



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS
NO. 291

ANTI-CIRCUMVENTION INQUIRY

**HOLLOW STRUCTURAL SECTIONS EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA THE REPUBLIC OF
KOREA, MALAYSIA AND TAIWAN**

5 November 2015

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ABBREVIATIONS

| | |
|---------------------|---|
| ACDN | Australian Customs Dumping Notice |
| ADN | Anti-Dumping Notice |
| AS | Australian Standard |
| ATM | Austube Mills Pty Ltd |
| China | People's Republic of China |
| CHS | Circular hollow sections |
| circumvention goods | goods subject of the anti-circumvention inquiry |
| CON 291 | Consideration report 291 |
| Dalian Steelforce | Dalian Steelforce Hi-Tech Co. |
| DIBP | Department of Immigration and Border Protection |
| Dumping Duty Act | <i>Customs Tariff (Anti-Dumping) Act 1975</i> |
| HDG | hot-dipped galvanised |
| HRC | hot rolled coil |
| HSS | hollow structural sections |
| Huludao Steel Pipe | Huludao City Steel Pipe Industrial Co., Ltd |
| ICD | interim countervailing duty |
| IDD | interim dumping duty |
| ILG | inline galvanised |
| Inquiry 291 | case number 291 |
| Investigation 177 | Investigation into hollow structural section from China, Korea, Malaysia, Taiwan and Thailand |
| Korea | Republic of Korea |
| original notices | Subsection 269TG(2) and TJ(2) notices following Investigation 177 |
| PAD | preliminary affirmative decision |
| PAD 177 | preliminary affirmative decision 177 |
| PAD 177A | preliminary affirmative decision 177A |
| Qingdao XiangXing | Qingdao XiangXing Steel Pipe Co., Ltd |
| REP177 | Anti-Dumping Commission Report No. 177 |
| REP203 | Reinvestigation Report 203 |
| Review 285 | Review 285 of Dalian Steelforce Hi-Tech Co. |
| RHS | rectangular or square hollow sections |
| SEF | Statement of Essential Facts |
| SEF177 | Statement of Essential Facts 177 |
| Steelforce Trading | Steelforce Trading Pty Ltd |
| TMRO | Trade Measures Review Officer |
| the Act | <i>Customs Act 1901</i> |

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| | |
|-----------------------------|--|
| the Commission | Anti-Dumping Commission |
| the Commissioner | Commissioner of the Anti-Dumping Commission |
| the goods | the goods the subject of the original application |
| the Parliamentary Secretary | the Parliamentary Secretary to the Minister for Industry, Innovation and Science |
| the Regulation | <i>Customs (International Obligations) Regulation 2015</i> |
| the Tariff Act | <i>Customs Tariff Act 1995</i> |

1. SUMMARY AND RECOMMENDATIONS

1.1. Introduction

This statement of essential facts (SEF) relates to the Commissioner of the Anti-Dumping Commission's (the Commissioner's) anti-circumvention inquiry into whether a circumvention activity has occurred in relation to notices published under subsections 269TG(2) and 269TJ(2) of the *Customs Act 1901* (the Act)¹ in relation to Hollow Structural Sections (HSS) exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan.

The anti-circumvention inquiry follows an application by Austube Mills Pty Ltd (ATM) that alleged a circumvention activity has occurred under section 48 of the *Customs (International Obligations) Regulation 2015* (the Regulations) through the slight modification of HSS exported to Australia.

This SEF sets out the facts on which the Commissioner proposes to base his recommendations regarding the inquiry to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary),² subject to any submissions received in response to this SEF.

1.2. Proposed recommendation

The Anti-Dumping Commission (the Commission) has found that a circumvention activity, in the form of slight modification of goods exported to Australia from China, Korea and Malaysia, has occurred in respect of HSS subject to the original subsection 269TG(2) and 269TJ(2) notices.

Based on these findings, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend to the Parliamentary Secretary that she alter the original notices applicable to HSS exported from China, Korea and Malaysia.

The Commissioner proposes to recommend the original notices be altered to change the description of the goods covered by those notices to include alloyed HSS exported or supplied by certain named entities, which has been exported from China, Korea or Malaysia. In relation to some exporters or suppliers, the specific alloying element of boron would be named, while in the case of others this change would include all types of alloyed HSS.

1.3. Authority to make a decision

Division 5A of Part XVB sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting an

¹ A reference to a part, division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

² The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this inquiry.

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anti-circumvention inquiry in relation to the goods covered by an application for the purpose of making a report to the Parliamentary Secretary.

1.4. Application

On 7 April 2015, ATM, a member of the Australian industry producing HSS, lodged an application under subsection 269ZDBC(1) requesting an anti-circumvention inquiry in relation to HSS exported from China, Korea, Malaysia and Taiwan.

The Commissioner was satisfied that each application was made in the prescribed manner and contained the information required in an application for an anti-circumvention inquiry.³

1.5. Initiation

After examining the application, the Commissioner was satisfied that there appeared to be reasonable grounds for asserting a circumvention activity in relation to the original notices had occurred in respect of exports from China, Korea and Malaysia.⁴ The Commissioner decided to not reject the application in relation to these countries.

The Commissioner was not satisfied that there appeared to be reasonable grounds for asserting that a circumvention activity had occurred in relation to exports from Taiwan, and the Commissioner decided to reject the application in so far as it related to exports of HSS from Taiwan.

Public notice of the initiation of the anti-circumvention inquiry into HSS exported from China, Korea and Malaysia was published on 11 May 2015. The inquiry was allocated case number 291 (Inquiry 291).

1.6. Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an anti-circumvention inquiry, or such longer period as the Parliamentary Secretary allows,⁵ place on the Public Record a statement of the facts on which the Commissioner proposes to base his recommendation in relation to the original notices.

In formulating this SEF, the Commissioner must have regard to the application, any submissions that are received by the Commission within 40 days after the date of notification of the initiation of the inquiry, and any other matters considered relevant.⁶

On 19 August 2015, the Parliamentary Secretary granted a 68 day extension to the date by which the SEF must be placed on the Public Record in relation to Inquiry 291. This extension made the due date by which the SEF must be placed on the Public Record, 5 November 2015.

³ Section 269ZDBD

⁴ Subsection 269ZDBE(2)

⁵ Subsection 269ZDBF(1)

⁶ Subsection 269ZDBF(2)

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1.7. Findings and conclusions

The Commission has made the following findings and conclusions based on available information at this stage of the investigation.

1.7.1. Circumvention activities (Chapter 4 of this report)

A circumvention activity, in the form of the slight modification of goods exported to Australia⁷ has occurred in relation to HSS exported or supplied by the following entities from the following countries:

| Supplier | Exporter | Country of export | Original notice that has been circumvented |
|-------------------------------|-------------------------------|-------------------|--|
| Dalian Steelforce Hi-Tech Co. | Dalian Steelforce Hi-Tech Co. | China | Subsections 269TG(2) and TJ(2) |
| Company A | Unknown | China | Subsections 269TG(2) and TJ(2) |
| Company B | Company C | China | Subsections 269TG(2) and TJ(2) |
| Company D | Unknown | China | Subsections 269TG(2) and TJ(2) |
| Company E | Company E | Malaysia | Subsection 269TG(2) |
| Company F | Unknown | Korea | Subsection 269TG(2) |

Table 1 – summary of exporters determined to have exported circumvention goods

Note: The Commissioner is in the process of considering the confidentiality issues surrounding the naming of A to F and hence the identity of these companies has not been released in this SEF.

The Commission may release the identities of these companies at a later date once further consideration is given to these confidentiality issues.

In the case of Dalian Steelforce Hi-Tech Co. (Dalian Steelforce) and Company C this slight modification involved the export of HSS containing the alloying element boron.

In the case of Company A, Company B, Company E, Company D and Company F this slight modification involved the export of HSS containing an unknown alloy.

