrays a misunderstanding of the overall scheme of Division 5A. It is further contended that if an applicant demonstrates, as ATM has, that there are reasonable grounds for concluding that one or more circumvention activities in relation to the original notice has occurred the Commissioner must initiate an inquiry in relation to the original notice, that is, covering all nominated countries subject to that notice. For the purposes of section 269ZDBEA, it is not open to the Commissioner to give the Parliamentary Secretary a report recommending that she declare specified alterations to the original notice only in respect of exports from China, Korea and Malaysia.

ATM also submit²³ that on the basis of the Minister's recommendations in Report No. 24124 (where the decision was to alter the original dumping notice prospectively to parties who not taken any part in the alleged circumvention activity and who, in some cases, had not exported the circumvention goods to Australia), the Minister must maintain the established policy position in this matter.

5.2.2 Commission's assessment

In relation to ATM's claims that subsection 269ZDBE(2)(b) makes it clear that the positive consideration of an application only requires the identification of reasonable grounds for asserting the occurrence of one or more circumvention activities relating to the original notice.

²³ Submission by ATM dated 27 October 2015

²⁴ The final report for the anti-circumvention inquiry into certain aluminium extrusions exported by PanAsia Aluminium (China) Limited from China (Inquiry 241)

PUBLIC RECORD

As discussed in Consideration Report 291 (CON 291), reasonable grounds for asserting the occurrence of one or more circumvention activities relating to the original notice existed only for exports of HSS to Australia from the People's Republic of China, the Republic of Korea and Malaysia. No such reasonable grounds existed for exports of HSS to Australia from Taiwan. Consequently, there were no grounds for the initiation of an anti-circumvention inquiry into exports from Taiwan and the Commission maintains it was correct to not initiate that inquiry.

In relation to ATM's assertion that subsection 269ZDBH(2)(b) permits the extension of original notices to countries but not the exclusion of certain countries from that extension, the Commissioner notes that section 269ZDBH is extremely broad in its application and provides that the Parliamentary Secretary may make any alterations to the original notices deemed necessary. It is not considered that there are any limitations on whether a selection of countries can be named in an alteration to original notices with other countries excluded from that amendment.

Further, the Commissioner considers it is appropriate and proposes to only recommend that the Parliamentary Secretary make limited alterations to the original notice to specifically address circumvention activities that have been found to have occurred.

The Commission notes that even if the application had not been rejected in so far as it related to Taiwan, the Commission has come across no evidence that there has been any circumvention activity in relation to goods exported from Taiwan.

Thus, even if Taiwan was included in the investigations, as there is no evidence of circumvention from that country, the Commissioner would not be recommending that the original notice be altered in any way in so far as they relate to Taiwan and the outcome of this inquiry would be the same in any case.

In relation to ATM's assertions about the recommendations in Report 241 setting a precedent that must be followed to extend original notices to entities that had not taken part in an anti-circumvention activity but may do so in the future, the Commission notes that the alterations made to the original notice in this case were in response to specific circumstances that differ to the circumstances of this inquiry. The changes to the original notice were made in relation to certain aluminium extrusions exported by one exporter that had exported circumvention goods, where new importers were foreseen as potentially entering the market. As such, the alterations made to the original notice were specific to that exporter but open as to which importers were covered by the change to the notice.

The Commission proposes to make alterations to the original notices for HSS that target the activities of the exporter but are not limited to importers' activities. This approach is not considered inconsistent with the approach in Report No. 241. However, the Commission does not consider that the Commissioner or the Parliamentary Secretary are subject to any precedent from the findings in Inquiry 241 in any case.

6 CIRCUMVENTION OF THE ANTI-DUMPING MEASURES

6.1 Finding

The Commissioner has found circumvention activity of the following kind by the following entities:

Exporter	Country of export	Nature of circumvention activity
Dalian Steelforce Hi-Tech Co., Ltd	China	Slight modification of goods – addition of alloys
Tianjin Ruitong Iron and Steel Co., Ltd	China	Slight modification of goods – addition of alloys
Tianjin Friend Steel Pipe Co., Ltd	China	Slight modification of goods – addition of alloys
Roswell S A R L Limited	China	Slight modification of goods – addition of alloys
Alpine Pipe Manufacturing SDN BHD	Malaysia	Slight modification of goods – addition of alloys

Table 6 – Summary of circumvention activities found

6.2 Commissioner's assessment of whether goods were slightly modified

Under subsection 48(3) of the Regulation, to determine whether the circumvention goods were slightly modified, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the thirteen factors listed in that subsection.

In the following sections, the Commission has considered the factors of subsection 48(3) under the following categories for each exporter:

- patterns of trade²⁵ and changes in export volumes.²⁶
- physical differences;²⁷
- manufacturing cost²⁸ and selling price;²⁹
- marketing³⁰ and trade channels/distribution;³¹ and
- interchangeability,³² end use³³ and customer preferences and expectations.³⁴

²⁵ Subsection 48(3)(j) of the Regulation.

²⁶ Subsection 48(3)(l) of the Regulation.

²⁷ Subsection 48(3)(a) and (d) of the Regulation.

²⁸ Subsection 48(3)(e) and (f) of the Regulation.

²⁹ Subsection 48(3)(k) of the Regulation.

³⁰ Subsection 48(3)(h) of the Regulation.

³¹ Subsection 48(3)(i) of the Regulation.

³² Subsection 48(3)(c) of the Regulation.

This specifically addresses twelve of the thirteen subsection 48(3) factors.

In relation to the final factor, tariff classification, as outlined in Chapters 3 and 4, alloyed and non-alloyed HSS fall under different tariff classifications in Schedule 3 of the Tariff Act.

In respect of exporters for which no exporter questionnaire response has been received, the Commission relies on all available information, such as that provided by ATM, information provided by other interested parties and information obtained from previous investigations.

6.3 Dalian Steelforce

An exporter questionnaire response has been received from Dalian Steelforce.

6.3.1 Overview

Steelforce Trading Pty Ltd (Steelforce Trading) was identified by the Commission as a potential importer of circumvention goods from Dalian Steelforce and was requested to complete an importer questionnaire. Steelforce Trading responded to the importer questionnaire and identified Dalian Steelforce as its supplier of alloyed HSS.

Additionally, the Commission identified another possible importer of the circumvention goods from Dalian Steelforce during the inquiry period and forwarded that entity an importer questionnaire for completion. That entity did not respond to the importer questionnaire.

6.3.2 Assessment against subsection 48(2) of the Regulation

6.3.2.1 Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies? (48(2)(a))

As outlined above, the Commission has accessed DIBP import data for all importations during the inquiry period of goods classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90), which relate to alloyed HSS. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Dalian Steelforce to Australia during the inquiry period were entered under these tariff classifications, declared as having originated in China.

The import data accessed by the Commission shows that the supply of alloyed HSS by Dalian Steelforce to Australia commenced in the first quarter of the 2013 calendar year. This is confirmed by Dalian Steelforce in their exporter questionnaire.

³³ Subsection 48(3)(b) of the Regulation.

³⁴ Subsection 48(3)(g) of the Regulation.

Further, in the response to the exporter questionnaire, Dalian Steelforce confirmed that they have been involved in the manufacture and export of alloyed HSS to Australia during the inquiry period. Specifically, Dalian Steelforce's response outlined that the company:

- manufactures alloyed HSS in China; and
- sells these goods to Australia.

In addition, Dalian Steelforce provided a quarterly listing of its sales to Australia during the inquiry period. This listed sales of both non-alloyed and alloyed HSS. This forms **Confidential Attachment 2**.

Steelforce Trading has identified that it makes purchases of the non-alloyed and alloyed HSS, manufactured in China, directly from Dalian.

In light of the above, the Commission is satisfied circumvention goods are exported to Australia from China.

Who is the exporter?

In light of the above information from Dalian Steelforce, the Commission considers Dalian Steelforce to be the exporter of alloyed HSS exported to Australia from China. This is consistent with the findings of Investigation 177 in relation to Dalian Steelforce.

***6.3.2.2 Before that exportation, were the circumvention goods slightly modified?
(48(2)(b))***

See below for a detailed comparison of the alleged circumvention goods to the goods the subject of the notice.

Patterns of trade and export volumes

As detailed above, Dalian Steelforce declared that it commenced exporting alloyed HSS to Australia in early 2013, after the publication of the original notices. This is confirmed by the Australian sales listing submitted by the company (**Confidential Attachment 2**) in its exporter questionnaire response and the import data obtained from DIBP (**Confidential Attachment 1**).

That data shows that:

- Dalian Steelforce began exporting alloyed HSS to Steelforce Trading in the first quarter of the 2013 calendar year; and
- Dalian Steelforce began exporting alloyed HSS to another importer in the third quarter of the 2013 calendar year (shortly after commencing exports to Steelforce Trading).

The Commission observes that this data shows that, in relation to goods supplied to Steelforce Trading, there was a corresponding decline in Dalian Steelforce's exports of non-alloyed HSS at levels similar to the increase in volumes of the alloyed goods from the first quarter of calendar year 2013.

