



**AUSTRALIAN CUSTOMS SERVICE**  
***CUSTOMS ACT 1901 – PART XVB***

**RE-INVESTIGATION OF CUSTOMS' FINDINGS**

**HOT ROLLED STRUCTURAL STEEL SECTIONS**

**EXPORTED FROM**

**THE REPUBLIC OF KOREA AND THAILAND**

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# CONTENTS

CONTENTS .....	2
ABBREVIATIONS .....	3
1 SUMMARY .....	4
2 INTRODUCTION .....	5
2.1 BACKGROUND TO THIS RE-INVESTIGATION.....	5
2.2 RE-INVESTIGATION PROCESS .....	5
2.3 THE GOODS.....	6
2.4 LIKE GOODS .....	6
3 CUSTOMS' ORIGINAL INVESTIGATION.....	7
4 RE-INVESTIGATION.....	8
4.1 INTRODUCTION .....	8
4.2 CAUSATION .....	8
4.2.1 <i>Background</i> .....	8
4.2.2 <i>Original investigation</i> .....	9
4.2.3 <i>Re-investigation</i> .....	10
4.2.4 <i>Conclusion</i> .....	14
4.3 WILL FUTURE DUMPED IMPORTS CAUSE MATERIAL INJURY? .....	14
4.3.1 <i>Original investigation</i> .....	14
4.3.2 <i>Re-investigation</i> .....	14
4.3.3 <i>Conclusion</i> .....	15
5 RECOMMENDATIONS .....	16

## ABBREVIATIONS

ASA	Australian Steel Association Inc.
Customs	Australian Customs Service
GUC	goods under consideration
INI	INI Steel Company Limited
Korea	Republic of Korea
Mpa	MegaPascal
Minister	Minister for Justice and Customs
OneSteel	OneSteel Manufacturing Pty Ltd
Sanwa	Sanwa Pty Ltd
South Africa	Republic of South Africa
structural steel	certain hot rolled structural sections
SYS	Siam Yamato Steel Co. Ltd
TMRO	Trade Measures Review Officer

## 1 SUMMARY

On 29 October 2001, OneSteel Manufacturing Pty Ltd (OneSteel) lodged an application for the publication of dumping duty notices in respect of certain hot rolled structural steel sections (structural steel) exported to Australia from the Republic of Korea (Korea), the Republic of South Africa (South Africa) and Thailand.

The Australian Customs Service (Customs) conducted an investigation and submitted its report to the Minister for Justice and Customs (the Minister). The Minister decided to publish dumping duty notices in respect of exports of structural steel from the nominated countries. Public notification of this decision was made on 5 July 2002.

Subsequently, Siam Yamato Steel Co. Ltd (SYS) from Thailand, INI Steel Company Limited (INI) from Korea and the Australian Steel Association Inc. (ASA) applied to the Trade Measures Review Officer (TMRO) for a review of the Minister's decision.

On 1 April 2003, the Minister, in accordance with advice he received from the TMRO, directed Customs to re-investigate the following findings:

causal link, to the extent that it relates to the issue of other factors that may have contributed to material injury; and  
Customs' determination that future dumped imports from Korea and Thailand may cause material injury to the Australian industry if measures are not imposed.

The Minister asked Customs to report the results of the re-investigation to him by no later than 6 June 2003.

Customs examined material collected during its initial investigation and submissions made by interested parties to this re-investigation.

Customs remains satisfied that:

it has not attributed injury caused by other factors to the injury caused by structural steel exported at dumped prices from Korea, South Africa and Thailand;  
structural steel exported at dumped prices from Korea, South Africa and Thailand, of itself, caused material injury to the Australian industry; and  
exports of structural steel from Korea, South Africa and Thailand after the investigation period may be at dumped prices and could cause material injury to the Australian industry if measures were not imposed.

Customs considers that the Minister should be satisfied that exports of structural steel from Korea, South Africa and Thailand, of themselves, caused material injury to the Australian industry.

Customs recommends that the Minister affirm the decision to publish dumping duty notices in respect of structural steel exported to Australia from Korea, South Africa and Thailand.

