



Australian Government

**Australian Customs and
Border Protection Service**

Customs Act 1901 - Part XVB

TRADE MEASURES BRANCH

STATEMENT OF ESSENTIAL FACTS NO. 144

HOLLOW STRUCTURAL SECTIONS

FROM

THE PEOPLE'S REPUBLIC OF CHINA AND MALAYSIA

8 July 2010

PUBLIC RECORD

CONTENTS

CONTENTS	2
ABBREVIATIONS	3
1 SUMMARY AND RECOMMENDATIONS	4
1.1 Proposed recommendations	4
1.2 Application of law to facts	4
1.3 Preliminary findings and conclusions	5
2 BACKGROUND	7
2.1 Introduction	7
2.2 Responding to the statement of essential facts	9
2.3 Final Report	10
3 THE GOODS & LIKE GOODS	11
3.1 Preliminary findings	11
3.2 The goods	11
3.3 Like goods	12
4 AUSTRALIAN MARKET	13
4.1 Preliminary findings	13
4.2 Market size	13
4.3 Marketing and distribution	13
4.4 Competition in the market	14
5 DUMPING AND SUBSIDISATION	15
5.1 Preliminary finding	15
5.2 Background	15
5.3 Assessment	16
6 MATERIAL INJURY CAUSED BY DUMPING AND/OR SUBSIDISATION	22
6.1 Preliminary findings	22
6.2 Introduction	22
6.3 The Review Officer's decision	23
6.4 Volume effects	23
6.5 Price effects	26
6.6 Profits and profitability	29
6.7 Other economic factors	31
6.8 Conclusion	33
7 THREAT OF MATERIAL INJURY	35
7.1 Preliminary findings	35
7.2 Introduction	35
7.3 Applicants' claims	36
7.4 Assessment	36

PUBLIC RECORD

ABBREVIATIONS

Act	<i>Customs Act 1901</i>
Alpine	Alpine Pipe Manufacturing Sdn Bhd
ATM	OneSteel Australian Tube Mills Pty Ltd
ACDN	Australian Customs Dumping Notice
CEO	Chief Executive Officer of Customs and Border Protection
China	The People's Republic of China
CHS	Circular hollow sections
Choo Bee	Choo Bee Metal Industries
Customs and Border Protection	Australian Customs and Border Protection Service
Foshan Nanhai	Foshan Nanhai Honggang Metal Products Co. Ltd
HDG	Hot dipped galvanised
Hiap Teck	Hiap Teck Venture Berhard
HRC	hot rolled coil
HSS	Certain hollow structural sections
Huludao	Huludao City Steel Pipe Industrial Co. Ltd
ILG	In-line galvanised
Injury analysis period	From 1 January 2005
Investigation period	1 January 2008 to 31 December 2008
Kingland	Zhejiang Kingland Pipeline and Technologies Co. Ltd
Megasteel	Megasteel Sdn Bhd
Melewar	Melewar Industrial Group Behr
Minister	Minister for Home Affairs
Orrcon	Orrcon Operations Pty Ltd
RHS	Rectangular or square hollow sections
Review Officer	Trade Measures Review Officer
SBB	Steel Business Briefing
Shandong Fubo	Shandong Fubo Group Co.

PUBLIC RECORD

1 SUMMARY AND RECOMMENDATIONS

This report sets out the essential facts on which the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base its recommendations to the Minister for Home Affairs (the Minister) in relation to an application to publish a dumping duty notice in respect of certain hollow structural sections (HSS) exported to Australia from Malaysia and the People's Republic of China (China) and a countervailing duty notice in respect of HSS exported to Australia from China.

1.1 Proposed recommendations

Customs and Border Protection has made the following preliminary findings:

- there has been dumping of HSS exported from Malaysia;
- the Australian industry producing like goods suffered injury during the investigation period;
- Exports of HSS from China and Malaysia did not cause material injury to the Australian industry during the investigation period. The injury suffered by the Australian industry at this time was caused by other factors – being predominantly the contraction in demand brought about by the global financial crisis;
- The threat of material injury to the Australian industry caused by dumped and/or subsidised HSS imports is not foreseeable and imminent

Customs and Border Protection proposes to recommend that the Minister not impose dumping duty on HSS exports from Malaysia and China and to not impose countervailing duty on HSS exports from China.

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by an application. The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

1.2.2 Application

On 19 November 2008, OneSteel Australian Tube Mills Pty Ltd, trading as OneSteel ATM Pty Ltd (ATM), and Orrcon Operations Pty Ltd (Orrcon) lodged an application requesting that the Minister publish dumping duty notices in respect of HSS exported to Australia from Malaysia and China, and publish a countervailing duty notice in respect of HSS exported to Australia from China.

PUBLIC RECORD

On 5 December 2008, the applicants provided further information in support of the application. As a result, Customs and Border Protection restarted the 20 day period for considering the application.

The CEO was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

1.3 Preliminary findings and conclusions

Customs and Border Protection has made the following preliminary findings and conclusions based on available information at this stage of the investigation:

1.3.1 The goods and like goods (Chapter 3 of this report)

OneSteel/ATM and Orrcon produce HSS that has characteristics closely resembling those of HSS manufactured in China and Malaysia and exported to Australia. Therefore HSS manufactured by OneSteel/ATM and Orrcon is like goods to the goods exported from China and Malaysia to Australia.

1.3.2 Market (Chapter 4 of this report)

The Australian HSS market in 2008 was supplied by OneSteel/ATM and Orrcon, as well as imports from a number of countries including China and Malaysia. The Australian HSS market is estimated to have been 600,000 tonnes in 2008.

1.3.3 Dumping and subsidisation (Chapter 5 of this report)

Alpine did not give a full and open account of matters relevant to the determination of dumping, in particular the receipt of rebate payments during the investigation period. Therefore information provided by Alpine cannot be relied upon because it is no longer considered to be reliable and credible.

HSS was exported from Malaysia during the investigation period at dumped prices.

The alleged dumping and subsidisation of HSS exports from China has not been determined at this time. For the purpose of assessing injury, HSS exported from China during the investigation period is taken to be dumped and subsidised.

1.3.4 Injury and causation (Chapter 6 of this report)

The Australian industry suffered injury in the form of:

- reduced sales volume;
- lost market share;
- price depression;
- price suppression; and
- reduced profits and profitability.

Exports of HSS from China and Malaysia did not cause material injury to the Australian industry. The injury suffered by the Australian industry was caused by

PUBLIC RECORD

other factors – being predominantly the contraction in demand brought about by the global financial crisis.

1.3.5 Threat of material injury (Chapter 7 of this report)

Material injury to the Australian industry is not threatened by exports of HSS from China and Malaysia.

PUBLIC RECORD

2 BACKGROUND

2.1 Introduction

On 19 November 2008, the Australian industry manufacturing HSS lodged an application requesting that the Minister publish countervailing and dumping duty notices in respect of HSS exported to Australia from China and a dumping duty notice in respect of HSS exported from Malaysia.

On 5 December 2008, the Australian industry provided further information in support of its application. As a result, Customs and Border Protection restarted the 20 day period for considering the application.

The application was lodged on behalf of the two Australian manufacturers of HSS, ATM and Orrcon.

The application for the publication of a dumping duty notice was made in respect of:

- all imports of HSS from Malaysia, and
- certain imports of HSS from China (excluding imports from Chinese exporters which are already the subject of anti-dumping measures).

The application for the publication of a countervailing duty notice was made in respect of all imports from China.

Customs and Border Protection considered the application and was satisfied that there were no grounds to reject it. Public notification of initiation of the investigations was made on 18 December 2008 by a notice in *The Australian* newspaper and by Australian Customs Dumping Notice (ACDN) 2008/45. The ACDN is available on the internet at www.customs.gov.au.

Customs and Border Protection notified that the investigation period would be 1 January 2008 to 31 December 2008. This is the period for determining whether dumping or countervailable subsidisation has occurred. Customs and Border Protection also notified that it would examine details of the Australian market from 1 July 2004 for injury analysis purposes. As the investigation period is a calendar year, Customs and Border Protection commenced the injury analysis from 1 January 2005.

