



Australian Government
**Australian Customs and
Border Protection Service**

R E P O R T

**TRADE MEASURES BRANCH
REPORT TO THE MINISTER NO. 153**

REVIEW OF ANTI-DUMPING MEASURES

**HOLLOW STRUCTURAL SECTIONS
EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

30 June 2010

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Australian industry	the Australian industry producing like goods
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
China	The People's Republic of China
CHS	Circular Hollow Sections
Customs and Border Protection	the Australian Customs and Border Protection Service
Dalian Steelforce	Dalian Steelforce Hi-Tech Co Ltd
FOB	free on board
Foshan Nanhai	Foshan Nanhai Honggang Metal Products Co., Ltd
HSS	Hollow Structural Sections
Minister	The Minister for Home Affairs
OneSteel ATM	OneSteel Australian Tube Mills Pty Ltd
Orrcon	Orrcon Operations Pty Ltd
PIR	Preliminary Information Request
REP	Trade Measures Report
Review Officer	Trade Measures Review Officer
RHS	Rectangular (and non-circular) Hollow Sections
Tariff Act	<i>Customs Tariff Act 1995</i>
Tianjin Jinshengde	Tianjin Jinshengde Steel Tube Produce Co Ltd
The delegate	Officer of Customs and Border Protection who has been delegated the CEO's powers under Division 5 of Part XVB of the Act
the goods	certain HSS exported to Australia from China
VAT	Value added tax

1 SUMMARY AND RECOMMENDATIONS

This report to the Minister for Home Affairs (the Minister) provides the results of the Australian Customs and Border Protection Service (Customs and Border Protection) review of anti-dumping measures applying to certain hollow structural sections (HSS)¹ exported to Australia from the People's Republic of China (China).

1.1 Recommendations

The delegate recommends that:

- a) the Minister sign the attached schedule (**confidential attachment 4**) and sign the attached public notice (**confidential attachment 3**) to declare that:
 - i) to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice—that, with effect from the date of publication of the notice, the notice is taken to have effect in relation to exporters the subject of this review generally as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty;² and
 - ii) to the extent that the anti-dumping measures concerned involved the acceptance by the Minister of an undertaking—that, if the terms of the undertaking are altered in a manner specified in the declaration, the undertaking as so varied will be acceptable to the Minister.³

1.2 Applicable law

1.2.1 Authority to make decision

Division 5 of Part XVB of the Act⁴ enables affected parties to apply for the review of measures. The Division also empowers the Minister to initiate such a review. The Division, among other matters:

- sets out the procedures to be followed by the Chief Executive Officer of Customs and Border Protection (CEO) in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection (the delegate).

After conducting a review of anti-dumping measures, the delegate must give the Minister a report containing recommendations⁵.

¹ More particularly described in section 3.2 of this report.

² Section 269ZDB.

³ Section 269ZDB.

⁴ A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901 (Cth)*.

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1.2.2 Initiation

On 18 December 2008, Customs and Border Protection initiated a review of measures imposed on certain HSS exported from China at the request of OneSteel ATM (ATM) and Orrcon Operations Pty Ltd (Orrcon). On 9 September 2009, Customs and Border Protection recommended to the Minister (REP 143) that the dumping duty notice and undertakings applicable to HSS exports from China remain unaltered.

Shortly after accepting the recommendations the Minister requested Customs and Border Protection initiate the review the subject of this report. Notification of initiation of the review was made on 8 October 2009. The review period was advised as 1 January 2008 to 31 December 2008.

Further background information in relation to the current and previous review is contained in Section 2 of this report.

1.2.3 Statement of essential facts

On 16 May 2010, the delegate of the CEO placed on the public record a statement of the facts (SEF 153) on which the CEO proposed to base his recommendation to the Minister concerning the review.

Interested parties were invited to lodge responses to SEF 153 by no later than 7 June 2010. Non-confidential versions of all submissions received are available on the public record.

1.2.4 Report 153

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows⁶, the CEO must give the Minister a report in respect of the review.

The Minister granted a 110 day extension to the date by which SEF 153 had to be placed on the public record. This report was provided to the Minister on 30 June 2010.

In formulating the final report the CEO must have regard to the request for review, any submissions relating generally to the review to which the delegate has had regard for the purpose of formulating SEF 153, any submission in response to SEF 153 received by Customs and Border Protection within 20 days after the day that statement was placed on the public record, and any other matters considered relevant⁷.

1.3 Findings and conclusions

1.3.1 The goods and like goods (Section 3)

The goods—The goods subject to the measures, which are more particularly described in section 3.2 of this report, are electric resistance welded pipes made of carbon steel, comprising circular hollow sections or rectangular or square hollow sections. The goods

⁵ Section 269ZDA(1).

⁶ If the date by which the statement of essential facts must be placed on the public record is extended, this extends the date by which the final report is due to the Minister by a corresponding period – s269ZC(7)(c).