PUBLIC RECORD

In relation to the alloyed HSS supplied to the other importer, the Commission notes that in the same quarter that importer commenced importing alloyed HSS from Dalian Steelforce, it also commenced importing alloyed HSS from Malaysia, and that supplier had no prior history of supplying alloyed HSS.

The DIBP data shows that the total Australian export volume of HSS from Dalian Steelforce (alloyed and non-alloyed combined) remained stable from financial year 2012 (before the export of alloyed HSS) through to financial year 2015.

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and found a pattern of trade that suggests that the non-alloyed HSS exported by that company prior to early 2013 (following imposition of the original notices in mid-2012) has shown a clear switch in volumes from non-alloyed HSS to alloyed HSS by that company.

Physical modifications

In its response to the exporter questionnaire, Dalian Steelforce identified that it had supplied alloyed HSS to Australia during the inquiry period. The company provided an exports listing as an attachment to that questionnaire, which identified the type of alloy and level of alloys included in that HSS.

This identified that the goods supplied by that company were boron-added at concentrations of 0.0008% and above. It did not identify the maximum level of boron present in the HSS exported by Dalian Steelforce.

Further, Dalian Steelforce's exporter questionnaire response detailed the company's manufacturing process of alloyed and non-alloyed HSS. Dalian Steelforce identified that there were some small differences between its manufacturing process for alloyed and non-alloyed HSS.

In Dalian Steelforce's non-confidential version of the exporter questionnaire response (available on the public record), the primary difference between the manufacturing process of alloyed HSS and non-alloyed HSS has been redacted by the company as confidential information. This information is discussed further in **Confidential Attachment 3**. The Commission notes that this confidential information is generally consistent with the explanation provided by ATM as to what it considers would be the modifications required for an exporter to produce alloyed HSS.

The Commission considers that the available evidence suggests that the difference in Dalian Steelforce's manufacturing processes between alloy and non-alloyed HSS would be the purchase of alloyed HRC instead of non-alloyed HRC.

Neither Dalian Steelforce or Steelforce trading identified any differences in physical characteristics between the non-alloyed and alloyed HSS exported to Australia by Dalian Steelforce, other than the inclusion of boron in concentrations of 0.0008% or above.

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and has found that there:

- is little to no difference in the general physical characteristics other than the presence of the alloy boron at levels at or above 0.0008%; and
- a difference in the manufacturing process through the purchase and use of alloyed HRC instead of non-alloyed HRC with no other modifications to the manufacturing process.

Manufacturing cost and selling price

In its response to the exporter questionnaire, Dalian Steelforce submitted information about the main cost difference between manufacturing alloyed and non-alloyed HSS. However, this was redacted from the company's non-confidential version of its response. This information is discussed further at **Confidential Attachment 3**.

The non-confidential information from Dalian Steelforce indicates that there is some cost difference between manufacturing alloyed and non-alloyed HSS incurred by Dalian Steelforce, but does not quantify this difference.

Although Dalian Steelforce has redacted information in relation to cost differences, the Commission notes that it has determined above that the difference in Dalian Steelforce's manufacturing process to make alloyed HSS instead of non-alloyed HSS is the purchase (and then use) of alloyed HRC (including at least 0.0008% boron) as opposed to non-alloyed HRC. It follows logically that this would be the leading cost difference between the alloyed and non-alloyed HRC.

To determine the likely significance of cost differences incurred by Dalian Steelforce in purchasing alloyed over non-alloyed HRC, the Commission has turned to the available information it has gathered during its inquiries into the slight modification of galvanised steel exported from Korea, Taiwan and China (Inquiry 290 and 298).

In the SEF for that inquiry, the Commission has determined that the cost of purchasing alloyed HRC instead of non-alloyed HRC in Taiwan by a company (that then galvanises this HRC) would incur an extra purchase cost, but this would represent a very small percentage of the purchase price of alloyed HRC, and of the total cost to make alloyed galvanised HRC.³⁵

Although this reflects the purchase of HRC in Taiwan from a Taiwanese HRC supplier, it is considered unlikely that any pricing extras attached to purchases of alloyed HRC in China would be much greater and this cost would reflect a significant percentage of Dalian Steelforce's total cost to make alloyed HSS.

³⁵ SEF 290 and 298, Paragraph 6.1.1

PUBLIC RECORD

In relation to selling price, Dalian Steelforce's response to the difference between the selling price of alloyed and non-alloyed HSS was heavily redacted in its public record exporter questionnaire response, as was Steelforce Trading's discussion of:

- purchase price from Dalian Steelforce; and
- selling price to Australian customers.

Details of the redacted information provided by each company is in **Confidential Attachment 3**. The Commission's conclusions in relation to selling price based on this information is also in that confidential attachment.

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and has found that there is little to no difference in the cost to produce each good. In relation to selling price, the Commission's findings on this matter are at **Confidential Attachment 3**.

The Commission notes that these findings do not cause it to consider that the modifications of alloyed HSS exported by Dalian Steelforce are greater than 'slight'.

Marketing and trade channels/distribution

Dalian's response to the exporter questionnaire submitted:

- the company's sales process remained the same for both non-alloyed and alloyed HSS; and
- Dalian Steelforce did not market alloyed HSS any differently to non-alloyed HSS with both being marketed as being compliant with relevant standards.

In its response to the importer questionnaire, Steelforce Trading confirmed that its order and purchase process from Dalian Steelforce does not differ for non-alloyed and alloyed HSS.

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and has found that there is no difference in the way each good is marketed, or in the channels of trade or distribution of those goods.

Interchangeability, end use, customer preference and expectations

The exporter questionnaire specifically asked steel force to describe the end uses of the alloyed and non-alloyed steel it exported to Australia during the inquiry period. The company's response simply stated that the Alpinexports HSS into Australia for on-selling into the Australian steel market.

Further, the exporter questionnaire queried whether the alloyed HSS it exported during the enquiry period had any specific purposes or end uses that non-alloyed HSS was not suitable for. After briefly outlining the supply chain of exported goods, Dalian Steelforce responded:

PUBLIC RECORD

The ultimate end use of all HSS is wide and varied across many industry segments, including: steel fabrication; rural sector; residential construction; non-residential construction; etc.

Dalian Steelforce is not in a position to comment on the end use of the HSS products. Suitability of the products is generally determined by compliance with the relevant Standards. All HSS supplied by Dalian Steelforce is compliant with applicable Standards.

Steelforce Trading's response to the importer questionnaire mirrored the above responses by Dalian Steelforce.

The Commission considers that Dalian Steelforce and Steelforce Trading's responses to these matters did not directly address the questions, particularly in providing a comparison between alloy and non-alloyed HSS exported by the company.

However, Steelforce Trading's importer questionnaire response and Dalian Steelforce's exporter questionnaire submitted the following:

- availability of alloyed or non-alloyed coil determines whether non-alloyed or alloyed HSS is supplied to Australia; and
- following the Minister's decision to impose anti-dumping measures, Dalian Steelforce took the opportunity to source additional and alternative raw materials to manufacture and export new products and alternative products that were in demand in the Australian market and that continued to meet Steelforce Trading's requirements for products that complied with the relevant standards.;

Further, Dalian Steelforce's exporter questionnaire response stated:

From Dalian Steelforce's point of view, these new alternative products (which included alloyed HSS) fell outside the parameters of the goods subject to interim duties and as such are not considered to be like goods to carbon HSS products subject to duties.

The Commission also notes that the pattern of trade observed in relation to HSS exported by Dalian Steelforce has shown a shift from supplying certain volumes of non-alloyed HSS to alloyed HSS (see above discussion).

The Commission considers that the exporter and importer have not provided evidence to suggest there is any change in interchangeability, end use, or customer preferences or expectations in relation to alloyed HSS when compared with non-alloyed HSS. On the contrary, the Commission considers that statements by Dalian Steelforce and Steelforce Trading support a finding that there is no difference in any of these factors between alloyed and non-alloyed HSS, as the alloyed HSS imported after the imposition of anti-dumping measures has been identified by the companies as a reaction to the anti-dumping measures and filled demand in the Australian market which the company was supplying with non-alloyed HSS prior to the imposition of measures.

Further, as discussed above, the companies continue to supply these goods through the same marketing and trade channels complying to the same standards (and hence to the same customers likely for the same end uses with the same expectations).

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and has found that the goods can be used interchangeably and the end use of each good has not changed. In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference between the alloyed and non-alloyed HSS.

Summary of findings and conclusion

The Commission considers that the balance of evidence supports a finding that alloyed HSS exported by Dalian Steelforce during the inquiry period has been slightly modified through a minor change to the manufacturing process. This modification occurred through the use of alloyed HRC instead of non-alloyed HRC prior to production of the circumvention goods in China, and hence occurred before the exportation of those goods.

6.3.2.3 Is the use or purpose of the circumvention goods the same before and after the slight modification? (48(2)(c))

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS exported by Dalian Steelforce to Australia, refer to the discussion of subsection 48(2)(b) of the Regulation above.

