



PO Box 305, Burwood, Victoria, Australia 3125  
Office: Suite 307/737 Burwood Rd., Hawthorn East Vic. 3123  
Telephone: +61 3 9882 1652 Mobile: +61 426 268 432  
E-mail: dbirrell@steelous.com.au Web: www.steelous.com.au

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Mr Geoffrey Gleeson,  
Director  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601

Dear Mr Gleeson,

**Submission - Public File Version**

**Australian Steel Association Submission 3 – Material Injury  
ACDN Investigation no 177: HSS Exported from China, Korea, Malaysia, Taiwan and Thailand**

**Material Injury: Extract:**

The Australian Customs & Border Protection Service Anti Dumping Manual states  
"Before any remedial action can be taken against dumped and/ or subsidised imports, it must be demonstrated that the Australian industry producing like goods is injured, and that the injury is caused by dumping (and or subsidised) imports<sup>1</sup>.

Therefore prior to determining a finding of material injury there needs to be:

- (i) A demonstration that there is material injury
- (ii) Clearly establishment that it affects the whole Australian industry and not just an interested party.
- (iii) In addition, for measures to be imposed there must also be a direct or discernable causal link between the material injury and the dumping / subsidisation<sup>2</sup>

In this respect Australia's legislation generally reflects Article 3 of the Anti-Dumping Agreement and Article 15 of the Agreement on Subsidies and Countervailing Measures

In response to the Onesteel ATM Application it can be demonstrated that:

1. That there has not been material injury attributable to the Australian industry from goods imported from the countries under investigation beyond that offered by fair and reasonable competition.
2. That the claims of alleged material injury are not to the Australian industry but solely to the Applicant.

<sup>1</sup> Australian Customs and Border Protection Services Dumping & Subsidy Manual June 2009 21 Causation; 21.1 Context  
<sup>2</sup> Productivity Commission Inquiry Report No48, 18 December 2009, 6.4, page 109



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3. That there is no direct and causal relationship of the allegation of material injury to the goods under investigation as is required.
4. That the 'alleged material injury' is driven more by unilateral actions of Onesteel ATM than imports of the GUC from the countries under investigation.
5. That for a significant proportion of the goods under consideration, there is no Australian Industry producing the goods and hence by definition there can be no material injury.



Considering each of these factors:

**1: That there has been no material injury to the Australian industry by imports from the countries under investigation beyond that offered by fair and reasonable competition.**

The Australian Dumping manual defines material injury as:

"...injury which is not immaterial, insubstantial or insignificant, and is greater than that likely to occur in the normal ebb and flow of business"<sup>3</sup>

In this context:

(i) Onesteel have had significant headline published price increases on pipe and RHS effective during the 2010 – 2011 period under investigation.

i.e: June 2010	+11%
December 2010	+ 7%
March 2011	+18%

These price announcements have been announced through correspondence to customers and in One Steel releases to the ASX<sup>4</sup>.

A compounded price increase of over 40 per cent relative to a CPI figure of 3.6 per cent<sup>5</sup> for the corresponding period is at odds with any claim of material injury.

(ii) The announcement of similar, simultaneous headline price increases from the other local producers during the period under investigation further demonstrates a lack of material injury to the overall industry and in fact suggests that imports, (be they from the countries alleged to have dumped or not), serve as the only form of price discipline and competition that curtail excessive increases being imposed on Australia's steel pipe and tube users.

(iii) Claims that imports from the countries under investigation increased during the period under investigation are incorrect!

On a 3 month moving average basis, alleged dumped imports have actually declined during the period under investigation.

This decline is evidenced by Onesteel releases to the ASX<sup>6</sup> and confirmed as part of the Onesteel ATM Application<sup>7</sup> where there is a decrease in imports from the countries under investigation from 147.95 to 121.23 between 2009/10 and 2010/11 (the PUI).

<sup>3</sup> Australian Customs and Border Protection Services Dumping & Subsidy Manual June 2009a p.11

<sup>4</sup> Onesteel Operational Site Tour 2 May 2011 ( pages 18 and 38)

<sup>5</sup> Source: ABS

<sup>6</sup> Onesteel 2011 Operational Site Tour 2 May 2011 , Graph page 39

<sup>7</sup> Onesteel Application for Anti –Dumping Duties; Indexed table of Sales Quantities; pages 15 & 16.



