



AUSTRALIAN STEEL ASSOCIATION INC.
A0020339V

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Date: 23rd April 2012

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 4 – Non Injurious Price
ACDN Investigation no 177: HSS Exported from China, Korea, Malaysia, Taiwan and Thailand**

Executive Summary:

It is the Australian Steel Association's opinion that the Application for Anti Dumping Duties for Certain Hollow Structural Sections exported from the People's Republic of China, Korea, Malaysia, Taiwan and Thailand (HSS Case 177) has been a strategic misuse of Australia's Anti-Dumping provisions to inequitably protect Onesteel's import and distribution business as it transitions from a steel producer to a mining materials business.

Of particular concern is the inclusion in the subject goods of the Application, products that Onesteel have either permanently 'mothballed' or ceased production of whilst establishing exclusive importing arrangements from countries (selectively) not impacted by this Anti-Dumping Application.

With regard to ensuring that the interests of Australia's steel manufacturing sector are considered, it is requested that Non Injurious Price determination consider the lesser of:

- Onesteel's imports from countries not subject to this investigation
- Only goods that are manufactured in Australia consistent with the primary brief of Australia's anti-Dumping and Countervailing System.



Non Injurious Price: Extract:

The Customs Act Sect 269TACA defines the non injurious price of goods exported to Australia as the minimum price necessary to remove the injury caused by dumping or subsidies

Australia's Anti-Dumping and Countervailing Administration Manual provides alternate methodologies for determining a non injurious price¹.

"To assess a non injurious price, it is first necessary to determine an unsuppressed selling price (USP). This is the price that the Australian industry might reasonably expect to sell its goods in the Australian market if that market were not affected by dumped imports".

The Manual goes on to state:

"One way of determining a USP is to look at prices achieved in the Australian market before injurious dumping commenced. The non injurious price would then be obtained by subtracting from the USP:

- expenses occurred in Australia
- Customs Duty and Goods & Services Tax
- expenses incurred in importing the goods into Australia.
- selling expenses
- an amount for profit in Australia

Alternative methods for assessing a USP may be to consider the Australian Industry's Cost to Make & Sell plus a margin of profit, or the price of undumped goods from other countries".

An equitable approach would be to use the lesser of the above alternatives to determine a non injurious price noting that in the HSS case:

- 1) As Onesteel / Arrium² transitions to a mining business with an adjunct hybrid steel /import business, many of the goods that are the subject of this Application are no longer manufactured in Australia. The implications of this are:
 - (i) An Australian industry cost to make and sell is not an available option.
 - (ii) The AD systems primary role of providing remedy to Australian industry is no longer relevant as there is no Australian industry for the subject goods to protect³. This should, of itself, render the Application inadmissible and at a minimum, necessitate these `unlike goods being excised from the scope of the Application.

Subject goods for which there is no `like products' in the Australian industry include:

¹ Australia's Anti-Dumping and Countervailing Manual; Non Injurious Price; page 14

² Notice of Extraordinary General Meeting 8 May 2012 to change the company name from Onesteel to Arrium as "the name Onesteel no longer reflects the nature of the business... The name has in fact become an **impediment** in recent years..."

³ Australian Steel Association HSS `Like Goods' Submission.



- Hot Dipped Galvanised Pipe⁴
 - Oil and Gas Pipe⁵
- 2) The price of undumped goods from other countries is a valid consideration for determining a non injurious price.

Remarkably imports from countries that have not been alleged to have dumped have increased by 66 per cent⁶ during the period under investigation, whilst imports that have been alleged to have been dumped have significantly decreased in the corresponding period.

The extent to which Onesteel exclusive imports from Vietnam contribute to the surge in 'undumped' imports is an important element that warrants further investigation by AC&BPS.

In other jurisdictions, such as the United States, Related Parties provisions would render a significant importer such as Onesteel ineligible for initiating such a targeted Anti-Dumping Application against countries other than from where it has exclusive importing arrangements⁷.

With regard to Non Injurious Price, the price of "undumped goods" from Vietnam can be demonstrated to be at a **comparable** price to goods from countries that have alleged to have been dumped.^{8,9}

Adding further weight to the case that Vietnam imports be considered in determining a Non Injurious Price is the fact that the US Department of Commerce announced in April 2012 preliminary determinations of countervailable subsidies from Vietnamese circular ERW pipe exporters of between 0.4% to 8.06%¹⁰.

Conclusion:

Given that:

- The AD application on Hollow Structural Sections (HSS Case No 177) is yet another in a continuum of applications from a recidivist Applicant
- Much of subject goods of this Application had either ceased commercial production or have been announced as ceasing Australian production since the Application's initiation
- The Applicant is a significant importer from countries (notably) not included in the countries alleged to have dumped.

⁴ <http://www.smh.com.au/business/more-jobs-go-at-onesteel-20111121-1nqw.html>

⁵ ASX Release 15th March 2012

⁶ OneSteel Application for Dumping and Countervailing Duties; Table A-4.2, Page 15.

⁷ Section 771(4) B of the Act (19 USC & 1677 (4) B)

⁸ Waratah Steel Supplies submission 5 December, 2011

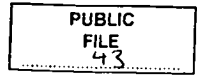
⁹ Attachment 1: Offer of HSS ex Vietnam (Confidential)

¹⁰ US Department of Commerce Visit Report



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- There has been no causal establishment of material injury

(Note: the successful establishment of a new Australian HSS manufacturer and imports from countries not alleged to have dumped each account for the volume claims of material injury by the Applicant).

This Application should be rejected outright.

In the interests of Australia's downstream manufacturing sector, at a minimum, we respectfully request that a Non Injurious Price be considered.

Yours Sincerely

David Birrell

*Chief Executive Officer
Australian Steel Association Inc*