Following analysis of all available information, the Commission is satisfied that the use or purpose of the circumvention goods is the same before and after the slight modification of those goods.

6.3.2.4 Had the circumvention goods not been slightly modified, would they have been subject to the original notice? (48(2)(d))

As detailed above the goods subject to the original dumping duty notice 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.

Specific exclusions apply to certain types of HSS such as those that do not fit the sizing specifications of the additional information of the goods description, or precision HSS. Additionally, an exemption from the anti-dumping measures imposed by the original notices applies to HSS that meet the requirements of TCO TC 1333313.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Dalian Steelforce through the use of alloyed (boron-added) HRC in its manufacturing process of HSS (as opposed to using non-alloyed HRC). The use of boron-added HRC results in the production of alloyed HSS.

The Commission is satisfied that, had Dalian Steelforce not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

Excluding cases where goods produced by Dalian Steelforce met the requirements of the abovementioned TCO or were specifically excluded from the goods description, the Commission is satisfied that the goods produced by Dalian Steelforce would have been subject to the original notices.

The Commission considers that it does not have definitive evidence to establish whether all of Dalian Steelforce's exports of alloyed HSS during the inquiry period fit into any of the excluded categories of steel or the exempted TCO. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed HSS did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

6.3.2.5 Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods? (48(2)(e))

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2). These duties are referred to collectively as 'anti-dumping measures'.

The slight modification of the alloyed HSS that has been performed by Dalian Steelforce results in the circumvention goods exported by Dalian Steelforce being considered alloyed HSS for the purposes of classification under subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) of the Tariff Act.

This modification means that the exported goods are no longer 'of carbon steel' and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

6.3.3 Conclusion

The Commission finds that, in relation to alloyed HSS exported to Australia by Dalian Steelforce, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.4 Qingdao XiangXing Steel Pipe Co., Ltd

As outlined above, an exporter questionnaire has been received from Qingdao XiangXing Steel Pipe Co., Ltd (Qingdao XiangXing).

6.4.1 Overview

In the exporter questionnaire response, Qingdao XiangXing identified Senturion as a customer they shipped alloyed HSS to in the inquiry period. Senturion was separately identified by the Commission as a potential importer of circumvention goods from Qingdao XiangXing and was requested to complete an importer questionnaire. Senturion responded to the importer questionnaire.

DIBP import data identified a second importer as having imported alloyed HSS from Qingdao XiangXing during the inquiry period however the volumes were insignificant and therefore no importer questionnaire was issued to this importer.

Non-confidential versions of both responses are on the public record.

6.4.2 Assessment against subsection 48(2) of the Regulation

6.4.2.1 *Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?*

Examination of **Confidential Attachment 1** shows that goods supplied by Qingdao XiangXing to Australia during the inquiry period were entered under these tariff classifications, declared as having originated in China. The import data accessed by the Commission shows that the supply of alloyed HSS by Qingdao XiangXing to Australia commenced at the beginning of the 2011 calendar year.

In its response to the exporter questionnaire, Qingdao XiangXing submitted that it had supplied the circumvention goods to Australia during the inquiry period, identifying in the response that the company performed all of the following functions in relation to alloyed HSS during the inquiry period:

- produce or manufacture
- sell in the domestic market
- export to Australia, and
- export to countries other than Australia.

In its exporter questionnaire, Qingdao XiangXing state that they commenced exporting alloyed HSS a 'long time ago'. The company did not provide a detailed listing of its exports of the circumvention goods and the goods subject to the original notices, as requested by the exporter questionnaire.

In addition, Qingdao XiangXing provided a sample of seven mill test certificates of its exports of alloyed HSS to Australia during the inquiry period. These samples included the chemical composition of the HSS containing alloys above the concentration required for the notes to Chapter 72 of the Tariff Act.

In light of the above, the Commission is the satisfied circumvention goods are exported to Australia from China.

Who is the exporter?

In light of information available, the Commission is satisfied that Qingdao XiangXing is the exporter.

6.4.2.2 *Before that exportation, were the circumvention goods slightly modified (subsection 48(2)(b) of the Regulation)?*

Patterns of trade and export volumes

As discussed above, Qingdao XiangXing's exporter questionnaire response identified that the Qingdao XiangXing commenced exporting alloyed HSS 'a long time ago' but the company did not provide a detailed Australia sales listing as requested.

PUBLIC RECORD

The import data obtained from DIBP indicates that Qingdao XiangXing commenced exports of alloyed HSS at the beginning of the 2011 calendar year to two separate importers (**Confidential Attachment 1**). It is noted that the volume supplied to the importer that was not Senturion is insignificant.

Confidential information provided by Qingdao XiangXing with respect to the second importer of alloyed HSS in the inquiry period, including mill test certificates, indicate that the goods, may be non-alloyed HSS, resulting in a potential tariff misclassification and has been referred to DIBP.

The DIBP import data also shows that in relation to Senturion:

- Qingdao XiangXing exported non-alloyed HSS throughout the inquiry period to multiple importers, including to Senturion, which also began to import alloyed HSS at the beginning of 2011;
- Qingdao XiangXing exported non-alloyed HSS before the beginning of the inquiry period (before the imposition of the original anti-dumping measures);
- Qingdao XiangXing continued to export non-alloyed HSS to Australia following the imposition of the anti-dumping measures, through to the end of the inquiry period; and
- Qingdao XiangXing's major importer by volume during the inquiry period (not Senturion) saw a sharp drop-off in volumes of non-alloyed HSS after the imposition of preliminary measures in early 2012, with a complete cessation of imports by that party in mid-2013. That importer at no time imported alloyed HSS from Qingdao XiangXing.

In relation to Senturion, which imported both alloyed and non-alloyed HSS from Qingdao XiangXing during the inquiry period, the DIBP data shows that there was concurrent supply of alloyed and non-alloyed HSS to this importer of similar volumes (that is, there is no discernible switch from one to the other). Senturion has not imported alloyed HSS since late 2013 however they have continued to import non-alloyed HSS until late 2014 (and potentially later).

Physical modifications

In its response to the exporter questionnaire, Qingdao XiangXing advised that there was no difference in their manufacturing process for non-alloyed and alloyed HSS other than the process requiring a different feed material. It is considered that this reflects the same changes reported by Dalian Steelforce (discussed above) whereby alloyed HRC is used instead of non-alloyed HRC.

The exporter questionnaire made no further comment on the physical characteristics of the alloyed HSS supplied by Qingdao XiangXing.

PUBLIC RECORD

The Commission has reviewed the commercial documentation provided by Qingdao XiangXing in its response to the exporter questionnaire, which include several mill certificates for alloyed HSS supplied during the inquiry period. It is observed that these certificates indicate that the alloyed HSS exported by the company include numerous alloys. However, the only alloy at a concentration at or above the threshold required by the notes to Chapter 72 of the Tariff Act (allowing classification as an alloy) appears to be boron, which is present at a concentration of approximately the level of the Tariff Act threshold.

In its response to the importer questionnaire, Senturion identifies that the alloyed HSS it imports from Qingdao XiangXing is for a specific application (livestock yards) and that it is 'lighter and stronger' than standard (non-alloyed) HSS. In their questionnaire responses, Senturion and Qingdao XiangXing provided commercial documentation relating to alloyed HSS supplied to Australia during the inquiry period. This included mill certificates for several importations (attached at **Confidential Attachment 4**).

The Commission has examined these mill certificates and notes that these exhibit that the alloyed HSS supplied by Qingdao XiangXing has high tensile strengths recorded for each product. The Commission has compared these reported tensile strengths with:

- the tensile strengths recorded in mill certificates provided by Dalian Steelforce in relation to its alloyed HSS; and
- the minimum tensile strengths that ATM supplies its non-alloyed HSS to³⁶

and observed that the alloyed HSS supplied by Qingdao XiangXing is significantly higher than these minimum strengths. It is considered this supports Senturion's assertion that the alloyed HSS it purchases from Qingdao Xiang is stronger than standard HSS.

ATM has submitted to the Commission that certain specialised boron-added alloyed HSS exists that has unique physical characteristics of being stronger than non-alloyed HSS, after undergoing a quench and tempered (Q&T) process which activates the strength properties of the boron.³⁷

ATM explained that the market for this Q&T pipe and tube is very limited and the volumes of this type of pipe and tube would be minimal. ATM also submitted that Q&T HSS would be significantly more expensive than boron-added alloyed HSS that has not undergone this process. ATM did not indicate whether this Q&T alloyed HSS has a specific application in livestock yards.

³⁶ As reported in the company's *Pipe + Tube and Profiles Product Manual* available at http://www.austubemills.com.au/uploads/resources/atm_product_manual_2013.pdf.

³⁷ Record of meeting between the Commission and ATM dated 2 June 2015.

PUBLIC RECORD

The documentation provided by Qingdao XiangXing and Senturion did not identify whether the alloyed HSS imported is Q&T. Further, the Commission notes that Qingdao XiangXing has identified there is no price or cost difference between its alloyed and non-alloyed HSS. In light of ATM's submissions and the Commission's general understanding of the Q&T process of steel, the Commission considers that the alloyed steel exported by Qingdao XiangXing is unlikely to be Q&T. However, as detailed above, available evidence indicates that the alloyed HSS imported is stronger than non-alloyed HSS.