**2: That the claims of material injury are not attributable to the Australian industry but solely to the Applicant.**

Apart from the other Australian producers of hollow structural sections also enjoying the headline price increases initiated by Onesteel ATM, there was a new market entrant, Independent Tube Mills (ITM) during the period under investigation.

The fact that ITM were able to establish a new business during the PUI counters the claim of material injury noting the requirement that "it must be demonstrated that Australian industry producing the like goods"<sup>8</sup> (not just the applicant) is injured.

Reinforcing the point that there has been no substantiation of material injury claims to the Australian industry as a whole is the fact that neither of the other two Australian HSS producers have supported Onesteel ATM in its' application.

**3: That Onesteel ATM have not established a discernable 'causal link' between the allegations of dumping and material injury.**

Section 3.5 of the WTO Anti-Dumping Agreement states:

"It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports

Customs Act 1901- Sect269TAE 2A mirrors Section 3.5 of the WTO Anti Dumping Agreement in this regard stating that with reference to Material Injury:

"In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

- (a) the volume and prices of imported like goods that are not dumped; or
- (b) the volume and prices of importations of like goods that are not subsidised; or
- (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or
- (f) the export performance and productivity of the Australian industry; and any such injury or hindrance must not be attributed to the exportation of those goods.

<sup>8</sup> Australian Customs and Border Protection Services Dumping & Subsidy Manual June 2009 21 Causation;21.1 Context



Considering the above requirements with regard to the Onesteel ATM Application:

(a)& (b) - The volume and price of imports that are not dumped or that are not subsidised:

The volume of imports from the countries that are not alleged to have dumped or have been subsidised increased by between 66 per cent<sup>9</sup> and 72 per cent<sup>10</sup> during the PUI depending upon which Onesteel data is relied upon and by up to a massive five fold in the period between 2005/06 and 2010/11<sup>11</sup>.

This contrasts with an 18 per cent **decrease** for the goods under consideration during the period under investigation<sup>12</sup>.

It is respectfully submitted that analysis of prices of imports alleged to have been dumped relative to those not alleged to have dumped would also be insightful.

(d) Investigation as to whether there exists any restrictive trade practices between foreign and Australian producers (such as the Applicant) of like goods is recommended as appropriate due diligence in this investigation in order to substantiate or refute industry claims that these dumping allegations are more related to preferential importing arrangements than due to any alleged material injury to Australian producers.

It is public knowledge that Onesteel ATM and "Maruichi" have a strategic alliance and that an affiliate company of "Maruichi", namely Sunscoc of Vietnam, is an exclusive supplier of HDGP to Onesteel ATM. Vietnam is not a nominated country in this investigation.

Further to (a) and (b) above, in the Assessment of Submissions - Exposure Draft Dumping Manual<sup>13</sup>, the Trade Remedies Task Force has "agreed with Customs and Border Protection proposed approach to examining related party transactions by Australian industry and their impact on injury considerations".

The manual goes on to state "the proposed practice for examining related party transactions by the Australian industry is aimed at assessing the impact of related party transactions on the industry's price related claims". Where minor variations exist between between an industry's related party transactions and its unrelated sales which in this case is the goods alleged to have been dumped), it is open to Customs to find that these minor variations had little impact on the industry's weighted average selling price over the investigation period"

Accordingly a comparison by Customs of the volume and prices of goods imported by Onesteel or its related subsidiaries to the normal value (established in the normal course of trade) of goods exported from the countries under investigation should be mandatory in considering material injury in this case

<sup>9</sup> Onesteel Application for Anti -Dumping Duties; Indexed table of Sales Quantities; pages 15 & 16

<sup>10</sup> Onesteel Application for Anti -Dumping Duties; Table B-1-1 2010 Import Volumes; page 42

<sup>11</sup> Onesteel Application for Anti -Dumping Duties; Indexed table of Sales Quantities; pages 15 & 16

<sup>12</sup> Onesteel Application for Anti -Dumping Duties; Indexed table of Sales Quantities; pages 15 & 16 and also reaffirmed in table B.1.1; page 42.

<sup>13</sup> C&BPS Assessment of Submissions Exposure Draft Dumping Manual; Section 2 Trade Remedies Task Force



United State's legislation reserves even stronger words for the treatment of Related Parties in initiating Dumping Actions:

The United States Anti Dumping Act states:

"If a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties , or if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be **excluded** from the industry.<sup>14</sup>"

This is elaborated on further. " The purpose of the excluding related parties is to minimise any distortion in the aggregate data related to the condition of the domestic industry that might result **from including related parties whose operations are shielded from the effects of the subject imports**<sup>15</sup>"

Thus in the HSS case, it is recommended that as part of the assessment of material injury, consideration be given as to whether the Applicant is firstly eligible to initiate such a Dumping Action and secondly assess as to the intent of the Dumping Action, be it to altruistically protect Australian manufactured like goods or rather to shield the applicant's own exclusive import channels from the effects of the subject imports.

