



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

Customs Act 1901 - Part XVB

TRADE MEASURES BRANCH

REPORT NO. 143

Review

Certain Hollow Structural Sections from the People's Republic of China

9 SEPTEMBER 2009



Certain hollow structural sections

Exported from the People's Republic of China

Finding in relation a review of anti-dumping measures

Public notice under s. 269ZDB(1) of the Customs Act 1901

The Australian Customs and Border Protection Service has completed its review of anti dumping measures applying to certain hollow structural sections exported to Australia from the People's Republic of China (referred to in this notice as "the goods"), which was commenced on 18 December 2008. Recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in Trade Measures Report No. 143 (referred to in this notice as "the Report").

Non-confidential versions of the Report will be sent to all interested parties that participated in the review. Additional copies may be obtained by contacting Trade Measures Office Management, Canberra, on telephone number 02 6275 6547 or facsimile 02 6275 6990. Trade Measures reports are also available on the Customs internet home page at www.customs.gov.au.

I, Brendan O'Connor, Minister for Home Affairs, have considered the Report and accepted the recommendations and reasons for the recommendations, including all material findings of fact or law set out in the Report. Under s. 269ZDB(1) of the *Customs Act 1901*, I **DECLARE**, for the purposes of the *Customs Act 1901* and the *Customs Tariff (Anti-Dumping) Act 1975*:

- i. to the extent that anti-dumping measures concerning the goods involved the publication of a dumping duty notice, that the notice is to remain unaltered; and
- ii. to the extent that anti-dumping measures concerning the goods involved the acceptance by me of an undertaking, that the undertaking is to remain unaltered.

Enquiries regarding the outcome of the review may be directed to the case manager on telephone number (02) 6275 6393, fax number (02) 6275 6990 or email tmops1@customs.gov.au.

Dated this

24th

day of

September

2009

BRENDAN O'CONNOR
Minister for Home Affairs

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2. Recommendations and reasons

2.1. RECOMMENDATIONS

Customs and Border Protection recommends that the Minister consider the report and, if agreed, declare by public notice¹ that:

- i. to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice, that the notice remain unaltered; and
- ii. to the extent that the measures involved the acceptance by the Minister of an undertaking², that the undertaking remain unaltered.

To give effect to the above recommendation, you should sign the attached notice.

In addition, the Australian Customs and Border Protection Service (Customs and Border Protection) will, separate to the recommendations that are required as a part of this review process, recommend that the Minister request the CEO of Customs and Border Protection to initiate a fresh review of the measures³. This will allow recent decisions of the Trade Measures Review Officer (Review Officer) to be taken into account.

2.2. REASONS

2.2.1. Background to review

This report sets out the findings of Customs and Border Protection's review of the anti-dumping measures applying to certain hollow structural sections (HSS) exported to Australia from the People's Republic of China (China).

The current review was initiated on 18 December 2008 following an application by the Australian industry, comprising OneSteel Australian Tube Mills Pty Ltd (OneSteel ATM) and Orrcon Operations Pty Ltd (Orrcon). The review period was notified as 1 January 2008 to 31 December 2008.

2.2.2. Other activity in relation to measures

On the same day as it commenced the review, and following a separate application by the Australian industry, Customs and Border Protection initiated

¹ Under s 269ZDB of the *Customs Act 1901* (the Act). Unless otherwise mentioned, all references to legislation in this report are to the Act.

² An agreement between an exporter and the Minister that the exporter will not export to Australia at prices below a specified level.

³ Under section 269ZA(3)

an investigation into HSS exported to Australia by Chinese exporters not covered by the existing measures. The application also sought new anti-dumping measures on HSS exports from Malaysia, and countervailing measures against all exports from China (including those already covered by anti-dumping measures)⁴.

On 15 May 2009, Customs and Border Protection terminated the investigation into whether measures should apply to exports from Malaysia after finding that imports from the Malaysian exporter that accounted for the vast majority of imports were dumped, but by a negligible margin⁵. On 2 June 2009, Customs and Border Protection terminated both the dumping and countervailing investigations against China after finding that any injury that had been or may be caused by dumped or subsidised imports from China was negligible.

Following applications by the Australian industry, on 14 August 2009, the Review Officer revoked Customs and Border Protection's termination of the investigation of alleged dumping of HSS from Malaysia, and on 21 August 2009, revoked Customs and Border Protection's termination of the investigation of alleged dumping and subsidisation of HSS from China⁶. The effect of the Review Officer's revocations is that Customs and Border Protection must publish a statement of essential facts (SEF) as soon as practicable, from which time the investigation resumes its normal timeframes.

