

12 April 2006

Trade Measures Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Attention: Antonina Bolsherlarski

Dear Sir/Madam

Submission to the Joint Study on the Administration of Australia's Anti-Dumping System

I am writing in respect of the recently announced Joint Study on the Administration of Australia's Anti-Dumping System. The Joint Study was announced by the Minister for Justice and Customs, and the Minister for Industry Tourism and Resources, to examine current administrative practices and to consider improvements to the operation of Australia's anti-dumping system.

A Reference Group has been tasked with the responsibility of examining the administration of Australia's anti-dumping system and will report to the Ministers within a six-month timeframe.

OneSteel Trading Pty Ltd ("OneSteel") has been involved as an applicant company in a number of anti-dumping inquiries over recent years. The company offers the following comments in respect of its experiences with the administration of Australia's anti-dumping system.

1. Access to the anti-dumping system

Complexity of Application and related information requirements

It has been OneSteel's experience that the information requirements required of a "satisfactory" application for initiation purposes extend beyond the requirement of establishing "reasonable grounds" for the publication of a dumping duty notice.

OneSteel has found that the requirements imposed by Customs for the completion of Appendix A4, for example, extend well beyond this requirement. It has been OneSteel's experience that Customs will often seek three year's data in Appendix A4 format – despite the application form only requesting twelve months worth of data. Customs will also insist upon the data in each of the Appendices reconciling with each other (i.e. Appendix A6 reconciling with Appendix A2 and A3). Whilst OneSteel agrees that it is necessary for the financial data to reconcile, the reality of allocating rebates to invoice level (often undertaken manually) is an extremely time- and resource-constraining task.

OneSteel requests the Reference Group to ensure Customs does not seek to obtain information beyond the "reasonable grounds" requirement of the legislation. To require applicant companies to prepare specific data in a format that Customs requires is quite often unreasonable. Applicants are already preparing financial data in a format, which has no other purpose than for an anti-dumping application. Over-zealous requirements by Customs for applications cause considerable resource issues for applicants.

Pre-screening and Initiation

The 20-day pre-screening phase for an application is often extended by Customs for the most minor of reasons. By responding to questions from Customs for the purposes of clarification, any new information supplied (which may explain what has been supplied) will result in Customs' unfairly recommencing the 20-day pre-screening timeframe.

There are often considerable delays encountered in the 20-day pre-screening period, with Customs encouraging applicants to withdraw an application and re-submit when identified issues have been addressed.

Customs' approach to the pre-screening of an application is one in which it considers there is not sufficient time for it to fully assess the application. The legislation requires that "reasonable grounds" be established by the applicant for the publication of an application. It is OneSteel's view that Customs should interact fully with the applicant to familiarize itself and understand the application. This approach would ensure that the 20-day timeframe is met – unlike the current practice where the 20-day timeframe to initiation is rarely achieved.

ABS Data

OneSteel has experienced considerable frustration in seeking to obtain import data for the preparation of an anti-dumping application where certain data has been suppressed by the Australian Bureau of Statistics ("ABS"). The suppression of ABS data follows from a request by an importer (or importers) that the publication of the data will lead to the public disclosure of confidential business information.

OneSteel considers that restricted access to import data (as imposed by the ABS) significantly retards an applicant's ability to adequately provide the necessary information in a form required by Customs for the purposes of an anti-dumping application.

OneSteel encourages the Reference Group to examine the restrictive nature of suppression orders on import data, which impinge upon the applicant's ability to adequately complete, an application for anti-dumping measures.

2. Transparency

Commercial sensitivity in Public File documents

OneSteel has encountered numerous instances where large sections of a Public File report or document have been edited (or "blacked-out") on the basis that certain information in the document is commercially sensitive, and that the release of the information would disclose the confidential business activities of an interested party.

It is rare for a document to be placed on the Public File where a non-confidential summary of the commercially sensitive information has been prepared.

OneSteel would welcome a more rigorous approach by Customs in enforcing the requirement of a non-confidential summary for claimed sensitive material omitted from Public File documents. In the event a non-confidential summary is not prepared, recourse to non-consideration of the items is deemed appropriate.

Public File

The Public File system as it presently operates is cumbersome and difficult to access. This is particularly the case for companies that do not have a presence in Canberra. There are often delays of up to seven days in securing Public File documents, after allowing for Customs'

resources to copy documents and mail to interested parties.

OneSteel would like to see the Public File System accessible via the Customs website. This would enable immediate access to Public File information and ensure all parties access to documents throughout the inquiry process as required.

3. Conduct of dumping investigations

Artificially low prices - China

Following recent negotiations between the governments of Australia and P R China to negotiate a Free Trade Agreement, the Australian government undertook to allay the fears of Australian manufacturers concerned with the dumping of Chinese exports to Australia and include in the Customs Manual (Volume 22 – Dumping and Subsidization) references to “artificially low prices” in the country of export.

Manufacturers, concerned by the Australian government’s granting of “market economy” status to China in anti-dumping investigations, queried whether relief from dumping would be available in instances where the involvement of State Owned Enterprises (“SOEs”) in the exporting sector (or in the supply of raw materials to the exporting sector) could influence Chinese domestic and/or export prices for the goods under consideration (“GUC”).

