



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

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**TRADE MEASURES BRANCH**

**STATEMENT OF ESSENTIAL FACTS NO. 153**

**REVIEW OF ANTI-DUMPING MEASURES**

**CERTAIN HOLLOW STRUCTURAL SECTIONS**

**EXPORTED FROM**

**THE PEOPLE'S REPUBLIC OF CHINA**

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### ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Australian industry	the Australian industry producing HSS
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
China	The People's Republic of China
CHS	Circular Hollow Sections
Customs and Border Protection	the Australian Customs and Border Protection Service
Dalian Steelforce	Dalian Steelforce Hi-Tech Co Ltd
FOB	free on board
Foshan Nanhai	Foshan Nanhai Honggang Metal Products Co., Ltd
HSS	Hollow Structural Sections
Minister	The Minister for Home Affairs
OneSteel ATM	OneSteel Australian Tube Mills Pty Ltd
Orrcon	Orrcon Operations Pty Ltd
PIR	Preliminary Information Request
REP	Trade Measures Report
Review Officer	Trade Measures Review Officer
RHS	Rectangular (and non-circular) Hollow Sections
Tariff Act	<i>Customs Tariff Act 1995</i>
Tianjin Jinshengde	Tianjin Jinshengde Steel Tube Produce Co Ltd
the goods	the goods the subject of the application

## **1 SUMMARY AND RECOMMENDATIONS**

This review is in response to a request from the Minister for Home Affairs (the Minister) to review the measures as they affect certain exporters of hollow structural sections (HSS) from the People's Republic of China (China).

This statement of essential facts sets out the facts on which the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendations to the Minister in relation to the review.

### **1.1 Proposed recommendations**

The CEO proposes to recommend to the Minister that:

- to the extent that the anti-dumping measures involved the publication of a dumping duty notice—that the notice has effect in relation to exporters generally as if different variable factors had been ascertained, and
- to the extent that the anti-dumping measures concerned involved the acceptance by the Minister of an undertaking—that the Minister seek a variation of the terms of the undertaking.

### **1.2 Preliminary findings and conclusions**

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

- the variable factors relevant to the dumping duty notice applicable to exports of HSS from China have changed;
- prices relevant to the acceptance of an undertaking have changed; and
- there is insufficient information to be satisfied that anti-dumping measures should be revoked.

### **1.3 Final report**

The CEO's final report and recommendations must be provided to the Minister by **30 June 2010**.

## 2 INTRODUCTION

### 2.1 Review process

Where anti-dumping measures have been taken in respect of certain goods an affected party may apply for, or the Minister may request, that the CEO conduct a review of those measures. The Minister may initiate a review at any time; however no interested party may apply for a review earlier than 12 months after the publication of the original dumping duty notice or since the last review of the measures.

In respect of a dumping duty notice, the CEO must provide a proposed recommendation to the Minister that the dumping duty notice<sup>1</sup>:

- 1 remain unaltered; or
- 2 be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- 3 have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained.

In respect of the undertaking, the CEO must provide a proposed recommendation to the Minister that:

- 1 the undertaking<sup>2</sup> remain unaltered; or
- 2 the Minister seek a variation of the terms of the undertaking as indicated in the CEO's report; or
- 3 the Minister indicate to the person who gave the undertaking that the undertaking is no longer acceptable and that the investigation of the need for a dumping duty notice covering that person be resumed; or
- 4 the Minister indicate to the person who gave the undertaking that the person is released from the undertaking and that the investigation of the need for a dumping duty notice covering that person is terminated.

In formulating this statement of essential facts, the CEO must have regard to the Minister's request, any submissions concerning publication of the notice that are received by Customs and Border Protection within 40 days after the date of initiation of the review, and any other matters considered relevant<sup>3</sup>.

Interested parties have 20 days to make submissions in response to the statement of essential facts, and the CEO must provide the Minister with a report no later than 30 June 2010.

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<sup>1</sup> Section 269ZDA(1)(a).