⁷ Subsection 269ZDA(3)

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are in galvanised and non-galvanised finishes. The goods are collectively known as hollow structural sections or 'pipe and tube'.

Like goods—Hollow structural sections manufactured by OneSteel Australian Tube Mills Pty Ltd and Orrcon Operations Pty Ltd are like goods⁸ to the goods for the reasons set out in section 3.3.1 of this report.

1.3.2 Review of export price and normal value (Section 4)

The delegate is satisfied that the export prices and normal values relevant to the taking of anti-dumping measures on hollow structural sections exported to Australia from China have changed. Section 4 of this report provides details of the assessments for export prices and normal values.

1.3.3 Review of non-injurious prices (Section 5)

The delegate is satisfied that the non-injurious prices relevant to the taking of anti-dumping measures on hollow structural sections exported to Australia from China have changed. Section 5 provides details of the assessment for non-injurious prices.

1.3.4 Should the measures be revoked? (Section 6)

The delegate is not satisfied that if the anti-dumping measures to which this review relates had not been taken, the Minister would not be entitled to take such measures. It is possible that HSS exported to Australia from Malaysia and other Chinese exporters not subject to measures would have caused material injury to the Australian industry following the 2008 review period. If that were the case, and the goods under review were not subject to measures at that time, it is considered likely that the cumulative effect of dumped exports from different countries would likely have caused material injury to the Australian industry.

Accordingly, the delegate is not satisfied that the measures should be revoked.

⁸ Section 269T.

2 INTRODUCTION

2.1 Current anti-dumping measures

The review relates to measures imposed on certain HSS exported from China. The measures were imposed in May 2007 when the then Minister accepted Customs and Border Protection's recommendations contained in Trade Measures Report 116 (REP 116). Those recommendations were to accept price undertakings offered by four exporters from China and impose interim dumping duties on all other exporters from China other than six 'exempt' exporters with negligible levels of dumping in the investigation period (calendar year 2005).

2.2 Background

2.2.1 Previous review

On 21 November 2008, an application for review of those measures was lodged on behalf of the Australian industry producing like goods (Australian industry), claiming that one or more of the relevant variable factors had changed. That application followed the lodgement of a new application for the publication of a dumping duty notice on HSS exported from Malaysia, and on HSS exported by Chinese exporters exempt from measures as a result of REP 116. At the same time, the Australian industry lodged an application for the publication of a countervailing duty notice on all exports of HSS from China.

The review and the new dumping and countervailing investigations were initiated on 18 December 2008. The review period was notified as 1 January to 31 December 2008.

In relation to the review, Customs and Border Protection wrote to all known exporters of HSS from China and requested that the companies complete a Preliminary Information Request (PIR). Following an evaluation of the PIR responses Customs and Border Protection decided, in view of the large number of exporters who may provide information, it was not practicable to review the anti-dumping measures for each individual exporter. As a result, Customs and Border Protection selected the following two exporters for further and more detailed investigation:

- Dalian Steelforce H-Tech Co., Ltd (Dalian Steelforce), and
- Foshan Nanhai Honggang Metal Products Co., Ltd (Foshan Nanhai).

Dalian Steelforce was visited and information contained in its exporter questionnaire verified as part of the review.

Foshan Nanhai was advised that as it did not provide a complete and verifiable exporter questionnaire response it was deemed to have not cooperated with the review.

Although not selected, Customs and Border Protection received a completed exporter questionnaire response from Tianjin Jinshengde Steel Tube produce Co. (Tianjin Jinshengde).

Customs and Border Protection decided not visit Tianjin Jinshengde but elected instead to conduct a desk audit of the information contained in its exporter questionnaire response.

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2.2.2 Termination of investigations

On 15 May 2009, Customs and Border Protection terminated the dumping investigation against Malaysia after finding that imports from the Malaysian exporter that accounted for the majority of imports were exported with a negligible dumping margin and other exporters constituted negligible volume of exports from Malaysia (REP 144).

On 2 June 2009, Customs and Border Protection terminated both the dumping and countervailing investigations against HSS exports from China (REP 144). The delegate was satisfied there has been or may be dumping and/or subsidisation of some or all of the goods exported to Australia from China but the injury that has been or may be caused by that dumping and/or subsidisation is negligible.

Applications for review of the CEO's termination decisions were made to the Trade Measures Review Officer (Review Officer). On 14 August 2009, the Review Officer decided to revoke the CEO's decision to terminate the dumping investigation against Malaysia.

On 21 August 2009, the Review Officer decided to revoke the CEO's decision to terminate the dumping and subsidy investigations against China.

On 9 September 2009, Customs and Border Protection notified the resumption of the investigations into HSS exports from China and Malaysia.

2.2.3 Current review

On 9 September 2009, Customs and Border Protection reported to the Minister on the review initiated on 18 December 2008 (REP 143). The report recommended that the dumping duty notice and undertakings applicable to HSS exports from China remain unaltered following the decisions of the Review Officer to revoke Customs and Border Protection's decisions to terminate the investigations against Malaysia and China.

