



AUSTRALIAN STEEL ASSOCIATION INC.
A0070339V A3N 24 762 435 928

PUBLIC
FILE
146

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@steelaus.com.au Web: www.steelaus.com.au

Date: 14th May 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- Statement of Essential Facts - Response
ACDN Investigation no 177: HSS Exported from China, Korea, Malaysia, Taiwan and Thailand**

Executive Summary:

As previous submitted, it is the Australian Steel Association's opinion that the Application for Anti Dumping Duties (HSS Case 177) is part of a strategic & recidivist misuse of Australia's Anti-Dumping provisions to inequitably protect Onesteel's import and steel distribution business^{1,2}, as much as ATM, whilst Onesteel / Arrium transitions from a steel producer to a mining materials business^{3,4}

There are a number of key factors in the SEF findings that the ASA submit require further urgent consideration. These are:

- Like Goods
- Normal Value determination
- Material Injury
- Non Injurious Price

The ASA submits that collectively, these key elements have influenced the preliminary findings as reflected in the SEF, with potential outcomes that are not reflective of the facts of the HSS Case and that result in disproportionate and excessive anti dumping relief for the Applicant at the expense of:

- other HSS manufacturers (the Industry),
- artificially inflated input costs for Australia's downstream manufacturing industry resulting in a lessening of the competitiveness of Australia's HSS and manufacturing industries,
- Increased costs for Australian steel users and consumers.

¹ Attachment 1 – Onesteel imports from the countries under investigation

² Attachment 2 - Onesteel imports from countries not subject to the investigation.

³ HSS Case No 177 ASA Non Injurious Price Submission – Executive Summary

⁴ Statement of Essential Facts No 177: 2.4 Previous Cases; page 14



1. Like Goods -

The ASA notes the Like Goods findings in the SEF "are not premised on a comparison of individual imported and domestically produced models, but rather represent a 'global' consideration"⁵.

Whilst it is unclear what a 'global' consideration alludes to, the ASA respectfully requests that urgent priority be given to providing a determination based on the essential facts of the HSS case.

To this end, the ASA again submit that it can be demonstrably and comprehensively shown that between **35-40 per cent** of the goods under consideration **are not** commercially manufactured in Australia and hence with no local industry to protect, **must** be excluded from the goods under consideration⁶.

The ASA specifically requests consideration and an urgent determination regarding exclusion of the following products from the goods under consideration in the HSS Case No 177:

- Circular hot dipped galvanised pipe (HDGP)
- Large diameter pipe with a wall thickness of 9mm or greater
- Red painted CHS used for fire fighting equipment.

2. Normal Value -

The ASA submit that the preliminary finding of dumping is unduly reliant on artificially constructed normal values in lieu of the nominal and preferred method based on sales in the ordinary course of trade⁸.

The ASA question the need and appropriateness of utilising artificially constructed costs in HSS Case No 177. In addition, the ASA wish to draw attention to the methodology applied noting that the reversal of otherwise negative dumping margins into significant positive dumping margins is the direct result of these artificially constructed normal values.

In particular, the ASA wish to draw attention to:

- Uplifted HRC values & the basis thereof.
- Inflated profits ascribed on normal values premised on prices paid in the ordinary course of trade, (i.e: prior to substitute HRC and narrow strip costs), being applied to an uplifted normal value determined by artificial construction⁹.

• [REDACTED]
[Normal value determination]

⁵ Statement of Essential Facts No 177:3.6 Findings –Like Goods; page 20

⁶ Australian Steel Association Submission – Route to Market, Onesteel ATM Application, Custom's Onesteel ATM Visit Report & Like Goods; 13th February 2012

⁷ Attachment 3: Non Like Goods in application

⁸ Customs Act 1901 - Sect 269TAC & Sect 269TAAD

⁹ Statement of Essential Facts No 177: 6.5 Determination of profit for constructed normal values in China: page 32



- The ASA request review of the specific elements indicated however the overarching concern is one of integrity with the methodology applied, the resultant dramatic swings in dumping margin outcomes & the impact on the preliminary SEF findings.