Further compounding the concern with regard to the Applicant's legitimacy to initiate this anti-dumping application, are additional requests for what is commercially sensitive information.<sup>16</sup> These requests are tantamount to one importer, (Onesteel), abusing provisions of the anti-dumping system to have free access to other importers commercially confidential data. This is inequitable, discriminatory and in its' most basic form, anti-competitive.

(f) the export performance and productivity of the Australian industry:

Given that this application has only been initiated by one of the local producers and not the Australian industry, commentary is limited to Onesteel ATM:

Considering Export Performance:

	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>	<u>2008/09</u>	<u>2009/10</u>	<u>2010/11</u> <sup>17</sup>
Volume	100	<b>95.8</b>	<b>87</b>	66.7	38.4	36.4
Price	100	<b>104</b>	<b>105.3</b>	98.6	56.6	35.7

<sup>14</sup> Section 771(4) B of the Act ( 19 USC & 1677 (4) B)

<sup>15</sup> Allied Minerals Products inc v United States, F Supp.2d.Slip Op.04-139 (CIT 2004) at 5;

<sup>16</sup> John O'Connor & Associates submission on behalf of Onesteel dated 13 March 2012.

<sup>17</sup> Excerpt from Onesteel Application for Dumping and Countervailing Duties; A-5,2 pages 16-17.



From Onesteel ATMs Application the following observations can be made:

- In the 2005/06 – 2007/08 period, Onesteel ATM increased prices relative to a declining export volume.
- In the subsequent period the responsiveness of pricing was unable to match the relative decline in volume rendering Onesteel ATM uncompetitive in international export markets.

It should be noted that Onesteel ATM's international competitiveness and export performance is in no way related to the import of goods from the countries under investigation.

Productivity:

Onesteel ATMs domestic production, prior to the cessation of HDGP, has decreased by 40 per cent <sup>18</sup>reflected in a 13.14 per cent <sup>19</sup> increase in unit costs.

In the corresponding period prices are claimed to have decreased, on an indexed basis, to 92.16 per cent from the base year <sup>20</sup>.

Whilst it is noteworthy that Australian prices have not been subject to the same pressures that Onesteel ATM has encountered in international markets, nevertheless the above data illustrates a business that has struggled to match the productivity requirements to compete internationally.

There are many and varied factors that may have contributed to this circumstance. These include:

- Economic conditions such as the impact of the GFC <sup>21</sup>and both Australia and the world's recovery from this major factor.
- Changing patterns of consumption during the period under investigation <sup>22</sup>
- A new market entrant in the Australian market (ITM) whose 2010/11 sales of 10kt - 12kt represent the bulk of lost sales that Onesteel ATM have attributed to goods from the countries under investigation. The balance being explained by:
- A 12,273 tonne increase <sup>23</sup> in the PUI from imports not subject to dumping allegations.
- Onesteel ATM's own Return on Investment criteria with "alternative investment considerations outside the HSS range of product ( i.e: iron ore expansion) currently representing a better return on capital invested for the Onesteel Group" <sup>24</sup>.

<sup>18</sup> Onesteel Application for Dumping and Countervailing Duties; A-8; Index of Product Variations; page 21.

<sup>19</sup> Onesteel Application for Dumping and Countervailing Duties; A-8; Index of Cost Variations; page 22.

<sup>20</sup> Onesteel Application for Dumping and Countervailing Duties; A-8; Index of Price Variations; page 22

<sup>21</sup> Onesteel Application for Dumping and Countervailing Duties; A-9; Item 6; page 33

<sup>22</sup> Onesteel Operational Site Tour 2 May 2011 ; pages 18 & 38.

<sup>23</sup> Onesteel Application for Dumping and Countervailing Duties; Part B Dumping; table B.1.1; page 42

<sup>24</sup> Onesteel Application for Dumping and Countervailing Duties; A-9; Item 4; page 31



Collectively these influences far outweigh any direct causal link that could nominally be attributed to imports from the countries under investigation. The tenuous claim of direct causal material injury is further strained by the fact that imports from the countries under investigation actually declined by over 40,000 tonnes between 2009/10 and 2010/11<sup>25</sup> (the PUI).