The Commission has compared the alleged circumvention goods exported by Qingdao XiangXing to the goods the subject of the original notice exported by that company and has found that the manufacturing process for the goods are similar, with the main difference being the use of alloyed HRC 'feed' materials instead of non-alloyed HRC.

The Commission considers that the available evidence establishes that the physical differences between the alloyed and non-alloyed HSS supplied by Qingdao XiangXing are the presence of boron at around 0.0008% concentrations and a higher tensile strength.

Manufacturing cost and selling price

The exporter questionnaire requested that Qingdao XiangXing provide data that would determine the total difference in cost to make and sell alloyed HSS compared to non-alloyed HSS. Qingdao XiangXing advised that there was no difference in the cost to make and sell alloyed and non-alloyed HSS. Qingdao XiangXing also submitted that there was no difference in their selling price between non-alloyed and alloyed HSS.

The Commission has compared the alleged circumvention goods exported by Qingdao XiangXing to the goods the subject of the original notice supplied by that company and has found that there is no difference in the cost to produce each good or any differences between the selling prices of each good.

Marketing and trade/distribution channels

Qingdao XiangXing's response to the exporter questionnaire submitted that its sales process remained the same for both non-alloyed and alloyed HSS. Further, no evidence has been presented that establishes that there is any difference in the channels of trader or distribution of Qingdao XiangXing's alloyed and non-alloyed HSS.

The Commission has compared the alleged circumvention goods exported by Qingdao XiangXing to the goods the subject of the original notice exported by that company and has found that there is no difference in the way each good is marketed. In comparing the alleged circumvention goods with the goods the subject of the original notice, the Commission has found that there is little to no difference in the channels of trade and distribution for each good.

Interchangeability, end use, customer preference and expectations

Qingdao XiangXing, in their exporter questionnaire, contended that the end use of both non-alloyed and alloyed HSS they export to Australia is fence and animal tubing. They are however unsure as to whether the goods can be used interchangeably.

Senturion, in their importer questionnaire, advised that they on-sell the HSS they import and confirmed the end use of the alloyed HSS as being livestock yarding (rural application). Senturion also advised that, in relation to the alloyed HSS imported from Qingdao XiangXing, to the best of its knowledge:

- there are no uses for that product that are interchangeable with the non-alloyed HSS it imports from Qingdao XiangXing; and
- there may be some end uses for that product that are the same as for non-alloyed HSS, but the company considers that the alloyed HSS is best suited for the application (livestock yards).

However, Senturion has advised that its customers have made specific requests for stronger HSS to best suit their purposes, and hence have expectations that this HSS will be stronger and more suitable for their application.

Qingdao XiangXing advised that their customers specifically request a mix of non-alloyed and alloyed HSS. Senturion confirmed that they specifically request the goods to contain alloys that result in it being considered alloyed HSS.

ATM's application for an anti-circumvention inquiry did not detail specific end uses that non-alloyed and alloyed HSS are used for. However, the Australian market for non-alloyed HSS was examined in Investigation 177 and the final report for that investigation found that:

*HSS is used in a wide variety of applications including: automotive, engineering construction, manufacturing, mining, oil and gas, residential and non-residential construction, temporary fencing, transport, furniture and play equipment, and **rural applications***³⁸ [emphasis added].

In light of the evidence discussed above, the Commission considers that both alloy and non-alloyed HSS exported by Qingdao XiangXing is likely to be used for the same end use of rural applications and there is a degree of interchangeability of that HSS.

In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference.

6.4.3 Conclusion

The Commission finds that, in relation to alloyed HSS exported to Australia by Qingdao XiangXing, a circumvention activity has not occurred pursuant to subsection 48(2) of the Regulations, namely that there has not been a slight modification of goods exported to Australia.

6.5 Tianjin Ruitong Iron and Steel Co., Ltd

No exporter questionnaire response has been received from Tianjin Ruitong Iron and Steel Co., Ltd (Tianjin Ruitong).

³⁸ Investigation 177 Final Report, at Section 5.2.

6.5.1 Overview

As outlined above, Tianjin Ruitong was contacted by the Commission to complete an exporter questionnaire in relation to the inquiry. The company did not provide a response to the exporter questionnaire, or provide any correspondence or declaration that they had not been involved in a circumvention activity.

The Commission identified one possible importer of the circumvention goods from Tianjin Ruitong, which was contacted for completion of an importer questionnaire. No response was provided by that importer.

In the absence of relevant information, the Commission has relied on all available information to make determinations in relation to goods supplied by Tianjin Ruitong during the inquiry periods. The Commission's primary source of reliable information relating to the goods supplied by Tianjin Ruitong is data contained in the DIBP import records.

6.5.2 Assessment against subsection 48(2) of the Regulation

6.5.2.1 Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies? (48(2)(a))

Examination of **Confidential Attachment 1** shows that goods supplied by Tianjin Ruitong to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in China. This HSS was described by the importer as 'other alloy steel pipe', 'pipes of other alloy steel' or 'steel pipes of other alloy steel' in its customs declaration.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from China.

Who is the exporter?

In addition to not cooperating with the inquiry, Tianjin Ruitong did not provide information to the original investigations, or to any other historical investigation undertaken by the Commission to the best of its knowledge.

An internet search for Tianjin Ruitong indicates that the company is a manufacturer of steel products company of steel and steel products.³⁹ Tianjin Ruitong will be treated as the exporter for the purposes of this inquiry.

³⁹ See, for example, <http://www.globalsources.com/si/AS/Tianjin-Ruitong/6008833167185/Homepage.htm>.

6.5.2.2 Before that exportation, were the circumvention goods slightly modified? (48(2)(b))

In respect of exporters for which no exporter questionnaire response has been received, the Commission has relied on all available information, such as that provided by ATM, information provided by other interested parties and information obtained from previous investigations. Where available, any additional information has been referred to; otherwise, the assessment of the relevant factors regarding goods exported by Tianjin Ruitong is the same as that relied on for Dalian Steelforce.

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Tianjin Ruitong:

- supplied non-alloyed HSS to one importer in Australia from the beginning of the inquiry period and ceased exporting non-alloyed HSS in the third quarter of the 2012 calendar year;
- supplied alloyed HSS to the same importer in Australia from the fourth quarter of the 2012 calendar year;
- after ceasing supply of non-alloyed HSS to that importer, did not re-commence supply of non-alloyed HSS; and
- at times, the quarterly volumes of alloyed HS supplied from the end of the 2012 calendar year were at similar levels to non-alloyed HSS supplied before this date, but at other times these quarterly volumes were significantly less than the historical volumes of non-alloyed HSS to that importer.

The Commission notes the publication of the original notice on 3 July 2012 occurred a few months before the time that Tianjin Ruitong ceased supplying non-alloyed HSS and commenced supplying alloyed HSS to Australia.

The Commission notes that there has been a discernible switch in supply by Tianjin Ruitong from non-alloyed to alloyed HSS following the publication of the original notices.

Interchangeability, end use, customer preference and expectations

Import data obtained from DIBP indicates that exports of non-alloyed HSS ceased at the same time as exports of alloyed HSS commenced, coinciding with when the original notice was published. This indicates that the goods can be used interchangeably and have the same end use.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that the goods can be used interchangeably and the end use of each good has not changed. In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference.

6.5.2.3 Is the use or purpose of the circumvention goods the same before and after the slight modification? (48(2)(c))

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by Tianjin Ruitong to Australia, refer to the discussion of subsection 48(2)(b) of the Regulation above.

Following analysis of all available information, noting that there has been no information provided by the supplier of the circumvention goods or their importer with the inquiry, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

6.5.2.4 *Had the circumvention goods not been slightly modified, would they have been subject to the original notice? (48(2)(d))*

The Commission is satisfied that, had Tianjin Ruitong not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

6.5.2.5 *Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods? (48(2)(e))*

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2). These duties are referred to collectively as ‘anti-dumping measures’.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

6.5.3 Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Tianjin Ruitong, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.6 Chengda Steel Co. Ltd / Tianjin Friend Steel Pipe Co., Ltd

No exporter questionnaire response was received from Chengda Steel Co. Ltd (Chengda). A confidential exporter questionnaire response was received from Tianjin Friend Steel Pipe Co. Ltd (Tianjin Friend).

6.6.1 Overview

As outlined above, Chengda was contacted to provide a response to the exporter questionnaire, however responded that it was not the exporter of the circumvention goods but that Tianjin Friend was the exporter of those goods. Chengda did not provide any evidence that this was the case.

However, later correspondence received from Tianjin Friend showed that Chengda had forwarded the exporter questionnaire to Tianjin Friend, as Chengda had in fact supplied the circumvention goods to Australia that were manufactured by Tianjin Friend.