3. Material Injury

Further to the above comments, there has subsequently been a reliance on pricing (based on the dramatically uplifted normal values) as the causal link of material injury. This self fulfilling prophecy is contended as the sole basis of material injury despite overwhelming evidence of more significant contributing factors:

- That the nominal dumping margins determined are solely attributable to a constructed cost that as is of concern both in its appropriateness and the methodology applied, as stated.
- The fact that, to the ASA's understanding, neither of the other two (not three)¹⁰ HSS manufacturer's support the Application, thereby negating claims that the Application is on behalf of the Industry; a necessary condition of a material injury finding.
- That the systemic closure of HSS capacity has been part of an orchestrated Onesteel strategy enabling the closure of inefficient plant whilst booking profits based on the realisation of assets and cashflow^{11,12}. [Redacted] [Background comment] this strategy was initiated in a Onesteel review in March 2007 noting that growth in the Australian HSS market through 2005/06 – 2007/08¹³ coupled with unprecedented profitability.
- A five-fold increase in import volumes from countries not subject to this investigation underpinned by the Applicant's own imports¹⁴.
- The suppressive effect of including 'downgrade' product as a distinct product category.

The failure of the Applicant to produce product fit for purpose (downgrade) resulting in a disproportionate devaluing to scrap value or thereabouts should not be attributed to unrelated imports from the countries under investigation.

Procedurally, the appropriate treatment of downgrade sales is for AC&BPS to excise them from consideration.

The ASA estimate that approximately 10,000 tonnes are so affected.

¹⁰ The SEF incorrectly states that there are 4 producers of HSS; 1.3.1 (page 8) and 3.6 (page 20). There are in fact three. Note Onesteel Oil & Gas Pipe is a division of Onesteel as is ATM. The closure of Onesteel's Oil & Gas Pipe business was announced on 30th January 2012.

¹¹ Attachment 4: Australian Tube Mills Restructure Announcement including announcement of Mayfield HDGP closure

¹² Attachment 5: Announcement of Onesteel Oil & Gas Pipe closure & anticipated positive cash inflows

¹³ Application for Anti-Dumping Duties on Certain Hollow Structural Sections; Page 15; table of Indexed sales Quantities; column(c).

¹⁴ Attachment 2 - Onesteel imports from countries not subject to the investigation.



- Imports from the countries alleged to have dumped significantly **declining (by 23%)** during the period under investigation¹⁵
- A 10 per cent decrease in the market in FY2011¹⁶ reflecting diminished construction activity.
- Of the reduced market size to approximately 450,000 tonnes¹⁷, the increase from two to three manufacturers (ITM) has been discounted¹⁸. This is despite ITM's volumes in the period under investigation accounting for [REDACTED] [ITM volumes] of the Applicant's 9,000 tonne claim of diminished sales volumes¹⁹.
- Extensive commentary by the Applicant in ASX and industry presentations that the Australian exchange rate was a major factor affecting financial performance.
- Other:
 - Transformation strategies;
 - Ongoing effects of GFC;
 - Very weak domestic and international steel markets;
 - Rapid and significant increase in the Australian dollar;
 - Review's of its steel product portfolio and facilities;
 - Low construction activity due to funding availability;
 - Unseasonal wet weathers;
 - Under-utilisation in international steel markets;
 - High raw material prices;
 - Weakening in confidence levels due to factors such as the uncertainty over proposed new domestic taxes, global debt issues and higher interest rates;
 - Current economic conditions;
 - Weak manufacturing sector; and
 - European and US debt issues.

¹⁵ Application for Anti-Dumping Duties on Certain Hollow Structural Sections; Page 16;table of Indexed Sales Quantities; column(d)

¹⁶ Statement of Essential Facts No 177, 5.4 Australian Market Size; page 24

¹⁷ Statement of Essential Facts No 177, 5.4 Australian Market Size; page 24

¹⁸ Statement of Essential Facts No 177, 9.93 New Australian Industry entrant; page 63

¹⁹ Application for Anti-Dumping Duties on Certain Hollow Structural Sections; Page 16;table of Indexed sales Quantities; column(a).



