



Australian Government
Anti-Dumping Commission

Anti-Dumping Commission
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Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
CANBERRA CITY ACT 2601

by email: ADRP_support@industry.gov.au

Dear Ms Blumberg

**ADRP REVIEW – HOT ROLLED STRUCTURAL STEEL SECTIONS EXPORTED
FROM JAPAN, THE REPUBLIC OF KOREA, TAIWAN AND THE KINGDOM OF
THAILAND – INVITATION TO COMMENT**

I write to you in response to your letter dated 20 January 2015 inviting the Anti-Dumping Commission (the Commission) to comment on the applications for review of the decision by the Parliamentary Secretary to the Minister for Industry and Science to publish a dumping duty notice in relation to hot rolled structural sections exported from Japan, the Republic of Korea, Taiwan and the Kingdom of Thailand.

The Commission has prepared its responses to the issues raised by the applicants in a non-confidential form (see Attachment A). The Commission considers that this letter and non-confidential Attachment A are suitable for publication.

The Commission has observed the request in your letter of 20 January 2014 and responded to the four specific matters.

The Commission is available to offer assistance in the form of clarification or relevant material for the matters raised in the applications and the response by the Commission should you so require.

Yours sincerely

Dale Seymour
Commissioner
Anti-Dumping Commission
23 February 2015

Anti-Dumping Commission response

**Applications for Review of Decision relating to Hot Rolled Structural Sections exported
from Japan, the Republic of Korea, Taiwan and the Kingdom of Thailand**

Abbreviations

ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Act	<i>Customs Act 1901</i>
Applicants	OneSteel Manufacturing Pty Ltd, Siam Yamato Steel Pty Ltd, Nippon Steel & Sumitomo Metal Corporation
Australian Industry	OneSteel Manufacturing Pty Ltd
Commission	The Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping Act) 1975</i>
EPR 223	Electronic Public Record 223
EQR	Exporter Questionnaire Response
HRS	Hot Rolled Structural Steel Sections
Korea	The Republic of Korea
Manual	Anti-Dumping Commission Dumping and Subsidy Manual
OneSteel	OneSteel Manufacturing Pty Ltd
Nippon Steel	Nippon Steel & Sumitomo Metal Corporation
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry
REP 223	Final Report 223
SEF 223	Statement of Essential Facts No. 223
SYS	Siam Yamato Steel Pty Ltd
Thailand	The Kingdom of Thailand

Key points of note in reading responses to Applicant claims

- (i) Whilst the Anti-Dumping legislation (Part XVB of the *Customs Act 1901* ('the Act') and the *Customs Tariff (Anti-Dumping Act) 1975* (the 'Dumping Duty Act')) refers to the Minister, for the purposes of this response all references to the Minister or Parliamentary Secretary are used interchangeably. This approach reflects the Minister for Industry and Science's delegation of responsibility for Ministerial decision-making on operational anti-dumping matters (under the Act and the Dumping Duty Act) to the Parliamentary Secretary to the Minister for Industry and Science.
- (ii) On 20 November 2014, the then Parliamentary Secretary's decision to impose a dumping duty on hot rolled structural steel sections ('HRS') exported to Australia from Japan, the Republic of Korea ('Korea'), Taiwan and the Kingdom of Thailand ('Thailand') was published (Anti-Dumping Notice 2014/127 refers).
- (iii) Three interested parties sought reviews of this decision to the Anti-Dumping Review Panel ('ADRP'). Two exporters, Siam Yamoto Pty Ltd ('SYS') and Nippon Steel & Sumitomo Metal Corporation ('Nippon Steel') separately submitted applications for review of the decision by the Parliamentary Secretary and OneSteel Manufacturing Pty Ltd ('OneSteel'), the Australian industry, submitted its application for review of the decision.
- (iv) On 20 January 2015, the ADRP invited the Anti-Dumping Commission ('the Commission') to address certain issues in respect of the review applications. This document details the Commission's responses to the relevant issues, as invited by the ADRP.
- (v) In drafting responses to the issues raised by the applicants to the ADRP, the Commission has had regard to all information submitted to it in accordance with legislative timeframes during the investigation up until the day the Final Report 223 ('REP 223') was submitted to the Parliamentary Secretary. This information includes the Statement of Essential Facts ('SEF 223'), verification reports and submissions from interested parties. In drafting this response the Commission has also had regard to the analysis the Commission performed during its investigation. The Commission confirms that, in drafting this response, no new information (that was not considered during the investigation) has been considered.
- (vi) The response by the Commission is presented in a non-confidential format.