2.1.1 Termination of dumping investigation against Malaysia

On 20 May 2009, the delegate terminated the dumping investigation so far as it related to exporters of HSS from Malaysia because:

- exports of HSS to Australia by the principal Malaysian exporter, Alpine Pipe Manufacturing Sdn Bhd (Alpine), were dumped by a negligible margin. The delegate was therefore required to terminate the investigation so far as it related to Alpine; and

PUBLIC RECORD

- the volume of HSS exported to Australia during the investigation period by other Malaysian exporters was negligible. The delegate was therefore required to terminate the investigation so far as it related to Malaysia.

2.1.2 Termination of dumping and countervailing investigations against China

On 5 June 2009, Customs and Border Protection terminated investigations into the alleged dumping and subsidisation of the goods exported to Australia from China. Customs and Border Protection was satisfied that there has been, or may be, dumping and/or subsidisation of some or all of the goods the subject of the application that have been, or may be, exported to Australia from China, but the injury, if any, to the Australian industry, that has been, or may be, caused by that dumping and/or subsidisation is negligible.

2.1.3 Trade Measures Review Officer reviews

On 19 June 2009, the Australian industry manufacturing like goods lodged an application with the Trade Measures Review Officer (Review Officer) for a review of the delegate's decision to terminate the investigation as it related to Malaysia. The applicants claimed that Customs and Border Protection had:

- failed to make a fair comparison between Alpine's export prices and its selling prices in Malaysia;
- disregarded information that was provided by another Malaysian exporter, Melewar Industrial Group Behr (Melewar), concerning rebates available from the hot rolled coil producer Megasteel Sdn Bhd (Megasteel) on coil used to produce HSS for the export market;
- accepted inadequate information from Megasteel about pricing of hot rolled coil for the export and domestic market; and
- regard to domestic transfer sales of HSS by Alpine to related companies that were not arms length to establish normal values.

On 27 June 2009, the Australian industry lodged an application with the Review Officer for a review of Customs and Border Protection's decisions to terminate the investigations as they related to China.

On 14 August 2009, the Review Officer revoked the delegate's decision to terminate the dumping investigation as it related to Malaysia. The Review Officer's decisions were publicly notified on 31 August 2009. In the Review Officer's view the resumption of the investigations would enable the question of the appropriate date for comparison of domestic and export sales, and other issues raised by the applicants in their application to the Review Officer, to be further considered.

On 21 August 2009, the Review Officer also revoked Customs and Border Protection's decision to terminate the investigations as they relate to China. The Review Officer's decision was publicly notified on 31 August 2009. In the Review Officer's view further consideration should be given to the submissions of the Australian industry that dumping had caused material injury and this would be best

PUBLIC RECORD

achieved by the publication of a statement of essential facts, in relation to which interested parties can make further submissions.

2.1.4 Resumption of the investigations

Following the Review Officer's decisions to revoke the delegate's decisions to terminate the investigations as they relate to Malaysia and China, Customs and Border Protection must publish a statement of essential facts as soon as practicable. Following the publication of the statement of essential facts, the normal investigation timeframes resume.

2.2 Responding to the statement of essential facts

This statement of essential facts sets out the essential facts on which Customs and Border Protection proposes to rely. It represents an important stage in the investigation as it informs interested parties of the facts established and allows them to make submissions in response to the statement. It is important to note that the statement of essential facts may not represent the final views of Customs and Border Protection.

Interested parties have 20 days to respond to this statement of essential facts. Responses to this statement should be received by Customs and Border Protection no later than **28 July 2010**. Customs and Border Protection is not obliged to have regard to any submission made in response to the statement received after 28 July 2010.

Submissions should preferably be emailed to tmops1@customs.gov.au. Alternatively they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 1
Trade Measures Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Interested parties intending to respond to the statement of essential facts must include a non-confidential version of their submission for placement on the public record¹. Submissions provided in confidence must be clearly marked "**IN-CONFIDENCE**".

The public record contains non-confidential submissions already received from interested parties, this statement of essential facts, non-confidential versions of Customs and Border Protection's visit reports and other publicly available documents, such as Customs and Border Protection's initiation report, notices and

¹ In preparing a non-confidential version, interested parties should have regard to the requirements set out in ACDN 2006/54.

PUBLIC RECORD

other information. These documents should be read in conjunction with this statement.

Any party wishing to examine the public record should contact Trade Measures Office Management staff on (02) 6275 6547 or may access the electronic public record at <http://adpr.customs.gov.au/Customs/>

2.3 Final Report

The CEO's final report and recommendations will be provided to the Minister by 23 August 2010.

PUBLIC RECORD

3 THE GOODS & LIKE GOODS

3.1 Preliminary findings

Based on the information available, OneSteel/ATM and Orrcon produce HSS that has characteristics closely resembling HSS exported to Australia from China and Malaysia and are therefore like goods² to the goods exported.

3.2 The goods

The goods under consideration are 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 product is 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) and are also commonly referred to as steel pipe and tube.

Finish types of HSS are galvanised finishes – including in-line galvanised (ILG), pre-galvanised and hot-dipped galvanised (HDG); and non-galvanised finishes – including painted, black, lacquered or oiled finished coatings.

Sizes of HSS covered by the investigation are: for circular (including oval) products - those exceeding 21 mm up to and including 165.1 mm in outside diameter; and for square and rectangular products - those up to and including 1,277.3 mm 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 the application.

HSS is normally produced to either the British Standard BS 1387, the Australian Standard AS 1163 or international equivalent standards. 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, or extra heavy according to its wall thickness.

The following categories are excluded from the goods under consideration:

- 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 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 2256.

² Section 269T

PUBLIC RECORD

The goods are correctly classified to tariff subheadings 7306.30.00 (CHS) and 7306.60.00 (RHS) in Schedule 3 of the *Customs Tariff Act 1995*.

The goods from China and Malaysia are subject to DCS rates of duty - the current DCS rate for tariff heading 7306 is 4 percent.

3.3 Like goods

In Trade Measures Report 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 (and Malaysia). 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 (and Malaysia).'

Based on the information provided by the Australian industry and importers, the goods manufactured by the Australian industry are like goods to the goods under consideration 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.

PUBLIC RECORD

4 AUSTRALIAN MARKET

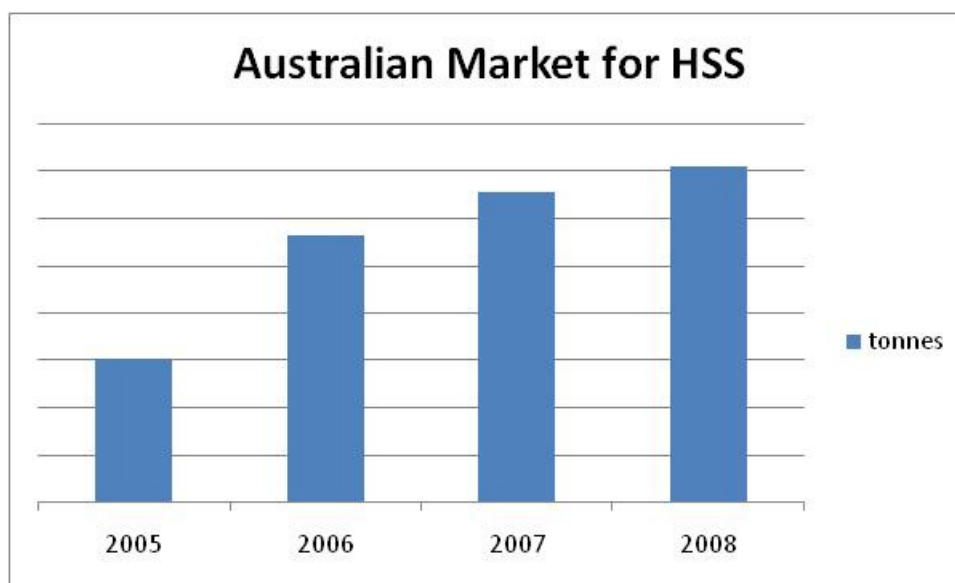
4.1 Preliminary findings

The Australian HSS market in 2008 was supplied by OneSteel/ ATM and Orrcon, as well as imports from a number of countries including China and Malaysia. The Australian HSS market is estimated to have been 600,000 tonnes in 2008.

4.2 Market size

The applicants estimated the Australian market to be about 570,000 tonnes in the investigation period roughly split into 60 percent RHS and 40 percent CHS. ATM estimated the size of the Australian market for hot dipped galvanised HSS as 110,000 tonnes (which is almost all CHS).