## 2 INTRODUCTION

### 2.1 Background to this re-investigation

On 29 October 2001, OneSteel lodged an application for the publication of a dumping duty notice in respect of structural steel exported to Australia from Korea, South Africa and Thailand. Customs accepted the application and initiated an investigation on 29 November 2001.

In the public notification of the investigation, Customs advised that:

to determine whether dumping had occurred, it would examine exports of structural steel to Australia from the nominated countries during the period 1 October 2000 to 30 September 2001 (the investigation period); and to determine whether injury was occurring it would examine the Australian market from 1 January 1998.

Details of Customs' investigation and recommendations are in Trade Measures Report No. 55.

The Minister declared that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to:

structural steel and like goods exported to Australia from Korea, South Africa and Thailand and entered for home consumption after 15 April 2002 but before public notification of the Minister's decision; and like goods exported to Australia from Korea, South Africa and Thailand and entered for home consumption after the date of public notification of the Minister's decision.

Public notification of the Minister's decision was made on 5 July 2002.

Subsequently, SYS from Thailand, INI from Korea and the ASA applied to the TMRO for a review of the Minister's decision to publish dumping duty notices under s. 269TG(1) and (2) of the *Customs Act 1901*.

The TMRO recommended that the Minister direct Customs to re-investigate the following findings:

causal link, to the extent that it relates to the issue of other factors that may have contributed to material injury; and Customs' determination that future dumped imports from Korea and Thailand may cause material injury to the Australian industry if measures are not imposed.

### 2.2 Re-investigation process

The Minister directed Customs to re-investigate the above findings in accordance with the advice he received from the TMRO and to report the results of the re-investigation to him on or before 6 June 2003.

After receiving the report on Customs' re-investigation the Minister must either:

affirm the decision to publish dumping duty notices in respect of structural steel exported to Australia from Korea, South Africa and Thailand; or  
revoke that decision and substitute a new decision.

In accordance with s. 269ZZM(3), the Minister may, among other things:

publish a dumping duty notice;  
vary a dumping duty notice; or  
revoke a dumping duty notice and substitute another dumping duty notice.

The Minister's decision takes effect from the time specified by the Minister and must be notified by public notice.

**2.3 The goods**

The goods under consideration (GUC) are hot rolled structural steel sections in the following shapes and sizes:

Channels (C or U sections)	Universal beams (I sections)	Universal columns (H sections)	Angles (L sections).
Of a height greater than or equal to 150mm and less than or equal 380mm	Of a height greater than or equal to 150mm and less than or equal to 610mm	Of a height greater than or equal to 100mm and less than or equal to 310mm	With a combined leg length greater than or equal to 240mm and less than or equal to 400mm

Imported structural steel is generally quoted to Australian Standard AS/NZS 3679.1. If not quoted to this standard, it will generally be quoted to an international equivalent standard. Customs found that the vast majority of imported product is offered with a nominal yield strength of 300 MegaPascal (Mpa).

Structural steel is classified to tariff subheadings 7216.31.00, 7216.32.00, 7216.33.00 and 7216.40.00 of Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty applicable to Korea and Thailand is zero.

**2.4 Like goods**

Structural steel manufactured in Australia has the following essential characteristics:

it complies with Australian Standard AS/NZS-3679.1;  
it is manufactured to the same range of sizes as imported structural steel;  
and  
it normally has a nominal minimum yield strength of 300 Mpa.

Customs considers structural steel produced in Australia physically resembles the GUC in size, weight, shape and appearance and is functionally the same. Australian produced structural steel and the GUC are sold into the same markets, and are directly competitive. Therefore, Customs concludes that Australian structural steel is a like good to the GUC.

### **3 CUSTOMS' ORIGINAL INVESTIGATION**

In its original investigation Customs:

found that a comparison of the weighted average export prices and weighted average normal values resulted in dumping margins for the investigation period of 3.52% for all products from Thailand, 18.25% for all products from Korea and 42.6% for universal columns and beams, 29.53% for channels and 33.84% for angles from South Africa;

found that an examination of the Australian industry's economic condition revealed it suffered injury in the form of reduced profits and profitability, price undercutting, price depression and suppression, reduced sales volume and loss of market share;

found that exports of structural steel at dumped prices from Korea, South Africa and Thailand has caused material injury to the Australian industry; and

on the basis of available evidence, was satisfied that, in the absence of measures, it was likely that dumping and material injury would continue.