Shortly after accepting the recommendations, the Minister requested that Customs and Border Protection initiate the current review of measures to allow the decisions of the Review Officer to be taken into account. In particular, the Minister requested that the CEO fully consider the Review Officer's views on causation and injury before proceeding to recommend revocation or change in the variable factors. The Minister also requested that the CEO ensure that recommendations are consistent with the outcome of the resumed investigations. The review period remains 1 January 2008 to 31 December 2008.

On 2 July 2010 Customs and Border Protection published a statement of essential facts in relation to the resumed investigations into HSS exports from Malaysia and China. In the statement of essential facts Customs and Border Protection states that it proposes to recommend to the Minister that measures should not be imposed. The recommendation is based on the preliminary finding that material injury suffered by the Australian industry in 2008 was not caused by exports of HSS from Malaysia and China.

2.3 Participation in this review

Customs and Border Protection advised in Australian Customs Dumping Notice (ACDN) 2009/32 that in forming its recommendations for this review, it would have regard to information gathered for the purpose of the previous review (REP 143), as well as information gathered for the purpose of the resumed dumping investigations against Malaysia and China and subsidy investigation against China.

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Customs and Border Protection did not seek any additional information from interested parties during this review.

3 THE GOODS & LIKE GOODS

3.1 Findings

The goods— The goods subject to the measures, which are more particularly described in section 3.2 of this report, are electric resistance welded pipes made of carbon steel, comprising circular hollow sections or rectangular or square hollow sections. The goods are in galvanised and non-galvanised finishes. The goods are collectively known as hollow structural sections or ‘pipe and tube’.

Like goods—Hollow structural sections manufactured by OneSteel Australian Tube Mills Pty Ltd and Orrcon Operations Pty Ltd are like goods⁹ to the goods for the reasons set out in section 3.3.1 of this report.

Like goods manufactured and sold in China—Hollow structural sections manufactured by certain manufacturers in the Chinese domestic market are like goods to the goods for the reasons set out in section 3.3.2 of this report.

3.2 The goods

The goods subject to the measures are described as electric resistance welded pipes made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, commonly used in structural and mechanical applications.

The goods are normally referred to as either circular hollow sections (CHS) or rectangular or square hollow sections (RHS). The goods are collectively known as hollow structural sections (HSS) or ‘pipe and tube’.

Galvanised finish types include in-line galvanised, pre-galvanised and hot-dipped galvanised HSS. Non-galvanised HSS is typically finished with painted, black, lacquered or oiled coatings. Sizes of HSS covered by the measures are: for circular (including oval) products - those exceeding 21mm up to and including 165.1mm in outside diameter; and for square and rectangular products - those up to and including 1,277.3mm in perimeter (parameters as per the Australian Harmonised Customs Tariff). CHS with other than plain ends (e.g. threaded, swaged and shouldered) is also included in this application.

HSS is normally produced to either the British Standard BS1387, the Australian Standard AS 1163 or international equivalent standards (including ASTM¹⁰ and JIS¹¹). HSS can also be categorised according to its minimum yield strength. The most common classifications are 250 and 350 Mega Pascals.

HSS is also described as extra light, light, medium, heavy and extra heavy according to its wall thickness.

The following categories of goods are excluded:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer weld fin protrusions removed by scarfing [not exceeding 0.1mm on

⁹ Section 269T.

¹⁰ American Society for Testing and Materials

¹¹ Japanese Industrial Standards

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outer surface and 0.25mm on inner surface], and out of round standards [i.e. ovality] which do not exceed 0.6mm in order to maintain vibration-free rotation and minimum wind noise during operation);

- precision RHS with a nominal thickness of less than 1.6mm (is not used in structural applications and is produced from cold-rolled coil); and
- air heater tubes to AS 2556.

3.2.1 Tariff classification

The goods to which the measures the subject of the current review relate are HSS classified to subheading:

- CHS: 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37); and
- RHS: 7306.61.00 (statistical codes 21, 22 and 23) and 7306.69.00 (statistical codes 26, 27 and 28)

of the *Customs Tariff Act 1995*. The rate of duty for China is 4 percent.

3.3 Like goods

In REP 116, Customs and Border Protection made the following finding:

'Customs considers that, while there are certain differences in the physical characteristics of the imported and locally manufactured product, the HSS produced by the Australian industry has physical characteristics closely resembling the HSS imported from China. Customs also considers that they have similar manufacturing processes and distribution and marketing channels. It also found that the domestically produced HSS is commercially and functionally substitutable and competes directly with the imported HSS from China.'

'Based on the information provided by the Australian industry and importers, the goods manufactured by the Australian industry are like goods to the goods for the following reasons:

- *physical: the goods are produced in similar grades, weights, standards and appearance;*
- *commercial: the goods directly compete with Australian produced goods and are interchangeable;*
- *functional: the goods are used to perform the same function and have the same end-use; and*
- *production: the goods are manufactured in a similar process.'*

Customs and Border Protection finds that the goods manufactured by the Australian industry continue to have physical characteristics closely resembling the goods under review and therefore like goods.