During the investigation, the Australian industry's sales data was verified. Import and sales data from importers of HSS from China and Malaysia was also collected and verified. Data from Customs and Border Protection's commercial database was also used to estimate the total import volume.



Based on available information the Australian market is estimated during the investigation period to be approximately 600,000 tonnes.

4.3 Marketing and distribution

The majority of ATM's sales into the Australian market were made through their associated distributors with the balance being made through independent national distributors. National distributors then supply smaller regional distributors and resellers or direct to end-users. ATM makes some direct sales into the market but these sales are restricted by volume.

Orrcon sold all its HSS direct to the market via distribution outlets and through independent stockists.

PUBLIC RECORD

Imported product was supplied to distributors or re-sellers through traders. Most of the traders did not maintain warehouse facilities. They therefore arranged the importation of HSS and the delivery of the goods direct to their customers. The majority of traders' imports were pre-sold to their customers before they arrived in Australia.

In addition, it was evident that there are a large number of HSS re-sellers, small and large, at the wholesaling and distribution level in the Australian market. It was apparent that these re-sellers did not necessarily sell to a particular level of trade in the market.

Re-sellers vary in size from stocking 20 tonnes to 1,000 tonnes of steel products. Some larger re-sellers can purchase directly from Australian manufacturers and traders.

4.4 Competition in the market

The Australian industry stated that competition in the Australian HSS market was intense and that the market was transparent and highly price sensitive. The Australian industry stated that it competed directly with imports of HSS, particularly goods imported from China and Malaysia. Australian HSS manufacturers acknowledged that they also competed with each other in trying to match competition from imported HSS.

The Australian industry claimed that the number of participants in the Australian HSS market had increased dramatically over recent years. It stated it now faced competition from an array of companies offering and selling HSS into all levels of the Australian market. The Australian industry was aware that a large number of re-sellers of imported HSS offered the product to all levels of trade from distribution to end users.

The majority of interested parties stated that price is an important factor in purchasing decisions. They generally agreed that the Australian HSS market is very competitive and is also price sensitive and transparent.

PUBLIC RECORD

5 DUMPING AND SUBSIDISATION

5.1 Preliminary finding

Based on available information, Alpine did not give a full and open account of matters relevant to the determination of dumping, in particular the receipt of rebate payments during the investigation period. Therefore information provided by Alpine cannot be relied upon because it is no longer considered to be reliable and credible.

Based on the available information, HSS from Malaysia was exported to Australia during the investigation period at dumped prices.

For the purpose of assessing injury, HSS exported from China during the investigation period is assumed to be dumped and subsidised.

5.2 Background

5.2.1 China

At the commencement of the investigation, a large number of potential exporters of HSS from China were identified.

Preliminary information was sought from identified suppliers of HSS to determine the likely number of exporters and whether particular exporters should be selected for further investigation. An assessment of responses to the request for information revealed that the number of exporters was so large that it was not practicable to work out individual exporter dumping and subsidy margins.

On the basis of the preliminary information gathered, the individual exporters in the table below were selected for the dumping investigation and countervailing investigation (referred to in this report as selected exporters).

Nominated country	Selected exporter
Dumping investigation	<ol style="list-style-type: none">1. Zhejiang Kingland Pipeline and Technologies Co., Ltd (Kingland), and2. Shandong Fubo Group Co (Shandong Fubo)
Subsidy investigation	<ol style="list-style-type: none">1. Kingland;2. Shandong Fubo;3. Dalian Steelforce Hi-Tech Co., and4. Foshan Nanhai Honggang Metal Products Co., Ltd (Foshan Nanhai)

The remaining exporters that complied with the request for information but were not selected for further investigation are considered residual exporters. Information obtained from the selected exporters was used to decide whether dumping exists for those residual exporters.

PUBLIC RECORD

In addition, there were a large number of exporters that provided incomplete or no response to the request for information. These exporters (referred to in this report as selected non-cooperating exporters) are considered to have not cooperated with the investigation. Of the selected exporters above, both Shandong Fubo and Foshan Nanhai were also deemed to be non-cooperative exporters after providing incomplete questionnaire responses.

Finally a Chinese exporter not selected for further investigation, Huludao City Steel Pipe Industrial Co. Ltd (Huludao), volunteered information seeking individual dumping and subsidy determinations and provided a complete and verifiable questionnaire response.

5.2.2 Malaysia

Customs and Border Protection identified the following companies as being exporters of HSS from Malaysia to Australia during the the investigation period:

- Alpine;
- Choo Bee Metal Industries (Choo Bee);
- Melewar; and
- Southern Pipe Industry (Malaysia) Sdn. Bhd.

Each of these exporters was advised of the initiation of the investigation and were requested to cooperate by completing a questionnaire response.

Exporter questionnaire responses were received from each of the above companies, but only the responses from Alpine, Choo Bee and Melewar were considered satisfactory. Given that Alpine accounted for the vast majority of exports of HSS from Malaysia to Australia during the investigation period, only information contained in Alpine's exporter questionnaire response was verified.

5.3 Assessment

5.3.1 MALAYSIA - DUMPING

Alleged rebates on purchases of HRC

Prior to the commencement of the verification visit to Alpine, the applicants raised the issue of a possible two-tier pricing arrangement operating in Malaysia for the purchase of hot rolled coil (HRC) from the sole supplier of HRC in Malaysia, Megasteel. The two-pricing pricing of HRC was claimed to be in operation through Megasteel providing rebates on purchases of HRC used in the production of exported goods.

Following the verification of Alpine's exporter questionnaire response, it was found that no such rebates existed with respect to Alpine's purchases of HRC. A brief visit to Melewar was also undertaken to better understand and verify information in respect of HRC purchases in Malaysia. It was confirmed with Melewar that Megasteel did offer rebates on purchased HRC used in the production of exported goods to enable Malaysian manufacturers to be competitive in international markets.

PUBLIC RECORD

To claim a rebate, Melewar applies to Megasteel by submitting supporting documentation such as delivery order, invoice and customs declaration.

In response to the preliminary findings and recommendations made in the Alpine normal value visit report, the applicants reiterated their view that a “two tiered” pricing system for HRC operated in Malaysia.

On 23 March 2009, Customs and Border Protection wrote to Megasteel to further investigate claims of rebates and “two tiered” pricing for HRC in Malaysia. Megasteel responded by denying that its HRC prices are high by international standards. It stated that it had strategies to promote exports by its customers but that it had not paid any rebates to Alpine in 2008. Ultimately Megasteel advised that it did not want to elaborate further or provide additional information on the issue of rebates or two-tier pricing allegations. Whilst Megasteel’s response was not particularly persuasive, Customs and Border Protection did not draw any adverse inferences given that Megasteel is not an exporter of HSS to Australia and therefore not directly concerned with the investigation.

At that time, Customs and Border Protection was of the view that the limited information provided by Megasteel did not contradict the information supplied by and verified with Alpine. That is, Alpine’s HSS production costs in the investigation period were reconciled to Alpine’s audited financial statements and to source documents. Therefore the records presented by Alpine relating to HSS reasonably reflected the costs associated with the production or manufacture of like goods.

Following the resumption of the investigation, the applicants provided a further submission on the issue along with evidence which it considered supported their claim that Alpine had received rebates from Megasteel on the purchase of HRC. The evidence related to the 2008 annual report for Alpine’s parent company Hiap Teck Venture Berhad (Hiap Teck) which makes the following references relevant to the issue of rebates:

1. Page 59 – Note 2.5 (b)(ii) Inventory rebates receivable

“The Group is entitled to claim rebates for the export of certain goods manufactured from raw materials purchased from a supplier. As at 31 July 2008, total rebates received from the supplier amounted to RM 38,215,217”; and

2. Page 79 – Note 19 Other receivables

“Included in sundry receivables of the Group are inventory rebates receivable from a supplier amounted to RM 38,215,217.”

The applicants assert that as the group is only involved in the manufacture of steel pipe products, the rebates identified in Hiap Teck’s financial accounts related to the supply of HRC by Megasteel.

In response to this new information, Alpine rejected the claim that the notes in the Hiap Teck Annual Report confirmed that rebates had been received. It went on to point out that the notes clearly qualify the receivables as an accounting provision by

PUBLIC RECORD

stating that “the rebates have not been certified by the supplier”. In Alpine’s view this qualification implies that ‘the amounts provided for had not been received during the period in question.’

