

20 February 2015

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601

Email: ADRP_support@customs.gov.au

Public File

Dear Sir/Madam,

ADRP Review Inquiry – Hot Rolled Structural Sections exported from Japan, the Republic of Korea, Taiwan and the Kingdom of Thailand

1.0 Introduction

I refer to the Anti-Dumping Review Panel (“ADRP”) review inquiry into hot rolled structural sections (“HRS”) exported from the Republic of Korea (“Korea”), Taiwan and the Kingdom of Thailand (“Thailand”).

Applications for review of the Parliamentary Secretary’s decision to impose measures on HRS exported from Japan, Korea, Taiwan and Thailand were received from:

- OneSteel Manufacturing Pty Ltd;
- Nippon Steel and Sumitomo Metal Corporation (“NSSMC”); and
- Siam Yamato Steel Co. Ltd (“SYS”) of Thailand.

OneSteel Manufacturing Pty Ltd (“OneSteel”) maintains its grounds for review as detailed in its application to the ADRP received on 22 December 2014. By this submission, OneSteel seeks to comment on the applications for review by NSSMC and SYS.

2.0 NSSMC

NSSMC has made an application for review of the Parliamentary Secretary’s decision to impose anti-dumping measures on HRS exported from Japan, Korea, Taiwan and Thailand. NSSMC’s grounds for review include:

- (i) errors in the assessment of material injury; and
- (ii) a misconstruction of the discretionary powers of s.269TG and considerations relevant to the exercise of that discretion.

2.1 Material Injury and causation

NSSMC claims that the Anti-Dumping Commission’s (“The Commission”) assessment of material injury and causation was flawed as it did not adequately demonstrate how causation was demonstrated to the exclusion of extraneous factors.

The Commission examined whether dumping had caused material injury to the Australian industry in Section 9 of Trade Measures Report No. 223 (“Report No. 223”). The

Commission confirmed that 96 per cent of exports to Australia from the nominated countries were at dumping margins of 2.20 to 19.48 per cent. It was further confirmed that the conditions of competition between the exports warranted considering the cumulative effect of injury that was attributed to the dumped exports.

The Commission was also satisfied that the dumped exports had caused the Australian industry's selling prices to be depressed and suppressed, and that this had caused a reduction in the Australian industry's profit and profitability.

The Commission further examined the impact of "other" factors that may have impacted on the economic performance of the Australian industry (Section 9.9) including:

- non-dumped goods;
- effect of imports from other countries;
- weakening domestic demand and an appreciation of the Australian dollar;
- exclusive supply arrangements;
- product substitution and changing supply patterns; and
- efficiency of operations.

The Commission concluded that non-dumped goods accounted for less than one percent of the Australian market during the investigation period. In respect of exports from other countries, the Commission established that the export prices for the goods under consideration from the other countries were all higher than the dumped exports and did not cause material injury to the Australian industry.

Weaker demand and the appreciation of the Australian dollar were factors that, in the opinion of the Commission, further exacerbated the injury experienced by the Australian industry. Supply arrangements within the industry did not detract from the conclusion that dumping had caused material injury to the Australian industry. The Commission stated it did not have any documentary evidence to conclude that there had been product substitution for HRS by other goods or a change in supply patterns. Further, the Commission was not provided with any information in support of allegations concerning the relative efficiency of OneSteel's HRS production facility.

The Commission adequately considered the impact of other extraneous factors that may have caused material injury to the Australian industry. The available evidence to the Commission confirmed that dumping, of itself, had caused material injury to the Australian industry.

NSSMC's claim that the Commission's finding on causation and a failure to adequately consider the impact of extraneous factors therefore is unfounded. The Commission's consideration of the extraneous influences has been considered in Section 9.9 and 9.10 of Report No. 223.

2.2 Classification errors

It is claimed by NSSMC that certain exported goods are not classified to AS/NZ standard 350L0 and should not therefore be included as having caused injury to the Australian industry.

The Commission was satisfied that the goods exported by NSSMC were alike to the goods the subject of the application by OneSteel. It is incumbent upon NSSMC to adequately demonstrate that the exported goods were not covered by the application. NSSMC has failed to do this, and has not adequately demonstrated that the exported goods fall outside the like goods classification.

2.2 Alleged misconstruction of discretionary powers

OneSteel agrees that the power to impose anti-dumping measures under s.269TG is discretionary in nature. However, it appears that NSSMC is suggesting that its exports of like goods have erroneously been included as like goods to those the subject of the investigation.