The Commission notes that the exporter questionnaire contained instructions for entities that were not the manufacturer of the supplied goods to complete the questionnaire in so far as it applied to them. Chengda did not do so.

Tianjin Friend completed an exporter questionnaire however no public record version of the questionnaire was submitted.

Consequently, the Commission considers that neither Chengda nor Tianjin Friend have provided non-confidential responses to the exporter questionnaires, and the Commission should have limited regard to the information submitted in Tianjin Friend's questionnaire response as no non-confidential summary has been furnished.

The Commission identified one possible importer of the circumvention goods from Chengda however no contact details were available for that importer. No information was provided by any other interested party in relation to the goods supplied by Chengda or Tianjin Friend.

The Commission's primary source of reliable information relating to the goods supplied by Tianjin Friend is data contained in the DIBP import records. Some confidential information in Tianjin Friend's response to the exporter questionnaire has been taken into account, as discussed in **Confidential Attachment 5**.

6.6.2 Assessment against subsection 48(2) of the Regulation

6.6.2.1 *Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies? (48(2)(a))*

Examination of **Confidential Attachment 1** shows that goods supplied by Chengda to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in China. This HSS was described by the importer as 'boron scaffolding tube' in its customs declaration.

In its response to the exporter questionnaire, Tianjin Friend declared that it had supplied alloyed HSS to Australia via Chengda, and provided a detailed listing of its sales to Australia during the inquiry period. This list contained sales of alloyed HSS identified as containing boron. This forms **Confidential Attachment 6**.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from China.

Who is the exporter?

The information in Tianjin Friend's confidential response to the exporter questionnaire indicates that company is the exporter of the circumvention goods supplied to Australia. Refer to **Confidential Attachment 5** for discussion.

6.6.2.2 *Before that exportation, were the circumvention goods slightly modified? (48(2)(b))*

In respect of exporters for which no exporter questionnaire response has been received, the Commission has relied on all available information, such as that provided by ATM, information provided by other interested parties and information obtained from previous investigations. Where available, any additional information has been referred to; otherwise, the assessment of the relevant factors regarding goods exported by Tianjin Friend is the same as that relied on for Dalian Steelforce.

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Tianjin Friend:

- exported a small volume of non-alloyed HSS to one importer in Australia in the third quarter of the 2013 calendar year; and
- exported alloyed HSS to three different importers in Australia from the fourth quarter of the 2012 calendar year - one of these three importers is the same importer as the non-alloyed HSS was exported to.

The Commission notes the publication of the original notice on 3 July 2012 occurred at approximately the same time that Tianjin Friend commenced supplying alloyed HSS to Australia.

Summary of findings and conclusion

The Commission considers that the available evidence demonstrates that when comparing the alleged circumvention goods with the goods the subject of the notice that following observations have been made.

Pattern of trade and export volumes

As there was no strong history of supply of non-alloyed HSS from Tianjin Friend, there is no clear switch in supply for non-alloyed to alloyed HSS in the inquiry period. In the absence of a non-confidential exporter questionnaire response by the supplier of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed HSS supplied by Tianjin Friend during the inquiry period has been slightly modified through a minor change to the manufacturing process.

6.6.2.3 Is the use or purpose of the circumvention goods the same before and after the slight modification? (48(2)(c))

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by Tianjin Friend to Australia, refer to the discussion of Subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, noting that there has been no non-confidential questionnaire provided by the supplier of the circumvention goods or their importer, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

6.6.2.4 *Had the circumvention goods not been slightly modified, would they have been subject to the original notice? (48(2)(d))*

The Commission is satisfied that, had Tianjin Friend not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

6.6.2.5 *Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods? (48(2)(e))*

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2). These duties are referred to collectively as ‘anti-dumping measures’.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

6.6.3 Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Tianjin Friend, a circumvention activity has occurred pursuant to Subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.7 Roswell S A R L Limited

No exporter questionnaire response was received from Roswell S A R L Limited (Roswell).

6.7.1 Overview

As outlined above, Roswell was not contacted by the Commission to complete an exporter questionnaire due to no contact details being available. No information was provided by any other interested party in relation to the goods supplied by Roswell.

In the absence of relevant information, the Commission has relied on all available information to make determinations in relation to goods supplied by Roswell during the inquiry periods. The Commission’s primary source of reliable information relating to the goods supplied by Roswell is data contained in the DIBP import records.

6.7.2 Assessment against subsection 48(2) of the Regulation

6.7.2.1 *Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies? (48(2)(a))*

Examination of **Confidential Attachment 1** shows that goods supplied by Roswell to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in China. This HSS was described by the importer as 'tube without fittings', 'pipe without fitting', 'high alloy steel tubes', 'high alloy tube scaffolding', 'tube steel alloy', 'gal alloy tube', 'scaffolding components tube without fitting', 'steel tube without fitting' and 'welded steel tubing' in its customs declarations.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from China.

Who is the exporter?

Roswell did not provide information to the original investigations, or to any other historical investigation undertaken by the Commission to the best of its knowledge. For the purposes of this inquiry however Roswell will be treated as the exporter of the alleged circumvention goods.

6.7.2.2 *Before that exportation, were the circumvention goods slightly modified? (48(2)(b))*

In respect of exporters for which no exporter questionnaire response has been received, the Commission has relied on all available information, such as that provided by ATM, information provided by other interested parties and information obtained from previous investigations. Where available, any additional information has been referred to; otherwise, the assessment of the relevant factors regarding goods exported by Roswell is the same as that relied on for Dalian Steelforce.

In the case of no exporter questionnaire responses by the exporter of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed HSS exported by Roswell during the inquiry period has been slightly modified through a minor change to the manufacturing process.

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Roswell:

- supplied a small volume of non-alloyed HSS to one importer in Australia in the fourth quarter of the 2013 calendar year and at no other time supplied non-alloyed HSS during the inquiry period;
- supplied alloyed HSS to the same importer in Australia from the second quarter of the 2014 calendar year; and
- supplied alloyed HSS to a different importer in Australia from the first quarter in the 2013 calendar year.

The Commission notes that the publication of the original notice on 3 July 2012 occurred not long before Roswell commenced supplying alloyed HSS to Australia. As there was no strong history of supply of non-alloyed HSS from Roswell, there is no clear switch in supply for non-alloyed to alloyed HSS in the inquiry period.

However, in the absence of information from interested parties, the Commission cannot be satisfied that Roswell did not make a small exportation of non-alloyed HSS before immediately switching to supply of alloyed HSS with the same physical characteristics, end use and other characteristics to non-alloyed HSS, as detailed in this section).

6.7.2.3 *Is the use or purpose of the circumvention goods the same before and after the slight modification? (48(2)(c))*

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by Roswell to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, noting that there has been no information provided by the supplier of the circumvention goods or their importer with the inquiry, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

6.7.2.4 *Had the circumvention goods not been slightly modified, would they have been subject to the original notice? (48(2)(d))*

The Commission is satisfied that, had Roswell not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

6.7.2.5 *Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods? (48(2)(e))*

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsection 269TG(2) or 269TJ(2). These duties are referred to collectively as ‘anti-dumping measures’.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

6.7.3 Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Roswell, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulation, namely that there has been a slight modification of goods exported to Australia.

6.8 Alpine Pipe Manufacturing SDN BHD

No exporter questionnaire was received from Alpine Pipe Manufacturing SDN BHD (Alpine).

6.8.1 Overview

As outlined above, Alpine was contacted by the Commission to complete an exporter questionnaire. Alpine did not provide a response to the exporter questionnaire, or provide any correspondence or declaration that they had not been involved in a circumvention activity. The Commission identified one possible importer of the circumvention goods from Alpine, which was contacted for completion of an importer questionnaire. No response was provided by that importer.

In the absence of relevant information, the Commission has relied on all available information to make determinations in relation to goods supplied by Alpine during the inquiry periods. The Commission's primary source of reliable information relating to the goods supplied by Alpine is data contained in the DIBP import records.

6.8.2 Assessment against subsection 48(2) of the Regulation

6.8.2.1 Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies? (48(2)(a))

Examination of **Confidential Attachment 1** shows that goods supplied by Alpine to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in Malaysia. This HSS was described by the importer as 'alloy hollow section' in its customs declaration.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from Malaysia.

Who is the exporter?

The Commission has observed a switch in Alpine's supply to one importer from non-alloyed HSS to alloyed HSS (see below). That importer imported non-alloyed HSS during the investigation period of Investigation 177.

Alpine was visited as part of Investigation 177 and for the purposes of that investigation, the Commission found that Alpine was the exporter of the non-alloyed HSS during that investigation's investigation period. Consequently, Alpine was considered the exporter of the non-alloyed HSS to the importer who has since begun importing alloyed HSS.

The Commission is satisfied that Alpine is the exporter of alloyed HSS to Australia from Malaysia.

6.8.2.2 Before that exportation, were the circumvention goods slightly modified? (48(2)(b))

In respect of exporters for which no exporter questionnaire response has been received, the Commission has relied on all available information, such as that provided by ATM, information provided by other interested parties and information obtained from previous investigations. Where available, any additional information has been referred to; otherwise, the assessment of the relevant factors regarding goods exported by Alpine is the same as that relied on for Dalian Steelforce.