Order of responses

1. The Commission addresses the claims submitted to the ADRP in the applications for review by:
 - OneSteel;
 - Nippon Steel; and
 - SYS.

The Commission invites the ADRP to consider and read in full SEF 223 and REP 223 as well as information on the electronic public record to provide additional context to the information provided in this response.

Claims made by OneSteel:

OneSteel, the Australian industry, has requested a review of the Parliamentary Secretary's decision in respect to;

1. adjustments, for fair comparison purposes, to account for the price differences between differing grades of HRS sold domestically in the country of export and the goods exported to Australia; and
2. the application of anti-dumping measures using the ad valorem method.

[Claim 1: Adjustment for price differences between differing grades of HRS sold domestically in the country of export and the goods exported to Australia](#)

A. Information that is not relevant information as defined

Nil

B. Factual claims disputed, commentary and background

OneSteel asserts that the Commission has not made the correct or preferable decision in its determination of a sufficiently similar subset of domestically sold goods for normal value purposes. In Part 2 of its application, *Applicant's ground for Review*, One Steel provides section (a), *Appropriate models for normal value calculation*, which the Commission has interpreted as representative of OneSteel's grounds for review in relation to Claim No.1.

The application appears to identify three main elements that constitute the grounds that underpin Claim No.1. In its response to the ADRP, the Commission provides its discussion for each of the following elements that are listed below.

- Element 1 - The Commission's determination of actual physical specifications is based on incorrect assessments;

- Element 2 - The Commission's adoption of mill test certificates; and,
- Element 3 - The Commission approach to the application of cost and selling price adjustment of like goods.

Element 1 - The Commission's determination of actual physical specifications is based on incorrect assessments

1. One Steel believes it is a fundamental error of fact where REP 223 states the Commission's assessment that 'a standard is only one physical characteristic' of like goods. One Steel also puts forward its view that that the Commission has not adequately considered the role of standards in determining like goods broadly, as well as the role of standards in determining a sufficiently suitable subset of HRS for calculating normal values. OneSteel cites REP 223 section 6.4.2 to support its arguments on like goods and the application of standards
2. In determining like goods in this investigation, the Commission applied the like goods test criteria required under its policy in the *Dumping and Subsidy Manual*.¹ Pursuant to this policy, standards form one of many characteristics used to establish the physical likeness of the goods along with other attributes, for example shape and length. In determining the like goods, the Commission is required to consider not only the physical likeness (of which standards is one characteristic), but also the commercial, functional and production likeness and any other information the Commission considers relevant.
3. The decision on like goods in the HRS investigation is also consistent with the previous investigation into HRS outlined in *Report 79*, that is, 'all HRS produced and sold domestically by the exporters in the nominated counties, irrespective of steel grade, whilst not identical, have characteristics closely resembling those of the goods under consideration and therefore are like goods for the purposes of s.269T(1).'²
4. With respect to OneSteel's view on the role of standards, the Commission reiterates that the submissions lodged by all interested parties, and the evidence verified during the investigation was considered. The following lists the sections and appendices within in REP 223 that discusses the role of standards in determining like goods and models selected for normal value calculations.
 - 4.1. Section 6.4.3 of REP 223 outlines the Commission's reasoning to assess a comparable subset of normal values on an exporter-by-exporter basis;
 - 4.2. In section 6.4.3 of REP 223 on page 31 under the heading 'standards, expert opinion and physical specifications' the Commission explains its views on the limitations of standards-based comparisons, physical specifications evidence and its findings.