The Australian government agreed to incorporate provisions within Volume 22 of the Customs Manual to enable Australian manufacturers to detail circumstances of the impact of SOEs on the domestic market of the exporting country.

The manual was revised in May 2005 to incorporate provisions, which relate to the incidence of “artificially low prices” in the exporting country.

OneSteel supports the changes and consider that there has been insufficient time as to determine the impact of the changes. OneSteel is concerned that the extent of any verification and investigation by Customs as to the involvement of SOEs (either as a participant in the domestic market or as a supplier of raw material inputs) must be thorough and extensive. It is insufficient to question the exporter on the extent of how domestic prices are determined, or whether there is competition on the home market.

OneSteel considers that evidence indicating the involvement of SOEs either as a participant on the domestic market or as a supplier of raw materials to producer(s) who subsequently export to Australia, is sufficient a basis to question the reliability of domestic prices for the GUC.

OneSteel considers that the “onus of proof” rests solely with the exporter to establish whether the involvement of SOEs on the domestic market does not influence costs and/or selling prices for the GUC. OneSteel anticipates that Customs would thoroughly investigate assertions made by applicant companies that SOEs are actively involved in the exporting country – and that investigations undertaken are consistent with the rigorous verification inquiries undertaken of Australian industry in anti-dumping investigations.

Provisional measures

Current practice followed by Customs is that a preliminary affirmative determination (“PAD”) imposing provisional measures will only generally follow the publication of a Statement of Essential Facts (“SoEF”). An SoEF is published on or before Day 110 of an investigation (in recent times, on only one occasion was a PAD made prior to a SoEF).

OneSteel believes that Customs adopts a very cautious approach to the imposition of provisional measures. Only when Customs is absolutely satisfied that the publication of a dumping duty notice will be included in its recommendations to the Minister, will Customs publish a PAD.

OneSteel supports initiatives to impose provisional measures as early as practicable following Day 60 of an investigation. Such an approach may involve Customs not having fully verified the information contained in an exporter's submission; Customs, however, will be in possession of sufficient information (from the exporter's questionnaire response) to understand whether dumping and material injury are likely to continue.

On this basis, OneSteel considers it is appropriate to impose provisional measures to provide relief to the Australian industry from the injurious effects of dumping.

Retrospective Measures

Australia's anti-dumping system as it presently operates does not provide sufficient disincentive to exporters who continue to cause material injury to the Australian industry following the initiation of an investigation. Material injury to the applicant industry often continues until the imposition of provisional measures at publication of a PAD.

The legislation contains provisions, which enable Customs to consider the imposition of retrospective measures where certain requirements can be satisfied. Customs has not recommended retrospective measures over recent times.

It is OneSteel's view that the adoption of provisional measures at the earliest opportunity following Day 60 of an investigation and the application of retrospective measures (where the legislative requirements have been satisfied) would discourage ongoing material injury to the applicant industry during the inquiry period.

4. Post imposition of measures

Monitoring and compliance

It is OneSteel's understanding that the monitoring of interim duties is not afforded the highest priority by Customs. The monitoring of interim duty collection is undertaken intermittently as available resources permit.

It is OneSteel's expectation that once interim duties have been imposed there should be some return to normal trading conditions. During this period it is anticipated that Customs would ensure applicable interim duties are paid by importing parties. In addition to the duty collection function, Customs should also be involved in monitoring the effect of the interim duties imposed on market selling prices for the GUC – to ensure that the duties imposed have the desired effect of enabling the industry's prices to recover to non-injurious levels.

This latter activity where market prices are monitored regularly by Customs does not presently occur. OneSteel requests the Reference Group to examine opportunities to have Customs actively monitor the impact of interim duties on market prices through close liaison with the applicant industry.

5. Assessment of Profits Foregone – Material Injury factor

Customs' recent decision to terminate the HSS investigation (of which OneSteel was an applicant) was based on a view that a loss of market share – in a market where prices and profits were increasing (the latter off a low base) – could not be interpreted as demonstrating material injury.

Following this determination, OneSteel requests the Reference Group to seek clarification from the Industry Minister (responsible for anti-dumping policy) to guide Customs on what, in

the government's view, is sufficient for material injury to be proven.

Previous Ministerial Directions and Guidance letters on slowing in an industry's rate of growth and material injury only being proven in "rare" circumstances where industry profitability has not diminished, have been narrowly interpreted by Customs.

Customs has also been reluctant to infer that a loss of market share (resulting in profits and profitability foregone) as evidence of material injury in its own right.

As such, OneSteel is of the view that a contemporary directive is required to provide Customs with the government's view that a loss of market share can be used as a basis for establishing material injury to an Australian industry.

In addition, clarification is required on the injurious nature of a loss of market share in an expanding market on the industry's ability to invest in the industry over the longer term. To date Customs has not accepted that reduced market share in a rapidly expanding market as sufficient evidence of material injury.

The approach sought with a new Ministerial directive is to recognise the substantial short-term and long-term injury implications from profits foregone by Australian industry due to dumped imports

Summary

OneSteel has provided above, comments on its experiences with the administration of Australia's anti-dumping system. OneSteel has also included suggestions, which will lead to improving the effectiveness of the system, as well as utilizing mechanisms, which are already available within the legislation more effectively. If you have any questions concerning this submission, please do not hesitate to contact me.

Yours sincerely

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OneSteel

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