Alpine’s response to the evidence presented by the Australian industry is not convincing. Alpine was made well aware of the two-tier pricing claims prior to the verification visit at its premises. The issue of supplier rebates was discussed in some detail at the visit and the report of the visit, which Alpine agreed was an accurate record, included the following statement:

“Alpine stated that it does not receive a rebate from [company name] for HRC purchased and used to manufacture product for export”³.

On 17 March 2010, Alpine were informed in writing that cooperating exporters are expected to provide a full and open account of matters relevant to the determination of dumping. Given the repeated allegations by the Australian industry that rebates were being paid by Megasteel on purchases of HRC, Customs and Border Protection is not persuaded by Alpine’s claim that it did not actually receive a rebate payment during the investigation period.

As a result, Alpine was requested to provide reasons why relevant information submitted by the company should not be considered unreliable.

On 31 March 2010, Alpine responded and made the following statements:

- neither Alpine nor its parent, Hiap Teck, have actually received (been paid) any rebates in respect of 2008 purchases of HRC from Megasteel;
- assuming that rebates were indeed payable by Megasteel to Hiap Teck in respect of 2008 HRC sales, even though the relevant notes in the annual report clearly demonstrate them to be provisional and not guaranteed, payment of these rebates should not alter the determinations on export price and normal value;
- receipt or the entitlement to receive rebates by Alpine on its HRC purchases is not relevant to the calculation of export price;
- Customs and Border Protection’s own guidelines state that adjustment to normal value will not be made where there is a two-tiered pricing arrangement;
- if an adjustment to normal values was to be made, receipt of the rebates would not result in a material dumping margin as:
 - the rebate is only payable on HRC used in the production of HSS destined for export and not connected with the sale of HSS by Alpine domestically, and
 - even if the rebate was payable in respect of domestic sales of HSS, the effect would be to reduce the costs and consequently the normal value.

Alpine contends that the original dumping findings are supportable, have been rigorously verified and are not affected by the apparent existence of any provisional entitlement of Hiap Teck to a rebate on HRC sales from Megasteel to Alpine.

³ P22 Exporter visit report – Alpine Pipe Manufacturing Sdn Bhd

PUBLIC RECORD

On 10 May 2010, Alpine offered the opportunity for Customs and Border Protection to again visit the company's premises and conduct further verification of source documents relating to its purchases of HRC during the investigation period. After careful consideration, Alpine were advised that further verification was not necessary.

Customs and Border Protection finds that:

- Alpine has been provided with ample opportunity during this investigation to adequately address claims surrounding the existence of rebates on purchases of HRC from Megasteel;
- Alpine appears to be justifying its earlier denial of their existence on the grounds that rebates have not actually been paid or received for Alpine's purchases of HRC during the investigation period. This justification is not accepted;
- Alpine's full disclosure on the rebate arrangements (either paid or payable) would have allowed Customs and Border Protection to consider the implications of the arrangements for the dumping finding. The disclosure of the rebates would have also allowed Customs to undertake a further line of questioning and verification of the role of Alpine's parent, Hiap Teck, and whether this impacted on the cost to make and sell information provided.

Customs and Border Protection concludes that Alpine did not give a full and open account of matters relevant to the determination of dumping, in particular the receipt of rebate payments on HRC purchases. Therefore information provided by Alpine cannot be relied upon because it is no longer considered to be reliable and credible.

Export price

Customs and Border Protection found that:

- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importers from the exporter; and
- the purchases of the goods were arms length transactions.

Export prices have been determined using the invoiced price less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation⁴.

Normal value

Customs and Border Protection recommends the Minister consider all costing information provided by Alpine to be unreliable and disregard the information for the purposes of determining normal values⁵.

⁴ s. 269TAB(1)(a)

⁵ In accordance with s.269TAC(7)

PUBLIC RECORD

In the absence of reliable production costs and administrative, selling and general costs, Customs and Border Protection is unable to determine whether Alpine's domestic sales were sold in the ordinary course of trade. Therefore normal value cannot be determined using either domestic sales⁶ or by constructing a domestic selling price⁷.

Having regard to all relevant information⁸, a normal value for Alpine's HSS exports to Australia has been determined by reference to the applicants' estimate of the cost to make and sell HSS for the Malaysian domestic market. An amount for profit has been added, which is based on the profit achieved in 2007 by Hiap Teck's manufacturing segment, of which Alpine is the largest contributor (only 2007 data was available).

Dumping margin

Using a weighted average comparison of export prices and normal values, a country-wide dumping margin of 15.2 percent has been calculated for exports of HSS from Malaysia during the investigation period.

5.3.2 CHINA – DUMPING AND SUBSIDISATION

As stated earlier, in the case of the dumping investigation, one of the selected Chinese exporters was found to be non-cooperative. For the subsidy investigation, two of the selected exporters were deemed to have not cooperated.

For the remaining two cooperating exporters, Kingland and Huludo, Customs and Border Protection has undertaken verification of their respective exporter questionnaire responses.

A preliminary assessment of dumping based on domestic sales sold in the ordinary course of trade shows that the dumping margins of HSS exported during the investigation period by both Kingland and Huludao were negligible. However these preliminary normal values and dumping margins do not address the applicant's claims that domestic sales are not suitable for determining normal values because the Government of China has materially distorted competitive conditions on the domestic market and/or certain costs may be considered to not reasonably reflect competitive market costs associated with the production of like goods for the purposes of constructing a normal value.

Based on its preliminary assessment of injury to the Australian industry (refer to Section 6), Customs and Border Protection has deferred its visit to the Government of China and has therefore not fully investigated the applicant's claims about the suitability of domestic selling prices.

A preliminary assessment of subsidisation has also been made for both Kingland and Huludao. Customs and Border Protection has found that the amount of countervailable subsidy received by these exporters in respect of the goods exported

⁶ s.269TAC(1)

⁷ s.269TAC(2)(c)

⁸ s.269TAC(6)

PUBLIC RECORD

to Australia is negligible (not more than 2%), when expressed as a percentage of the export price of the goods.

However, these preliminary subsidy margins have been calculated after only having regard to information provided by the exporters. For example, in determining the benefits received by the exporters under Program 10 (HRC at less than adequate remuneration), Customs and Border Protection has relied on the exporter's identification of the raw material suppliers that are considered to be state-owned enterprises. The status of each of the raw material producers has not been fully investigated with the Government of China.

Based on its preliminary assessment of injury to the Australian industry, Customs and Border Protection has deferred its visit to the Government of China and has therefore not fully investigated whether the claimed subsidy programs are countervailable.

Therefore, for the purpose of assessing material injury to the Australian industry, Customs and Border Protection has assumed that HSS exported to Australia from China during the investigation period were dumped and subsidised.

PUBLIC RECORD

6 MATERIAL INJURY CAUSED BY DUMPING AND/OR SUBSIDISATION

6.1 Preliminary findings

The economic performance of the Australian industry was examined from 2005. The Australian industry suffered injury in the form of:

- reduced sales volume;
- price depression;
- price suppression; and
- reduced profits and profitability.

The injury suffered by the Australian industry in the investigation period was not caused by exports of HSS from China and Malaysia

6.2 Introduction

In assessing the condition of the Australian industry, Customs and Border Protection used data provided by the Australian industry (in Appendix A6 of the application as adjusted following verification visits), data obtained and verified at visits to importers and import data from its commercial database⁹.

The Australian industry's data has been adjusted to exclude the impact of significant one-off costs incurred in the September quarter of 2007 incurred by ATM relating to a corporate restructure. These costs are not relevant when examining trends in the context of an anti-dumping investigation.

In examining the injury claims made by the applicants, Customs and Border Protection has, where appropriate, focused on the quarterly movement of the Australian industry's key injury indicators in the injury analysis period. Given the volatility of hot rolled coil prices during these periods, their impact on HSS prices and the possible influence of the global financial crisis in October 2008, the use of quarterly data in examining injury is considered more appropriate.

In assessing whether exports of HSS from Malaysia or China caused material injury to the Australian industry, Customs and Border Protection is satisfied that it is appropriate to consider the cumulative effect of exports from both countries after having regard to the conditions of competition between those goods and like goods produced domestically¹⁰. Therefore the following analysis has considered the cumulative effect of exports from both Malaysia and China.

⁹ The data provided by ATM does not include cost and sales information in respect of HSS produced by OneSteel Distribution at the Kembla Grange facility. In view of the quantities of HSS produced by this facility, Customs and Border Protection does not consider that the exclusion of this data materially affects the analysis of the condition of the Australian industry.

