



Anti-Dumping Commission
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Ms Leora Blumberg
A/g Panel Member
Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
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by email: ADRP_support@industry.gov.au

Leora
Dear Ms Blumberg

ADRP REVIEW – HOT ROLLED STRUCTURAL STEEL SECTIONS EXPORTED FROM JAPAN, THE REPUBLIC OF KOREA, TAIWAN AND THE KINGDOM OF THAILAND – ON THE QUESTION OF THE PANEL'S JURISDICTION

I write to you in response to OneSteel Manufacturing Pty Ltd's (OneSteel's) letter, dated 11 March 2015, and to the Anti-Dumping Review Panel's (ADRP's) Notice to interested parties, dated 23 March 2015. I thank you for the further opportunity to comment on the question of the Panel's jurisdiction, specifically the power to review a decision to use an ad valorem duty method in determining the interim dumping duty payable.

The Commission notes that OneSteel, in its letter to the ADRP dated 11 March 2015, outlined its reasons for asserting that the consideration of the correct or preferable form of dumping duty falls within the jurisdiction of the ADRP's review. One Steel refers to my comments of 23 February 2015 that the ADRP does not have the jurisdiction to review a decision relating to the form of anti-dumping measures applied as this decision is made under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) and not the *Customs Act 1901* (the Customs Act).

Reviewable decisions under subsection 269ZZA(1) of the Customs Act

I note that only certain decisions of the Minister and the Parliamentary Secretary can be reviewed by the ADRP. These types of reviewable decisions are listed in subsection 269ZZA(1) of the Customs Act. These reviewable decisions do not include a decision as to the form of measures imposed under subsection 8(5) of the Dumping Duty Act. The ADRP's jurisdiction to review certain decisions of the Minister and the Parliamentary Secretary are limited to those decisions listed in subsection 269ZZA(1) of the Customs Act. This view was recently affirmed by Panel Member, Joan Fitzhenry, in her recent decision in ADRP Report No. 16, on Quenched and Tempered Steel Plate exported from Finland, Japan and Sweden (February 2015). In this case, one of the applicants, Bisalloy Steel Group Limited, contended that the wrong form of method was used by the Commission to determine the imposition of dumping duties on exports from Finland and Japan. In particular, I note paragraph 17 of the report which provides:



The various methods by which the dumping duties can be imposed are set out in the *Customs Tariff (Anti-Dumping) Regulation 2013*. A decision as to which of those methods are to be applied is made by the Minister pursuant to s. 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act). Thus, the decision with respect to the use of the ad valorem method was one made under s. 8(5) of the Dumping Duty Act and not under s. 269TG(1) or (2) of the [Customs] Act. As a result, ***the decision is not part of the reviewable decision and the Panel has no power to review it.*** (emphasis added)

In relation to the investigation of hot rolled structural steel sections, the decision with respect to the use of ad valorem was a decision that was also made under subsection 8(5) of the Dumping Duty Act and not under subsections 269TG(1) and 269TG(2) of the Customs Act. Noting this, and ADRP Report No. 16, my view is that the decision as to the form of measures is not a reviewable decision that comes within the jurisdiction of the ADRP for review.

Decisions under the Dumping Duty Act

One Steel also references section 6 of the Dumping Duty Act. The submission notes the effect of section 6 is that the Customs Act is to be read as one with the Dumping Duty Act.

One Steel further submits that the variable factors such as export price, normal value and non-injurious price (NIP) are 'key elements' in the decision of the Minister as to whether to publish a dumping duty notice and therefore the form of measures should be included as part of this reviewable decision. Ms. Fitzhenry also considered this issue in her recent ADRP decision of Quenched and Tempered Steel in relation to the determination of non –injurious price. Paragraphs 18 and 19 of ADRP Report No. 16 provide:

...the Parliamentary Secretary was required to determine whether to apply a NIP, and at what level, before the Dumping Duty Notice could issue. S. 269TG(3) requires a notice issued under s. 269TG(1) or (2) to include the amount of NIP ascertained at the time of publication of the notice.

The consideration of the NIP is part of the findings that to be made leading up to the decision to issue a notice declaring that s. 8 of the Dumping Duty Act applies. As Justice Rares noted in *Siam Polyethylene Co Ltd v Minister for Home Affairs* [[2009] FCA 837 at para 21] the scheme of the legislation:

...requires the Minister to ascertain the normal value, export price and non-injurious price for the purposes of the declaration and the consequent imposition of anti-dumping duties under the Dumping Duty Act.

Ms. Fitzhenry concluded in paragraph 20 of her report that she believed the "better view is that a finding with respect to the NIP falls within the scope of a reviewable decision under s. 269ZZA(1)(a) [of the Customs Act]".

I agree with Ms Fitzhenry's views on this issue in ADRP Report 16 and that the



Australian Government
Anti-Dumping Commission

decisions regarding export price, normal value and NIP are separate to the decision of the form of measures under subsection 8(5) of the Dumping Duty Act. This view is consistent with the operation of section 6 of the Dumping Duty Act.

Regards,

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dale Seymour', followed by a horizontal line.

Dale Seymour
Commissioner
Anti-Dumping Commission
30 March 2015