In the case of no exporter questionnaire provided by the supplier of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed HSS supplied by Alpine during the inquiry period has been slightly modified through a minor change to the manufacturing process.

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Alpine:

- exported non-alloyed HSS during the inquiry period to multiple importers; and
- exported alloyed HSS to one importer in Australia from the fourth quarter of the 2013 calendar year; and
- no other importer purchased alloyed HSS from Alpine during the inquiry period.

In relation to the one importer that imported alloyed HSS during the inquiry period, the DIBP import data shows:

- that importer commenced importing small volumes of non-alloyed HSS in the third quarter of calendar year 2011 and this continued throughout the inquiry period;
- the importer commenced importing alloyed HSS in volumes that were significantly larger than the previous importations of non-alloyed HSS and this continued throughout the remainder of the inquiry period; and
- that importer also commenced importing alloyed HSS from Dalian Steel at the same time as imports of alloyed HSS commenced from Alpine.

As noted above, alloyed HSS exported by Dalian Steelforce has been found to been involved in a circumvention activity.

6.8.2.3 Is the use or purpose of the circumvention goods the same before and after the slight modification? (48(2)(c))

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by Alpine to Australia, refer to the discussion of subsection 48(2)(b) of the Regulation above.

Following analysis of all available information, noting that there has been no information provided by the supplier of the circumvention goods or their importer with the inquiry, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

6.8.2.4 *Had the circumvention goods not been slightly modified, would they have been subject to the original notice? (48(2)(d))*

The Commission is satisfied that, had Alpine not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

6.8.2.5 *Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods? (48(2)(e))*

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsection 269TG(2) or 269TJ(2). These duties are referred to collectively as 'anti-dumping measures'.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

6.8.3 Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Alpine, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.9 Kukje Steel Co. Ltd

A submission dated 29 June 2015 was received from Kukje Steel Co. Ltd (Kukje), as well as a response to the exporter questionnaire. In the submission and questionnaire response, Kukje contended that they had not exported any volumes of alloyed HSS during the inquiry period.

Import data obtained from DIBP confirms this submission and no action is to be taken in relation to exports by Kukje from Korea.

6.10 J Steel

A submission dated 25 November 2015 was received from J Steel contending that goods classified as alloyed HSS in the import database were in fact non-alloyed HSS. Confidential information provided by J Steel confirmed that these goods were not the circumvention goods.

A referral is to be made to Australian Border Force to ensure that amendments have been made to the import goods from J Steel and appropriate dumping duties paid.

No further action is to be taken in relation to goods supplied by J Steel from Korea.

6.11 Summary of findings of circumvention activities

The Commission has found that a circumvention activity, specifically the slight modification of goods exported to Australia, have occurred with respect to the following activities:

Exporter	Country of export	Nature of circumvention activity
Dalian Steelforce Hi-Tech Co., Ltd	China	Slight modification of goods – addition of alloys
Tianjin Ruitong Iron and Steel Co., Ltd	China	Slight modification of goods – addition of alloys
Tianjin Friend Steel Pipe Co., Ltd	China	Slight modification of goods – addition of alloys
Roswell S A R L Limited	China	Slight modification of goods – addition of alloys
Alpine Pipe Manufacturing SDN BHD	Malaysia	Slight modification of goods – addition of alloys

Table 7 – Summary of circumvention activities found

7 RECOMMENDED CHANGES TO NOTICES

7.1 Recommendation

The Commissioner recommends that the original notices be amended to include alloyed goods exported to Australia by certain named exporters.

7.2 Legislative framework

After conducting an anti-circumvention inquiry, section 269ZDBG specifies that the Commissioner must give the Parliamentary Secretary a report which recommends either:

- that the original notice remain unaltered;⁴⁰ or
- that the original notice be altered because a circumvention activity has occurred, and what alterations ought to be made to that original notice.⁴¹

Subsection 269ZDBH(1)(b) requires that, when making a declaration that an original notice is to be altered, the Parliamentary Secretary's declaration must specify the date from which those changes take effect.

Subsection 269ZDBH(8) provides that, when specifying a date in a declaration under (1)(b), the Parliamentary Secretary is not able to specify a date earlier than the date of publication of the public notice of initiation of an anti-circumvention inquiry.

7.3 Proposed recommendation at time of SEF

At the time of the SEF, the Commission's position was that the original dumping duty notice ought to be altered such that boron-alloyed HSS exported from China by Dalian Steelforce, and all alloyed HSS exported from China by Tianjin Friend, Tianjin Ruitong, Roswell and by Alpine from Malaysia be subject to the measures.

The Commission also proposed that the original countervailing duty notice ought to be altered such that boron-alloyed HSS exported from China by Dalian Steelforce, and all alloyed HSS being exported from China by Tianjin Friend, Tianjin Ruitong and Roswell be subject to the measures.

Further, the Commission proposed to recommend that the original notices be altered so as to have effect from the date of initiation of these inquiries, being 11 May 2015.

⁴⁰ Subsection 269ZDBG(1)(c).

⁴¹ Subsection 269ZDBG(1)(d).

7.4 Submissions in response to SEF

ATM objected to the Commission's proposed recommendations, arguing that to focus the alterations on the presence of boron would simply encourage the identified exporters to use other alloys to further circumvent the measures set out in the relevant notice. ATM further considers that other, un-named exporters will not be deterred from incorporating alloys into the goods (and avoiding the measures). ATM does not consider that this approach is consistent with the intention of the anti-circumvention provisions. However, ATM is supportive of the Commission's proposed recommendation to alter the notices so that they have effect from the respective dates of initiation.⁴²

Dalian Steelforce in two submissions⁴³ and an unnamed importer in another submission⁴⁴ argue that no slight modification of the non-alloyed HSS has or could occur to change the product to alloyed HSS. By virtue of the presence of differing levels of alloying elements in the HRC used to produce HSS, the end product is either alloyed HSS or non-alloyed HSS, and therefore it is not possible to "slightly modify" the non-alloyed HSS in order to avoid the anti-dumping measures – the products are separate and distinct.

7.4.1 Commission's analysis

At the time of the SEF the Commission's position was construed narrowly, focusing only on addressing the specific instances of circumvention activity which had demonstrably occurred. The available evidence demonstrated the use of boron-alloyed HSS for this purpose, but the Commission considered that other alloys may also be used and therefore proposed a broader alteration to the notice concerning the uncooperative exporters whose export behaviour demonstrated a circumvention activity had occurred.

As noted in Chapter 4, the Commission accepts that boron-alloyed HSS is used for reasons other than avoiding the anti-dumping measures imposed on the goods. This is demonstrated by the DIBP import database, which shows that some trade in alloyed HSS existed prior to the imposition of the measures, and continued unaffected following the imposition of measures. However, the Commission also noted the submission of ATM⁴⁵ which argued that to obtain an increased strength and higher hardness benefit from the legitimate addition of boron, it would be necessary to subsequently heat treat the product by quench and tempering processes. Accordingly, the Commission sought to test these assertions and to establish whether a particular proportion of boron, a particular end use or some other particular description of the steel (such as production treatments like quench and tempering) might be able to be specified in the original notices such that any "legitimate" trade might be unaffected.

⁴² Submission received from ATM dated 4 February 2016

⁴³ Submission received from Dalian Steelforce submitted by Moulis Legal on 25 November 2015 and submission received from Dalian Steelforce submitted by Moulis Legal on 25 November 2015.

⁴⁴ Submission received from an unnamed importer received on 25 November 2015.

⁴⁵ Submission received from ATM dated 9 September 2015.

7.4.2 Metallurgical advice

The Commission subsequently engaged Emeritus Professor Druce Dunne of the University of Wollongong to provide an independent explanation of the practical impact of the presence of boron in steel products.⁴⁶ The advice sought from Professor Dunne was to address the following questions:

1. *What effect does the addition of boron have on HSS and galvanised (flat rolled) steel?*
2. *At what point, or in what proportion, does the addition of boron have a measurable impact on the performance characteristics of HSS and galvanised steel? What are these effects?*
3. *To what extent do these effects differ according to the processes used to manufacture the product (such as quench and tempering)?*
4. *Are there any end-use applications of HSS and galvanised steel that contain boron above 0.0008% concentration where the end use is different before and after the addition of boron (i.e. where non-boron goods would not be suitable)?*
5. *What are these applications, and what are the physical characteristics of the steel necessary to meet the requirements of these applications? For example, can these be determined by the level of boron, the particular production process required (such as quenched and tempered), or by reference to some other characteristic not present in the non-alloyed steel (such as an improved tensile strength)?*
6. *Are there any other factors which the Commission ought to consider to achieve its objective of not disrupting legitimate trade in alloyed HSS or alloyed galvanised steel?*

Professor Dunne's report can be found on the public record.⁴⁷

The Commission considers that Professor Dunne's report demonstrates that it is impractical to alter the original notices to refer to boron in a defined proportion, HSS intended for certain defined end uses or otherwise manufactured using defined processes in order to prevent further circumvention activity taking place. In particular, the Commission notes that an importer of alloyed HSS would have access to limited information regarding these parameters and would be unable to readily assess whether the imported goods are subject to measures defined in these terms.