<sup>2</sup> Section 269ZDA(1)(b).

<sup>3</sup> Subsection 269ZD(2) and (3).

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### 2.2 Responding to the statement of essential facts

The CEO proposes to base his recommendations to the Minister concerning the review of the anti-dumping measures on this statement of essential facts. Interested parties are therefore invited to make submissions in response to this statement of essential facts.

The CEO is not obliged to have regard to any submissions received after Monday **7 June 2010** if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be sent to:

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

Submissions can also be sent to fax number +61 2 6275 6990 or email [tmops1@customs.gov.au](mailto:tmops1@customs.gov.au).

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 record<sup>4</sup>. 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 other information. These documents should be read in conjunction with this statement of essential facts.

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/>.

All Australian Customs Dumping Notice (ACDN) are available on the internet at the Customs and Border Protection home page [www.customs.gov.au](http://www.customs.gov.au) (follow prompts for "Anti-dumping").

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<sup>4</sup> In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

**3 BACKGROUND**

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

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

The review and the new dumping and countervailing investigations were initiated on 18 December 2008.

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

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

Dalian Steelforce was visited and information contained in its exporter questionnaire verified as part of the review. Steelforce Australia Pty Ltd requested on behalf of Dalian Steelforce, a release from the price undertaking pertaining to Dalian Steelforce.

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

Customs and Border Protection received a completed exporter questionnaire response from Tianjin Jinshengde Steel Tube produce Co. (Tianjin Jinshengde). Customs and Border Protection decided not visit Tianjin Jinshengde but elected instead to conduct a desk audit of the information contained in its exporter questionnaire response.

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

On 2 June 2009, Customs and Border Protection terminated both the dumping and countervailing investigations against HSS exports from China after finding that dumping or

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subsidisation had not caused, or had not threatened to cause, material injury to the Australian industry (REP 144).

Applications for review of the CEO's termination decisions were made to the Trade Measures Review Officer (Review Officer). On 14 August 2009, the Review Officer decided to revoke the CEO's decision to terminate the dumping investigation against Malaysia. On 21 August 2009, the Review Officer decided to revoke the CEO's decision to terminate the dumping and subsidy investigations against China.

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

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

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

### **3.1 Participation in this review**

Customs and Border Protection advised in ACDN No. 2009/32 that in forming its recommendations for this review, it would have regard to information gathered for the purpose of the previous review (REP 143), as well as information gathered for the purpose of the resumed dumping investigations against Malaysia and China and subsidy investigation against China.

Customs and Border Protection did not seek any additional information from interested parties during this review. Customs and Border Protection relied solely on information obtained during the previous review.

## 4 THE GOODS & LIKE GOODS SUBJECT TO THE REVIEW

### 4.1 Preliminary findings

Based on the information available:

- OneSteel Australian Tube Mills Pty Ltd (OneSteel ATM) and Orrcon Operations Pty Ltd (Orrcon) produce HSS that have characteristics closely resembling those of HSS manufactured in China and exported to Australia; and therefore
- HSS manufactured by OneSteel ATM and Orrcon are like goods<sup>5</sup> to the goods exported from China to Australia; and
- HSS sold on the Chinese domestic market are like goods to the goods.

### 4.2 The goods

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

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

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

HSS is normally produced to either the British Standard BS1387 or the Australian Standard AS 1163 or international equivalent standards (including ASTM<sup>6</sup> and JIS<sup>7</sup>). HSS can also be categorised according to its minimum yield strength. The most common classifications are 250 and 350 Mega Pascals.

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

The following categories of goods are excluded:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer weld fin protrusions removed by scarfing [not exceeding 0.1mm on outer surface and 0.25mm on inner surface], and out of round standards [i.e

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<sup>5</sup> Section 269T.