## 4 RE-INVESTIGATION

### 4.1 Introduction

The Minister directed Customs to re-investigate the following findings:

causal link, to the extent that it related to the issue of other factors that may have contributed to material injury; and  
Customs' determination that future exports of structural steel at dumped prices from Korea and Thailand may cause material injury to the Australian industry if measures were not imposed.

### 4.2 Causation

#### 4.2.1 Background

The Minister is required to be satisfied, in accordance with s. 269TG and s. 269TAE, that material injury has been, is being caused, or is threatened, to an Australian industry 'because of' dumped imports. Under s. 269TAE, Customs must consider whether detriment has been or is being caused by factors other than the dumped imports and the detriment caused by these factors must not be attributed to the dumped imports. Article 3.5 of the World Trade Organisation Agreement also refers.

The Federal Court in *ICI v Anti-Dumping Authority and Fraser* (1992) 106 ALR 258 made the following comments on the relationship between s. 269TG and s. 269TAE and the ultimate issue for the Minister to determine.

The object of the 1975 legislation is to protect Australian industry (see *Tasman Timber Ltd and Others v. Minister for Industry and Commerce and Anor*, at p 151 and *Feltex Reidrubber Ltd v. Minister for Industry and Commerce and Anor* (1983) 46 ALR 171 at 182) by providing relief from the anti-competitive effects that dumped goods may have on domestic producers, whilst at the same time ensuring that protective measures adopted by the imposition of duties do not unjustifiably impede international trade. This object is to be achieved by imposing dumping duty which does not exceed the dumping margin (sub-s 8(4)), and may be less (sub-s 8(5)), for so long only as the dumping, or threat of dumping, will cause material injury to an Australian industry. The relationship required between the dumping and material injury to an Australian industry is therefore a close one. The material injury against which the Act provides relief is the material injury attributable to the dumping, and to no other cause.

Subsequent amendments include the enactment of provisions now contained in sub-s 269TAE(1), and the ADA Act. ... The provisions of the sub-section, read with sub-s. 269TG(1), make clear that the subject matter of sub-s. 269TG(1), is not material injury to an Australian industry in the abstract, but material injury causally connected to, 'by reason of' or 'because of', dumping. By whatever steps the deliberations occur during which the Minister has regard to the matters relevant to the determination of 'material injury', whether they be matters enumerated in sub-s 269TAE(1) or otherwise, the ultimate issue for the Minister is whether he or she is satisfied that there has been material injury causally connected in the manner required by the legislation to the dumping of goods that have been exported to Australia.

The 'material injury' to an Australian industry contemplated by sub-s. 269TG(1) is material injury which is the consequence of the dumping of the goods that have been exported to Australia. Section 269TG is not concerned with detriment which the Australian industry under consideration may have suffered from causes other than dumping, for example declining demand due to

economic recession, industrial unrest, or insufficient raw materials to permit the achievement of anticipated production output.<sup>1</sup>

The Federal Court judgement shows that, although detriment may have been caused by other factors, Customs must find that dumped imports, of themselves, caused material injury to the Australian industry.

#### **4.2.2 Original investigation**

Customs examined exports of structural steel from Korea, South Africa and Thailand between October 2000 and September 2001 to determine if the goods had been sold at dumped prices. It found that a comparison of the weighted average export prices and weighted average normal values resulted in dumping margins of 3.52% for all products from Thailand, 18.25% for all products from Korea and 42.6% for universal columns and beams, 29.53% for channels and 33.84% for angles from South Africa.

Customs examined the Australian market from January 1998 to December 2001 to determine if the Australian industry had suffered injury.

Customs found that the Australian industry had suffered injury in the form of:

- reduced profits and profitability;
- price undercutting;
- price depression;
- price suppression; and
- reduced sales volume and loss of market share.

Customs found that the Australian industry's profits fell by about 20% in 1999, 50% in 2000 and 45% in 2001. Movements in profitability, that is profit expressed as a percentage of revenue, showed similar trends to movements in profits.