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4 REVIEW OF EXPORT PRICE AND NORMAL VALUE

4.1 Findings

The delegate is satisfied that export prices and normal values relevant to the taking of anti-dumping measures on HSS exported to Australia from China have changed.

4.2 Introduction

The Minister requested the CEO to initiate this review after considering that one or more of the variable factors had changed. This section explains the results of Customs and Border Protection's inquiry into whether the variable factors of export price and normal value have changed since measures were imposed.

The review covers only exporters that are currently subject to a dumping duty notice or a price undertaking.

4.3 Participation

4.3.1 Australian industry's claim for review of variable factors

In support of their original claims that variable factors had changed, the Australian industry provided the following information:

- monthly price information for hot rolled coil, the main material input to HSS, sourced from an independent steel publication service (January 2005 to September 2008);
- monthly constructed normal value information for painted HSS and hot-dipped galvanised HSS;
- monthly export price information for HSS exported from China sourced from another independent price reporting service (January 2004 to June 2008); and
- Australian industry's cost to make and sell data for the twelve months ending September 2008¹².

4.3.2 Importers

No additional information was sought from importers during this review.

Importer questionnaire responses were received in relation to the previous review and verification visits were conducted to the following importers: Croft Steel Pty Ltd; Steelforce Australia Ltd; CMC (Australia) Tubular Trade Pty Ltd; Stemcor Australia Pty Ltd; Metalcorp Steel Pty Ltd; Palmer Steel Trading (Aust) Pty Ltd; Dixon (Asia-Pacific) Pty Ltd; and BlueScope Distribution.

¹² The Australian industry subsequently provided data for the quarter ended 31 December 2008 to cover the entire review period.

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4.3.3 Exporters

As explained earlier in this report, no additional information was sought from exporters during this Minister initiated review.

During the previous review, Dalian Steelforce was a selected exporter and completed an exporter questionnaire response which was subject to a verification visit conducted in April 2009. The visit report has been placed on the public record. Verified information from the visit to Dalian Steelforce has been used to establish the variable factors for that exporter.

Foshan Nanhai was also a selected exporter during the previous review but failed to provide a complete exporter questionnaire response and was therefore found to be non-cooperative.

Also during that review, Tianjin Jinshengde completed an exporter questionnaire response. This exporter was not visited for the purpose of verification however a desk audit was carried out on the information contained in the response. This information has been used to establish variable factors for that exporter.

4.4 Assessment

4.4.1 Export price

Dalian Steelforce

Dalian Steelforce manufactured and exported the goods to Australia during the review period.

In response to the SEF, Steelforce Australia Pty Ltd (Steelforce Australia) submitted that any comparison between export price and normal value should be made using order confirmation date as the date of sale. Customs and Border Protection maintains that the date of invoice best approximates the date of sale for the goods exported. There is insufficient evidence to support the claim that order confirmation dates establish the material terms of sale.

The goods have been exported to Australia otherwise than by the importer, Steelforce Australia, and have been purchased by the importer from the exporter. However, export prices could not be established under s.269TAB(1)(a) or (b) as the price of HSS sold by Dalian Steelforce to Steelforce Australia did not reflect an arm's length transaction, being influenced by the relationship between the two parties.

After having regard to all the circumstances of the sale, in particular the manner in which the export price is set between the exporter and the importer, export prices for Dalian Steelforce have been established under s.269TAB(1)(c), using the invoiced price between the exporter and the importer.

Tianjin Jinshengde

Customs and Border Protection is not aware of all the circumstances of exportation of HSS exported by Tianjin Jinshengde. Therefore, export prices are unable to be determined under s.269TAB(1). Export prices for Tianjin Jinshengde have been established under s.269TAB(3) having regard to all relevant information, with reference to the FOB invoiced price between the exporter and the importer.

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Other co-operating exporters

For exporters not individually selected for further investigation, export prices have been determined under s.269TAB(3) having regard to all relevant information, with reference to export prices determined for Dalian Steelforce.

Foshan Nanhai and other non-cooperating exporters

Sufficient information has not been furnished to enable export prices of HSS exported to Australia from China by Foshan Nanhai and other non-cooperating exporters to be determined under sections 269TAB(1)(a), (b) or (c).

For non-cooperating exporters, Customs and Border Protection has determined export price in accordance with s.269TAB(3), after having regard to all relevant information.

Using its import database, Customs and Border Protection identified exports of HSS during the review period, by all other exporters subject to the review except for those exported by Dalian and Tianjin Jinshengde. Whilst the information did not enable in each instance the identification of the types of finish from the description of the goods, Customs and Border Protection has accepted the applicant's estimate that exports comprised an equal mix of hot-dipped galvanised HSS and painted HSS.

For non-cooperating exporters, export prices have been determined under s.269TAB(3) having regard to all relevant information.