¹ As described in the Dumping and Subsidy Manual, pages 8 – 10.

² Section 6.4.2 of REP 223 on page 30.

- 4.3. Non-confidential appendix 3 to REP 223, which provides all interested parties a summary of all relevant international standards considered by the Commission during this investigation, including the range of mechanical and chemical properties.
- 4.4. Non-confidential appendix 4 to REP 223, which provides all interested parties a sample of the standards considered by the Commission during this investigation.

Element 2 - The Commission's adoption of mill test certificates

5. The second element in OneSteel's Claims No.1 relates to Commission's adoption of mill test certificates as a more significant indicator than standards to which the goods are produced. OneSteel believes this is neither the correct nor the preferable decision.³
6. The Commission applied standards for determining the physical differences in HRS sold on an exporter's domestic market. However, other available information, such as mill test certificates, was also relied on when it was considered appropriate.
7. During the investigation, the Commission was presented with a range of information and evidence, for example, interested parties' view on minimum production standards, the use of test certificates and a sufficiently similar subset of HRS for normal value calculations. This is highlighted in submissions 51 and 63 on the electronic public record and is discussed in REP 223 at section 6.4.3.
8. To assess the reasonableness of the claims, the Commission relied on a sampling methodology of mill test certificates as part of the verification process. The mill test certificates were found to be the most reasonably reliable evidence to support claims about the actual physical specifications to which HRS is produced and sold, both in the domestic and export market. Key findings of the investigation process included that:
 - 8.1. not all steel grades are manufactured and sold across all domestic markets (for example SM490 grades);
 - 8.2. not all products have the same actual physical characteristics across different markets, nor are all the relevant standards universally identical;
 - 8.3. whilst goods satisfy the minimum requirements prescribed in the relevant standards, verified evidence demonstrates actual physical characteristics to which the products are produced can be materially higher; and
 - 8.4. exporters produce HRS capable of conforming to multiple standards at the semi-finished product level (for example, blooms suitable for rolling HRS to

³ OneSteel Application, page 4.

several standards)⁴ and finished product level (for example, dual grade SS/SM400 in the Thai market)⁵ across markets.⁶

9. In summary, evidence presented during the course of the investigation in relation to Elements 1 and 2 above indicated that the physical properties of HRS did not always correlate to the standard to which it may have been said to conform.

Element 3 - Cost and selling price adjustments

10. The third element to OneSteel's Claim No.1 is that the Commission has not considered a selling price adjustment. For this part of its claim, One Steel cites section 6.4.4 of REP 223, 'costs, like goods and adjustments.
11. The Commission's findings at 6.4.4 of REP 223 relate to cost adjustments. In response to OneSteel's point regarding selling price adjustments, section 6.5.5 of REP 223 is the appropriate reference.
12. An observable selling price difference is not disputed by the Commission. This is highlighted in section 6.4.5 of REP 223 which states that 'whilst adjustments for physical characteristic differences are ordinarily made using costs, the Commission may make adjustments for physical characteristic differences on the basis of selling price difference.'
13. In section 6.4.5 of REP 223, the Commission has outlined its response to OneSteel's claimed selling price adjustment, including the reasons for its decision not to use selling price as a basis for adjustment to normal value.
14. OneSteel's application lists the evidence it presented to the Commission during the investigation to support its preferences for particular models to be used for normal value and adjustments for selling price differences. Each of these issues and the evidence contained in OneSteel's submissions were considered and addressed in REP 223, specifically, section 6.1 of REP 223 at pages 27 to 36, and section 6.3 of SEF 223 at pages 30 to 40.

⁴ Tung Ho Steel verification report (#55 on the public record)

⁵ SYS verification report (#75 on the public record)

⁶ REP 223, page 31.