<sup>6</sup> American Society for Testing and Materials

<sup>7</sup> Japanese Industrial Standards

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ovality] which do not exceed 0.6mm in order to maintain vibration-free rotation and minimum wind noise during operation);

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

### 4.3 Tariff classification

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

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

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

### 4.4 Like goods

#### Like goods manufactured and sold in Australia by OneSteel ATM and Orrcon

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

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

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

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

#### Like goods manufactured and sold in China

Customs and Border Protection conducted a verification visit to Dalian Steelforce during the previous review and found that all domestic sales made by Dalian Steelforce during the investigation period were the same types of HSS exported to Australia.

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Dalian Steelforce stated that all of its HSS is manufactured to Australian standards and is intended for export to Australia. Some domestic sales are taken from stocks of HSS that were originally produced for Australian export purposes. Dalian Steelforce produces prime (product conforming to Australian standards) and downgrade (product non-conforming to Australian standards) grades of product. Only prime product is sold on the domestic market whereas prime and downgrade product are exported to Australia.

Other Chinese exporters provided information on exported goods and like goods in their exporter questionnaire responses.

The CEO is satisfied that the HSS sold on the Chinese domestic market are like goods to the goods.

**5 REVIEW OF EXPORT PRICE AND NORMAL VALUE**

**5.1 Preliminary findings**

The CEO has made a preliminary finding that export prices and normal values relating to HSS exported from China have changed.

**5.2 Australian industry's claim for review of variable factors**

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

- monthly price information for hot rolled coil, the main material input to HSS, sourced from an independent steel publication service (January 2005 to September 2008);
- monthly constructed normal value information for painted HSS and hot-dipped galvanised HSS;
- monthly export price information for HSS exported from China sourced from another independent price reporting service (January 2004 to June 2008); and
- Australian industry's cost to make and sell data for the twelve months ending September 2008<sup>8</sup>.

**5.3 Importers**

No additional information was sought from importers during this review.

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

**5.4 Exporters**

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

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

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

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<sup>8</sup> The Australian industry subsequently provided data for the quarter ended 31 December 2008 to cover the entire review period.

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

### **5.5 Export prices**

#### **Dalian Steelforce**

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

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

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

#### **Tianjin Jinshengde**

Export prices for Tianjin Jinshengde have been established under s.269TAB(3) having regard to all relevant information, using the FOB invoiced price between the exporter and the importer.

#### **Other co-operating exporters**

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

#### **Foshan Nanhai and other non-cooperating exporters**

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

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

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

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### 5.6 Normal values

#### Dalian Steelforce

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

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

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

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

#### Tianjin Jinshengde

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

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

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

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

#### Other co-operating exporters

Normal values have been established for other cooperating exporters under s.269TAC(6) after having regard to all relevant information.

#### Foshan Nanhai and other non-cooperating exporters

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

For non-cooperating exporters, Customs and Border Protection has determined normal value in accordance with s.269TAC(6), after having regard to all relevant information.

Normal values for both painted and hot-dipped galvanised HSS were calculated using estimated information submitted by the Australian industry in its application for dumping and countervailing duties on HSS exported from China. Estimates of the constructed

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normal value included the monthly cost of hot-rolled coil at a free on truck price in Japan plus estimates of conversion and selling costs along with a reasonable amount of profit.

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

### **5.7 Dumping margins**

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

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

## 6 REVIEW OF NON-INJURIOUS PRICE

### 6.1 Preliminary findings

The CEO has made preliminary findings that:

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

### 6.2 Introduction

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

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping<sup>9</sup>.

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

### 6.3 Unsuppressed selling price

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

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

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

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

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<sup>9</sup> The non-injurious price is defined in s.269TACA.

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### **6.4 Customs and Border Protection's assessment**

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

## 7 PRICE UNDERTAKINGS

### 7.1 Preliminary findings

The CEO has made a preliminary finding that the change in variable factors requires a variation of the terms of the undertakings applicable to HSS exported from China.