As a consequence it is claimed that the measures extend to exports by NSSMC that have not caused injury to the Australian industry.

As a non-cooperative exporter, NSSMC elected not to assist the Commission with its inquiries. In the absence of relevant information to adequately identify exported goods, the Commission must conclude that the goods are correctly classified upon importation. The Commission has not erred in its recommendations to the Parliamentary Secretary to impose measures on exports of like goods by NSSMC. OneSteel respectfully requests the AD RP to reaffirm the decision of the Parliamentary Secretary to apply anti-dumping measures to exports of HRS by NSSMC.

3.0 SYS

SYS has requested a review of the Parliamentary Secretary's decision to apply anti-dumping measures on exports from Thailand on the following grounds:

- the grade of steel selected for normal value purposes;
- date of sale;
- conversion rate for currency;
- adjustment for cutting cost; and
- level of trade adjustment.

3.1 Grade of steel

SYS contends that the Commission has incorrectly selected its so-called "superior" grade SS/SM400 "dual" grade products for the basis of SYS normal value. The goods exported to Australia by SYS are goods that are made in accordance with AS/NZ 3679.1 and are described as Grade 300 product.

SYS claims that "grade SS400 is the closest comparable grade of like goods sold in SYS' domestic market to its exports of grade 300". SYS seeks to justify this claim on the following grounds (refer SYS, p. 2):

- "the purpose of SM400 is welding whereas AS300 and SS400 are *suited* for bolt and nut installation" (emphasis added);
- "grades SS400 and AS300 are the lowest grades of mild steel respectively" under the Thai and Australian standards; and
- Dual graded SS/SM400 requires impact testing, whereas AS300, does not.

Firstly, as a matter of factual accuracy, it is important to note that AS300 is suitable for welding. This is reflected in AS/NZS 3679.1:

"AS/3679.1 – Grade 300

For general structural and engineering applications, all grades are suitable for welding, riveting and bolting."

By way of comparison, grade SS400 is not according to the Japanese Industrial Standard JIS G3101:

"JIS G3101 – Grade SS400 Hot rolled steel for general structures..."

The above *Comparison of Scope* definitions was contained in OneSteel's submission to the Commission dated 3 July 2014 (refer *EPR223/ Folio 072*, p.3)

In relation to SYS' general observation that "grades SS400 and AS300 are the lowest grades of mild steel" in respect of the Thai and Australian Standards, OneSteel says that this is an irrelevant consideration to the 'like goods' analysis required under the *Dumping and Subsidies Manual* (December 2013).

Indeed, OneSteel compared the functional comparability and chemistry of grades SS400, AS300 and SM490A in its 3 July 2014 submission to the Commission (refer *EPR223/Folio 072*, p.2), and found that grade AS300, could not be compared to the so-called 'low grade' SS400, as AS300's physical and chemical characteristics more closely resembled grade SM490A. *Tables 1 and 2*, below, reproduce the analysis originally contained in OneSteel's 3 July 2014 submission.

		Minimum Yield (MPa)																									
		210	215	220	225	230	235	240	245	250	255	260	265	270	275	280	285	290	295	300	305	310	315	320	325	330	
Grade	SS400																										
	AS300																										
	SM490A																										

Table 1 Comparison of minimum yield of grades SS400, AS300 and SM 490A under respective standards (source EPR223/Folio 072, p.2)

Grade		Specified chemistry requirements for Carbon, Silicon and Manganese?	
		Yes	No
	SS400		
	AS300		
	SM490A		

Table 2 Comparison of specified chemical compositions of grades SS400, AS300 and SM 490A under respective standards (source EPR223/Folio 072, p.2)

Although, dual grade SS/SM400 was not compared by OneSteel for the purpose of its 3 July 2013 submission, tables 1 and 2, clearly demonstrate that there is limited physical or chemistry likeness between grades SS400 and AS300. Therefore, it is not reasonable for SYS to simply assert that SS400 and AS300 are capable of comparability just because they represent the 'base' grades of their respective standards.

In relation to SYS' claim that grade AS300 does not require impact testing, it should be noted that OneSteel's grade AS300 is suitable for impact testing as it produced to meet the same physical and chemical requirements of grade AS 300L0. In addition OneSteel AS300 has significantly higher yield than SM400.