Claim 2: The form of anti-dumping measures applied

A. Information that is not relevant information as defined

Nil

B. Factual claims disputed, commentary and background

1. Onesteel contends that the Parliamentary Secretary has erred in accepting the Commission's recommendation on applying anti-dumping measures in an *ad valorem* form. OneSteel claim that 'the correct and preferable decision to remove injurious effects of dumping, (including any future threat thereof by reductions in export prices) can be addressed by measures based upon the combination method.⁷.
2. Division 9 of the Act sets out the procedures for review by the ADRP of certain decisions by the Minister or the Commissioner. Specifically, section 269ZZA of the Act sets out the decisions made by the Minister or Parliamentary Secretary which can be reviewed by the ADRP. These are decisions made by the Minister on under the Act. The form of anti-dumping measures is a decision made under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act). Accordingly, decisions made by the Minister or Parliamentary Secretary under the Dumping Duty Act cannot be reviewed by the ADRP. As a result, this part of OneSteel's application should be excluded from the review.

Claims made by Nippon Steel:

Nippon Steel requested a review of the Parliamentary Secretary's decision in respect to material injury findings and that the Parliamentary Secretary consider exercising discretion by applying a zero rate of dumping duty to Nippon Steel.

Claim 1: Error in the assessment of material injury

A. Information that is not relevant information as defined

Nil

B. Factual claims disputed, commentary and background

1. In Nippon Steel's Statement of Reasons in relation to Claim No.1, Nippon Steel provides discussion under the headings, *Failure to isolate extraneous and internal structural consideration*, and, *Classification errors*.

Failure to isolate extraneous and internal structural consideration

2. Nippon Steel submits that the analysis of material injury and causation in REP 223 was flawed and was demonstrated due 'to the exclusion of extraneous factors and

⁷ Application, pages 8-9.

internal structural considerations’ and that it ‘simply relied upon the pricing model utilised by the applicant in concluding that material injury had been established.’

3. During the investigation, the Commission found that material injury was caused by dumping from the nominated countries. The Commission has taken into consideration other possible injury factors raised during the investigation and is of the view that these other possible causes of injury do not detract from the assessment that dumping has caused material injury to the Australian industry. Consideration of causation, including the effects of other injury factors is discussed in chapter 9 of REP 223.

Classification errors

4. Nippon Steel states that Australia is not an export market for the company and its exports of the goods under consideration were limited to one transaction during the investigation period to one Australian end user (customer).
5. Nippon Steel further highlights that the standard of steel it exported to Australia was not identical to the Australian standard to which OneSteel’s products conform. Nippon Steel also states its view that if an exporter was to market and sell products that conform with the Australian standard, then certification to the standard would be necessary.
6. The dissimilar nature of Nippon Steel’s products exports to Australia and the goods produced by OneSteel are cited by Nippon Steel as the basis for no market demand for its steel and no material injury caused by its exports.
7. The Commission has already dealt with the classification issues raised by Nippon Steel in its ADRP application and refers to REP 223 at sections 3.7 and 9.11 for its response.

[Claim 2: Ministerial discretion pursuant to section 269TG of the Act](#)

A. Information that is not relevant information as defined

Nil

B. Factual claims disputed, commentary and background

1. Nippon Steel claim that the imposition of dumping duties under section 269TG of the Act is a discretionary matter for the Minister, and that the Minister should have been informed of, and exercised his discretion in relation to Nippon Steel only. The Commission’s investigation in relation to Nippon Steel found that it was appropriate to recommend to the Parliamentary Secretary that exports of the goods by Nippon Steel should be subject to dumping duties.

2. The Commission notes that there is no statutory obligation to inform the Minister of discretionary considerations with respect to the exercise of discretion in s269TG of the Act.
3. Furthermore, it is not appropriate for the Commission to comment on the decisions of the Parliamentary Secretary, particularly in respect to the exercise of discretion in s269TG of the Act. The Commission's view is that the Parliamentary Secretary has exercised his powers independently and lawfully, and that all statutory obligations of the Commission in respect to s269TG of the Act have been satisfied.