2.2.3. Statement of essential facts

While the termination decisions ceased the investigations into the application for new measures, the review process continued. Unlike the termination of an investigation, which is decided by the CEO of Customs and Border Protection, the outcome of a review is determined by a decision of the Minister.

On 27 July 2009, Customs and Border Protection published a SEF in relation to the review. Following its investigations, Customs and Border Protection concluded that in the review period the injury, if any, to the Australian industry that has been, or may be, caused by imports of HSS from China, including those currently subject to anti-dumping measures, was negligible. This was notwithstanding that the measures appear to have had little impact on the proportion of HSS imports from China covered by measures. Customs and Border Protection indicated that it proposed recommending to the Minister that:

- i. to the extent that the measures involved the publication of a dumping duty notice, that the notice be revoked generally; and

⁴ See section 3.2.3

⁵ Less than 2 percent of the weighted average of export prices

⁶ See section 4.3

- ii. to the extent that the measures involved the acceptance by the Minister of an undertaking, that the Minister indicate to those persons who gave the undertakings that those persons are released from the undertaking and that the need for a dumping duty notice covering those persons is terminated.

The grounds for the proposed recommendations in the SEF to revoke the existing measures were founded on and consistent with the findings set out in Customs and Border Protection's termination report (TM Report 144), in relation to terminating the investigations of alleged dumping and subsidisation of HSS from China⁷.

2.2.4. Reasons for recommendations

The findings of TM Report 144 were the basis for Customs and Border Protection's proposed recommendations in the SEF for the review. The investigations and the review are inter-related. Customs and Border Protection considers that the Review Officer's views on causation and injury, expressed in revoking the termination decisions, need to be fully considered before it could proceed to recommend revocation of the measures or a change in the variable factors in the current review.

This report must be lodged with the Minister by 9 September 2009 and there is no provision to further extend that date. Accordingly, Customs and Border Protection recommends that the Minister decide to leave the dumping duty notice and the undertakings unchanged.

In addition, Customs and Border Protection will, separate to this review, recommend that the Minister request the CEO of Customs and Border Protection to initiate a fresh review of the measures⁸. This will allow Customs and Border Protection to fully consider the Review Officer's views on injury and causation to ensure that its recommendations arising from the review are consistent with the outcome of the resumed investigations.

⁷ See Section 4.1

⁸ Under section 269ZA(3)

3. PROCEDURES & BACKGROUND

3.1. PROCEDURES

An affected party may apply for a review of any of the variable factors specified in the original notice imposing the measure. Variable factors are normal value, export price and the non-injurious price. Changed variable factors would affect the amount of interim dumping duty imposed, or require amendment of the terms of an undertaking. The other circumstance in which a review would be sought is an application for revocation of the measures.

An affected party includes a person directly concerned with the exportation or importation of the goods to which the measures relate; a person representing all or part of the Australian industry producing like goods; or the government of a country from which like goods have been exported to Australia.

Within 20 days after receipt of an application the CEO must examine it to determine whether⁹:

- it complies with section 269ZB; and
- whether there appear to be reasonable grounds for asserting either:
 - that the variable factors relevant to the taking of anti-dumping measures have changed; or
 - that, if the anti-dumping measure to which the application relates had not been taken, the Minister would not be entitled to take such measures.

A number of possible outcomes may result from a review. Where the measures are in the form of a dumping or countervailing notice, the outcomes are:

- i. the notice remain unaltered; or
- ii. the notice be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- iii. the notice have effect as if different variable factors had been ascertained.

Equivalent legislative provisions apply where the measures are in the form of undertakings.

If an application for review of an anti-dumping measure is lodged and it complies with the requirements, Customs and Border Protection must initiate a formal review. Customs and Border Protection then has up to 155 days to inquire and report to the Minister, recommending one of the above outcomes.

⁹ Section 269ZC

3.2. BACKGROUND

3.2.1. The goods

The goods to which the measures the subject of the current review relate are HSS classified to subheading 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 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.

The goods subject to the measures are described as:

electric resistance welded pipes made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, commonly used in structural and mechanical applications.