7.4.3 Commission's approach to interpreting "slight modification"

The Commission observes that the non-exhaustive list of factors which are listed in subsection 48(3) of the Regulation contemplate that the Commissioner may compare the goods and the circumvention goods from the beginning of their existence (from the production process) through to their end use. The degree to which the goods are comparable will depend on the circumstances of the inquiry and the nature of the goods being compared; in that sense, "slight modification" is not constrained or determined solely by reference to any one factor.

⁴⁶ For use in Inquiries 290 and 298, and Inquiry 291.

⁴⁷ Item 031 on the public record refers.

The Commission's view is that alloyed HSS and non-alloyed HSS are separate and distinct products in terms of their chemical composition. However, of the alloyed HSS sold by those exporters found to be circumventing the anti-dumping measures, there is little practical difference between these products and non-alloyed HSS in terms of the good's cost, how it is marketed or the channels of trade through which it is sold, and no apparent consumer preference for alloyed HSS over non-alloyed HSS beyond certain applications. There are some minor differences in weldability, but the advice referred to by submissions suggests that the presence of boron in alloyed HSS requires greater care to be taken by the customer. The key difference between the products has been the changes in export volumes of the goods and the circumvention goods, which coincides with the imposition of measures on non-alloyed HSS. No other explanation as to why there was such a significant switch in the market by the exporters that have been identified as engaging in circumvention activity is persuasive.

7.4.4 Impact of metallurgical advice on Commission's recommendations

Given the complex chemistry demonstrated by Professor Dunne's report concerning the effect of boron in steels, the Commission considers that it is reasonable to conclude that other alloying elements (such as chromium, molybdenum and so on) would also have varying practical effects on steel products, and that these products may have a specific engineering purpose in certain circumstances.

The Commission has obtained evidence from the cooperating exporters that boron-alloyed HSS has been imported into Australia, and has concluded (as outlined in Chapter 6) that the boron was added for the purpose of slightly modifying the goods in order to avoid the anti-dumping measures set out in the original notices. The Commission notes that no evidence has been obtained which establishes what alloying elements have been added to the raw material used to manufacture alloyed HSS by the uncooperative exporters, but has concluded that the weight of all the remaining available evidence supports a conclusion that these elements were added for the purpose of slightly modifying the goods in order to avoid the anti-dumping measures set out in the original notices.

The Commission considers that some aspects of the argument made by ATM in its submissions in response to the SEF⁴⁸ are persuasive: it would be an unusual outcome if certain exporters that have previously engaged in a particular circumvention activity based on the addition of boron could simply employ a different alloy to continue avoiding the measures. The Commission notes that the data it has relied on to demonstrate the clear shift in export behaviour (moving from goods subject to measures to alloyed products) indicates that circumvention activity is a commercially attractive response for some market participants. The Commission notes the significant discrepancy between the interim dumping duty payable by importers on the goods subject to measures, and the comparatively inexpensive additional cost of boron or other alloying elements that currently enables an importer to avoid those measures.

⁴⁸ Item 020 on the public record refers.

The Commission does not consider that ATM's proposal that the original notices should be extended to alloyed HSS exported by all exporters is reasonable, for similar reasons. The exporters that have been identified as having engaged in circumvention activity have substantially changed their export activity in order to avoid the measures, which is behaviour that the anti-circumvention framework in the Act has been established to address. For all other exporters examined by the Commission, there is little – if any – discernible change in their behaviour which would suggest that a circumvention activity has occurred.

7.5 Date of effect

The Commission was alerted to some practical impacts of altering the original notices to the extent that they would have effect on alloyed HSS from the date of initiation of the inquiries. Specifically, interested parties noted that, should the measures be imposed retrospectively, the legislated timeframe in which an importer could apply for a duty assessment (being six months after the completion of the relevant importation period) would have passed by the time the Parliamentary Secretary made her decision.⁴⁹ As a result, those importers may become liable for an interim dumping duty and / or interim countervailing duty payment for which it would be unable to apply for an assessment of final duty.

The Commission subsequently published a note on the public record which acknowledged this issue.⁵⁰ That note indicated the impending expiry of the application period for the relevant importation period that would be affected by any retrospective imposition of measures on the circumvention goods. The application deadline, 3 January 2016, was advised to be inflexible, but the Commission committed to providing importers that applied within that timeframe an opportunity to provide further information in support of their application if the measures were applied retrospectively.

The Commission provided no further advice to interested parties on this matter. However, the Commission notes that importers that paid duty on non-alloyed HSS would have standing to apply for a duty assessment on those goods. The Commission considers that the note clearly indicated the Commission's intention to undertake duty assessments on both the goods and the circumvention goods if requested to do so by an importer, and that its willingness to accept additional information would provide affected parties with an opportunity to pay any interim duty liability arising from the retrospective application of the measures and – if appropriate – seek an assessment of the final duty payable.

7.6 Conclusion and recommended alterations to the original notices

In light of the findings outlined in Chapter 6 that circumvention activities have occurred in relation to HSS exported from China and Malaysia, the Commissioner recommends that the original notices relating to HSS be altered to amend the description of the goods subject to the notice, as follows:

⁴⁹ Division 4 of Part XVB of the *Customs Act 1901* refers.

⁵⁰ Item 030 on the public record for Inquiry 291, published 16 December 2015.

Section 269TG(2) notice

The goods description in the original dumping duty notice is recommended to be amended to read as follows:

certain hollow structural sections (the goods) classified to tariff subheadings 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) in Schedule 3 of the Customs Tariff Act 1995.

and

certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

China by Dalian Steelforce Hi-Tech Co.;

China by Tianjin Friend Steel Pipe Co., Ltd;

China by Tianjin Ruitong Iron and Steel Co., Ltd;

China by Roswell S A R L Limited;

Malaysia by Alpine Pipe Manufacturing SDN BHD.

The text in **bold** above indicates the recommended changes to the original notice.

All other elements of the goods description are to remain unchanged.

Section 269TJ(2) notice

The goods description in the original dumping duty notice is recommended to be amended to read as follows:

certain hollow structural sections (the goods) classified to tariff subheadings 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) in Schedule 3 of the Customs Tariff Act 1995.

and

certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

China by Dalian Steelforce Hi-Tech Co.;

China by Tianjin Friend Steel Pipe Co., Ltd;

China by Tianjin Ruitong Iron and Steel Co., Ltd;

China by Roswell S A R L Limited.

The text in **bold** above indicates the recommended changes to the original notice.

All other elements of the goods description are to remain unchanged.

7.7 Commencement

The Commissioner notes that the legislation (outlined at section 7.2) indicates that, if the Parliamentary Secretary declares that a notice is to be altered, that declaration must indicate the date of effect of those alterations. The Commissioner notes that the earliest date available to her is the date of publication of the public notice of initiation of an anti-circumvention inquiry.

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The Commissioner considers that the application of the anti-dumping measures from the date of initiation of these inquiries provides the most effective remedy to the Australian industry available under the terms of the legislation.

Accordingly, the Commissioner recommends that the alteration of the original notices referred to above have effect from the date of initiation of the inquiry being 11 May 2015.

8 RECOMMENDATION

The Commissioner is satisfied that:

- for the purposes of subsection 269ZDBB(6) of the Act, a circumvention activity, in relation to a notice under subsection 269TG(2) and subsection 269TJ(2), in the circumstances prescribed by section 48 of the Regulation, has occurred;
- the circumvention activity, being a slight modification of the goods exported to Australia from China and Malaysia, has occurred because:
 - the circumvention goods are exported to Australia from a foreign country (China) in respect of which notices under subsection 269TG(2) and subsection 269TJ(2) of the Act apply;
 - the circumvention goods are exported to Australia from a foreign country (Malaysia) in respect of which a notice under subsection 269TG(2) of the Act applies;
 - before that export, the circumvention goods were slightly modified by being alloyed with small quantities of alloys;
 - the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
 - had the circumvention goods not been so slightly modified, they would have been the subject of the notice; and
 - neither section 8 nor 10 of the Dumping Duty Act applies to the export of the circumvention goods to Australia.

The Commissioner recommends that the Parliamentary Secretary declare:

- under subsection 269ZDBH(1)(b) of the Act that, for the purposes of the Act and the Dumping Duty Act:
 - the notice under subsection 269TG(2) be altered by amending the goods description to:

certain hollow structural sections (the goods) classified to tariff subheadings 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) in Schedule 3 of the Customs Tariff Act 1995.

and

certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- *China by Dalian Steelforce Hi-Tech Co.;*
- *China by Tianjin Friend Steel Pipe Co., Ltd;*
- *China by Tianjin Ruitong Iron and Steel Co., Ltd;*
- *China by Roswell S A R L Limited;*
- *Malaysia by Alpine Pipe Manufacturing SDN BHD.*

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- the notice under subsection 269TJ(2) be altered by amending the goods description to:

certain hollow structural sections (the goods) classified to tariff subheadings 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) in Schedule 3 of the Customs Tariff Act 1995.

and

certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- *China by Dalian Steelforce Hi-Tech Co.;*
 - *China by Tianjin Friend Steel Pipe Co., Ltd;*
 - *China by Tianjin Ruitong Iron and Steel Co., Ltd;*
 - *China by Roswell S A R L Limited.*
- that the alterations specified in the declaration are taken to have been made to the original notices for HSS exported from China and Malaysia, with effect on and after 11 May 2015.