Further, SYS argues that in the case of other exporters, the Commission treated domestic sales of the lesser grade SS400 for normal value calculation purposes. SYS points to the

example of Hyundai Steel, “which sold grades SS400 and SM490A in the domestic market”. OneSteel. However, OneSteel observes as follows:

1. In the cases of the Japanese and Korean exporters, the Commission **did not** treat grade SS400 as completely alike to grade AS300. In both cases, the Commission made adjustments to the normal value under subsection 269TAC(8) of the Act for the physical differences between the grades; and
2. In the cases of the two Taiwanese exporters, the Commission made no adjustments to the normal value.

In both circumstances, OneSteel submits that the Commission’s calculation of the normal value is incorrect, as it is based on a comparison of the cost of incompatible steel grades, namely grades SS400 and AS300 and not the prices difference between AS300 and SM490 which has more alike functional properties of weldability and yield strength.

In support of this assertion, OneSteel repeats its 3 July 2014 submission:

“In cases where normal value is to be ascertained under s.269TAC(1) and the goods sold in the country of export are not identical to the goods exported to Australia, a fair comparison of domestic and export sales involves a two stage process. The first stage is to identify domestic goods with characteristics closely resembling the export goods and the second is to make any adjustments necessary to compensate for the impact on the price comparison process of timing differences, physical differences and the terms or circumstances of the two sales...

“[t]he first stage of the process the emphasis must be on the physical traits of the two products being compared. This emphasis resonates in the Commission’s own policy expressed in the Dumping Manual (p.8-10) where there is no reference to cost being a relevant consideration in determining whether two products closely resemble each other.”

To the extent that the Commission compared the individual exporter’s production costs for grade SS400 to grade AS300, the Commission has erred.

The Commission failed to properly consider the evidence submitted by OneSteel in its 3 July 2014 submission, specifically, reference to OneSteel’s earlier submission (30 June 2014) attaching an independent expert report on the comparison of steel grades by reference to International Standards (confidential attachment A <<30 June CIC submission>>and non-confidential attachment B <<30 June non-confidential submission>>).

In summary, the weight of evidence submitted by OneSteel in the course of the original investigation does not support the Commission’s conclusion that grade SS400 is most alike to grade AS300. OneSteel repeats earlier submissions that grade SM490A has been identified as the products that most closely resembles grade AS300 exported to Australia. Again, OneSteel repeats its earlier 3 July 2013 submission on this issue of adjustments pursuant to subsection 269TAC(8):

“The second stage of the process must focus on observed price differences because the statutory objective implicit in s269TAC(1) and (8) is to establish a domestic price that represents a fair comparison with the export price. While a cost difference may constitute corroborative evidence of the reasonableness of a price

difference it cannot of itself constitute grounds for an adjustment. This principle informs the Commission's own routine practice of rejecting claims for a normal value adjustment based on differential costs unless there is some evidence of that differential influencing the domestic price of the goods [fn]1." (fn 1: Investigation 225 – Item 029: p.50)"

In support of this approach specifically for SYS, OneSteel in numerous submissions ¹drew to the attention of the Commission evidence provided by the exporter Leong Huat Hardware that stated in its export questionnaire

AS3679.1 grade 300 requires more items to be stated in chemical compositions, physical/chemical laboratory approval....both Taiwan and Thailand steel mills charge a higher rate for AS3679.1 grade 300 compared to EN10025, ASTM or JIS standard.

Notwithstanding this, OneSteel observes that SYS was the only cooperative exporter who produced the 'dual' SS/SM400 grade. Therefore, if the Panel accepts the argument (which is not admitted but expressly opposed by OneSteel) that grade SM400 is suitable for comparison purposes to the exported grade AS300, even though SM400's yield strength is 30% lower than AS300, then it is entirely reasonable for the Commission to base its normal value calculation on the 'dual' grade goods.

It is recognized that Grade 300 product is a superior product to standard grade SS400 HRS in both terms of yield strength and weldability. The Commission has correctly established that SYS's grade SS/SM400 product has more aligned characteristics and specifications with the exported goods than the lower grade SS400 goods due to the fact SM400 is at least a weldable grade. As a result, SYS' SS/SM400 grades form the basis for normal values as determined by the Commission.