¹⁰ s.269TAE(2C)

PUBLIC RECORD

6.3 The Review Officer's decision

The TMRO gave reasons for his decision in a report of 21 August 2009. The TMRO stated that 'insufficient consideration has been given to the submissions of OneSteel in arriving at the determination that dumping is not causative of material injury to the Australian industry producing HSS'. Customs and Border Protection has had regard to issues raised in submissions by the Australian industry and where appropriate, addressed them in the following analysis.

For other issues raised by the TMRO, Customs and Border Protection has specifically addressed them in relevant sections of the injury analysis.

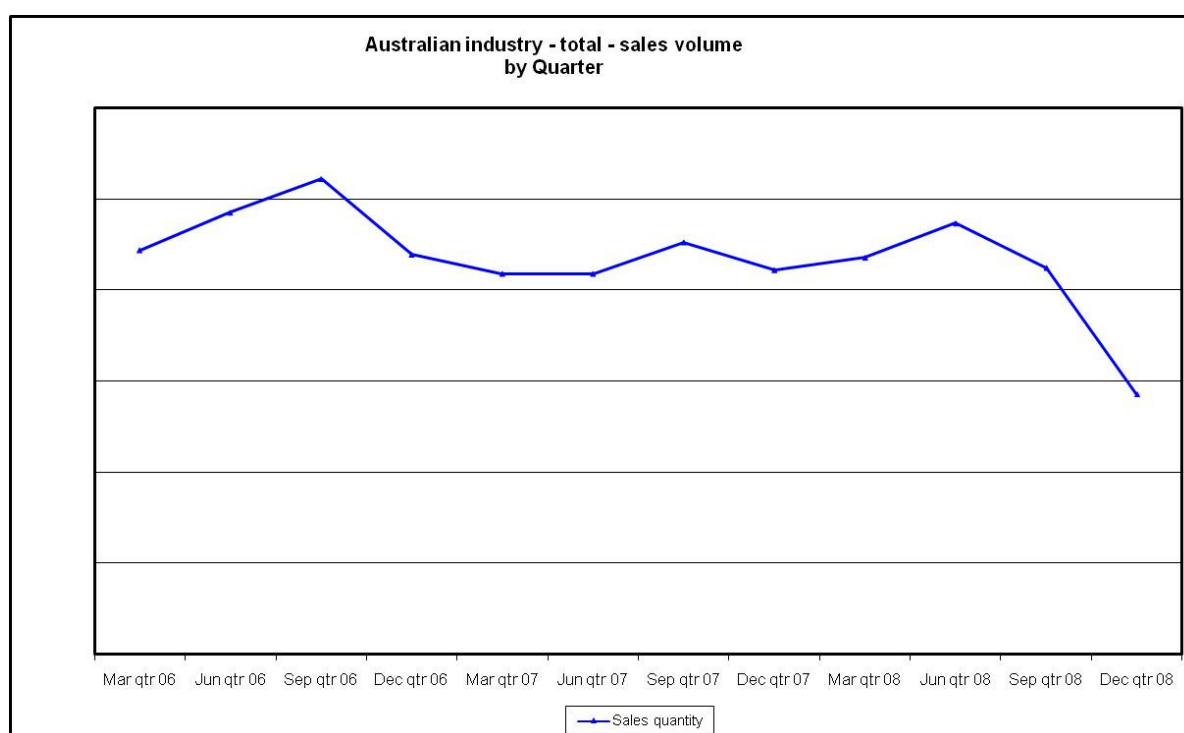
6.4 Volume effects

Sales volume

Quarterly sales volume data shows that from the beginning of the injury analysis period through to the September quarter 2008, the total sales volume of HSS produced by the Australian industry was relatively stable. With the exception of the September quarter 2006, the quarterly volumes deviated within a 10 percent range from the quarterly average over that period.

However over the whole of the injury analysis period, it is noticeable that sales in the December quarter 2008 fell sharply, with the quarterly volume deviating by over 50 percent from the quarterly average over the analysis period.

The Australian industry's quarterly sales volume of its own production is shown in the following chart. Quarterly data for 2005 is not shown as it was not provided by all members of the Australian industry.



PUBLIC RECORD

The Australian industry was identified as a significant importer of HSS during the investigation period and also a purchaser of imported HSS from other importers. Whilst sales of these sources 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.

Over the investigation period the Australian industry suffered injury in the form of reduced sales volume; however this injury is confined to the December quarter of 2008. Customs and Border Protection has examined whether this injury can be attributed to exports of HSS from China and Malaysia, and if so, whether that injury is material.

In assessing the cause of the industry's reduced sales volume in the December quarter 2008, the following observations are important to explaining the state of the Australian market for HSS prior to that time:

- Orrcon stated that during the period April to September 2008, demand in the Australian market for HSS increased sharply and that it could not satisfy demand, even if operating at maximum capacity. Orrcon stated it made the decision to import a volume of HSS that would bridge the gap between production levels and the forecast ongoing demand;
- BlueScope Lysaght reported in a customer newsletter dated 12 March 2008 that "We have been advised that due to strong demand in Australia, our supplier has needed to move to "demand allocation". Despite this we will endeavour to continue to ensure we satisfy your on-going needs". Customs and Border Protection understands that demand allocation means that customers are put on allocations and that complete orders are not filled;
- Orrcon stated in its June 2008 Market Pricing Update that "The global steel industry is continuing to experience unprecedented demand and as a result the Australian market is also experiencing tight supply conditions";
- ATM stated in its July 2008 Steel & Tube Update that "demand management will underpin all of our arrangements for the coming months";
- ATM stated in its August 2008 Steel & Tube Update that "Global steel demand is continuing to grow" and "To satisfy demand, OneSteel Group is taking many available steps to increase its supply to ease the short term pain";
- The December 2008 issue of "Connect" (a OneSteel Steel & Tube Customer Newsletter) reported that the Australian market had been subject to demand allocations earlier in 2008; and
- ATM stated in its January 2009 Steel & Tube Update that "2008 finished as a year that was marked by incredible volatility and uncertainty of pricing and supply in the domestic and international steel markets".

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.

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

PUBLIC RECORD

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.

In the TMRO's report of 21 August 2009, the Review Officer considered

"...that the available evidence does not support the conclusion drawn in the report that the Australian industry could have sold more HSS in 2008 had it not been constrained by the mothballing of production assets under the Footprint Proposal. The evidence suggests that it may not have been practically feasible to reinstate the production assets, and moreover even if this had occurred, it appears likely that any increased production could not have been sold profitably."

Customs and Border Protection has reviewed this issue and found that the conclusion referred to by the Review Officer should not have been made. The Australian industry had reorganised production assets to produce a budgeted volume. ATM had budgeted overall production in order to satisfy its customers and maximise profit. While the market may have increased in 2008 and it was technically possible for ATM to increase production, ATM was not in a position to produce more at the expense of unprofitable sales.

Conclusion

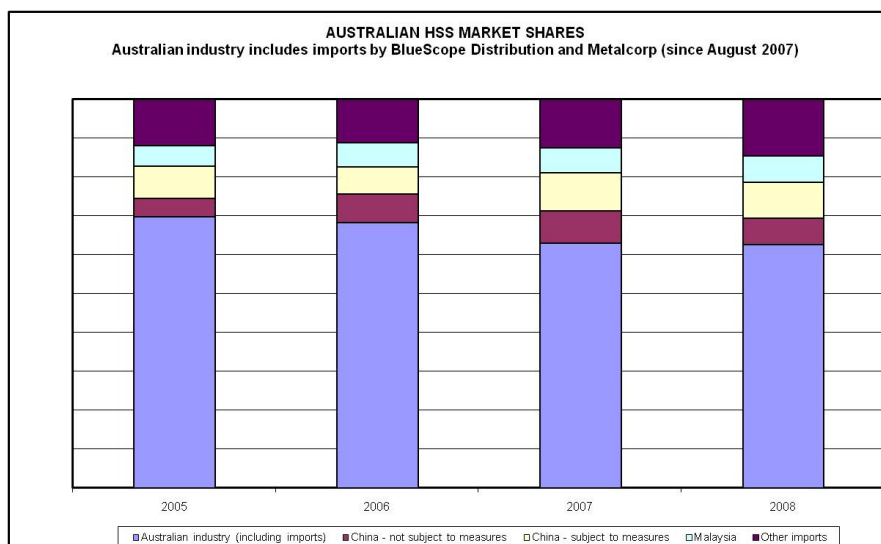
The strong demand experienced by the steel industry prior to the December quarter 2008 led the Australian industry to experience supply pressures. These supply pressures resulted in an increase in the industry's sales of imported HSS into the Australian market. The onset of the global financial crisis 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.