1.7.2. Proposed changes to the original notices (Chapter 5 of this report)

Following the finding that a circumvention activity has occurred in relation to the original notices, the Commissioner is satisfied that, because of this activity, the original notices should be altered.⁸

⁷ Subsection 48(2) of the Regulations.

⁸ Paragraph 269ZDBG(1)(d)

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The Commissioner proposes to recommend that the original notices relating to HSS be altered to amend the description of the goods subject to the notice to be as follows.

Section 269TG(2) notice

The goods description in the original dumping duty notice is recommended to be amended so the first sentence reads as follows:

- *certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes;*

and

- ***certain electric resistance welded pipe and tube made of alloy steel containing boron, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, exported from:***

- ***China by Dalian Steelforce Hi-Tech Co.;***
- ***China by Company C;***

and

- ***certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes:***

- ***exported from China by any exporter and supplied by:***
 - ***Company A;***
 - ***Company D;***
- ***exported from Korea and supplied by Company F;***
- ***exported from Malaysia by Company E.***

The text in **bold** above indicates changes to the first sentence of the original notice.

All other elements of the goods description are to remain unchanged.

Section 269TJ(2) notice

The goods description in the original countervailing duty notice is recommended to be amended so the first sentence reads as follows:

- *certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes;*

and

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- ***certain electric resistance welded pipe and tube made of alloy steel containing boron, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, exported from:***

- ***China by Dalian Steelforce Hi-Tech Co.;***
- ***China by Company C;***

and

- ***certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes exported from China by any exporter and supplied by:***

- ***Company A;***
- ***Company D.***

The text in **bold** above indicates changes to the first sentence of the original notice.

All other elements of the goods description are to remain unchanged.

2. BACKGROUND

2.1. The original investigation and notices

2.1.1. Application and initiation

On 12 August 2011, ATM lodged an application⁹ for the publication of a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand, and a countervailing duty notice in respect of HSS exported to Australia from China.

Following an examination of the application, the then Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) decided not to reject the application, and an investigation into the alleged dumping and subsidisation of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand was initiated on 19 September 2011.

This investigation was numbered case 177 (Investigation 177).

2.1.2. Preliminary affirmative determinations

On 23 December 2011, after having regard to the application and submissions made to the investigation, the CEO of Customs and Border Protection was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia and Taiwan, and made a preliminary affirmative determination (PAD)¹⁰ to that effect (PAD177).

No PAD was made in relation to goods exported from Thailand, or in relation to subsidies at that stage.

Following this PAD, Customs and Border Protection decided to require and take securities¹¹ in respect of any interim dumping duty that may become payable in respect of HSS from China, Korea, Malaysia and Taiwan that were entered into home consumption on or after 10 January 2012.

On 5 June 2012, following the publication of *Statement of Essential Facts 177* (SEF177), and consideration of submissions received in response to SEF177, the CEO of Customs and Border Protection was satisfied that there were sufficient grounds for the publication of a countervailing duty notice in respect of HSS exported to Australia from China by all exporters except Huludao City Steel Pipe Industrial Co., Ltd (Huludao Steel Pipe) and Qingdao XiangXing Steel Pipe Co., Ltd (Qingdao XiangXing), and made a PAD to that effect (PAD177A).

Notification was made of this PAD in *The Australian* on 6 June 2012, and within ACDN 2012/27. However, noting several matters at that stage, the CEO of Customs

⁹ Section 269TB

¹⁰ Section 269TD

¹¹ Section 42

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and Border Protection decided to not require countervailing securities following that PAD.

2.1.3. Partial termination

Following publication of SEF177, and consideration of submissions received in response to SEF177, the CEO of Customs and Border Protection was satisfied that grounds had been established that:

- Huludao Steel Pipe and Qingdao XiangXing had not received an above-negligible level of subsidisation; and
- the volume of HSS exported to Australia from Thailand during the investigation period that had been dumped was negligible.

Consequently, on 5 June 2012, the CEO terminated:

- the countervailing investigation so far as it related to Huludao Steel Pipe and Qingdao XiangXing; and
- the dumping investigation in relation to the goods exported from Thailand.

Reasons for these decisions are outlined in *Termination Report 177*, which is available on the Public Record. Consequently, this report has limited discussion of the investigation into the alleged dumping of HSS exported to Australia from Thailand.

Public notification of these terminations was made in *The Australian* on 6 June 2012, and in ACDN 2012/25 and ACDN 2012/26.

2.1.4. Final report and Minister's decision

On 3 July 2012, following consideration of *Anti-Dumping Commission Report No. 177 (REP177)*, the then Minister for Home Affairs published:

- dumping duty notices under subsections 269TG(1) and TG(2) imposing anti-dumping measures in the form of interim dumping duty (IDD) on HSS exported to Australia from China, Korea, Malaysia and Taiwan; and
- a countervailing duty notice under subsection 269TJ(2) imposing anti-dumping measures in the form of interim countervailing duty (ICD) on HSS exported to Australia from China, excluding HSS exported by:
 - Huludao Steel Pipe; and
 - Qingdao XiangXing.

For the purposes of this inquiry:

- the subsection 269TG(2) notice is the original dumping duty notice (the

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prospectively operating notice); and

- the subsection TJ(2) notice is the original countervailing duty notice

as set out by subsection 269ZDBB(1).

2.1.5. Reinvestigation

The decision by the then Minister for Home Affairs to publish a dumping duty notice and a countervailing duty notice following Investigation 177 was the subject of review by the former Trade Measures Review Officer (TMRO)¹² and subsequently, reinvestigation by Customs and Border Protection (Report 203).

The reinvestigation resulted in Customs and Border Protection recommending to the then Minister for Home Affairs that the dumping duty notice and countervailing duty notice remain in place with an alteration of the amount of combined IDD and ICD applicable to the exports of Dalian Steelforce. The then Minister accepted this recommendation.

2.2. Summary of dates – Investigation 177

The below table summarises key dates of the original investigation into HSS for ease of reference, as patterns of trade with reference to these dates are referred to throughout this report in examining whether a circumvention activity has occurred.

| Activity | Date |
|--|-------------------|
| Initiated | 19 September 2011 |
| Dumping securities collected from | 10 January 2012 |
| Publication of original notice (interim duties collected from) | 3 July 2012 |

Table 2 – Summary of key dates – Investigation 177

2.3. Goods subject to the original notices

2.3.1. Goods description

The goods subject to the original notices are:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

Further, the goods subject to the original notice are subject to the below additional descriptive information:

¹² The TMRO was the former name of the review body, which is now known as the Anti-Dumping Review Panel.

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The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include inline galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.'

Sizes of the goods are, for circular products, those exceeding 21mm up to and including 165.1mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3mm. Categories of HSS excluded from the goods are conveyor tube; precision RHS with a nominal thickness of less than 1.6mm and air heater tubes to Australian Standard (AS) 2556.

A full description of the goods subject to the original notices is available in Australian Customs Dumping Notice (ACDN) No. 2011/43 (relating to the initiation).

This ACDN is available on the Commission's website at <http://www.adcommission.gov.au/notices/Pages/Past%20Years/2011.aspx>.

2.3.2. Excluded goods

The following categories are excluded from the goods subject of the original notices:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm 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
- air heater tubes to AS.2556.

2.4. Exemptions

In addition, the relevant Minister has granted an exemption from the anti-dumping measures imposed by the original notices under subsections 8(7)(b) and 10(8)(aa) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) in relation to goods subject to Tariff Concession Order (TCO) TC 1333313, which covers the following:

TC 1333313 covers the following:

TUBES, square OR rectangular, electric resistance welded, complying with Australian/New Zealand Standard 1163:2009 (AS/NZS 1163:2009), Grade C350L0 OR C450L0, having EITHER (a) OR (b) AND (c), as follows:

- (a) silicon content plus 2.5 times the phosphorus content NOT greater than 0.09%;*
- (b) silicon content greater than 0.14% and NOT greater than 0.24%;*

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(c) perimeter NOT less than 720 mm.