4. Non Injurious Price

Without prejudice to the comments above, the ASA nevertheless consider that in the event of any dumping finding, measures applied retain an equitable and balanced approach that removes injury but also minimise the impact of duties on the wider economy and the competitiveness of Australia's downstream manufacturing sector.

The Customs Act 1901 Sect269TACA states that the Non Injurious Price (NIP) of goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury or to remove the hindrance.

For the purposes of establishing an unsuppressed selling price (USP) the Australian Steel Association proposes AC&BPS consideration of:

- HSS prices deemed not to be dumped as a result of the HSS Case investigation.
- Prices for the Applicant's own imports of HSS which have notably been excluded from the scope of the application
- Other HSS imports from the countries not subject to the HSS investigation.
- HSS prices from the other Australian HSS manufacturers, (the Industry), who have not supported the AD Application.

Central to the findings in the SEF, the ASA strongly contends that the determination of dumping is unduly reliant on:

- (i) Grossly uplifted HRC prices that bear little to no link to international, competitive market prices undertaken in the ordinary course of trade in the region.
- (ii) The selection of the non representative nine month period for profit that corresponds with arguably the most profitable period in steel history.

Dealing with each of these separately:

1. Hot Rolled Coil :-

The Australian Steel Association propose, for the input of a constructed HRC, the lesser of:

- Onesteel's own HRC purchase price ex Bluescope Steel (BSL) net of all rebates.
- Onesteel's purchases of import HRC net of all rebates & settlement discounts.
- BSL's own HRC export prices for the period under investigation.
- Far East Asian(FOB) Index prices as detailed by CRU Monitor.
- The lowest cost, undumped HRC price during the PUI.



2. Profit

Apart from registering surprise at the SEF preliminary assessment that the approach submitted by ATM be considered reasonable, the ASA proposes a more practical and equitable approach.

As indicated the nine months nominated by the Applicant correspond with an analogous period in steel and HSS history. In the interests of a more equitable determination, the ASA proposes that profits be based on:

- One (or two years) preceding and subsequent to the nine months nominated by the Applicant, [redacted] rationale for broader time period]
- Consistent with AC&BPS policy, any profit should be based on an average of the industry (i.e: including the other domestic HSS manufacturer Orrcon), with a preference for a one year minimum.

The ASA also requests that the reasonable price premium attributable to the Applicant for local, ex stock supply be taken into account. This premium has been quantified in the difference between Onesteel Tier 1 Prime /Premium offers and Tier 2 /Tier 3 offers per earlier ASA submissions²⁰.

Finally, the ASA also requests that in the consideration of the ongoing impacts of any alleged material injury, and in the determination of a non injurious price, [redacted] [amount of]subsidy assistance supplied to the Applicant²¹ be directly offset against the Applicant's cost to make & sell.

[redacted]

²². [Estimate of subsidy on CTM&S]

Additional subsidies should also be offset as provided.

For the establishment of a non injurious price and application of the lesser duty rule provisions, the ASA therefore propose determination of a Non Injurious Price based on:

- 1) HRC as indicated above plus
- 2) Cost to Make & Sell determined by the most efficient manufacture based on HSS manufacturers assessed as part of the HSS Case No 177 Investigation, or the Applicant noting the Applicants CTM&S should be discounted by the apportioning of received or announced subsidies.

²⁰ Australian Steel Association submission: Domestic / Import Pricing; 9th March 2012

²¹ Attachment 7: Onesteel Steel Transformation Plan Advance 30 January 2012.



- 3) Profit based on the average Australian HSS industry profitability two years either side of the 2008/09 financial year.

Other comments specific to Statements contained in the Statement of Essential facts are detailed in Annexure 1

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Additional comments on impact of duties]