Volume related injury suffered by the Australian industry was not caused by exports of HSS from China or Malaysia.

Market shares

Market shares are illustrated in the following chart. The Australian industry's market share includes its own production and its imports, including HSS purchased from other importers.

PUBLIC RECORD



The graph indicates that:

- the Australian industry's market share decreased in 2006 and 2007 but remained unchanged in 2008;
- the market share held by imports from Malaysia increased in 2006 and 2007 but remained unchanged in 2008;
- the market share held by Chinese imports not subject to measures increased in 2006 and 2007 but decreased in 2008; and
- the market share held by imports from all other sources remained stable through 2006 and 2007 and increased in 2008.

Conclusion

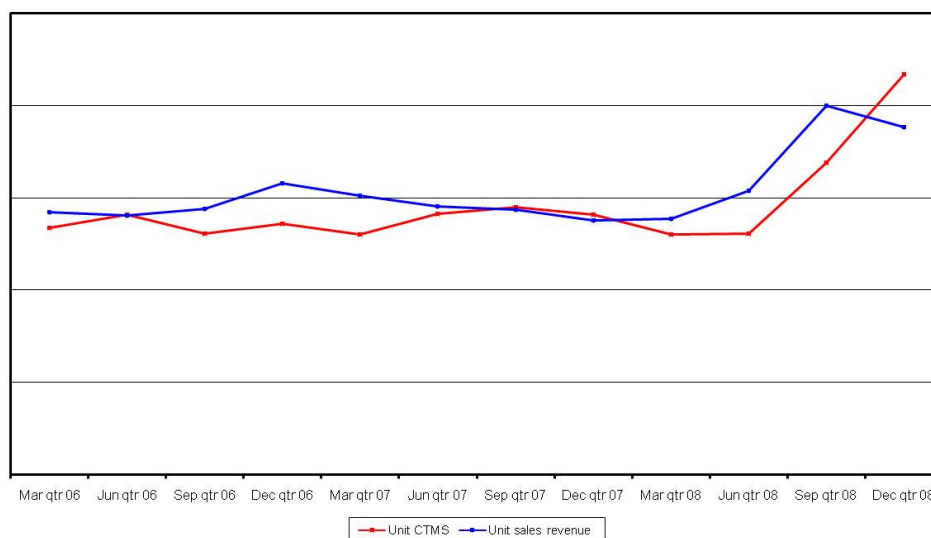
During the investigation period, the Australian industry did not suffer injury in the form of lost market share.

6.5 Price effects

Movements in the Australian industry's quarterly unit prices and costs in respect of its own production of HSS are illustrated in the following chart.

PUBLIC RECORD

Australian industry - total - unit revenue and costs
by Quarter



The chart shows that over 2006, Australian industry's weighted average selling price rose steadily before falling throughout 2007, where it was at its lowest in December quarter 2007. The selling price steadied at the beginning of 2008, rising only slightly before increasing in the June quarter 2008 and then increasing sharply in the September quarter 2008. Prices increased by approximately 45 percent 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 percent).

The chart also shows that the Australian industry's unit CTMS fell in the March quarter 2008, remained steady in the following quarter before rising sharply in the second half of 2008. Importantly, 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.

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

When examining whether imports have caused industry's prices to be depressed and/or suppressed, Customs and Border Protection will typically undertake a price undercutting analysis to ascertain and compare relative prices of the goods in the Australian market from the various sources (including the nominated countries and imports from countries not under investigation). This undercutting analysis is useful for determining whether the Australian industry has been driven to reducing its selling prices (depression) or hindered from increasing its prices (suppression) as a consequence of price pressure in the market by imports.

Customs and Border Protection had difficulty reconciling Australian industry's prices to its Appendix A4 data and also identified substantial variances in prices which appeared attributable to rebates offered to ATM customers. Notwithstanding the questionable reliability of the Australian industry's net selling prices, Customs and

PUBLIC RECORD

Border Protection has undertaken its undercutting analysis by comparing the Australian industry's net selling price to distributors with the free-into-store net selling price of traders of imported HSS.

Customs and Border Protection compared industry's average monthly prices to distributors from Appendix A4 data, with sales and import data obtained from the importers. 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;
- 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.

In summary, during the investigation period prices of imported HSS from Malaysia and China undercut Australian industry's equivalent net selling prices. Prices of imported HSS from countries not subject to investigation also undercut industry's prices for certain finishes of HSS.

In considering then whether the undercutting by HSS imports from China and Malaysia caused material injury to the Australian industry, Customs and Border Protection makes the following findings:

- price undercutting during the investigation period did not result in lost sales by the Australian industry. As noted earlier in this chapter, the industry had experienced tight supply conditions in 2008 stemming from the strong demand for steel products and had themselves turned to imported HSS product to satisfy domestic customer orders;
- price undercutting during the investigation period did not result in depressed prices. The previous chart shows that industry's prices increased by approximately 45 percent in the year to 30 September 2008. The only instance of price depression occurred in the December quarter 2008 which coincided with the emergence of the global financial crisis and the subsequent slowing of demand;
- price undercutting during the investigation period did not result in suppressed prices. Similar to the previous point, the unprecedented market conditions experienced in the first three quarters of 2008 saw increases in selling prices outstripping cost increases. However, as noted earlier, the Australian industry experienced price suppression in the December quarter 2008 which was caused by the global financial crisis in October 2008.

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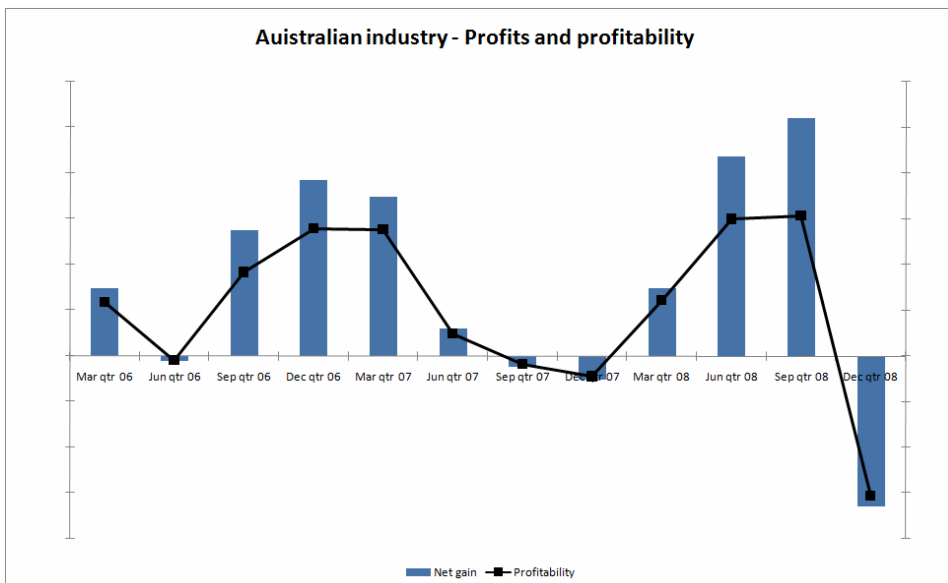
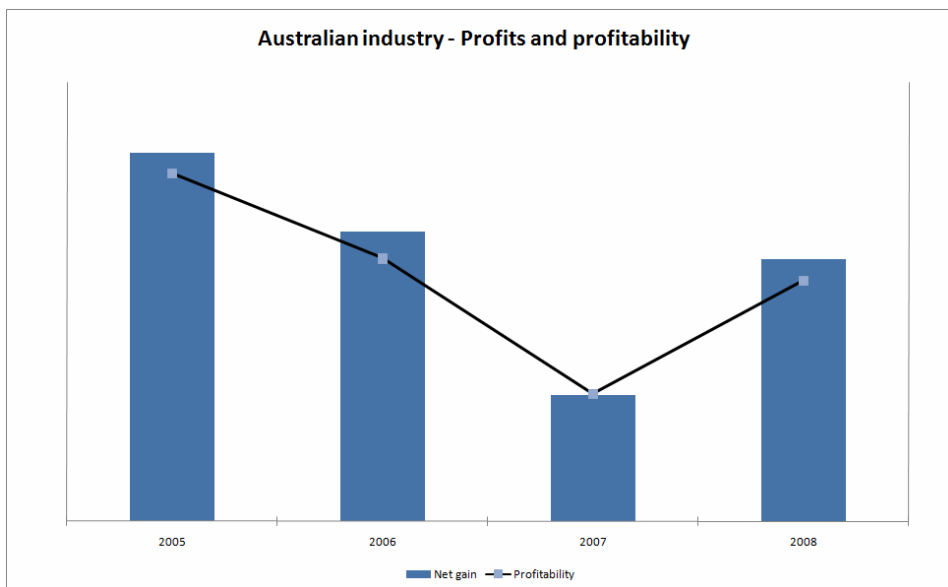
Conclusion

During the investigation period, the Australian industry suffered injury in the form of price depression and suppression. However prices were depressed and suppressed in the December quarter 2008 which was caused by the slowing demand brought about by the global financial crisis.