2.4.1. Tariff classifications

HSS the subject of the original notice is classified to the following tariff subheadings of Schedule 3 to the *Customs Tariff Act 1995* (the Tariff Act):

- 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 code 10).

2.5. Application for anti-circumvention inquiry

On 7 April 2015, ATM, a member of the Australian industry producing HSS, lodged an application under subsection 269ZDBC(1) for an anti-circumvention inquiry in relation to HSS exported from China, Korea, Malaysia and Taiwan.

In its application, ATM alleged that the applicable anti-dumping measures in respect of HSS from China, Korea, Malaysia and Taiwan were being circumvented by importers and exporters of the goods through the slight modification of those goods. Specifically, ATM alleged that HSS that would otherwise be subject to the anti-dumping measures, was being slightly modified through the addition of alloys to those goods, which allows for those goods to no longer be considered HSS of **carbon** steel, but rather of **alloyed** steel (and classified to a different tariff subheading – see Paragraph 2.7.1 below).

In its application, ATM highlighted that it considers HSS including the alloying element of boron has been imported and declared as alloyed HSS, thereby evading the anti-dumping measures. ATM identified that other alloys (such as chromium) may also have been used in such a modification.

2.6. Consideration of the applications

Following review of this application, the Commissioner was satisfied that the application complied with subsection 269ZDBE(2) as the application:

- complied with section 269ZDBD; and
- established that there appeared to be reasonable grounds for asserting that circumvention activity in relation to the original notice had occurred in relation to goods exported from China, Korea and Malaysia.

In relation to goods exported from Taiwan, the Commissioner was not satisfied that the application established that there appeared to be reasonable grounds for asserting that circumvention activity in relation to the original notice had occurred.

The Commissioner decided not to reject the application for exports of HSS from China, Korea and Malaysia. The Commissioner initiated an anti-circumvention

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inquiry on 11 May 2015 (Inquiry 291). The Commission's assessment of that application is set out in *Consideration Report 291* (CON 291).

The Commissioner decided to reject the application for exports of HSS from Taiwan.

Public notification of initiation of Inquiry 291 was made in *The Australian* newspaper on 11 May 2015. Anti-Dumping Notice (ADN) 2015/58 provides further details of the inquiry. This ADN is available on the Commission's website at www.adcommission.gov.au.

The inquiry period was established as 1 July 2010 – 31 March 2015.

2.7. The goods subject to the inquiry (the circumvention goods)

The goods subject to the anti-circumvention inquiry (the circumvention goods, for the purposes of subsection 48(2)(a) of the Regulations, are described as:

*Certain electric resistance welded pipe and tube made of **alloy steel**, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.*

The additional information of the description of the goods subject to the original notice and applicable exclusions and exemptions applies to the circumvention goods.

For the purposes of this report, the circumvention goods are referred to as 'alloyed HSS' or as 'the circumvention goods' unless defined otherwise.

2.7.1. Tariff classifications of the circumvention goods

Alloyed HSS is classified to tariff subheadings:

- 7306.50.00 (statistical code 45) – circular; and
- 7306.61.00 (statistical code 90) – rectangular/square

of Schedule 3 to the Tariff Act.

2.7.2. Identifying and classifying the circumvention goods

Note 1(f) to Chapter 72 (iron and steel) of Schedule 3 of the Tariff Act provides that, in order for a product to be considered 'other alloy' steel (required to be classified to the above codes relating to alloyed steel for the purposes of that chapter), the below must be satisfied:

Steels not complying with the definition of stainless steel and containing by weight one or more of the following elements in the proportion shown:

- 0.3% or more of aluminium
- 0.0008% or more of boron
- 0.3% or more of chromium

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- *0.3% or more of cobalt*
- *0.4% or more of copper*
- *0.4% or more of lead*
- *1.65% or more of manganese*
- *0.08% or more of molybdenum*
- *0.3% or more of nickel*
- *0.06% or more of niobium*
- *0.6% or more of silicon*
- *0.05% or more of titanium*
- *0.3% or more of tungsten (wolfram)*
- *0.1% or more of vanadium*
- *0.05% or more of zirconium*
- *0.1% or more of other elements (except sulphur, phosphorus, carbon and nitrogen), taken separately.*

Note (1) to Chapter 72 advises that the definition in note (1)(f) applies to the entirety of Schedule 3 of the Tariff Act, thereby applying the definition of note (1)(f) to Chapter 73 of that schedule and the abovenamed classifications of HSS.

HSS that does not meet the threshold requirements of note (1)(f) should be classified to:

- 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 code 10)

2.8. Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary in relation to the Commission's anti-circumvention inquiry into HSS.

This SEF represents an important stage in the inquiry. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. However, it is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final report to the Parliamentary Secretary. The report will recommend whether or not the original notices should be altered because a circumvention activity has occurred, and the alterations to be made to those notices (if any).

Responses to this SEF should be received by the Commissioner no later than **25 November 2015**.

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The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.

The Commissioner must report to the Parliamentary Secretary by 20 December 2015.

Submissions should preferably be emailed to operations2@adcommission.gov.au.

Alternatively, they may be sent to fax number +613 8539 2499, or posted to:

The Director
Operations 2 – Anti-Dumping Commission
Department of Industry, Innovation and Science
Lvl 35, 55 Collins St
Melbourne VIC 3000
GPO Box 1632 Melbourne VIC 3001

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available on the Commission's web site at www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of importer and exporter questionnaire responses and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2440 to make an appointment), or online at www.adcommission.gov.au

Documents on the Public Record should be read in conjunction with this SEF.

3. INQUIRY PROCESS

The Commission has conducted reasonable inquiries with interested parties following the initiation of Inquiry 291. The inquiry process is outlined below.

3.1. Post-initiation meeting with ATM

Following initiation, the Commission met with ATM on 2 June 2015 to gain a better understanding of:

- the process involved in the slight modification of HSS to circumvent anti-dumping measures;
- alloys that may be used for this slight modification; and
- the commercial activities that may surround the circumvention.

The non-confidential record of the meeting can be found on the Public Record.

3.2. Identifying possible circumvention

During its consideration of the applications, the Commission accessed import data information (based on import declarations made by importers or their agents) held by the Department of Immigration and Border Protection (DIBP) in its imports database.

This data covered the tariff classifications for both the goods and the circumvention goods over the length of the inquiry period.

This data forms **Confidential Attachment 1** to this report.

This data was analysed in detail and was used to identify all possible importers and exporters of goods that could have been involved in a circumvention activity during the applicable inquiry periods. This involved:

- identifying possible 'switches' of trade from the tariff classification applicable to non-alloyed HSS to alloyed HSS;
- identifying potential 'start up' circumventors (where there was no history of trade in non-alloyed HSS but trade in alloyed HSS commenced following imposition of the anti-dumping measures); and
- identifying patterns of trade in alloyed goods occurring historically prior to the imposition of anti-dumping measures and continuing after the imposition of these measures at similar rates.

3.3. Importer and exporter questionnaires

Once possible circumvention was identified, the Commission disseminated importer and exporter questionnaires to all parties potentially involved in the circumvention activity of the slight modification of goods.

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Importer questionnaires were sent to seven entities declared in the DIBP data as an importer of potential circumvention goods. Several unsuccessful attempts were made to contact another importer, and a questionnaire was unable to be sent to this party. Responses to the importer questionnaire were received from two importers.

Exporter questionnaires were sent to six potential suppliers of circumvention goods.