9 APPENDICES AND ATTACHMENTS

Appendix 1	Original notices
Confidential Attachment 1	DIBP Import Data and Commission's Analysis
Confidential Attachment 2	Dalian Steelforce – Export Sales Listing
Confidential Attachment 3	Dalian Steelforce – Differences in manufacturing process between alloyed and non-alloyed HSS
Confidential Attachment 4	Qingdao XiangXing – Supporting documents
Confidential Attachment 5	Tianjin Friend – Supporting documents
Confidential Attachment 6	Tianjin Friend – Export sales via Chengda

APPENDIX 1



**Commonwealth
of Australia**

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SPECIAL



**Australian Government
Australian Customs and
Border Protection Service**

Customs Act 1901 - Part XVB

Certain Hollow Structural Sections

exported from

the People's Republic of China (China)

Findings in relation to a subsidisation investigation

Notice under section 269TJ(2) of the *Customs Act 1901*

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its investigation into the subsidisation of certain hollow structural sections (the goods), classified to tariff subheading subheadings 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) in Schedule 3 of the *Customs Tariff Act 1995*, exported to Australia from the People's Republic of China (China).

In International Trade Remedies Report No. 177 (REP 177) Customs and Border Protection recommended the publication of a countervailing duty notice in respect of the goods. REP 177 outlines the investigations carried out by Customs and Border Protection, a statement of the reasons for the recommendations contained in REP 177, material findings of fact or law on which Customs and Border Protection's recommendations were based, and particulars of the evidence relied on to support the findings.

On 6 June 2012, Customs and Border Protection terminated its subsidy investigation with respect to two Chinese exporters Huludao City Steel Pipe Industrial Co., Ltd (Huludao) and Qingdao Xiangxing Steel Pipe Co., Ltd. (Qingdao Xiangxing) (Termination Report No. 177 sets out the reasons for this termination).

Particulars of the subsidy programs and level of subsidisation established for exporters are set out in the following table:

Exporter	Countervailable subsidy program number	Subsidy Margin
Dalian Steelforce Hi-Tech Co., Ltd.	5 & 20	11.1%
Hengshui Jinghua Steel Pipe Co., Ltd	20	4.6%
Zhejiang Kingland Pipeline & Technologies Co. Ltd	19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 34 & 35	2.2%
Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd	20	7.9%

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PUBLIC RECORD

Selected non-cooperating exporters	1, 2, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32 & 35	54.8%
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* The names and details of each of the above countervailable subsidy programs are contained within REP 177.

I, JASON CLARE, Minister for Home Affairs, have considered, and accepted, the recommendations of Customs and Border Protection, the reasons for the recommendations and the material findings of fact on which the recommendations are based.

I am satisfied that a countervailable subsidy has been received in respect of the goods that have already been exported to Australia; and that a countervailable subsidy may be received in respect of like goods that may be exported to Australia in the future; and because of that, material injury to the Australian industry producing like goods has been caused, is being caused, or maybe caused in the future. Therefore under s.269TJ(2) of the Act, I **DECLARE** that s.10 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from China to Australia (other than Huludao and Qingdao Xiangxing).

The considerations relevant to my determination of material injury to the Australian industry caused by subsidisation are the size of the subsidy margins, the effect of subsidised imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry including price depression, price suppression and reduced profits and profitability. In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of subsidised goods, and have not attributed injury caused by other factors to the exportation of those subsidised goods.

Interested parties may seek a review of this decision by lodging an application with the Trade Measures Review Officer, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the non-injurious prices of the goods (as ascertained in the confidential tables to this notice) will not be published as they may reveal confidential information.

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 6173, fax number (02) 6275 6990 or email itrops3@customs.gov.au.

Dated this 12th day of June, 2012.

JASON CLARE
Minister for Home Affairs



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of Australia

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SPECIAL



Australian Government
Australian Customs and
Border Protection Service

Customs Tariff (Anti Dumping) Act 1975

Certain Hollow Structural Sections

exported from

the People's Republic of China (China)

Notice pursuant to subsections 10(3B) and 10(3D) of the *Customs Tariff (Anti Dumping) Act 1975*

I, JASON CLARE, Minister for Home Affairs, having decided to issue a notice pursuant to s. 269TJ(2) of the *Customs Act 1901* in respect of certain hollow structural sections described in that notice (the goods), DIRECT pursuant to subsection 10(3B) of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act), that the interim countervailing duty referred to in paragraph 10(3A) in respect of certain hollow structural sections exported from the People's Republic of China to Australia be ascertained as a proportion of the export price of those particular goods.

Pursuant to subsection 10(3D) of the *Customs Tariff (Anti Dumping) Act 1975*, I have had regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (i) the export price of those particular goods, and
- (ii) that amount of the interim countervailing duty as so fixed, and
- (iii) the amount of interim dumping duty as fixed under s.8

does not exceed the non-injurious price of goods of that kind as ascertained.

This notice applies to the goods and like goods entered for home consumption on and after the date of the publication of this notice.

Dated this 12th day of June, 2012.

JASON CLARE
Minister for Home Affairs

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SPECIAL



Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 - Part XVB

Certain Hollow Structural Sections

**Exported from the People's Republic of China (China), the
Republic of Korea (Korea), Malaysia and Taiwan**

Findings in relation to a dumping investigation

Notice under section 269TG (1) and (2) of the *Customs Act 1901*

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its investigations into the alleged dumping of certain hollow structural sections (the goods), classified to tariff subheadings 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) in Schedule 3 of the *Customs Tariff Act 1995*.

In International Trade Remedies Report No. 177 (REP 177) Customs and Border Protection recommended the publication of a dumping duty notice in respect of the goods exported to Australia from China, Korea, Malaysia and Taiwan. REP 177 outlines the investigations carried out by Customs and Border Protection, a statement of the reasons for the recommendations contained in REP 177, material findings of fact or law on which Customs and Border Protection's recommendations were based, and particulars of the evidence relied on to support the findings.

On 6 June 2012, Customs and Border Protection terminated its investigation into the goods exported from Thailand (Termination Report No. 177 sets out the reasons for this termination).

Particulars of the dumping margins established for exporters and an explanation of the methods used to compare export prices and normal values to establish each dumping margin are set out in the following table:

Exporter	Dumping Margin	Method to establish dumping margin
<i>China</i>		
Dalian Steelforce Hi-Tech Co. Ltd	13.4%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss.269TACB(2)(a) of the <i>Customs Act 1901</i> .
Hengshui Jinghua Steel Pipe Co., Ltd	23.7%	
Huludao City Steel Pipe Industrial Co., Ltd	10.1%	
Qingdao Xiangxing Steel Pipe Co., Ltd	18.0%	

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Zhejiang Kingland Pipeline & Technologies Co. Ltd	10.2%	
Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd.	32.0%	
Selected non-cooperating exporters	57.1%	
<i>Korea</i>		
Kukje Steel Co., Ltd	3.2%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss. 269TACB(2)(a) of the <i>Customs Act 1901</i> .
Selected non-cooperating exporters	8.9%	
<i>Malaysia</i>		
Alpine Pipe Manufacturing SDN BHD	3.0%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss. 269TACB(2)(a) of the <i>Customs Act 1901</i> .
Selected non-cooperating exporters	20.0%	
<i>Taiwan</i>		
Shin Yang Steel Co., Ltd	2.8%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss. 269TACB(2)(a) of the <i>Customs Act 1901</i> .
Ta Fong Steel Co., Ltd	2.4%	
Selected non-cooperating exporters	5.3%	

I, JASON CLARE, Minister for Home Affairs, have considered, and accepted, the recommendations of Customs and Border Protection, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 177. I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under s.269TG(1) of the *Customs Act 1901* (the Act), I DECLARE that s.8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- the goods; and
- like goods that were exported to Australia after 23 December 2011 (when the Chief Executive Officer of Customs and Border Protection made a Preliminary Affirmative Determination under s.269TD(4)(a) of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused, is being caused, or maybe caused in the future. Therefore under ss.269TG(2) of the Act, I DECLARE that s.8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

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This declaration applies in relation to all exporters of the goods and like goods from China, Korea, Malaysia and Taiwan.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry including price depression, price suppression and reduced profits and profitability. In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Trade Measures Review Officer, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 6173, fax number (02) 6275 6990 or email itrops3@customs.gov.au.

Dated this 12th day of June, 2012.

JASON CLARE
Minister for Home Affairs