**4. That the 'alleged material injury' is driven more by unilateral actions of Onesteel ATM than imports of the GUC from the countries under investigation.**

Whilst, as noted, there are a range of factors that may have contributed to Onesteel ATM's claim of material injury, one aspect worthy of further investigation is Onesteel's own unilateral actions to address internal issues with the lack of international competitiveness of its ATM business unit.

In particular, consideration should be given to:

- The extent to which Onesteel or its related subsidiaries contributed to the fivefold increase in imports between 2005/06 and 2010/11 from countries not affected by this dumping allegation.
- The volume and prices of these imports relative to the prices of the goods under consideration.

With regard to material injury it could be argued that it is a self fulfilling prophecy to unilaterally direct production away from an inefficient business unit to an alternate, exclusive import channel.

**5: That products alleged to have been dumped are not manufactured by Onesteel ATM and therefore should be excluded from the scope of the allegation.**

This fundamentally changes the basis of the goods under investigation and irrevocably changes the numerical basis of claims made in the Application.

(i) A significant proportion (35%) of the goods alleged to be dumped include post hot dipped galvanised pipe (HDGP) which is not manufactured by Onesteel ATM or any other pipe manufacturer in Australia. Note that black or in line galvanised (ILG) pipe are not substitutable for HDGP and therefore they cannot be considered 'like products'.

(ii) Additionally, over 80 per cent of Circular Hollow Section are manufactured in a HDGP form. Given that HDGP coated pipe is not manufactured in Australia, greater than 80 per cent of the Circular Hollow Sections (CHS) alleged to have been dumped should be excised from the scope of goods under investigation.

(iii) Circular Hollow Sections (CHS) are also supplied in a pre-dominantly non structural form noting that the ambit of Onesteel's claim is around 'certain hollow structural steel sections'.

A separate, detailed submission of why Circular Hollow Sections, particularly in a post hot dipped galvanised form cannot be considered a 'like product' to RHS structural sections has already been supplied.

<sup>25</sup> Onesteel Application for Dumping and Countervailing Duties: Part B Dumping; table B.1.1: page 42





A fundamental principle in this country is that if there is no substitutable, functional equivalent produced locally there should be no duty payable. Suggestions that a nominal offer to supply custom made product, in a limited discretionary range, on a longer lead time, on a higher cost base than the previously uncompetitive domestic HDGP does not constitute a locally supplied functional equivalent.

On this basis alone, HDGP and CHS should, at a minimum, be excluded from the scope of the investigation.

Additionally, as the claims of material injury are reliant on product that should be excised from the goods under consideration, the overall claims of material injury are baseless.

Given, the impact of HDGP and CHS on the numerical basis of claims made in this Application, claims as to material injury and indeed the veracity of all claims have been affected to an extent that the entire application for Anti-Dumping Duties for Certain Hollow Structural Section should be prima facie rejected.



### Conclusion:

With regard to the requirement to establish a claim of material injury it has been demonstrated that there is no causal link between imports from the countries under investigation and the claim of injury.

Rather it has been shown that:

- The alleged dumped imports actually decreased during the period under investigation.
- That other factors such as the slow economic recovery from the GFC and a lack of international competitiveness by ATM in export markets have been a contributing factor to the claims of material injury.
- That there was a new market entrant during the PUI that accounted for much of the decline in OneSteel ATM sales.
- That imports from countries not affected by this allegation increased by up to 72 per cent in the period under investigation.
- Imports from countries not subject to dumping allegations were in part affected by Onesteel's strategic decision to direct sales away from the Australian ATM business to their exclusive import channels. This internal strategic decision has been provided with more gravitas with the decision of Onesteel ATM to close HDGP production in Australia prior to the initiation of this dumping action.

Therefore given that:

- there has been no establishment of a direct causal link between material injury claims and the fortunes of the Onesteel ATM business, and
- a significant proportion of the goods that are the foundation of these allegations are in fact not manufactured in Australia and
- that this allegation of dumping is not one by the Australian industry but rather a sole applicant and
- the fact that Onesteel and /or its related subsidiaries are 'related parties' to importers not subject to this Application and that Onesteel would thereby directly benefit from a selective imposition of duties.

We stridently contend that not only should be no finding of material injury but that this HSS application of dumping and countervailing subsidies be rejected outright.