The below table identifies these suppliers and whether they responded to the exporter questionnaire and provides some details about each response.

| Supplier | Country of supply | Exporter questionnaire response provided? | Details/additional information |
|---------------------------------------|--------------------------|--|--|
| Dalian Steelforce | China | Yes | |
| Company A | China | No | No response or correspondence provided |
| Company B | China | No | The company corresponded with the Commission to advise that they had not supplied the circumvention goods to Australia. However, later information supplied showed that the company forwarded the exporter questionnaire to Company C, who supplied the circumvention goods via the company which acted as its agent. |
| Qingdao XiangXing Steel Pipe Co., Ltd | China | Yes | |
| Company D | China | No | Unable to contact |
| Company E | Malaysia | No | No response or correspondence provided |
| Company F | Korea | No | No response or correspondence provided |

Table 3 – entities that exporter questionnaires were sent to for completion

In addition to the above entities, the Commission attempted to contact Company D, which it identified as a possible exporter of the circumvention goods from China. These attempts were unsuccessful.

In addition to the responses identified in Table 3 above, the Commission received the following responses to the exporter questionnaire from entities that it did not contact directly to request completion of that Questionnaire:

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| Respondent | Country of supply | Details |
|---------------------|-------------------|--|
| Company C | China | The company identified that it had supplied alloyed HSS during the inquiry period via Company B, which acted as its agent. However, the company only provided a confidential version of the response. |
| Kukje Steel Co. Ltd | Korea | The company submitted a response and identified that it had not exported alloyed HSS to Australia during the inquiry period. |

Table 4 – responses to the exporter questionnaire from additional respondents

Excluding the response to the exporter questionnaire provided by Company C, non-confidential versions of all responses to the importer and exporter questionnaire are available on the Public Record.

As identified above, Company C only provided a confidential response to the exporter questionnaire. Several attempts were made with that company to obtain a non-confidential response but these attempts were unsuccessful. Consequently no version of this response was placed on the Public Record.

3.4. General submissions

In the public notices advising of the initiation of the anti-circumvention inquiry, the Commission invited general submissions to be lodged in response to the application.

The following general submissions were received:

| Submitted by | Date |
|--------------------------------|-----------|
| Cedex Steel and Metals Pty Ltd | 27/5/2015 |
| Kukje Steel Co. Ltd | 29/6/2015 |
| ATM | 9/9/2015 |
| ATM | 27/10/15 |

Table 5 – general submissions received

Non-confidential versions of these submissions are on the Commission's Public record. All of the abovenamed submissions have been considered for the purposes of this SEF.

3.5. Meetings with interested parties

At the request of ATM, the Commission conducted a further meeting with that company on 25 August 2015.

PUBLIC RECORD

A non-confidential record of this meeting is available on the Commission's Public Record in accordance with subsection 269ZJ(4).

4. ATM'S SUBMISSION IN RELATION TO REJECTION OF APPLICATION IN RELATION TO TAIWAN

4.1. Matters raised by ATM

In its submission dated 27 October 2015, ATM raised their concerns with the Commissioner's decision to reject the anti-circumvention inquiry application in so far as it relates to HSS exported from Taiwan.

ATM submits that subsection 48(2) of the Regulations does not require the establishment of the occurrence of a circumvention activity in relation to exports from each of the exporting countries specified in the original notice. Subsection 269ZDBE(2)(b) makes it clear that the positive consideration of an application by the Commissioner only requires the identification of reasonable grounds for asserting the occurrence of one or more circumvention activities relating to the original notice.

ATM further supports their concerns with submissions that section 269ZDBE only authorises the Commissioner to reject an application or to accept it rather than partially reject or accept.

In addition, ATM sets out that section 269ZDBEA authorises the Commissioner only to terminate an anti-circumvention inquiry if the Commissioner is satisfied that no circumvention activity has occurred. It does not permit partial termination in relation to one of a number of countries of export included in the original notice.

While subsection 269ZDBH(2)(b) contemplates the addition of foreign countries, it does not support the elimination of a foreign country from the application of the original notice.

ATM further raises concerns that if the Commissioner excludes exports of HSS from Taiwan in the altered notice, it will invite such exports from Taiwan to include an alloy to circumvent the original notice.

ATM also submit that on the basis of the Minister's recommendations in Report No. 241¹³ (where the decision was to alter the original dumping notice prospectively to parties who not taken any part in the alleged circumvention activity and who, in some cases, had not exported the circumvention goods to Australia), the Minister must maintain the established policy position in this matter.

4.2. Commission's assessment

In relation to ATM's claims that subsection 269ZDBE(2)(b) makes it clear that the positive consideration of an application only requires the identification of reasonable grounds for asserting the occurrence of one or more circumvention activities relating to the original notice.

¹³ The final report for the anti-circumvention inquiry into certain aluminium extrusions exported by PanAsia Aluminium (China) Limited from China (Inquiry 241)

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As discussed in Consideration Report 291 (CON 291), reasonable grounds for asserting the occurrence of one or more circumvention activities relating to the original notice existed only for exports of HSS to Australia from the People's Republic of China, the Republic of Korea and Malaysia. No such reasonable grounds existed for exports of HSS to Australia from Taiwan. Consequently, there were no grounds for the initiation of an anti-circumvention inquiry into exports from Taiwan and the Commission maintains it was correct to not initiate that inquiry.

In relation to ATM's assertion that subsection 269ZDBH(2)(b) permits the extension of original notices to countries but not the exclusion of certain countries from that extension, the Commissioner notes that section 269ZDBH is extremely broad in its application and provides that the Parliamentary Secretary may make any alterations to the original notices deemed necessary. It is not considered that there are any limitations on whether a selection of countries can be named in an alteration to original notices with other countries excluded from that amendment.

Further, as outlined in Paragraph 7.3, the Commissioner considers it is appropriate and proposes to only recommend that the Parliamentary Secretary make limited alterations to the original notice to specifically address circumvention activities that have been found to have occurred.

The Commission notes that even if the application had not been rejected in so far as it related to Taiwan, the Commission has come across no evidence that there has been any circumvention activity in relation to goods exported from Taiwan (see Paragraph 3.3 which discusses the identification of possible entities involved in a circumvention activity).

Thus, even if Taiwan was included in the investigations, as there is no evidence of circumvention from that country, the Commissioner would not be recommending that the original notice be altered in any way in so far as they relate to Taiwan and the outcome of this inquiry would be the same in any case.

In relation to ATM's assertions about the recommendations in Report 241 setting a precedent that must be followed to extend original notices to entities that had not taken part in an anti-circumvention activity but may do so in the future, the Commission notes that the alterations made to the original notice in this case were in response to specific circumstances that differ to the circumstances of this inquiry. The changes to the original notice were made in relation to certain aluminium extrusions exported by one exporter that had exported circumvention goods, where new importers were foreseen as potentially entering the market. As such, the alterations made to the original notice were specific to that exporter but open as to which importers were covered by the change to the notice.

As discussed in Chapter 7, the Commission proposes to make alterations to the original notices for HSS that target the activities of the exporter but are not limited to importers' activities. This approach is not considered inconsistent with the approach in Report No. 241. However, the Commission does not consider that the Commissioner or the Parliamentary Secretary are subject to any precedent from the findings in Inquiry 241 in any case.

5. KEY LEGISLATIVE PROVISIONS

The below provisions prescribe what a circumvention activity of the slight modification of goods exported to Australia entails.

5.1. Circumvention activity – slight modification of goods

Subsection 48(2) of the Regulations provides that a circumvention activity occurs where there is a slight modification of goods exported to Australia. This circumvention activity occurs if all of the following apply:

- a) the circumvention goods are exported to Australia from a foreign country in respect of which the dumping and/or countervailing duty notice applies;
- b) before that export, the circumvention goods are slightly modified;
- c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice;
- e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

5.2. When is a good slightly modified?

Subsection 48(3) of the Regulations sets out how the Commissioner should determine whether a circumvention good is slightly modified, including a non-exhaustive list of factors that may be examined to determine slight modification.