Claims made by SYS:

SYS, an exporter, has requested a review of the Minister's decision. In its application to the ADRP SYS states 'the Commission's dumping margin determination is incorrect and therefore the Parliamentary Secretary's decision to publish the said dumping duty notice is not the correct or preferable decision.' A summary of SYS' five claims is tabulated below.

Claim no.	Claim by SYS	Reference in REP 223
1	Models used for normal value	7.7.2 – 1 (like goods and grades comparison)
2	Date of sale	7.7.2 – 2 (date of sale)
3	Conversion of export prices from Australian dollar to Thai baht	7.7.2 – 6 (foreign exchange gains and losses)
4	Cutting cost normal value adjustment	7.7.2 – 3 (cutting cost adjustment)
5	Level of trade adjustment	7.7.2 – 5 (level of trade adjustment)

A. Information that is not relevant information as defined

Nil

B. Factual claims disputed, commentary and background

1. In section 7.7.2 of REP 223, the Commission has outlined its position on these matters, including referring to the relevant legislative and policy framework used to support its findings on each of SYS' claims.
2. The Commission is satisfied that during the original investigation, it has sufficiently considered the submissions lodged by SYS and relevant counter submissions lodged by other interested parties on these issues, (for example submission 81 on the electronic public record). For the purpose of responding to SYS' application, claims 3, 4 and 5 are dealt with by reference to the relevant sections of REP 223 as contained in the table above. For claims 1 and 2 the Commission provides the following.

Claim 1 – Models used for normal value

3. SYS claims that it was treated inconsistently in comparison to all other cooperating exporters. SYS claim that 'where an exporter (other than SYS) had more than one grade of domestic sales of like goods to the grade 300 exported to Australia, the Commission selected the single grade of those like goods which most closely matched grade 300.' It claimed that by contrast, in the case of SYS, the Commission selected two domestically sold grades for normal value. It compared the

methodology used to select grades for normal value for the exporter Hyundai Steel (Korea) to that used for SYS to strengthen its claim.

4. The Commission's approach to formulating the normal value for SYS was consistent with the treatment of all exporters subject to the investigation. A point of difference is that SYS was found to have two models which could be included in its normal value as opposed to other exporters who had one model. SYS claims that all other exporters had a single grade selected for normal value calculations. However, the Commission notes, that it included multiple grades of HRS in its normal value calculations for another cooperating exporter, Tung Ho Steel from Taiwan.
5. Furthermore, there appears to be a misunderstanding by SYS of the Commission's reasoning in determining a comparable subset of goods for normal value calculations. SYS' argument does not take into account that the models sold by Hyundai Steel are different to the models sold by SYS, and that the principles applied in selection of models was not to select a single grade for normal value calculation. The Commission has determined that this must be performed on an exporter-by-exporter basis. The Commission's reasoning is outlined in section 6.4.3 of REP 223.

Claim 2 – Date of sale

6. SYS claim in its application that the Commission was presented with sufficient evidence that the date of order confirmation should be relied on as the date of sale. The Commission disagrees with this claim.
7. In response to the exporter verification report for SYS, SEF 223 and REP 223, SYS made submissions regarding its preference for the Commission to use the order confirmation date for normal value calculations. The basis of the submissions relied on sales documents provided to the Commission on 1 April 2014. An examination of the documents highlighted that the order confirmation date was subject to amendment prior to issuing of invoices. The Commission could not accept the order confirmation date on the basis that the material terms of the sale were not final. However, upon issuing invoices the material terms of the sale become final and accordingly, the invoice date was considered to be appropriate. This approach is consistent with the *Dumping and Subsidy Manual* and footnote 8 to Article 2.4 of the Anti-Dumping Agreement. Detailed discussion about the date of sale is contained in section 7.7.2 of REP 223.