4.4.2 Normal value

Dalian Steelforce

Dalian Steelforce's domestic sales of like goods were not sufficient for use in determining normal value under s.269TAC(1) due to the insufficient volume of domestic sales.

Normal values have been established under s.269TAC(2)(c), on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export.

Steelforce Australia claimed that domestic sales of HSS in China were typically of an inferior quality compared to the standard of HSS exported to Australia by Dalian Steelforce. Therefore it claimed that a zero amount of profit should be included in constructing normal values for Dalian Steelforce.

No profit has been added to the constructed normal values for downgrade HSS exported to Australia by Dalian Steelforce. For prime quality HSS, Customs and Border Protection find that previously verified profits achieved on domestic sales of prime quality HSS, being like goods, by other exporters is both relevant and reasonable.

The normal value incorporated adjustments made under subsection 269TAC(9) to ensure a fair comparison with export prices. These adjustments are for: export tariff, painting costs, inland freight to port, other free-on-board (FOB) related charges and value added tax (VAT).

Tianjin Jinshengde

Tianjin Jinshengde's domestic sales of like goods were not relevant or suitable for use in determining normal value under s.269TAC(1).

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Normal values have been established under s.269TAC(2)(c), on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export.

The normal value was constructed using the cost to make and sell the various types of exported HSS plus an amount for profit. The amount of profit was the weighted average profit margin achieved by Chinese exporters during the original dumping investigation period.

The normal value incorporated adjustments made under subsection 269TAC(9) to ensure a fair comparison with export prices. These adjustments are for: export tariff, inland freight to port, other FOB related charges and VAT.

Other co-operating exporters

Normal values have been established for other cooperating exporters under s.269TAC(6) after having regard to all relevant information, with reference to normal values determined for Dalian Steelforce.

Foshan Nanhai and other non-cooperating exporters

In response to the SEF, a number of Australian importers of HSS jointly submitted that Customs and Border Protection should have regard to all relevant information in determining normal values for non-cooperating exporters. It considered that information gathered from cooperating exporters was more relevant and appropriate for establishing normal values in China than the Australian industry's estimates.

Following a review of its normal value calculations for non-cooperating exporters, Customs and Border Protection has identified that the SEF incorrectly stated that the monthly cost of hot-rolled coil was based on a free-on-truck price in Japan. In fact, normal values were constructed using the verified cost of hot-rolled coil purchased by a cooperating Chinese exporter plus the Australian industry's estimates of conversion costs and selling expenses in China.

Sufficient information is not available to enable the normal value of HSS exported to Australia from China by Foshan Nanhai and other non-cooperating exporters to be determined under subsections 269TAC(1) or (2).

For non-cooperating exporters, Customs and Border Protection has determined normal value in accordance with s.269TAC(6), after having regard to all relevant information. Normal values have been constructed by reference to monthly HRC prices verified in China plus the applicant's estimate of Chinese conversion and selling costs plus an amount for profit verified in China.

Adjustments for export tariff and VAT incurred on export sales were made to the normal values in accordance with s.269TAC(9).

4.4.3 Dumping margin

The margin of dumping is not required for the purposes of revising the variable factors, however it may be relevant to the consideration of whether measures should be revoked.

Customs and Border Protection has compared the revised export prices and normal values during the review period and found that HSS exported by Chinese exporters subject to the anti-dumping measures were dumped.

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Confidential attachment 1 provides a summer of export prices and normal values.

5 REVIEW OF NON-INJURIOUS PRICE

5.1 Findings

The delegate is satisfied that:

- the appropriate basis for the non-injurious price is the Australian industry's cost to make and sell for 2008 and the profit generated on sales of specific types of HSS in 2003/04 less certain deductions to the FOB level; and
- the non-injurious price has changed.

5.2 Introduction

The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping¹³.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a non-injurious price is calculated in FOB terms for the country of export.

This section explains the results of Customs and Border Protection's inquiry into whether the variable factor of non-injurious price has changed since measures were imposed.

5.3 Unsuppressed selling price

A non-injurious price is generally derived by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price. Customs and Border Protection's preferred approach to establishing an unsuppressed selling price observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated an unsuppressed selling price, the non-injurious price is calculated by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

In REP 116, Customs and Border Protection concluded that the unsuppressed selling price should be constructed using the Australian industry's cost to make and sell from 2005 and the profit generated on sales of all HSS in 2003-04.

¹³ The non-injurious price is defined in s.269TACA.

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5.4 Assessment

The delegate considers the method used in REP 116 remains appropriate. Customs and Border Protection has therefore constructed a selling price for HSS using the industry's consolidated cost to make and sell each type of HSS in calendar year 2008 plus an amount for profit generated on sales of all HSS in 2003-04.

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6 SHOULD MEASURES BE REVOKED?