The subsection states:

For the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors:

- a) each good's general physical characteristics;*
- b) each good's end use;*
- c) the interchangeability of each good;*
- d) differences in the processes used to produce each good;*
- e) differences in the cost to produce each good;*
- f) the cost of modification;*

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- g) customer preferences and expectations relating to each good;*
- h) the way in which each good is marketed;*
- i) channels of trade and distribution for each good;*
- j) patterns of trade for each good;*
- k) changes in the pricing of each good;*
- l) changes in the export volumes for each good;*
- m) tariff classifications and statistical codes for each good.*

6. HAS A CIRCUMVENTION ACTIVITY OCCURRED?

This chapter examines whether a circumvention activity has occurred in relation to the goods the subject of the original notices. It examines the activities of each supplier of the goods that have been identified as potentially being involved in a circumvention activity, as discussed above at Paragraph 3.2.

6.1. Chinese suppliers

6.1.1. Dalian Steelforce

Background

As outlined in Paragraph 3.2, Dalian Steelforce provided a response to the exporter questionnaire.

Steelforce Trading Pty Ltd (Steelforce Trading) was identified by the Commission as a potential importer of circumvention goods from Dalian Steelforce and was requested to complete an importer questionnaire. Steelforce Trading responded to the importer questionnaire and identified Dalian Steelforce as its supplier of alloyed HSS.

Additionally, the Commission identified another possible importer of the circumvention goods from Dalian Steelforce during the inquiry period and forwarded that entity an importer questionnaire for completion. That entity did not respond to the importer questionnaire.

Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a))?

As outlined at Paragraph 3.2, the Commission has accessed DIBP import data for all importations during the inquiry period of goods classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90), which relate to alloyed HSS. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Dalian Steelforce to Australia during the inquiry period were entered under these tariff classifications, declared as having originated in China.

The import data accessed by the Commission shows that the supply of alloyed HSS by Dalian Steelforce to Australia commenced in the first quarter of the 2013 calendar year. This is confirmed by Dalian Steelforce in their exporter questionnaire.

Further, in the response to the exporter questionnaire, Dalian Steelforce confirmed that they have been involved in the manufacture and export of alloyed HSS to Australia during the inquiry period. Specifically, Dalian Steelforce's response outlined that the company:

- manufactures alloyed HSS in China; and
- sells these goods to Australia.

In addition, Dalian Steelforce provided a quarterly listing of its sales to Australia during the inquiry period. This listed sales of both non-alloyed and alloyed HSS. This forms **Confidential Attachment 2**.

Steelforce Trading has identified that it makes purchases of the non-alloyed and alloyed HSS, manufactured in China, directly from Dalian Steelforce.

In light of the above, the Commission is satisfied circumvention goods are exported to Australia from China.

Who is the exporter?

As detailed above, Dalian Steelforce's exporter questionnaire response identified that the company manufactures alloyed HSS in China and sells these goods to Australia. Specific information as to the Australian sales process and the role of Dalian Steelforce and Steelforce Trading in that transaction were redacted as confidential information.

Dalian Steelforce and Steelforce Trading have been involved in numerous cases run by the Commission, including Investigation 177 and the ongoing review of the anti-dumping measures in so far as they relate to Dalian Steelforce (Review 285). These cases relate to the goods the subject of the original notices, that is carbon HSS.

In each case, the export transaction and relationship between parties has been examined by the Commission and, in relation to carbon HSS supplied by Dalian Steelforce, the Commission has found that company to be the exporter of those goods. From the Importer and exporter questionnaire responses, it is considered that this is the case with alloyed HSS as well.

Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade¹⁴ and export volumes.¹⁵
- physical modifications;¹⁶
- manufacturing cost¹⁷ and selling price;¹⁸

¹⁴ Subsection 48(3)(j) of the Regulations

¹⁵ Subsection 48(3)(l) of the Regulations

¹⁶ Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d) of the Regulations

- marketing¹⁹ and trade channels/distribution;²⁰ and
- interchangeability,²¹ end use²² and customer preferences and expectations.²³

As outlined at Paragraphs 2.4.1 and 2.7.1, in relation to tariff classification (subsection 48(3)(m) of the Regulations), alloyed and non-alloyed HSS fall under different tariff classifications in Schedule 3 of the Tariff Act.

See below for a detailed comparison of the alleged circumvention goods to the goods the subject of the notice.

Patterns of trade and export volumes

As detailed above, Dalian Steelforce declared that it commenced exporting alloyed HSS to Australia in early 2013, after the publication of the original notices.

This is confirmed by the Australian sales listing submitted by the company (**Confidential Attachment 2**) in its exporter questionnaire response and the import data obtained from DIBP (**Confidential Attachment 1**).

That data shows that:

- Dalian Steelforce began exporting alloyed HSS to Steelforce Trading in the first quarter of the 2013 calendar year;
- Dalian Steelforce began exporting alloyed HSS to another importer in the third quarter of the 2013 calendar year (shortly after commencing exports to Steelforce Trading).

The Commission observes that this data shows that, in relation to goods supplied to Steelforce Trading, there was a corresponding decline in Dalian Steelforce's exports of non-alloyed HSS at levels similar to the increase in volumes of the alloyed goods from the first quarter of calendar year 2013.

In relation to the alloyed HSS supplied to the other importer, the Commission notes that in the same quarter that importer commenced importing alloyed HSS from Dalian Steelforce, it also commenced importing alloyed HSS from Malaysia (see Paragraph 6.3.1), and that supplier had no prior history of supplying alloyed HSS.

¹⁷ Subsection 48(3)(e) and (f) of the Regulations

¹⁸ Subsection 48(3)(k) of the Regulations

¹⁹ Subsection 48(3)(h) of the Regulations

²⁰ Subsection 48(3)(i) of the Regulations

²¹ Subsection 48(3)(c) of the Regulations

²² Subsection 48(3)(b) of the Regulations

²³ Subsection 48(3)(g) of the Regulations

The DIBP data shows that the total Australian export volume of HSS from Dalian Steelforce (alloyed and non-alloyed combined) remained stable from financial year 2012 (before the export of alloyed HSS) through to financial year 2015.

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and found a pattern of trade that suggests that the non-alloyed HSS exported by that company prior to early 2013 (following imposition of the original notices in mid-2012) has shown a clear switch in volumes from non-alloyed HSS to alloyed HSS by that company.

Physical modifications

ATM's application submitted that the physical characteristics of non-alloyed and alloyed HSS are 'essentially the same'. It is considered this was in reference to alloyed HSS with minute amounts of boron or other alloys such that they exceed the threshold requirements for alloyed steel required by the notes to Chapter 72 of the Tariff Act.

In its meeting with the Commission on 2 June 2015, ATM explained its understanding of the manufacturing process of alloyed HSS. ATM submitted the following:

- to make alloyed HSS that circumvents the measures (i.e. with amounts of boron or other alloys), manufacturers of HSS would need to purchase their steel raw material (hot rolled coil (HRC)) with the requisite amounts of alloy already included in it;
- the HSS rolling and welding manufacturing processes of the HRC would then be performed in the same manner as for non-alloyed HSS; and
- no further changes are needed to be made to the manufacturing process to make alloyed HSS instead of non-alloyed HSS other than the purchase of alloyed HRC.

ATM explained that its suppliers of HRC have advised that the process of adding boron and other alloys to make alloyed HRC occurs when molten steel passes through the ladle treatment station during the steelmaking process, where micro additions of alloys and temperature control is undertaken. No further changes would be made in the manufacturing process to manufacture alloyed HRC with the liquid alloyed steel being cast into slabs and rolled into HRC in the same manner as non-alloyed HRC.

ATM submitted that, once HSS was manufactured using alloyed HRC with small amounts of boron, there is no impact on the finishing of HSS such as subsequent painting and galvanising.

In its response to the exporter questionnaire, Dalian Steelforce identified that it had supplied alloyed HSS to Australia during the inquiry period. The company provided an exports listing as an attachment to that questionnaire, which identified the type of alloy and level of alloys included in that HSS.

This identified that the goods supplied by that company were boron-added at concentrations of 0.0008% and above. It did not identify the maximum level of boron present in the HSS exported by Dalian Steelforce.

