

3 July 2014

Mr Adam Yacono
Manager
Anti-Dumping Commission
C/o Australian Customs and Border Protection Service
Customs House
1010 La Trobe Street
DOCKLANDS VICTORIA 3008

Public File

Dear Mr Yacono,

Hot Rolled Structural Sections (HRSS) exported from Japan, Korea, Taiwan and Thailand – Like goods to the GUC

Background

I refer to previous representations by OneSteel Manufacturing Pty Ltd (“OneSteel”) concerning the identification of the product sold in the domestic market of the exporting countries that most closely resembles the AS/NZS 3679.1 -300 (“G300”) grade HRSS that is exported to Australia and our submission of 30 June 2014 attaching an independent expert report on the subject. The purpose of this submission is to bring to the attention of the Commission that its approach to date to the identification process referred to cannot be sustained as it involves a conflation of the separate issues of like goods and due allowance adjustments. While cost differentials between product grades may have peripheral relevance for the purpose of assessing normal value adjustments under s269TAC (8) they have no relevance in the identification of like goods.

The Commission, however, has based its preliminary assessment of the appropriate comparable product on a consideration of relative production cost data. No authority is cited for this approach and we submit that it is clearly contrary to the requirements of the *Customs Act*, the *Anti-Dumping Agreement* (ADA) and the usual practice of the Commission itself. In cases where normal value is to be ascertained under s.269TAC(1) and the goods sold in the country of export are not identical to the goods exported to Australia, a fair comparison of domestic and export sales involves a two stage process. The first stage is to identify domestic goods with characteristics closely resembling the export goods and the second is to make any adjustments necessary to compensate for the impact on the price comparison process of timing differences, physical differences and the terms or circumstances of the two sales.

WTO jurisprudence and Australian case law make it clear that in the first stage of the process the emphasis must be on the physical traits of the two products being compared. This emphasis resonates in the Commission’s own policy expressed in the Dumping Manual (p.8-10) where there is no reference to cost being a relevant consideration in determining whether two products closely resemble each other. As we shall see below the application of this policy in the present matter inevitably results in HRSS SM490(A,B,C) grades (“SM490A”) being identified as the products that most closely resembles G300 grade exported to Australia, a view that is fully supported by the expert report referred to above.

The second stage of the process must focus on observed price differences because the statutory objective implicit in s269TAC(1) and (8) is to establish a domestic price that represents a fair comparison with the export price. While a cost difference may constitute corroborative evidence of

the reasonableness of a price difference it cannot of itself constitute grounds for an adjustment. This principle informs the Commission's own routine practice of rejecting claims for a normal value adjustment based on differential costs unless there is some evidence of that differential influencing the domestic price of the goods¹.

Physical and Chemical requirements

In support of OneSteel’s claims concerning the exporter’s domestic grades considered to most closely resemble the grade exported to Australia (i.e. an SM490A equivalent), OneSteel has previously submitted evidence based upon internationally recognised quality standards to which the goods have been certified.

The independent standards allow an appropriate comparison of products based on a range of attributes that include Mechanical and Chemical requirements developed to ensure products meet the functionality requirements for market application(s) to which the given standard pertains. For convenience, OneSteel has again included a summary of key minimum Mechanical and Chemical properties of grades that are certified to comply with the relevant standards in Table 1.

OneSteel draws the Commission’s attention to the scope of the standards that describe the functionality of grades produced to SS400, SM490A and G300 (as shown in Table 2). The inclusion of welding criteria that is present in both SM grades and G300 is absent in SS grades. A customer who is looking to purchase HRSS that are certified for a welding application would not be considering an SS grade as the product delivered would need to undergo additional testing to determine it’s weldability. A product such as an SM or G300 grade would be delivered certified suitable for welding against the standard requirements and would thus command a price premium in the market.

OneSteel maintains its assessment that model matching based on the total range of qualities demonstrates that goods produced to SM490A grade more closely resemble the goods exported to Australia as G300 than grade SS400.

Table 1 _ Comparison of key physical and chemical requirements.

Grade	Min Yield (MPa)	Chemistry Requirement for Carbon, Silicon, Manganese	Min Tensile (MPa)
SS400 AS3679.1- 300 Variance	215 to 245 280 to 320 -30%	None specified Specific Not comparable	400 440 -10%
SM490A AS3679.1-300 Variance	315 to 325 280 to 320 11% to 2%	Specific Specific Comparable	490 440 +10%

¹ Investigation 225 – Item 029: p.50

Table 2.- Comparison of Scope definitions

Standard	Applicable Grades	Scope Description
JISG3101	SS400	Hot rolled steel for general structures....
AS/3679.1	300	For general structural and engineering applications, all grades are suitable for welding , riveting and bolting
JIS G3106	SM490A	Hot rolled steel for bridges, ships, rolling stock....and other structures that have superior weldability

Exporter Visit Reports

JFE Bars and Shapes Corporation

The Commission has completed a verification report following its visit to JFE Bars and Shapes Corporation (“JFE”). In the Report the Commission made an adjustment for physical differences between the like goods sold by JFE on its domestic market (i.e. deemed to be grade SS400 equivalent) and the goods exported to Australia (i.e. grade G300).