### 7.2 Introduction

As an alternative to publishing a dumping duty notice, the Minister may accept an undertaking that an exporter will conduct future trade to Australia in like goods so as to avoid causing or threatening material injury to the Australian industry. An undertaking is an agreement by the exporter to conduct future trade in a manner that will avoid causing material injury to the Australian industry producing like goods. The Minister may accept an undertaking from an exporter at any time after Customs and Border Protection has made a preliminary affirmative determination in respect of goods the subject of an anti-dumping application. By accepting an undertaking<sup>10</sup> the Minister defers his decision to publish or not to publish a dumping duty notice covering that exporter.

In considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase, to which the price undertaking relates, is limited to an amount such that the total price of the goods is not more than the non-injurious price<sup>11</sup>.

Following the original investigation, the Minister accepted price undertakings offered by the following four Chinese exporters in May 2007:

- Bazhou Dong Sheng Hot-Dipped Galvanised Steel Pipes Co., Ltd;
- Foshan Nanhai;
- Beijing Moving-Goods Construction Machinery Co., and
- Dalian Steelforce.

### 7.3 Customs and Border Protection's assessment

It has been established that normal values and non-injurious prices changed during the review period. Therefore Customs and Border Protection considers that the prices to which the price undertakings relate should be varied to avoid causing or threatening material injury to the Australian industry producing like goods.

Customs and Border Protection intends providing the four relevant Chinese exporters with revised undertaking agreements reflecting the variation in their terms.

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<sup>10</sup> S.269TG(4)

<sup>11</sup> S.269TG(5)

## 8 SHOULD MEASURES BE REVOKED?

### 8.1 Findings

Customs and Border Protection is not satisfied that if the anti-dumping measures to which this review relates had not been taken, the Minister would not be entitled to take such measures. Accordingly, Customs and Border Protection considers that the measures should not be revoked.

### 8.2 Introduction

After reviewing the variable factors Customs and Border Protection considered whether a recommendation to the Minister should be made to:

- revoke the dumping duty notice published under s.269TG(1),(2) and (6) as it applies to a particular exporter or to exporters generally; and / or
- whether the person who gave an undertaking should be released from that undertaking and that the investigation of the need for a dumping duty notice as it relates to that person be terminated.

This section outlines the factors Customs and Border Protection considers relevant in drawing the preliminary finding stated above.

### 8.3 Grounds for seeking revocation of the existing measures

#### Dalian Steelforce

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

- since commencement of operations Dalian Steelforce has exported HSS to Australia at prices significantly above the undertaking price; and
- Dalian Steelforce has no domestic sales. As the sale price to Australia is based on Dalian Steelforce's cost to make and sell, Dalian Steelforce cannot dump product into the Australian market and the undertaking is not a relevant measure.

#### Tianjin Jinshengde

On 10 June 2009, Customs and Border Protection received a submission from Tianjin Jinshengde, an exporter of HSS to Australia, requesting revocation of the anti-dumping measures. The reasons provided are:

- the dumping investigation into HSS exported from Malaysia found negligible levels of dumping and the dumping and countervailing investigations into HSS exported from China established that during the investigation period, potentially dumped and subsidised HSS from China caused negligible injury to the Australian industry;
- Customs and Border Protection's causal link finding between injury to the Australian industry and HSS exported from China has application to all HSS exported during the investigation period, including those subject to measures as well those not subject to measures; and

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- in its application and a subsequent letter the Australian industry stated that the measures were ineffective due to price rises since 2005.

### 8.4 Customs and Border Protection's assessment

The assessment of whether anti-dumping measures should be revoked involves examining whether, if the measures being reviewed had not been taken, the Minister would not be entitled to take any such measures. Considerations relevant to whether measures should be revoked are not the same as those relevant to an original investigation into whether measures should be imposed. A finding in a review that there is no current dumping causing material injury may not satisfy the test for revocation because that is the desired effect of the imposition of the original measures. In other words, the existence of the measures implies the elimination of dumping causing material injury.

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

Customs and Border Protection 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. Had the anti-dumping measures not been taken, Customs and Border Protection is not satisfied that Dalian Steelforce would not export HSS at dumped prices, thereby causing material injury to the Australian industry.