Further, Dalian Steelforce's exporter questionnaire response detailed the company's manufacturing process of alloyed and non-alloyed HSS. Dalian Steelforce identified that there were some small differences between its manufacturing process for alloyed and non-alloyed HSS.

In Dalian Steelforce's non-confidential version of the exporter questionnaire response (available on the Public Record), the primary difference between the manufacturing process of alloyed HSS and non-alloyed HSS has been redacted by the company as confidential information. This information is discussed further in **Confidential Attachment 3**.

The Commission notes that this confidential information is not inconsistent with the explanation provided by ATM as to what it considers would be the modifications required for an exporter to produce alloyed HSS.

The Commission considers that the available evidence suggests that the difference in Dalian Steelforce's manufacturing processes between alloy and non-alloyed HSS would be the purchase of alloyed HRC instead of non-alloyed HRC.

Neither Dalian Steelforce or Steelforce trading identified any differences in physical characteristics between the non-alloyed and alloyed HSS exported to Australia by Dalian Steelforce, other than the inclusion of boron in concentrations of 0.0008% or above.

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and has found that there:

- is little to no difference in the general physical characteristics other than the presence of the alloy boron at levels at or above 0.0008%; and
- a difference in the manufacturing process through the purchase and use of alloyed HRC instead of non-alloyed HRC with no other modifications to the manufacturing process.

Manufacturing cost and selling price

In the meeting of 2 June 2015, ATM submitted that its supplier had advised the cost that it incurs for the addition of the alloy boron in the concentration of 0.0008%. The specifics of this calculation have been redacted from the Public Record version of the ATM record of meeting. However, the Commission notes that this boron-addition cost is representative of a negligible amount of the total cost to make and sell HRC that would be incurred by a fully integrated manufacturer of HRC (noting the Commission holds on file significant information in relation to the cost to make HRC, including that gathered during its investigation into HRC from Japan, Korea, Malaysia and Taiwan (Investigation 188)).

During the meeting of 2 June 2015, ATM submitted that, due to the insignificant quantum of the cost difference incurred by its supplier, it would be unlikely that its HRC supplier would charge extra for a boron-added HRC as opposed to HRC not containing alloys.

However, in its response to the exporter questionnaire, Dalian Steelforce submitted information as to the main cost difference between manufacturing alloyed and non-alloyed HSS. However, this was redacted from the company's non-confidential version of its response. This information is discussed further at **Confidential Attachment 3**.

This information from Dalian Steelforce indicates that there is some cost difference between manufacturing alloyed and non-alloyed HSS incurred by Dalian Steelforce, but does not quantify this difference.

Although Dalian Steelforce has redacted information in relation to cost differences, the Commission notes that it has determined above that the difference in Dalian Steelforce's manufacturing process to make alloyed HSS instead of non-alloyed HSS is the purchase (and then use) of alloyed HRC (including at least 0.0008% boron) as opposed to non-alloyed HRC. It follows logically that this would be the leading cost difference between the alloyed and non-alloyed HRC.

To determine the likely significance of cost differences incurred by Dalian Steelforce in purchasing alloyed over non-alloyed HRC, the Commission has turned to the available information it has gathered during its inquiries into the slight modification of galvanised steel from China, Korea and Taiwan (Inquiry 290 and 298).

In the SEF for that inquiry, the Commission has determined that the cost of purchasing alloyed HRC instead of non-alloyed HRC in Taiwan by a company (that then galvanises this HRC) would incur an extra purchase cost, but this:

would represent a very small percentage of the purchase price of alloyed HRC, and of the total cost to make alloyed galvanised HRC.²⁴

Although this reflects the purchase of HRC in Taiwan from a Taiwanese HRC supplier, it is considered unlikely that any pricing extras attached to purchases of alloyed HRC in China would be much greater and this cost would reflect a significant percentage of Dalian Steelforce's total cost to make alloyed HSS.

In relation to selling price, Dalian Steelforce's response to the difference between the selling price of alloyed and non-alloyed HSS was heavily redacted in its public record exporter questionnaire response, as was Steelforce Trading's discussion of:

- purchase price from Dalian Steelforce; and
- selling price to Australian customers.

Details of the redacted information provided by each company is in **Confidential Attachment 3**. The Commission's conclusions in relation to selling price based on this information is also in that confidential attachment.

²⁴ SEF 290 and 298, Paragraph 6.1.1

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and has found that there is little to no difference in the cost to produce each good. In relation to selling price, the Commission's findings on this matter are at **Confidential Attachment 3**. The Commission notes that these findings do not cause it to consider that the modifications of alloyed HSS exported by Dalian Steelforce are greater than 'slight'.

Marketing and trade channels/distribution

Dalian's response to the exporter questionnaire submitted:

- the company's sales process remained the same for both non-alloyed and alloyed HSS; and
- Dalian Steelforce did not market alloyed HSS any differently to non-alloyed HSS with both being marketed as being compliant with relevant standards.

In its response to the importer questionnaire, Steelforce Trading confirmed that its order and purchase process from Dalian Steelforce does not differ for non-alloyed and alloyed HSS.

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and has found that there is no difference in the way each good is marketed, or in the channels of trade or distribution of those goods.

Interchangeability, end use, customer preference and expectations

In its application, and later in the meeting of 2 June 2015, ATM has submitted that alloyed HSS with small amounts of boron in it would have the same end use as non-alloyed HSS.

The exporter questionnaire specifically asked steel force to describe the end uses of the alloyed and non-alloyed steel it exported to Australia during the inquiry period. The company's response simply stated that the company exports HSS into Australia for on-selling into the Australian steel market.

Further, the exporter questionnaire queried whether the alloyed HSS it exported during the enquiry period had any specific purposes or end uses that non-alloyed HSS was not suitable for. After briefly outlining the supply chain of exported goods, Dalian Steelforce responded:

The ultimate end use of all HSS is wide and varied across many industry segments, including: steel fabrication; rural sector; residential construction; non-residential construction; etc.

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Dalian Steelforce is not in a position to comment on the end use of the HSS products. Suitability of the products is generally determined by compliance with the relevant Standards. All HSS supplied by Dalian Steelforce is compliant with applicable Standards.

Steelforce Trading's response to the importer questionnaire mirrored the above responses by Dalian Steelforce.

The Commission considers that Dalian Steelforce and Steelforce Trading's responses to these matters did not directly address the questions, particularly in providing a comparison between alloy and non-alloyed HSS exported by the company.

However, Steelforce Trading's importer questionnaire response and Dalian Steelforce's exporter questionnaire submitted the following:

- availability of alloyed or non-alloyed coil determines whether non-alloyed or alloyed HSS is supplied to Australia;
- following the Minister's decision to impose anti-dumping measures:

Dalian Steelforce took the opportunity to source additional and alternative raw materials to manufacture and export new products and alternative products that were in demand in the Australian market and that continued to meet Steelforce Trading's requirements for products that complied with the relevant standards.;

Further, Dalian Steelforce's exporter questionnaire response stated:

From Dalian Steelforce's point of view, these new alternative products (which included alloyed HSS) fell outside the parameters of the goods subject to interim duties and as such are not considered to be like goods to carbon HSS products subject to duties.

The Commission also notes that the pattern of trade observed in relation to HSS exported by Dalian Steelforce has shown a shift from supplying certain volumes of non-alloyed HSS to alloyed HSS (see above discussion).

The Commission considers that the exporter and importer have not provided evidence to suggest there is any change in interchangeability, end use, or customer preferences or expectations in relation to alloyed HSS when compared with non-alloyed HSS. On the contrary, the Commission considers that statements by Dalian Steelforce and Steelforce Trading support a finding that there is no difference in any of these factors between alloyed and non-alloyed HSS, as the alloyed HSS imported after the imposition of anti-dumping measures has been identified by the companies as a reaction to the anti-dumping measures and filled demand in the Australian market which the company was supplying with non-alloyed HSS prior to the imposition of measures.

