



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

R E P O R T

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

REVIEW OF ANTI-DUMPING MEASURES

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

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1 BACKGROUND

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 for Home Affairs (Minister) in 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.

The delegate of the Chief Executive Officer (CEO) of Customs and Border Protection provided a report to the Minister in respect of this review on 30 June 2010 (REP 153). The delegate recommended that the Minister vary the variable factors relating to anti-dumping measures applying to exports of HSS from China. During the course of the Minister's consideration of the delegate's recommendation in REP 153, the Full Federal Court handed down a decision *Minister of State for Home Affairs v Siam Polyethylene Co Ltd*¹ (the Siam decision) which has cast doubt on the legality of the delegate's recommendations in REP 153.

This addendum sets out the delegate's recommendation in respect of the review taking into account the decision of the Full Federal Court in the Siam decision. The facts and findings set out in Chapters 2 through to 6 of REP 153 are adopted for the purpose of this addendum, and this addendum should be read in conjunction with REP 153.

¹ [2010] FCAFC 86

2 SHOULD MEASURES BE REVOKED?

2.1 Findings

The Siam decision set out the Full Federal Court's interpretation of the test for assessing whether measures should be revoked in the context of a review. This interpretation is different to the test applied in making the recommendation in REP 153. Applying that test to the facts found during the course of the review, the delegate is not satisfied that if measures were not in place they could now be imposed consistently with s269TG(2). While dumping was found during the review period, the dumping caused negligible injury to the Australian industry.

Accordingly, the delegate recommends that:

- to the extent that the measures involved the publication of a dumping duty notice, the dumping duty notice be revoked generally; and
- to the extent that the measures involved acceptance by the Minister of an undertaking, that the Minister indicate to the person who gave the undertaking that the person is released from the undertaking and the investigation of the need for a dumping duty notice is terminated.

2.2 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.

Following the Siam decision revocation must be recommended unless the delegate is positively satisfied that, if measures were not in place, they could now be imposed consistently with s269TAG. That is, that in the absence of measures there would be dumping causing material injury during the review period.

2.3 Assessment of dumping

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.

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.

2.4 Assessment of material injury

In REP 144A, Customs and Border Protection set out the facts established during its investigation into the dumping and subsidisation of HSS exported from China

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and the dumping of HSS exported from Malaysia. That report undertook a detailed examination and assessment of the Australian industry's material injury claims during the investigation period of 2008.

Because that investigation period is the same as this current review period, the facts established in that investigation are relevant in addressing the question of revocation.

2.4.1 Relevant findings contained in REP 144A

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.

Customs and Border Protection found that 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, Customs and Border Protection found that:

- prior to 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 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.

In terms of the impact of the reduced sales volume on the Australian industry's market share, Customs and Border Protection found that its share of the Australian HSS market has 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 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.

Customs and Border Protection finds that 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

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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 cost to make and sell (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 Customs and Border Protection found that 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.

Customs and Border Protection compared industry's average monthly prices to distributors 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-galvanised, in-line galvanised (ILG) and hot-dipped galvanised (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.

Customs and Border Protection found that over the review period of 2008, prices of imported HSS from Chinese exporters subject to measures undercut Australian

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industry's equivalent net selling prices. It was also found that prices of imported HSS from countries not subject to measures (including other Chinese exporters) undercut industry's prices for certain finishes of HSS.

Importantly, the prices of the goods under review during 2008 were significantly above undumped prices by other Chinese exporters not subject to measures. As these undumped exports were found to be non-injurious, it is reasonable to conclude that the goods under review are also non-injurious.

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 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 from the GFC is evident from the significant losses achieved in that quarter.

It is worth noting that the profits 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.

Customs and Border Protection finds that during the review period, the Australian industry suffered injury only in the December quarter 2008 and that this injury can be attributed to the contraction in demand following the event of the global financial crisis in October 2008.

2.4.2 Assessment of material injury in the absence of measures

Given that the majority of imported HSS during the 2008 review period was sourced from countries and exporters not subject to anti-dumping measures, this provides an ideal basis to examine and understand the likely impact of imported HSS by those Chinese exporters that were subject to measures, in the hypothetical scenario that measures had not been taken.

There is little evidence that the volume of imported HSS subject to review would have increased at the expense of industry's sales and therefore led to reduced market share or lost sales. As outlined above, the Australian market was experiencing supply constraints prior to the onset of the global financial crisis.

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Therefore, any injurious volume effects to the industry could not be attributed to imports.

If the removal of the measures did result in increased import volumes by exporters subject to review, it is more likely that it would have led to reduced volumes from other Chinese exporters not currently subject to measures.

In terms of potential price related injury, Customs and Border Protection notes that industry's prices were undercut by both dumped and undumped imports not subject to measures. During the 2008 review period, all of these imports were found to have been non-injurious, as the Australian industry's selling prices rose sharply in the first three quarters of 2008 in response to excess demand. The price depression and price suppression experienced in the December quarter 2008 was found to have been caused by the global financial crisis.

Given that the prices of these non-injurious imports also undercut the prices of imported HSS that were subject to anti-dumping duties, it is reasonable to conclude that it is unlikely that the goods subject to measures would have caused material injury. The more likely scenario is that the export prices of these goods would have reduced, reflecting the absence of the anti-dumping duties, to prices that would make them competitive with other imported HSS from Malaysia, other Chinese exporters and other exporting economies such as Korea, Taiwan and Thailand .

Therefore, there is not sufficient evidence to be satisfied that had the anti-dumping measures not been taken, it is likely that the necessary conditions for imposing the duties would have been met. Whilst the goods were found to have continued to be exported to Australia at dumped prices during 2008, it is unlikely that these dumped prices would have led to material injury to the Australian industry.