Customs compared the Australian industry's selling prices with importer's selling prices to distributors. The analysis indicated that the price of imports from Korea, South Africa and Thailand undercut OneSteel's selling prices. The price of imports from Korea undercut OneSteel's prices by between 19% and 41%. Price undercutting by Thai imports ranged from 13% to 27%. The price of South African structural steel undercut OneSteel's prices by between 13% and 25%.

Customs calculated the Australian industry's prices for each year of the period reviewed. It found that the weighted average selling price per tonne fell 4% and 8% in 1999 and 2000 respectively. Prices remained relatively unchanged in 2001 although they were down 11% on prices in 1998, the year before claimed injury commencement.

Customs compared weighted average net selling prices with the weighted average cost to make and sell over the period of claimed injury. It found that the cost to make and sell structural steel had increased slightly while selling prices had fallen.

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<sup>1</sup> *ICI v Anti-Dumping Authority and Fraser* (1992) 106 ALR 258, 263-5.

Analysis of the Australian industry's sales indicates that sales volume decreased at an increasing rate between 1998 and 2001. Sales in 2001 were about 30% less than sales in the year before claimed commencement of injury.

The Australian industry's market share has fallen each year since 1998 with a net loss of 12 percentage points. At the same time imports from Korea and Thailand have increased. Imports from South Africa and other countries lost market share over the period of analysis.

Customs was satisfied that when considered in total the injury was material. It concluded that the dumping of structural steel from Korea, South Africa and Thailand caused material injury to the Australian industry.

Customs at no stage concluded that there were *no factors* other than the dumped imports that could have caused injury or detriment to the Australian industry. Rather, Customs stated on page 38 of Report No. 55:

Based on the available evidence, Customs has considered whether the injury to the Australian industry is being caused by other factors. Customs is satisfied that it has not attributed any injury caused by other factors to structural steel exported from Korea, South Africa and Thailand.

Customs did not (and is not required to) find that dumped imports were the sole, in the sense of exclusive, cause of all of the injury suffered by Australian industry.<sup>2</sup> The 'material injury' to an Australian industry contemplated by s. 269TG(1) is material injury which is the consequence of the dumping of the goods that have been exported to Australia.

### **4.2.3 Re-investigation**

#### **4.2.3.1 Introduction**

In this re-investigation Customs has focussed on whether material injury to the Australian industry, within the meaning of s. 269TG, was caused because of dumped imports from Korea, South Africa and Thailand. In doing so, Customs considered:

whether dumped goods, of themselves, caused material injury to the Australian industry; and  
whether any detriment to the Australian industry was caused by any factor other than dumped imports so that detriment caused by other factors was not attributed to dumped imports.

Customs examined material collected during its initial investigation and submissions made by interested parties to this re-investigation.

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<sup>2</sup> 106 ALR 258, 271.

#### **4.2.3.2 Dumped imports**

In 1998 imports of structural steel from Korea, South Africa and Thailand accounted for about 50% of all imports. In 2001 imports from these countries accounted for over 90% of all imports.

Customs found that exports from Korea, South Africa and Thailand were at dumped prices. The dumping margins, particularly for structural steel from Korea and South Africa, were substantial. Customs was satisfied that this enabled these goods to be sold at prices that undercut the Australian industry's prices, forcing the Australian industry to lower its prices to try and maintain market share. However, notwithstanding the various strategies employed by Australian industry, imports gained market share at the expense of the Australian industry. Price depression, price suppression, reduced sales volume and reduced market share ultimately resulted in a loss in profits and profitability.

#### **4.2.3.3 Other factors**

At paragraphs 24 and 47 of his report, the TMRO affirmed Customs finding that the Australian industry had suffered material injury. The TMRO's terminology and the distinction drawn between 'injury' and 'material injury' appears to indicate that the TMRO accepted dumped imports caused 'injury' but did not accept Customs finding that 'material injury' was caused by the dumped imports. The TMRO's rejection of Customs finding appears to have been based on its view that Customs had not sufficiently examined 'other factors' that might have contributed to the detriment suffered by the Australian industry in order to allow it to conclude that the dumped imports, of themselves, caused or threatened material injury.

Section 269TAE(2A) states that the Minister must consider whether any injury to the Australian industry is being caused by other factors.