Further, as discussed above, the companies continue to supply these goods through the same marketing and trade channels complying to the same standards (and hence to the same customers likely for the same end uses with the same expectations).

The Commission has compared the circumvention goods exported by Dalian Steelforce to the goods the subject of the original notice exported by that company and has found that the goods can be used interchangeably and the end use of each good has not changed. In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference between the alloyed and non-alloyed HSS.

Summary of findings and conclusion

When comparing the alleged circumvention goods with the goods the subject of the notice the available evidence demonstrates the following:

Patterns of trade

There is a clear shift from the volumes of non-alloyed HSS exported to the volumes of alloyed HSS exported after the imposition of anti-dumping measures. There is no change in overall HSS volumes exported other than the clear shift from exports of non-alloyed HSS to alloyed HSS.

Physical modifications:

- the main physical characteristics of the alloyed and non-alloyed HSS are essentially the same, the only physical difference being the inclusion of boron in concentrations higher than 0.0008% in the alloyed product; and
- the adding of boron to HSS to make alloyed HSS requires little to no adjustments to Dalian Steelforce's manufacturing process.

Manufacturing cost and selling price:

The addition of boron to HSS to make alloyed HSS has a small to negligible impact on Dalian's cost to produce those goods.

Marketing and trade channels/distribution

There is little difference between the trade channels, distribution and sales transaction of Dalian Steelforce's alloyed HSS compared to its non-alloyed HSS and both products are marketed in the same way.

Interchangeability, end use and customer preferences and expectations:

- alloyed and non-alloyed HSS exported by Dalian Steelforce can be used interchangeably;
- the end use of non-alloyed and alloyed HSS exported by Dalian Steelforce in the inquiry period was the same; and
- there is no difference in customer preferences and expectations between the non-alloyed and alloyed HSS exported by Dalian Steelforce;

Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS exported by Dalian Steelforce to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, the Commission is satisfied that the use or purpose of the circumvention goods is the same before and after the slight modification of those goods.

Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?

As detailed at Paragraph 2.3.1 the goods subject to the original dumping duty notice are:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

Specific exclusions apply to certain types of HSS such as those that do not fit the sizing specifications of the additional information of the goods description, or precision HSS.

Additionally, an exemption from the anti-dumping measures imposed by the original notices applies to HSS that meet the requirements of TCO TC 1333313.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Dalian Steelforce through the use of alloyed (boron-added) HRC in its manufacturing process of HSS (as opposed to using non-alloyed HRC). The use of boron-added HRC results in the production of alloyed HSS.

The Commission is satisfied that, had Dalian Steelforce not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

Excluding cases where goods produced by Dalian Steelforce met the requirements of the abovementioned TCO or were specifically excluded from the goods description, the Commission is satisfied that the goods produced by Dalian Steelforce would have been subject to the original notices.

The Commission considers that it does not have definitive evidence to establish whether all of Dalian Steelforce's exports of alloyed HSS during the inquiry period fit into any of the excluded categories of steel or the exempted TCO. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed HSS did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods (Subsection 48(2)(e) of the Regulations)?

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2). These duties are referred to collectively as ‘anti-dumping measures’.

As discussed above, anti-dumping measures (imposed by the original notice) apply to:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

The slight modification of the alloyed HSS that has been performed by Dalian Steelforce results in the circumvention goods exported by Dalian Steelforce being considered alloyed HSS for the purposes of classification under subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) of the *Tariff Act*.

This modification means that the exported goods are no longer ‘of carbon steel’ and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

Conclusion

The Commission finds that, in relation to alloyed HSS exported to Australia by Dalian Steelforce, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.1.2. Qingdao XiangXing Steel Pipe Co., Ltd

As outlined in Paragraph 3.3, Qingdao XiangXing provided a response to the exporter questionnaire. In this questionnaire, Qingdao XiangXing identified Senturion Steel Supplies Pty Ltd (Senturion) as a customer they shipped alloyed HSS to in the inquiry period.

Senturion was separately identified by the Commission as a potential importer of circumvention goods from Qingdao XiangXing and was requested to complete and importer questionnaire. Senturion responded to the importer questionnaire.

DIBP import data identified a second importer as having imported alloyed HSS from Qingdao XiangXing during the inquiry period however the volumes were insignificant and therefore no importer questionnaire was issued to this importer.

Non-confidential versions of both responses are on the Public Record.

Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the

Regulations)?

As outlined at Paragraph 3.2, the Commission has accessed import data for all importations during the inquiry period of goods classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90), which relate to alloyed HSS. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Qingdao XiangXing to Australia during the inquiry period were entered under these tariff classifications, declared as having originated in China.

The import data accessed by the Commission shows that the supply of alloyed HSS by Qingdao XiangXing to Australia commenced at the beginning of the 2011 calendar year.

In its response to the exporter questionnaire, Qingdao XiangXing submitted that it had supplied the circumvention goods to Australia during the inquiry period, identifying in the response that the company performed all of the following functions in relation to alloyed HSS during the inquiry period:

- produce or manufacture
- sell in the domestic market
- export to Australia, and
- export to countries other than Australia.

In its exporter questionnaire, Qingdao XiangXing state that they commenced exporting alloyed HSS a 'long time ago'. The company did not provide a detailed listing of its exports of the circumvention goods and the goods subject to the original notices, as requested by the exporter questionnaire.

In addition, Qingdao XiangXing provided a sample of seven mill test certificates of its exports of alloyed HSS to Australia during the inquiry period. These samples included the chemical composition of the HSS containing alloys above the concentration required for the notes to Chapter 72 of the Tariff Act.

In light of the above, the Commission is the satisfied circumvention goods are exported to Australia from China.

Before that exportation, were the circumvention goods slightly modified?

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade²⁵ and export volumes;²⁶
- physical modifications;²⁷
- manufacturing cost²⁸ and selling price;²⁹
- marketing³⁰ and trade channels/distribution;³¹ and
- interchangeability,³² end use³³ and customer preferences and expectations.³⁴

As outlined at Paragraphs 2.4.1 and 2.7.1 in relation to tariff classification (Subsection 48(3)(m) of the Regulations), alloyed and non-alloyed HSS fall under different tariff classifications in Schedule 3 of the Tariff Act.

See below for the discussion of the comparison of the alleged circumvention goods to the goods the subject of the notice.

Patterns of trade and export volumes

As discussed above, Qingdao XiangXing's exporter questionnaire response identified that the company commenced exporting alloyed galvanised steel 'a long time ago' but the company did not provide a detailed Australia sales listing as requested.

The import data obtained from DIBP indicates that Qingdao XiangXing commenced exports of alloyed HSS at the beginning of the 2011 calendar year to two separate importers (**Confidential Attachment 1**). It is noted that the volume supplied to the importer that was not Senturion is insignificant.

Confidential information provided by Qingdao XiangXing with respect to the second importer of alloyed HSS in the inquiry period, including mill test certificates, indicate that the goods, may be non-alloyed HSS, resulting in a potential tariff misclassification and has been referred to DIBP.

²⁵ Subsection 48(3)(j) of the Regulations

²⁶ Subsection 48(3)(l) of the Regulations

²⁷ Including physical characteristics (Subsection 48(2)(a)) and production process changes (Subsection 48(2)(d) of the Regulations

²⁸ Subsection 48(3)(e) and (f) of the Regulations

²⁹ Subsection 48(3)(k) of the Regulations

³⁰ Subsection 48(3)(h) of the Regulations

³¹ Subsection 48(3)(i) of the Regulations

³² Subsection 48(3)(c) of the Regulations

³³ Subsection 48(3)(b) of the Regulations

³⁴ Subsection 48(3)(g) of the Regulations

The DIBP import data also shows that in relation to Senturion:

- Qingdao XiangXing exported non-alloyed HSS throughout the inquiry period to multiple importers, including to Senturion, which also began to import alloyed HSS at the beginning of 2011;
- Qingdao XiangXing exported non-alloyed HSS before the beginning of the inquiry period;
- Qingdao XiangXing continued to export non-alloyed HSS to Australia following the imposition of the anti-dumping measures, through to the end of the inquiry period; and
- Qingdao XiangXing's major importer by volume during the inquiry period (not Senturion) saw a sharp drop-off in volumes of non-alloyed HSS after the imposition of preliminary measures in early 2012, with a complete cessation of imports by that party in mid-2013. That importer at no time imported alloyed HSS from Qingdao XiangXing.