6.1 Findings

The delegate is not satisfied that if the anti-dumping measures to which this review relates had not been taken, the Minister would not be entitled to take such measures. It is possible that HSS exported to Australia from Malaysia and other Chinese exporters not subject to measures would have caused material injury to the Australian industry following the review period. If that were the case, and the goods under review were not subject to measures at that time, it is considered likely that the cumulative effect of dumped exports from different countries would likely have caused material injury to the Australian industry.

6.2 Introduction

After reviewing the variable factors, the delegate considered whether a recommendation to the Minister should be made to:

- revoke the dumping duty notice as it applies to a particular exporter or to exporters generally; and/or
- release a person who gave an undertaking from that undertaking and terminate the investigation of the need for a dumping duty notice as it relates to that person.

The assessment of whether anti-dumping measures should be revoked involves examining whether, if the measures being reviewed had not been taken, the Minister would not be entitled to take any such measures. Considerations relevant to whether measures should be revoked are not the same as those relevant to an original investigation into whether measures should be imposed. For example, a finding in a review that dumping did not cause material injury in the review period may not satisfy the test for revocation because that is the desired effect of the imposition of the original measures. In other words, the existence of the measures implies the mitigation of some or all injurious effects of any dumping.

Customs and Border Protection considers that the revocation test is based on the presumption that anti-dumping measures should remain unless the negative is established – that is, it is satisfied that there would not be material injury caused by dumping if there were no measures.

6.3 Submissions claiming revocation

Dalian Steelforce

On 2 March 2009, Customs and Border Protection received a request from Steelforce Australia Ltd for release from the price undertaking pertaining to Dalian Steelforce, a related company. The reasons provided for the release are:

- since commencement of operations Dalian Steelforce has exported HSS to Australia at prices significantly above the undertaking price; and

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- Dalian Steelforce has no domestic sales. As the sale price to Australia is based on Dalian Steelforce's cost to make and sell, Dalian Steelforce cannot dump product into the Australian market and the undertaking is not a relevant measure.

Tianjin Jinshengde

On 10 June 2009¹⁴, Customs and Border Protection received a submission from Tianjin Jinshengde requesting revocation of the anti-dumping measures. The reasons provided are:

- the dumping investigation into HSS exported from Malaysia found negligible levels of dumping and the dumping and countervailing investigations into HSS exported from China established that during the investigation period, potentially dumped and subsidised HSS from China caused negligible injury to the Australian industry;
- Customs and Border Protection's causal link finding between injury to the Australian industry and HSS exported from China has application to all HSS exported during the investigation period, including those subject to measures as well those not subject to measures; and
- in its application and a subsequent letter the Australian industry stated that the measures were ineffective due to price rises since 2005.

6.4 Submissions in response to the statement of essential facts

A submission on behalf of certain Australian importers was received on 7 June 2010 that made the following observations:

- the Australian industry was shown to be performing well irrespective of whether exports of HSS from China or Malaysia were dumped and/or subsidised;
- other factors were found to have been causing injury to the Australian industry, and
- even if dumping and/or subsidisation was occurring in the case of Chinese HSS, it was not a factor which detracted from Customs and Border Protection's conclusion that no injury was being caused or was likely to be caused by Chinese HSS.

6.5 Likelihood of dumping continuing or recurring

The delegate has established that Dalian Steelforce exported HSS to Australia during the review period at dumped prices. Whilst its export prices were above the agreed undertaking prices for HSS, they continued to be less than their respective normal values – suggesting that Dalian Steelforce's price undertaking has not been an effective deterrent to dumping.

¹⁴ It should be noted that the submission was received after the termination of the investigations of HSS from Malaysia and China, and prior to the Review Officer's revocation of those terminations and resumption of the investigations.

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The delegate has also established during the review period that exports of HSS from other exporters subject to measures were dumped. This again indicates that anti-dumping measures have been ineffectual at eliminating dumping by Chinese exporters of HSS.

6.6 Likelihood of material injury continuing or recurring

In assessing revocation based on claims that the Australian industry is no longer suffering material injury caused by dumping, Customs and Border Protection will examine the economic condition of the Australian industry to determine whether, had the measures not been taken, the Minister would be entitled to take such measures. Customs and Border Protection will assess whether material injury caused by dumping would have occurred in the review period absent the measures, or would be likely to continue or recur if the measures are revoked. This examination will therefore typically cover the nominated review period and the subsequent period up to the publication of the SEF.

6.6.1 Likelihood of material injury during the review period

Volume effects

Quarterly sales volume data shows that in the first three quarters of the 2008 review period, the total sales volume of HSS produced by the Australian industry was relatively stable, before falling sharply in the December quarter 2008.

The Australian industry was identified as an importer of HSS during the investigation period and also a purchaser of imported HSS from other importers. Whilst these sales of HSS by the industry are not available in quarterly periods, it is noted that the volume of these imports doubled between 2006 and 2008.