The Commission based the adjustment to JFE’s normal value on differences that could be “quantified and supported by verifiable evidence” in JFE’s production costs between the like goods and the exported goods.

While cost differences between grades may be a relevant consideration in making 'due allowance' adjustments they are not always readily discernible given the varying levels of detail that exist within production accounting systems for different manufacturers. OneSteel submits, for the reasons set out earlier in this submission, that the Commission must base its normal value adjustments primarily on observed price differences between the domestic goods that most closely resemble the goods exported to Australia and G300 exports. The Commission should be able to make this assessment based on pricing information provided by JFE at the exporter visit. OneSteel’s claims that there are price differences between different grades in the Japanese market is further supported by the confidential attachments.²

Tung Ho Steel Enterprise Co

OneSteel notes that the investigating team did not make a specification adjustment to Tung Ho Steel Enterprise Co (“Tung Ho’s”) normal value for differences between the domestic and export sales on the basis that it was unable to identify cost differences based on the groupings provided by Tung Ho.

The Exporter verification states

THS explained that when classifying grades into the PCN system, it first considered whether there are any special requirements for that steel grade. These special requirements included phosphor and sulphur limitations, PCM requirements, TMCP process and tolerances of dimensions. The second consideration was whether it was necessary to add any fine grains (ferroalloy) to the steel.

² Confidential Attachments 1 & 2

THS stated that the addition of a ferroalloy has a significant cost which impacts on the cost of the goods, and that differences between steel grades on the basis of strength have a minor impact on the cost of goods. Thus, THS did not consider it appropriate to group 3679G300 with SM490A, as the latter has ferroalloys added which increased the cost of that grade when compared to 3679G300. We considered the approach presented by THS and considered that this methodology was appropriate.

THS stated that it designed the chemical composition and production process based on the total quality requirements, which were not limited to strength³.

However THS's own assessment criteria are inconsistent with how they have grouped the goods.

- G300 and SM490A have similar requirements for carbon equivalents (determines weldability) and none are required or specified for grade SS400.
- G300 and SM490A have similar minimum yield strengths. SS400 is up to 30% lower.
- Tensile strength is not determinative as G300 is half way between SS400 and SM490A and as discussed in the independent expert report,⁴ not the most critical factor is structural in a majority of situations.
- THS submission dated 10th June indicates that ferroalloys are required to produce grade 300 and SM490A.

OneSteel agrees that the total quality requirements are an essential element of an assessment of what are like goods. A full assessment and comparison of the total quality and certification requirements should be made by the Commission to determine what goods most closely resemble each other and no consideration should be given to the cost groupings presented by THS.

OneSteel also submits that the quality that products are tested and certified to, significantly impacts the price. For example, wool producers have their wool clip classed to segregate the wool into different micron groupings. Even though the total cost per kg between coarse and fine wool produced by a particular grower may be minimal, the price difference between a coarse micron wool suitable for carpets will be significantly different from a fine micron wool suitable for Italian suits.

Similarly, HRS tested and certified to have higher yields and suitable chemistry for superior weldability will achieve a premium price in the Taiwanese market compared with the price of those products which have a lower certification.⁵

Further evidence of this is contained in Leong Huat Hardware Exporter questionnaire response.

"AS3679.1 grade 300 requires more items to be stated in chemical compositions, physical/chemical laboratory approval....both Taiwan and Thailand steel mills charge a higher rate for AS3679.1 grade 300 compared to EN10025, ASTM or JIS standard."⁶

OneSteel requests that a full comparison be conducted on total qualities and certification of the goods sold by THS on the Taiwanese domestic market to determine the goods that most closely resemble each other.

³ Page 22 Tung Ho verification report

⁴ Page 2 NZ Heavy Engineering Research Association report -30 June 2014

⁵ Confidential Attachments 2 &3

⁶ Leong Huat Hardware Exporter Questionnaire

TS Steel Co

The Commission did not visit TS Steel Co., Ltd (“TS Steel”). The Commission based TS Steel’s normal value upon unverified information contained within TS Steel’s Exporter Questionnaire Response (“EQR”). The Commission did not make an adjustment for grade/specification differences between like goods sold domestically by TS Steel and the exported goods. No adjustment was made as there were no sales and or costing information included in the EQR detailing differences between the grades. It does not appear from the TS Steel Report that the Commission contacted TS Steel to request further clarification on selling price/cost information between grades.

The report states that TS only manufactures grade SS400 for the domestic market. On this basis OneSteel requests that the Commission make an adjustment based on the price that other Taiwanese manufacturers achieve for products that most closely resemble the performance criteria that G300 is certified to, namely SM490A.