#### **Other imports**

One of the factors set out s. 269TAE(2A) is 'the volume and prices of imported like goods that are not dumped'.

Customs is satisfied that it accurately identified the volume and value of imports of structural steel imported from Korea, South Africa and Thailand. However, it found during the original investigation that:

- significant quantities of imports had been misclassified;
- goods other than structural steel had been included in the tariff classification for structural steel and structural steel had been included in other tariff classifications; and
- the sizes specified in the relevant tariff classifications were broader than the sizes of structural steel nominated by the applicant.

During the original investigation:

Customs examined all imports under tariff heading 7216 and estimated the volume of imports from other countries—these imports accounted for less than 10% of total imports in 2001; and in accordance with s. 269TEA(2), Customs examined like goods exported to Australia by countries not covered by the application during the period starting on the date of initiation of the investigation (30 November 2001) and ending 20 days after the SEF was placed on the public record (9 April 2002) (other imports). Customs stated that:

However, the descriptions of the goods in the tariff are broader than the description of the goods nominated by OneSteel in its application. Therefore, Customs is unable to determine if the identified imports are like goods.

The TMRO stated that “it would seem reasonable that Customs be able to identify imports of like goods not covered by the application”.

During this re-investigation, Customs re-examined imports under tariff heading 7216 to estimate the volume of other imports after the investigation was initiated. Customs contacted a number of importers to clarify whether the other imports were structural steel. One importer advised Customs that its imports, which represented about half the volume of other imports during the period, were angles and that these were probably structural steel. Customs found that more than 75% of exports of structural steel were from countries under investigation.

While in this re-investigation Customs considers that the volume of other imports of structural steel is now likely to be higher than it originally thought, this does not affect its original conclusion. Namely, that exports of structural steel from the countries under investigation may continue to be at dumped prices and continue to cause material injury to the Australian industry.

### **Contraction in demand or changes in patterns of consumption**

Another of the factors set out s. 269TAE(2A) is whether any injury to the Australian industry is being caused by contractions in demand or changes in patterns of consumption.

Customs noted that there was a decline in the overall Australian market. Further, articles in the press indicated that the domestic steel market was at its worst for 20 years.

However, the Australian industry based its claim of volume injury on a fall in market share. Notwithstanding contraction in the market size, the volume of imports increased and accordingly the market share of imports increased significantly over the injury period.

INI, SYS, the ASA and Sanwa Pty Ltd (Sanwa) submitted that:

..the Australian producers volume of domestic sales which it provided to Customs is considered to be selective and questionable. Other market information provided to Customs would clearly suggest that the Customs has not captured all the relevant domestic sales of the applicant.

In the section of the TMRO’s report dealing with this claim, the TMRO affirmed Customs’ approach to determining the size of the Australian market.

## **Restrictive trade practices**

Another of the factors set out s. 269TAE(2A) is whether any injury to the Australian industry is being caused by restrictive trade practices. INI, SYS, the ASA and Sanwa have restated this claim.

During the original investigation some interested parties claimed that they could not source structural steel from the Australian industry. The TMRO stated in his report that any claims made in relation to issues to do with allegations of anti-competitive behaviour should be raised with the relevant authority. Further, the TMRO stated that he:

did not find evidence that supports the claim of supply exclusion and as such affirms Customs' determination that it was unable to have regard to this claim.

## **Developments in technology**

Another of the factors set out s. 269TAE(2A) is whether any injury to the Australian industry is being caused or threatened by developments in technology.

During the original investigation, interested parties referred to structures such as Stadium Australia in making the claim that other products (notably rectangular and circular hollow sections) were eroding the market for structural steel. The Australian industry advised these products were available on the Australian market for over 20 years and that there had been no significant change in relative prices. Further, the Australian industry asserted that these products only offered an engineering equivalent in terms of structural capacity in limited circumstances.

On the available information, Customs remains unable to assess the impact of these products on the Australian industry's sales of structural steel.

During the original investigation, interested parties also claimed that blast furnace technology employed by OneSteel is not as efficient or flexible as electric arc furnace technology employed by exporters in Korea and Thailand. OneSteel disputed this claim. It stated that perceptions that electric arc furnaces are inherently low cost are not correct. It provided information on costs for its Sydney electric arc furnace to support this claim.