Where there exist suitable domestic sales of like goods sold on the domestic market in the ordinary course of trade, the Commission is required by s.269TAC(1) to use those domestic sales as the basis for normal values. SYS' sales of SS/SM400 grade HRS have been considered by the Commission to be sales that most closely resemble the export sales to Australia.

3.2 Date of sale

SYS has suggested that the Commission has not accepted the date of confirmation of order as the date of sale for the exported goods. Rather, the Commission has used invoice date as the date of sale. The Commission provided SYS with the opportunity to evidence the material terms of the export sales, however, it was not satisfied that SYS had provided sufficient information to establish date of confirmation as the date of sale for the export sales.

The Commission must be satisfied as to the terms of the export sale as evidence by supporting information. In the absence of adequate documentation establishing the terms of sale as date of confirmation, the Commission correctly will select the invoice date as the date of sale.

¹ OneSteel Submission dated 3rd July 2014.

3.3 Conversion rate for currency

SYS suggests the Commission did not make an adjustment to allow for forward exchange costs. OneSteel can only conclude that the Commission was not satisfied that the claimed adjustment related to the terms of the sales for goods exported to Australia.

In the absence of sufficient or reliable supporting information, the Commission cannot substantiate the SYS claimed adjustment.

3.4 Cutting cost adjustment

OneSteel notes SYS' claim for an adjustment to be made to normal value for a cost associated with cutting the goods for domestic sale into lengths less than 12 metres. SYS further claims that goods made for export are produced to size. It would be expected that for goods sold for export that are not 12 metre in length, there would also be associated cutting costs.

As there are goods sold domestically and for export at less than the typical 12 metre lengths, it would seem that cutting costs are incurred for both domestic and export sales. On this basis, it is not appropriate to make a s.269TAC(8) adjustment to SYS' normal value as the costs are incurred for both domestic and export sales.

3.5 Level of trade adjustment

SYS has sought an adjustment to normal value for claimed level of trade price differentials. However, the Commission has not been able to evidence sales by SYS on the domestic market at the same level of trade as the sales by SYS to Australia i.e. trader.

SYS has claimed that the sales to Australia are at a discount to those on the domestic market as they are sales at a different level of trade to those sold domestically (that are to distributors and end-users). The Commission could not evidence a price differential on the domestic market and has correctly concluded that in the absence of a price differential, a level of trade adjustment is not warranted.

OneSteel concurs with the Commission's stance as it is in accordance with the requirements of s.269TAC(8). It is insufficient for SYS to refer to Article 2.4 of the WTO Anti-Dumping Agreement to justify a level of trade adjustment, as there remains a requirement for SYS to demonstrate that price differential can be evidenced for sales at different levels of trade. The price differential between the different levels on SYS' domestic market has not been substantiated. This view is well supported by WTO jurisprudence, specifically, in *United States – Final Dumping Determination on Softwood Lumber from Canada* WT/DS264/R, adopted 13 April 2004 ("*US – Softwood Lumber V*"), the Panel considered that there is no requirement to adjust for any and all differences but rather only those differences demonstrated to have affected the price comparability:

"We consider that Article 2.4 does not require that an adjustment be made automatically in all cases where a difference is found to exist, but only where — based on the merits of the case — that difference is demonstrated to affect price comparability. An interpretation that an adjustment would have to be made automatically where a difference in physical characteristics is found to exist would render the term 'which affect price comparability' nugatory. Further, such an interpretation would make little sense in practice, as not all differences in physical characteristics necessarily affect price comparability." (at para. 7.165)

Therefore, the Commission has not erred in its assessment of normal value for SYS in Report No.223. The Commission has not been provided with sufficient supporting documentation to warrant adjustments to SYS' normal value as sought by SYS.

OneSteel requests the ADRP to affirm the normal value determined for SYS as confirmed in Report No.223.

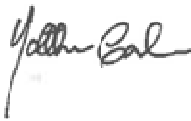
4.0 Conclusion

OneSteel requests the ADRP to examine OneSteel's grounds for review relating to measures based upon the ad valorem method rather than the preferred combination method. Additionally, OneSteel has also sought a review to ensure the correct grade of HRS is used for normal value comparison purposes and, where appropriate, make adjustments for cost differential between grades of like goods as required.

In respect of applications for review by NSSMC and SYS, OneSteel requests the ADRP to affirm the Parliamentary Secretary's decision as detailed in Report No. 223.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 8424 9880 or OneSteel's representative John O'Connor on (07) 3342 1921.

Yours sincerely



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