Hyundai Steel Company

OneSteel notes that the Commission’s investigating team has preliminarily assessed SS400 to be the closest comparator grade to the grade exported to Australia. OneSteel, however, seeks to raise a number of issues with the reported assessment approach to model matching.

The Commission’s investigating team rejects Customs previous model matching findings on the basis that it only assesses one performance factor, i.e. yield strength.

Customs review report No 79 only showed yield strength for the model exported to Australia, and for that reason the review report cannot be directly or easily compared.⁷

However after dismissing yield strength, the investigating team appears to validate its determination on model matching by accepting Hyundai’s preferred grading which is based solely on tensile strength. There appears to be no assessment as to why tensile strength is considered by the investigating team to be more relevant for grade comparison than yield strength or chemistry. In fact yield strength is a more important factor in structural design⁸ as it represents the upper limit of the load that can be applied before permanent deformation occurs. In structural engineering applications, this means that in the event of a failure, it is more likely to be “soft” rather than catastrophic.

Secondly, the investigating team states that they have assessed a number of mill certificates of goods produced to SS400 and on the basis that their tensile and yield strength exceeds the minimum requirements of G300, they must be closely matching. This is not a valid assessment as the imperatives of manufacturing variability inevitably result in a portion of the goods exceeding the minimum requirements of G300.

Similarly, it is expected and found that a significant portion of goods produced to G300 meet the minimum requirements for grade SM490A. OneSteel has demonstrated this to the Commission by supplying numerous Hyundai test certificates that demonstrate that the goods exported to Australia as G300, exceed the minimum yield, tensile and chemistry requirements for grade SM490A. Attached is another Hyundai test certificate for G300 exported to Australia that shows for each of

⁷ HRS – Exporter Visit Report – Hyundai Steel p 15

⁸ ⁸ Page 2 NZ Heavy Engineering Research Association report -30 June 2014

the separate heats, the average yield point is 23% higher than the minimum required for SM490A and the average tensile strength is 11% higher.⁹

The evidence counters the investigating team's preliminary assessment that

HRS sold to Australia cannot be sold to SM490A standard given that it fails substantively across the board to meet the requirements based on the sample examined.

It should be noted that when OneSteel manufactures goods to meet the minimum requirement of G300 it aims [Confidential production information] (refer attached graphs). It is not valid to determine which goods most closely resemble each other by assessing a sample of specific test certificates.

OneSteel maintains that it is incorrect to compare SS440 grade HRS with G300 grades exported to Australia and that the appropriate grade for comparison is SM490A due to certified yield strength and chemistry specifications.

OneSteel notes that the Commission has made an upwards adjustment to Hyundai's normal value to account for "merchandise differences" between the like goods sold domestically and the exported goods. The differences relate to grade properties and are consistent with grade differences made to the JFE normal value. However the adjustment to Hyundai Steel's normal value is based upon cost differences between the like goods and the exported goods. OneSteel requests that the Commission adjust the normal value upwards to account for the additional price achieved for the goods produced to SM490A equivalent products.¹⁰

Grade Difference Adjustments – all exporters of HRS

OneSteel submits that the Commission must apply its own published policy on the identification of like goods and base its selection of the most appropriate grade for normal value determination on physical characteristics and functional application requirements of the standards with which the grades comply. OneSteel further urges the Commission to make any price adjustments on the basis of selling price differences associated with product grades certified to comply to a given Standard compared to grades that are not certified to the same Standard.

OneSteel submits that a review of the grades on this basis (Standard functionality for market application including mechanical and chemical requirements) clearly shows that grade SM490A is the grade that most closely resembles G300 and that SS400 falls well short in a number of areas. Once the appropriate grade has been established, OneSteel contends that adjustments to normal values should be made based on selling price margin differences that this grade commands in the market, corroborated, where necessary by evidence of cost differences. Adjustments to normal values following this comparison should be applied to JFE, Hyundai Steel, Tung Ho and TS Steel (and all other exporters of HRS to Australia including SYS and Feng Hsin). It is critical that normal values for all exporters are determined by reference to the appropriate like product and on a "fair comparison" basis and that grade specification adjustments are reflected in all exporter normal values (whether verified or otherwise).

If you have any questions concerning this submission please do not hesitate to contact OneSteel's representative Mr John O'Connor on (07) 3342 1921 or Mr Matt Condon of OneSteel on (02) 8424 9880

⁹ Confidential Attachment 4

¹⁰ Confidential Attachment 5

OneSteel Manufacturing Pty Ltd
ABN 42 004 651 325

Level 40, 259 George St, Sydney NSW 2000
GPO Box 536, Sydney NSW 2000, Australia

P 02 9239 6666
F 02 9239 6633



Yours sincerely

A handwritten signature in black ink, appearing to read "Matt Condon".

Matt Condon
Manager – Trade Development
OneSteel Manufacturing Pty Ltd