The Australian industry suffered injury in the form of reduced sales volume, but that the injury was confined to the December quarter 2008. In assessing the cause of the industry's reduced sales volume in the December quarter 2008, the delegate found that:

- prior to the December quarter 2008, demand in the Australian market for HSS increased sharply. This was supported by Orrcon's June 2008 Market Pricing Update which stated that "The global steel industry is continuing to experience unprecedented demand and as a result the Australian market is also experiencing tight supply conditions", and
- prior to the December quarter 2008, the Australian market for steel had been subject to demand allocations. This is supported by ATM's July 2008 Steel & Tube Update which stated that "demand management will underpin all of our arrangements for the coming months" and the December 2008 issue of "Connect" (a OneSteel Steel & Tube Customer Newsletter) which reported that the Australian market had been subject to demand allocations earlier in 2008.

Following strong demand for steel products in the first three quarters of 2008, the emergence of the global economic slowdown and credit crisis in October 2008 affected customers of the steel industry in key markets such as construction, automobiles and industrial equipment.

The reduced sales volume led to the Australian industry's share of the Australian HSS market decreased each year since 2005. In 2008, the Australian industry's market share fell 3 percentage points from 2007. This compared to a 1 percentage point drop in the

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market share held by Chinese HSS imports subject to measures, and a 4 percentage point rise in the market share held HSS imports from countries not subject to measures.

The strong demand experienced by the steel industry prior to the December quarter 2008 led to the Australian industry experiencing supply constraints. These supply constraints resulted in an increase in the industry's sales of imported HSS into the Australian market. Then the onset of the global financial crisis in October 2008 caused a sharp fall in demand due to businesses looking to reduce their inflated stock holding levels. This contraction in demand impacted on the Australian industry's sales in December quarter 2008.

Customs and Border Protection also finds that the Australian industry's lost market share in the review period was taken up by imports of HSS not currently subject to measures.

Price effects

Customs and Border Protection found that the Australian industry's selling prices rose only slightly in the first quarter of the review period (2008), before increasing in the June quarter 2008 and then increasing again sharply in the September quarter 2008. Prices increased by approximately 45% in the first three quarters of 2008.

Contrasting to the price increases experienced in the earlier quarters of 2008, selling prices in the December quarter 2008 fell sharply (approximately 6%).

In comparison, the Australian industry's unit CTMS fell slightly in the March quarter 2008, remained steady in the following quarter before rising sharply in the second half of the 2008 investigation period. The continued cost increases in the December quarter 2008 generated unprofitable net sales in that period as unit selling prices reversed the trend observed in the first three quarters of that year.

Over the review period the Australian industry suffered injury in the form of depressed and suppressed prices. However this price depression and suppression was confined only to the December quarter 2008.

The industry's average monthly prices to distributors were compared with sales and import data obtained from importers of HSS from China and Malaysia. The analysis was by State and covered sales of black, painted, pre-gal/ILG and HDG finishes over the investigation period.

The undercutting analysis reveals that:

- price undercutting for black HSS was sporadic, with the industry price generally the lowest;
- there was no undercutting on painted HSS in the first half of the investigation period - there was some evidence of undercutting in the second half by the Malaysian and Chinese goods, with the Malaysian goods at the lowest prices in the latter part of 2008;
- there was evidence of undercutting on pre-galvanised HSS by the Malaysian and Chinese goods - however, there were also competitively priced imports from another country not subject to the investigations; and
- there was evidence of undercutting on HDG HSS throughout the investigation period by the Malaysian and Chinese goods - however, there were also competitively priced imports from another country not subject to the investigations in the latter part of 2008.

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Over the review period, prices of imported HSS from Chinese exporters subject to measures undercut Australian industry's equivalent net selling prices. However, the prices of imported HSS from countries not subject to measures (including other Chinese exporters) also undercut industry's prices for certain finishes of HSS.

There is no evidence that the undercutting by HSS imports caused Australian industry's prices to be depressed or suppressed. As noted earlier, industry's prices had increased by approximately 45% in the year to 30 September 2008. The only instance of price depression and suppression occurred in the December quarter 2008 which occurred as a result of the emergence of the GFC and the subsequent slowing of demand

Profits and profitability

The Australian industry's profits and profitability fell in 2006 and 2007, before rising in the review period of 2008. This trend was reflected over all finish types. The trend observed in the quarterly data reflects a similar trend to selling prices with profits increasing over the first three quarters of 2008, before falling in the December quarter 2008.

Whilst the Australian industry's overall profit performance in 2008 was down on its 2005 levels, this yearly comparison conceals the effects of the GFC on the profits achieved in 2008. The lower sales volume and lower selling prices experienced by the Australian industry in the December quarter 2008 was the result of the GFC in October 2008. This impact is evident from the significant losses achieved in that quarter.

It is worth noting that the profit achieved by the Australian industry in only the first three quarters of 2008 was approximately 10% greater than the 2005 annual profit. This shows that the Australian industry would have surpassed its 2005 profit performance had the losses incurred in the December quarter 2008 as a result of the GFC not occurred.