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

Finish types for the goods include in-line galvanised (“ILG”), pre-galvanised, hot-dipped galvanised and non-galvanised HSS. Non-galvanised HSS is typically of painted, black, lacquered or oiled finished 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 and JIS). HSS can also be categorised according to its minimum yield strength. The most common classifications are 250 and 350 Mega Pascals (MPa).

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 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 AS2556.

3.2.2. History of measures

On 29 March 2006, the Australian industry manufacturing HSS lodged an application requesting that the Minister responsible for Customs publish a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand. The investigation was terminated in respect of Korea, Malaysia, Taiwan, Thailand and certain exporters from China in accordance with s. 269TDA. Customs continued the investigation into the alleged dumping of HSS exported to Australia from the remainder of Chinese exporters.

In May 2007, the Minister responsible for Customs accepted price undertakings from four exporters from China, and issued a dumping duty notice on goods exported by Tianjin No.1 Steel Rolled Co., Ltd, and all other exporters except exempt exporters of HSS from China as detailed below. TM Report 116 summarises the findings of that investigation.

A summary of the current anti-dumping measures and price undertakings applicable to exports of HSS from China and the relevant dates of expiry are as follows:

Type of Measure	Exporter	Date of expiry
Dumping	Tianjin No.1 Steel Rolled Co., Ltd and all other exporters except exempt exporters and exporters subject to undertakings listed below	24 May 2012
Price undertaking	<ul style="list-style-type: none"> • Bazhou Dong Sheng Hot-Dipped Galvanized Steel Pipes Co., Ltd • Foshan Nanhai • Beijing Moving-Goods Construction Machinery Co., Ltd • Dalian Steelforce Hi-Tech Co Ltd 	14 May 2012
None (Exempt)	<ul style="list-style-type: none"> • Hengshui Jinghua Steel Pipe Co., Ltd • Huludao City Steel Pipe Industrial Co., Ltd • Qingdao Xiangxing Steel Pipe Co., Ltd • Shandong Fubo Group Co • Tianjin Aprometal Co., Ltd • Zhejiang Kingland Pipeline and Technologies Co., Ltd 	Not Applicable

3.2.3. Recent activity in relation to measures

On 18 December 2008, Customs and Border Protection initiated an investigation into the alleged dumping and subsidisation of certain HSS from China, and the alleged dumping of HSS from Malaysia.

The investigation followed an application made by OneSteel ATM and Orrcon alleging that certain HSS have been exported to Australia:

1. at dumped prices; and/or
2. by exporter/producers in China in receipt of countervailable subsidies

and that this has resulted in material injury to the Australian industry.

The application was made:

- in relation to the allegation of dumping, in respect of:
 - certain exports of HSS from China, excluding imports from Chinese exporters which are already the subject of anti-dumping measures (including undertakings); and
 - all exports of HSS from Malaysia; and
- in relation to the allegation of subsidisation, in respect of all exports of HSS from China.

On 15 May 2009 the delegate of the CEO terminated the investigation insofar as it related to exports from Malaysia due to negligible dumping margins for the major exporter, Alpine Pipe Manufacturing Sdn. Bhd. (Alpine), and negligible volumes for the remaining exporters.

On 2 June 2009 the delegate of the CEO terminated the remainder of the investigation. Notification of termination was made on 5 June 2009. The delegate of the CEO was satisfied:

- there has been, or may be, dumping 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 is negligible; and
- there has been, or may be, 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 subsidisation is negligible.

On 14 August 2009, the Review Officer revoked the termination of the investigation as it related to Alpine and Malaysia, following an application by the Australian industry. On 21 August 2009, the Review Officer revoked the termination of the investigation as it related to China following an application by the Australian industry.

3.2.4. The current review

The applicants, OneSteel ATM and Orrcon, lodged an "Application for Review of Anti-Dumping Measures" in the approved form. The applicants are the only two Australian manufacturers of HSS.

OneSteel ATM and Orrcon claimed that the variable factors for China have increased since they were last established.

In support of its application, OneSteel ATM and Orrcon provided:

- 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 2008¹⁰.

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

3.2.4.1. Requests for revocation

On 2 March 2009, Customs and Border Protection received a request from Steelforce Trading Australia Pty Ltd for release from the price undertaking pertaining to the Chinese exporter Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce), a related company. The reasons provided for the release are summarised as follows:

- 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 in China. The sale price to Australia is based on Dalian Steelforce's cost to make and sell. Dalian Steelforce therefore cannot dump product into the Australian market and the undertaking is not a relevant measure.

¹⁰ The Australian industry subsequently provided data for the quarter ended 31 December 2008 to cover the entire review period.