On the available information, Customs remains unable to assess this claim.

## **Export performance and productivity of the Australian industry**

Another of the factors set out s. 269TAE(2A) is whether any injury to the Australian industry is being caused or threatened by the export performance and productivity of the Australian industry.

Interested parties did not raise this issue. In any event, Customs found no evidence that injury to the Australian industry was caused by the export performance and productivity of the Australian industry.

## **Other issues raised by interested parties**

INI, SYS, the ASA and Sanwa submitted that Customs failed to make an appropriate or exhaustive analysis on the cause and effect of price undercutting.

In its original report Customs found that the Australian industry had suffered injury from a number of causes, including price undercutting. In discussing this claim, the TMRO affirmed Customs' finding that OneSteel had suffered injury. However, he was not satisfied that Customs had not attributed injury caused by other factors to the injury caused by structural steel exported from Korea, South Africa and Thailand at dumped prices.

#### **4.2.4 Conclusion**

Customs is satisfied that it has not attributed injury caused by other factors to the injury caused by dumped goods exported from Korea, South Africa and Thailand.

Having regard to the dumping margins, the volume of dumped imports, their effect on prices in the Australian market, and their consequent impact on the Australian industry, Customs remains satisfied that the dumping of structural steel from Korea, South Africa and Thailand caused material injury to the Australian industry.

### **4.3 Will future dumped imports cause material injury?**

#### **4.3.1 Original investigation**

Section 269TG(2) requires that before action may be taken against future imports the Minister must be satisfied that imports that may occur in the future may be dumped.

In its original investigation, Customs examined events that occurred after the investigation period (October 2000 to September 2001). The two significant events relevant to the investigation were the establishment of OneSteel's preferred supplier arrangement with Smorgon Steel and the recommendation by the US International Trade Commission to introduce import restrictions in December 2001, culminating in the announcement by the US President of import restrictions (the Section 201 action), further discouraging imports of steel products into the US. Events leading up to the Section 201 action were relevant because the availability of steel destined for the USA was anticipated to put further downward pressure on world steel prices.

On the basis of available evidence, Customs was satisfied that, in the absence of measures, it was likely that dumping and material injury would continue.

#### **4.3.2 Re-investigation**

In its report to the Minister, the TMRO stated he was:

of the opinion that the information relating to threat is inconclusive and therefore insufficient to satisfy the Minister that future dumping will occur and material injury will continue.

The TMRO recommended that Customs reassess the issue of whether future dumped imports will cause material injury, in particular

the claim that the effect of US measures have had no affect on exports to their market from Korea and Thailand and as a result it would be unlikely that surplus exports would move into other markets and in particular the Australian market.

Customs considers that information used to assess whether future dumped imports may continue to cause material injury:

will not be *conclusive* because it relates to events that have not yet occurred; and  
must have been available to Customs at the time it made its recommendations to the Minister.

However, the information must allow the Minister to be satisfied that future dumped imports may continue to cause material injury.

At the time that Customs made its recommendations:

there had been a downward trend in export prices during the investigation period;  
it was expected that world prices would be unlikely to recover in the short term because of the availability of steel that was originally destined for the US market;  
the availability of steel destined for the US market would influence the price of steel exported to Australia, even if steel destined for the US market was not exported to Australia.; and  
there was no contrary information available to Customs.

#### **4.3.3 Conclusion**

Customs remains satisfied that, in the absence of measures, it was likely that dumping and material injury to the Australian industry would continue.

## **5 RECOMMENDATIONS**

Customs remains satisfied that:

it has not attributed injury caused by other factors to the injury caused by structural steel exported at dumped prices from Korea, South Africa and Thailand;

structural steel exported at dumped prices from Korea, South Africa and Thailand, of itself, caused material injury to the Australian industry; and exports of structural steel from Korea, South Africa and Thailand after the investigation period may be at dumped prices and could cause material injury to the Australian industry if measures were not imposed.

Customs considers that the Minister should be satisfied that exports of structural steel from Korea, South Africa and Thailand, of themselves, caused material injury to the Australian industry.

Customs recommends that the Minister affirm the decision to publish dumping duty notices in respect of structural steel exported to Australia from Korea, South Africa and Thailand.