Customs and Border Protection has also established during the review period that exports of HSS from exporters subject to measures were dumped. This again indicates that anti-dumping measures have been ineffectual at eliminating dumping by Chinese exporters of HSS. Customs and Border Protection is therefore not satisfied that had the anti-dumping measures not been taken, Chinese exporters subject to the measures would not have exported HSS at dumped prices, thereby causing material injury to the Australian industry.

Tianjin Jinshengde's claim for revocation centres on the decisions by Customs and Border Protection to terminate the:

- on-going dumping investigation into HSS exported from Malaysia after a finding of negligible dumping; and
- on-going dumping and subsidy investigations into HSS exported from China after finding that dumping caused negligible injury.

As explained earlier in this report, those termination decisions were subject of a review by the Review Officer, which resulted in the revocation of the CEO'S decisions and resumption of the investigations. The Minister requested that any recommendations stemming from this review of measures should take into account key findings from the resumed investigations and the Review Officer's views on causation.

## **PUBLIC RECORD**

Following the resumption of the dumping investigation into HSS exported from Malaysia, Customs and Border Protection identified serious omissions by Alpine Pipe Manufacturing Sdn Bhd (Alpine), the largest Malaysian exporter of HSS, in providing relevant information and evidence relating on the receipt of rebates from its raw material supplier, Megasteel Sdn Bhd. At this point in time, Customs and Border Protection is unable to establish whether HSS exported by Alpine was dumped, as it continues to assess the reliability of information provided by Alpine.

Importantly, the original finding that dumped and subsidised HSS exports from China caused negligible injury was based on a finding of negligible dumping from Malaysia and the fact that in most months of the 2008 investigation period, exports from Malaysia were the lowest priced source of HSS imports. However, Customs and Border Protection can no longer rely on a finding that Malaysian imports of HSS were non-dumped. The uncertainty surrounding whether HSS exports from Malaysia were in fact dumped during 2008, therefore impacts directly on the causal link between dumped and subsidised exports from China and material injury to the Australian industry.

Ultimately, the uncertainty surrounding whether HSS exports from Malaysia are dumped impacts on the ability of Customs and Border Protection to properly examine whether there would not be material injury caused by dumping if there were no measures.

In the absence of relevant and reliable information upon which the Minister could be satisfied that there would not be material injury caused by dumping if measures had not been taken, Customs and Border Protection is not satisfied that if measures had not been taken, the Minister would not be entitled to take such measures. Therefore the interested party claims for revocation of the anti-dumping measures are preliminarily dismissed.

However, as it is possible that a dumping determination on HSS exports from Malaysia may be made prior to the Minister's consideration of the CEO's recommendations in this review, Customs and Border Protection considers it appropriate to comment on the question of revocation in the event that the original finding of negligible dumping of HSS exports from Malaysia is maintained.

Customs and Border Protection maintains that the Australian HSS industry had suffered injury in 2006 and 2007 and in the last quarter of 2008, but had performed strongly in the first three quarters of 2008, despite suffering lost sales volume and a loss of market share in this period.

In contrast, the volume of imports from China increased by about 36% from 2006 to 2007 but did not increase in 2008. If Malaysian imports of HSS are found to not be dumped, the increase in import volumes from 2007 to 2008 was from non-dumped sources. This increase in import volumes from non-dumped sources, coupled with the finding that the price Malaysian HSS imports were generally the lowest in the Australian market, suggests that HSS imports from China did not cause material injury to the Australian industry.

Therefore, if dumped exports of HSS from Malaysia are found to have been at negligible levels, Customs and Border Protection preliminarily concludes that there would not be material injury caused by dumped exports of HSS from China if there were no measures.

**9 EFFECT OF THE REVIEW**

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

A comparison of normal values and non-injurious prices shows that the non-injurious price would be the operative measure for black and painted models of HSS and the normal value remains the operative measure for pre-galvanised and hot dipped galvanised HSS.

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