In summary, during the review period, the Australian industry suffered injury only in the December quarter 2008 and this injury can be attributed to the contraction in demand following the onset of the global financial crisis in October 2008. Therefore, in the absence of measures, Customs and Border Protection finds that the goods under review exported at dumped prices would not have caused material injury to the Australian industry during the review period.

6.6.2 Likelihood of material injury following the review period

As explained earlier, an examination of revocation claims based on injury or causation does not simply focus on whether material injury would have been caused absent the measures during the review period, but will also look forward beyond the review period, at the likelihood of a recurrence of material injury caused by the dumping of goods under review in the absence of measures.

Chinese exporters of HSS under review continued to export the goods to Australia at dumped prices during the review period. For the purposes of this assessment, the goods are assumed to have continued to be exported at dumped prices following the review period.

At the time of preparing this report Customs and Border Protection has also preliminarily found that HSS exported from Malaysia and other Chinese exporters not subject to measures were dumped during 2008. For the purposes of this assessment, HSS exported

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from Malaysia and other Chinese exporters are assumed to have continued to be exported at dumped prices.

As explained earlier, the emergence of the global economic slowdown and credit crisis in October 2008 directly affected customers of the steel industry in key markets such as construction, automobiles and industrial equipment. This impact is evident in the Australian industry's economic performance in the December quarter 2008.

Those companies that chose to expand their stock levels in the hope of minimising the impact of increasing prices due to the booming demand, were particularly impacted by the slowdown stemming from the global financial crisis. These companies found themselves with excess stock and de-stocking occurred during the latter half of 2008 and into 2009. A Steel Business Briefing (SBB) article set out a timeline of production cuts announced by steelmakers worldwide commencing from around August 2008. In November 2008, SBB reported that sentiment in the steel market was still negative, and the increased global credit crisis continued to have a major impact on steel demand. At that time, SBB reported that it was expected that any increase in demand could only begin to occur from the first half of 2009.

Therefore it is likely that the Australian industry would have continued to suffer injury in the first half of 2009 and this could largely be attributed to the global financial crisis. However during this period of economic uncertainty, it is likely that the weakened state of the Australian industry would have made it more susceptible to the effects of dumping.

Customs and Border Protection notes that the Ministerial Direction of 16 December 1991 relating to injury provided guidance on this issue. In the letter from the then Minister for Industry Technology and Commerce to the Controller-General of Customs, the then Minister wrote:

'an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped products in its market, could at another time weakened by other events, suffer material injury from the same amount and degree of dumping.'

Therefore, it is possible that HSS exported to Australia from Malaysia and other Chinese exporters not subject to measures would have caused material injury to the Australian industry in 2009, whereas the same levels of dumping would not have injured it in the first three quarters of 2008. The injury caused by the global financial crisis made the Australian industry more vulnerable to price competition in 2009, when customers were more scarce.

If that were the case and the goods under review were not subject to measures at that time, it is likely that following a consideration of the cumulative effect of dumped exports from different countries, the dumped goods under review would also be found to have caused material injury to the Australian industry.

Therefore, the delegate is not satisfied that, if the anti-dumping measures to which the review relates had not been taken, the Minister would not be entitled to take any such measures.

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7 EFFECT OF REVISING THE VARIABLE FACTORS

After establishing each of the relevant variable factors, Customs and Border Protection finds that export prices and normal values for all exporters have increased since the original measures were imposed in July 2005. Non-injurious prices have decreased slightly over the same period.

A comparison of normal values and non-injurious prices by the various finishes shows that the non-injurious price is the operative measure for exports of HSS by certain Chinese exporters.

The acceptable price undertaking levels have also increased, reflecting the increase in normal values and non-injurious prices.

In a submission responding to the SEF, a number of Australian importers of HSS jointly submitted that given the time that has elapsed between the 2008 review period and the reporting date to the Minister, the variable factors are effectively outdated due to substantial changes in costs and prices. It is claimed that steel prices have almost halved since the period prior to the global financial crisis and the 15% tax on HSS exports from China were cancelled on 1 December 2008. The Australian importers submit that given these changes, the variable factors should remain unaltered.

Adjusting the variable factors to take account of possible changes in costs or prices is not recommended. The period of review is nominated at the outset of the investigation to enable export prices and normal values to be determined for that given period. However, in considering a change in the level of anti-dumping measures applying to exports of HSS from China, it has been recommended that the new ascertained export prices be set equal to the ascertained normal values or the ascertained non-injurious prices, whichever is the lower.

This effectively sets a floor price for future exports of HSS with a zero amount of interim dumping duty, subject to any variable amount of duty being collected where actual export prices are less than the ascertained export prices.

Confidential attachment 2 provides a summary of the ascertained export prices, ascertained normal values, ascertained non-injurious prices and amounts of interim dumping duty.

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8 CONFIDENTIAL ATTACHMENTS

Confidential attachment 1	Normal value and export price summary
Confidential attachment 2	Ascertained export prices, normal values and non-injurious prices summary
Confidential attachment 3	Section 269ZDB public notice
Confidential attachment 4	Schedule – determine