Price related injury suffered by the Australian industry was not caused by exports of HSS from China and Malaysia.

6.6 Profits and profitability

Movements in the Australian industry's annual and quarterly profits and profitability in respect of its own production of HSS are illustrated in the following charts.



The Australian industry's profits and profitability decreased in 2006 and 2007, but increased in 2008. This trend was reflected over all finish types. The trend observed

PUBLIC RECORD

in the quarterly data reflects a similar trend to selling prices with profits increasing in 2006, except in the June quarter, falling throughout 2007 and then continuing to increase through to the September quarter 2008, before falling in the December quarter 2008.

In reviewing the decision to terminate, the TMRO made the following conclusion:

“Accepting that the profits and profitability of the Australian industry increased in 2008 in comparison to the previous three full calendar years, this could be attributable to restructuring of the industry and rationalisation of its manufacturing facilities, along with the surge in demand for HSS in the first three quarters of 2008. Of itself however this does not necessarily signify an absence of dumping or the possibility of further material injury to the Australian industry occurring into the future. As OneSteel pointed out in its submission of 1 May 2009, restructuring of a business can bring short term productivity gains and a lower cost structure. However, if sales volume and market share continues to decline, the lower unit costs achieved by the restructure may not be sustained for long.”

The restructure under the Footprint proposal followed the merger of Smorgon Steel Tube Mills Pty Ltd and ATM pipe and tube assets. Customs and Border Protection considers that in a competitive environment it is necessary to continually review efficiency and cost to improve productivity. In such an environment, the gains achieved by a lower cost structure may not endure. The process of improvement is ongoing. A decrease in profit and profitability may not signify injury due to dumping. An examination of the effects of dumping takes into account more information than industry's cost structure and establishes the reasons for changes in performance.

Whilst the Australian industry accepts that profits and profitability improved in 2008, it submits that injury is evident when the profits achieved in the investigation period of 2008 are compared with the profits achieved in 2005. The Australian industry claims that the improved margin achieved in 2008 includes a notional increase in profits in respect of ATM that can be attributed to the revaluation of inventories to reflect higher raw material costs. It claimed that in the June quarter 2008 this resulted in an artificial gain of almost six million dollars to the Australian industry's profit. In its submission of 1 May 2009, ATM claimed that in a market that is experiencing sharp changes in market conditions it is difficult to understand a company's true financial performance as events tend to distort profitability.

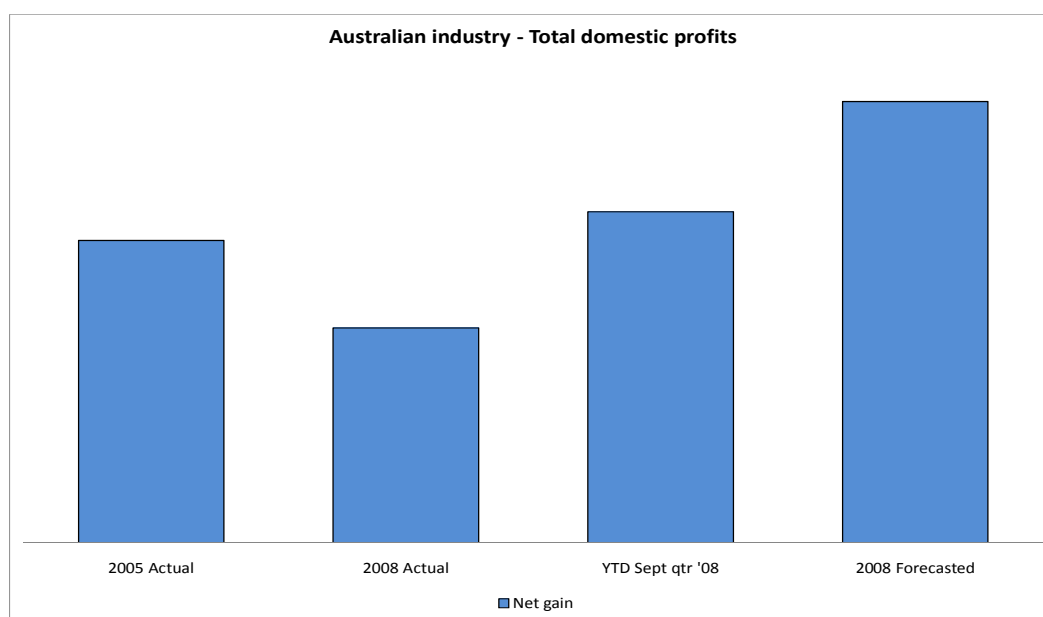
It is clear that the Australian industry's overall profit performance in 2008 was down on 2005 levels. However this yearly comparison conceals the effects of the global financial crisis on the profits achieved in 2008. Customs and Border Protection has already found that the lower sales volume and lower selling prices experienced by the Australian industry in the December quarter 2008 was the result of the global financial crisis. This impact from the global financial crisis is evident from the significant losses achieved in that quarter.

A better illustration of the material impact that the global financial crisis had on the Australian industry's performance can be seen in the chart below. It shows that actual profit in 2008 was down on the Australian industry's 2005 levels. However,

PUBLIC RECORD

excluding the losses incurred in the December quarter 2008 as a result of the global financial crisis shows that the profit achieved in only the first three quarters of 2008 was approximately 10 percent greater than the 2005 annual profit.

Further, had the global financial crisis not occurred in the last quarter of 2008 and the Australian industry achieved a December quarterly profit level equal to the average quarterly profit for the first three quarters, their 2008 forecasted profit would be approximately 45 percent higher than the 2005 profit levels as shown in the following chart.



Conclusion

During the investigation period, the Australian industry suffered injury in the form of reduced profits and profitability. Whilst the profits achieved in 2008 were higher than the previous year, they were lower than the profit achieved in both 2005 and 2006.

Profits in the first three quarters of the investigation period were strong reflecting the strong market conditions, before falling sharply in the December quarter 2008. The fall in profits in that quarter was caused by falling prices due to slowing demand from the global financial crisis and rising costs reflecting higher hot rolled coil prices.

Profit related injury suffered by the Australian industry was not caused by exports of HSS from China and Malaysia.

6.7 Other economic factors

Although volume, price and profit trends are the main indicators relied upon to assess injury, Customs and Border Protection also examines other economic factors.

Data in respect of other economic factors was only provided by financial year (i.e. 1 July to 30 June), although ATM provided quarterly data from July 2008 to March 2009.

PUBLIC RECORD

Assets

The value of ATM's assets rose each year from 2005-06 to 2007-08. The value almost quadrupled from 2006-07 to 2007-08. The value of ATM's assets rose in the September quarter 2008, fell slightly in the December quarter 2008 and fell by almost 10 percent in the March quarter 2009. The value of Orrcon's assets rose each year, by about 10 percent in 2005-06, by over 20 percent in 2006-07 and by less than 5 percent in 2007-08.

Capital investment

Capital investment by ATM rose in 2005-06 and 2006-07 and fell by almost 50 percent in 2007-08. ATM's capital investment fell each quarter from July 2008 to March 2009. Capital investment by Orrcon almost doubled in 2005-06, rose by about 30 percent in 2006-07 and fell by a little over 5 percent in 2007-08.