On 10 June 2009, Customs and Border Protection received a submission from Tianjin Jinshengde Steel Tube Produce Co Ltd (Tianjin Jinshengde), an exporter of HSS to Australia, requesting revocation of the anti-dumping measures. The reasons provided are summarised as follows:

- the investigation concerning HSS has established that during the review period (2008) no, or negligible, injury was caused to the Australian industry by dumped goods from China and Malaysia;
- in its application and a subsequent letter the Australian industry stated that the measures were ineffective due to price rises since 2005; and
- Customs and Border Protection's conclusion as to no causal link between injury that was not negligible and dumped and/or subsidised imports has application to all goods exported during the investigation period, including those subject to measures as well those not subject to measures.

4. FINDINGS

4.1. STATEMENT OF ESSENTIAL FACTS

A SEF was published on 27 July 2009 (SEF No. 143). The SEF stated that, at the time of the SEF, Customs and Border Protection considered that, if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures. Customs and Border Protection indicated that it proposed recommending to the Minister that:

- i. to the extent that the measures involved the publication of a dumping duty notice, that the notice be revoked generally; and
- ii. to the extent that the measures involved the acceptance by the Minister of an undertaking, that the Minister indicate to those persons who gave the undertakings that those persons are released from the undertaking and that the need for a dumping duty notice covering those persons is terminated.

The SEF stated that Customs and Border Protection found that in the review period the injury, if any, to the Australian industry that has been, or may be, caused by imports of HSS from China, including those currently subject to anti-dumping measures, was negligible. The Australian industry performed strongly in term of prices and profits in the first three quarters of 2008, until the onset of the global financial crisis in the December quarter 2008. Customs and Border Protection could not link a decline in the Australian industry's volumes and market share since 2006 with HSS imports from China.

In the review period, the measures appear to have had little impact on the proportion of HSS imports from China covered by measures. A comparative

analysis of exports from China subject to measures and not subject to measures during the review period supports the view that the price of exports if measures are removed would not necessarily be lower than if the measures remain in place, nor would export volumes necessarily increase.

On the available evidence, Customs and Border Protection considered that if the anti-dumping measures had not been taken, the Minister would not be entitled to take such measures due to the absence of a causal link between dumping and material injury, or threat of material injury to the Australian industry.

In reaching the conclusions set out in the SEF, Customs and Border Protection relied heavily on the findings set out in TM Report 144, the termination of the investigations in relation to HSS from China.

4.2. SUBMISSIONS TO THE SEF

Customs and Border Protection received two submissions in response to the SEF within the timeframe allowed for that purpose. One was from the Australian industry, and the other from Tianjin Jinshengde.

Given the reasons for Customs and Border Protection's final recommendation for the review, set out in section 4.3 below, details of the submissions are not summarised in this report. Non-confidential versions of the submissions have been placed on the public record.

Customs and Border Protection has had regard to the submissions in making the recommendations contained in this report.

4.3. CUSTOMS AND BORDER PROTECTION'S ASSESSMENT

On 14 August 2009, the Review Officer revoked Customs and Border Protection's termination of the investigation as it related to Alpine and Malaysia. On 21 August 2009, the Review Officer revoked Customs and Border Protection's termination of the investigation as it related to China. The Review Officer was of the view that certain aspects of Customs and Border Protection's investigations required further analysis and consideration.

The effect of the Review Officer's decision is that Customs and Border Protection must publish a SEF as soon as practicable, and the investigations resume immediately following publication of the SEF.

As discussed at section 4.1 above, the findings in the SEF for the current review were founded on, and consistent with, the findings in TM Report 144, the termination report for the investigation in relation to China. Given that the Review Officer has recommended that the investigation be resumed, with one potential outcome being a change to the findings in the termination report, Customs and Border Protection considers that the Review Officer's views on causation and injury need to be fully considered before making any recommendations for revoking the current measures or changing the variable factors.

There is a legislative requirement for the final report for the review to be completed by 9 September 2009. This date cannot be extended. Customs and Border Protection considers that the preferred course of action in these circumstances is to recommend that the dumping duty notice and undertakings remain unaltered and, at the same time, recommend separately that the Minister request the CEO to initiate a fresh review¹¹. This would allow the newly initiated review to run in conjunction with the resumed investigations, and the findings from the investigations to be taken into account in forming the recommendations for such a review.

¹¹ Under s 269ZA(3)