Research and development expenditure

The Australian industry has not incurred any significant research and development expenditure over the last three financial years.

Return on investment

ATM's return on investment at Acacia Ridge fell in 2005-06, remained stable in 2006-07, and fell in 2007-08. Its return on investment rose significantly in the September quarter 2008, before falling in the next two quarters. Orrcon's return on investment fell in 2005-06, rose in 2006-07 and fell by two thirds in 2007-08.

Degree of utilisation of capacity

ATM claimed its capacity utilisation fell each year from 2005-06 to 2007-08. It stated that its total capacity was 524,000 tonnes in 2007-08, but that its capacity utilisation in that year was about 54 percent. ATM claimed its capacity utilisation increased in the September quarter 2008 but fell significantly over the next two quarters. Customs and Border Protection notes that capacity utilisation in these quarters would have been affected by the five week shut down of the Newcastle and Acacia Ridge plants.

Orrcon's capacity utilisation fell in 2005-06 and has been at about 85 percent over the last three financial years.

The levels of capacity utilisation reported by the industry appear to be premised on all assets working at their maximum, including those not in operation. To the contrary Customs and Border Protection understands that industry was utilising all available production capacity at certain stages in 2008.

Employment

Between July 2007 and December 2008, staffing levels at Newcastle were reduced by about 200. ATM stated that the large reduction in employee numbers at Newcastle was due to the mothballing of mills and the galvanising plant. ATM stated that some capacity from Newcastle was shifted to Somerton and Acacia Ridge and is

PUBLIC RECORD

reflected by increased employee numbers at those sites. The gain at Acacia Ridge was offset by a reduction in the number of contractors. Overall, ATM's employee numbers fell in 2006-07, but rose in 2007-08 to its highest level since 2003-04. Employee numbers fell by almost 200 in 2008-09 (to March 2009). Employee numbers at Orrcon rose by over 50 percent in 2005-06, but fell by a little over 5 percent in each of the following years.

Productivity

ATM's productivity (tonnes per annum per employee) fell in 2005-06, rose in 2006-07 and fell in 2007-08. Its productivity increased in the September quarter 2008, but fell in the next two quarters. Orrcon's productivity rose in 2006-07, but fell slightly in 2007-08.

Stocks

ATM's closing stocks fell in 2005-06, but rose over the next two years. Stocks have continued to rise throughout 2008-09. Orrcon's stocks remained stable in 2005-06 and 2006-07, but fell significantly in 2007-08.

Cash flow measures

The only cash flow measure ATM provided was inventory turnover. Inventory turnover was relatively stable from 2005-06 to 2006-07, but fell in 2007-08. It has continued to fall in 2008-09. Orrcon's accounts receivable and inventory turnover remained relatively stable in 2006-07 and 2007-08.

Wages

ATM's total wages bill rose from 2004-05 to 2006-07, but fell in 2007-08. Orrcon's wages remained relatively stable in 2006-07 and 2007-08.

Conclusion on other economic factors

An assessment of other economic factors was inconclusive in indicating whether the Australian industry suffered injury. In any case, there was no evidence or information which connects the export of HSS from Malaysia at dumped prices to these injury indicators.

6.8 Conclusion

The Australian industry suffered injury in the investigation period in the form of:

- Reduced sales volume;
- Price depression;
- Price suppression; and
- Reduced profits and profitability.

The injury was confined to the December quarter 2008. The available evidence indicates that this injury is attributable to the global financial crisis and slowdown that has been acutely felt by the steel industry in Australia and internationally. There is

PUBLIC RECORD

nothing to indicate that an element of this injury for the industry as a whole, which could be seen as material, was caused by exports of HSS from China and Malaysia.

Based on the available evidence, the injury suffered by the Australian industry in the investigation period was not caused by exports of HSS from China and Malaysia.

7 THREAT OF MATERIAL INJURY

7.1 Preliminary findings

Material injury to the Australian industry is not threatened because of exports of HSS from China and Malaysia.

There is no evidence to be satisfied that the changes in circumstances would make material injury foreseeable and imminent unless dumping or countervailing measures were imposed.

7.2 Introduction

Threat of material injury arises in circumstances where the dumping and/or subsidisation is causing either no present injury, or is causing negligible present injury, but there is a future threat of material injury.

The WTO Agreements¹¹ and the Australian legislation enacted under those agreements provide for a determination of threat of material injury to be subject to stringent tests.

Article 3.7 of the ADA and 15.7 of the SCM provide that a determination of a threat of material injury must be based on facts and not merely on allegation, conjecture or remote possibility. It also provides a non-exhaustive list of factors that should be considered and notes that no one factor can necessarily give decisive guidance. A totality of factors must lead to a determination of threat of material injury.

Article 3.8 of the WTO Anti-Dumping Agreement provides that:

With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

The Australian legislation¹² provides that in determining whether or not material injury is threatened to an Australian industry:

*...the Minister must take account of only such **change in circumstances**, including changes of a kind determined by the Minister, as would **make that injury foreseeable and imminent** unless dumping or countervailing measures were imposed" (emphasis added).*

In assessing the threat of injury Customs and Border Protection considered, *inter alia*, factors such as:

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

¹¹ Anti-dumping Agreement and Agreement on Subsidies and Countervailing Measures

¹² s.269TAE(2B)

PUBLIC RECORD

- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped/subsidised exports to the market, taking into account the availability of any other export markets to absorb any additional exports;
- whether imports are entering at prices that will have a significant depressing or suppressing affect on domestic prices, and would likely increase demand for further imports; and
- whether inventories of the product being investigated have increased.

Having found that HSS exports from China and Malaysia have not caused material injury, Customs and Border Protection must now consider whether they are threatening to cause material injury. A finding of threat of material injury cannot be made unless the circumstances in which the dumped and subsidised goods would cause material injury are clearly foreseeable and imminent.

7.3 Applicants' claims

If it is found that the Australian industry has not suffered material injury, it is necessary to examine whether there is a threat of material injury to the Australian industry.

In its application for anti-dumping and countervailing duties, the Australian industry stated that this application was not based on threat of material injury. The Australian industry stated in its submission dated 26 March 2009 that:

The impact of injury brought about by dumping is more debilitating in 2009 where a global slow-down has occurred than in the periods of 2006 and 2007. As a consequence, the injurious dumping is likely to have a greater impact on manufacturers as companies are forced to reduce costs to remain competitive on lower outputs. The applicants foresee further material injury from dumped imports in 2009 as the industry seeks to maintain market share against the trend since 2003/04. Material injury is anticipated through further reductions in sales volumes, market share, and profit and profitability as dumped imports continue to increase market share in Australia.

7.4 Assessment

In conducting its assessment of threat of injury, Customs and Border Protection would generally examine a 12 month period from the date of its statement of essential facts. However in this case, given the time that has lapsed since the global financial crisis, Customs and Border Protection has examined the 12 months following the investigation period to determine whether material injury is threatened in the future.

Customs and Border Protection obtained details of imports of HSS in 2009 from its commercial database. This data was compared with the volumes of imports in 2008 (excluding imports by the Australian industry). The data reveals that import volumes of HSS from Chinese exporters not subject to measures fell sharply (down 73 percent) in 2009 compared to 2008 levels. Imports of HSS from Malaysia remained steady in 2009 over the previous year.

PUBLIC RECORD

There is no evidence or available information which would indicate an imminent and significant increase in the volume of imports of HSS from Malaysia and China into the Australian market.

Information provided by Malaysian and Chinese exporters in their questionnaire responses reveals that exporters had potential capacity for increased production of HSS during the investigation period. However, there is no evidence or available information which would indicate that there was excess demand in the Australian market following the investigation period which would likely lead to substantially increased exports of HSS.

Customs and Border Protection has no evidence or information on selling prices of imported HSS into the Australian market during 2009. Therefore a finding that import prices would significantly depress or suppress the Australian industry's prices is not supported

7.4.1 Conclusion

Customs and Border Protection has considered possible changes in circumstances that would make material injury clearly foreseeable and imminent unless dumping or countervailing measures were imposed. Customs and Border Protection found that there was not sufficient information to conclude that following on from the global financial crisis, material injury was threatened to the Australian industry.

Therefore on the available evidence, Customs and Border Protection is not satisfied that material injury to the Australian industry is threatened in the future by dumped and/or subsidised exports of HSS from China and Malaysia.