In relation to Senturion, which imported both alloyed and non-alloyed HSS from Qingdao XiangXing during the inquiry period, the DIBP data shows that there was concurrent supply of alloyed and non-alloyed HSS to this importer of similar volumes (that is, there is no discernible switch from one to the other).

Physical modifications

ATM's application submitted that the physical characteristics of non-alloyed and alloyed HSS are 'essentially the same'. It is considered this was in reference to alloyed HSS with minute amounts of boron or other alloys such that they exceed the threshold requirements for alloyed steel required by the notes to Chapter 72 of the Tariff Act.

In its response to the exporter questionnaire, Qingdao XiangXing advised that there was no difference in their manufacturing process for non-alloyed and alloyed HSS other than the process requiring a different feed material. It is considered that this reflects the same changes reported by Dalian Steelforce (discussed at Paragraph 6.1.1) whereby alloyed HRC is used instead of non-alloyed HRC.

The exporter questionnaire made no further comment on the physical characteristics of the alloyed HSS supplied by Qingdao XiangXing.

The Commission has reviewed the commercial documentation provided by Qingdao XiangXing in its response to the exporter questionnaire, which include several mill certificates for alloyed HSS supplied during the inquiry period. It is observed that these certificates indicate that the alloyed HSS exported by the company include numerous alloys. However, the only alloy at a concentration at or above the threshold required by the notes to Chapter 72 of the Tariff Act (allowing classification as an alloy) appears to be boron, which is present at a concentration of approximately the level of the Tariff Act threshold.

In its response to the importer questionnaire, Senturion identifies that the alloyed HSS it imports from Qingdao XiangXing is for a specific application (livestock yards) and that it is 'lighter and stronger' than standard (non-alloyed) HSS.

In their questionnaire responses, Senturion and Qingdao XiangXing provided commercial documentation relating to alloyed HSS supplied to Australia during the inquiry period. This included mill certificates for several importations (attached at **Confidential Attachment 4**).

The Commission has examined these mill certificates and notes that these exhibit that the alloyed HSS supplied by Qingdao XiangXing has high tensile strengths recorded for each product. The Commission has compared these reported tensile strengths with:

- the tensile strengths recorded in mill certificates provided by Dalian Steelforce in relation to its alloyed HSS; and
- the minimum tensile strengths that ATM supplies its non-alloyed HSS to³⁵ and observed that the alloyed HSS supplied by Qingdao XiangXing is significantly higher than these minimum strengths.

It is considered this supports Senturion's assertion that the alloyed HSS it purchases from Qingdao Xiang is stronger than standard HSS.

ATM has submitted to the Commission that certain specialised boron-added alloyed HSS exists that has unique physical characteristics of being stronger than non-alloyed HSS, after undergoing a quenching and tempering process which activates the strength properties of the boron.³⁶

ATM explained that the market for this quench and tempered pipe and tube is very limited and the volumes of this type of pipe and tube would be minimal. ATM also submitted that quenched and tempered HSS would be significantly more expensive than boron-added alloyed HSS that has not undergone this process.

ATM did not indicate whether this quenched and tempered alloyed HSS has a specific application in livestock yards.

The documentation provided by Qingdao XiangXing and Senturion did not identify whether the alloyed HSS imported is quenched and tempered. Further, the Commission notes that Qingdao XiangXing has identified there is no price or cost difference between its alloyed and non-alloyed HSS. In light of ATM's submissions and the Commission's general understanding of the quenched and tempering process of steel, the Commission considers that the alloyed steel exported by Qingdao XiangXing is unlikely to be quenched and tempered.

However, as detailed above, available evidence indicates that the alloyed HSS imported is stronger than non-alloyed HSS.

³⁵ As reported in the company's *Pipe + Tube and Profiles Product Manual* available at http://www.austubemills.com.au/uploads/resources/atm_product_manual_2013.pdf

³⁶ Record of meeting between the Commission and ATM dated 2 June 2015

The Commission has compared the alleged circumvention goods exported by Qingdao XiangXing to the goods the subject of the original notice exported by that company and has found that the manufacturing process for the goods are similar, with the main difference being the use of alloyed HRC 'feed' materials instead of non-alloyed HRC.

The Commission considers that the available evidence establishes that the physical differences between the alloyed and non-alloyed HSS supplied by Qingdao XiangXing are the presence of boron at around 0.0008% concentrations and a higher tensile strength.

Manufacturing cost and selling price

The exporter questionnaire requested that Qingdao XiangXing provide data that would determine the total difference in cost to make and sell alloyed HSS compared to non-alloyed HSS. Qingdao XiangXing advised that there was no difference in the cost to make and sell alloyed and non-alloyed HSS.

Qingdao XiangXing, also submitted that there was no difference in their selling price between non-alloyed and alloyed HSS.

The Commission has compared the alleged circumvention goods exported by Qingdao XiangXing to the goods the subject of the original notice supplied by that company and has found that there is no difference in the cost to produce each good or any differences between the selling prices of each good.

Marketing and trade/distribution channels

Qingdao XiangXing's response to the exporter questionnaire submitted that its sales process remained the same for both non-alloyed and alloyed HSS. Further, no evidence has been presented that establishes that there is any difference in the channels of trader or distribution of Qingdao XiangXing's alloyed and non-alloyed HSS.

The Commission has compared the alleged circumvention goods exported by Qingdao XiangXing to the goods the subject of the original notice exported by that company and has found that there is no difference in the way each good is marketed. In comparing the alleged circumvention goods with the goods the subject of the original notice, the Commission has found that there is little to no difference in the channels of trade and distribution for each good.

Interchangeability, end use, customer preference and expectations

ATM have submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications.³⁷ It is considered this submission was made by ATM with reference to alloyed HSS with minute amounts of alloys (particularly boron) included.

³⁷ Refer to ATM's application for an anti-circumvention inquiry.

Qingdao XiangXing, in their exporter questionnaire, contended that the end use of both non-alloyed and alloyed HSS they export to Australia is fence and animal tubing. They are however unsure as to whether the goods can be used interchangeably.

Senturion, in their importer questionnaire, advised that they on-sell the HSS they import and confirmed the end use of the alloyed HSS as being livestock yarding (rural application).

Senturion also advised that, in relation to the alloyed HSS imported from Qingdao XiangXing, to the best of its knowledge:

- there are no uses for that product that are interchangeable with the non-alloyed HSS it imports from Qingdao XiangXing; and
- there may be some end uses for that product that are the same as for non-alloyed HSS, but the company considers that the alloyed HSS is best suited for the application (livestock yards).

However, Senturion has advised that its customers have made specific requests for stronger HSS to best suit their purposes, and hence have expectations that this HSS will be stronger and more suitable for their application.

Qingdao XiangXing advised that their customers specifically request a mix of non-alloyed and alloyed HSS.

Senturion confirmed that they specifically request the goods to contain alloys that result in it being considered alloyed HSS.

ATM's application for an anti-circumvention inquiry did not detail specific end uses that non-alloyed and alloyed HSS are used for. However, the Australian market for non-alloyed HSS was examined in Investigation 177 and the final report for that investigation found that:

*HSS is used in a wide variety of applications including: automotive, engineering construction, manufacturing, mining, oil and gas, residential and non-residential construction, temporary fencing, transport, furniture and play equipment, and **rural applications***³⁸ [emphasis added].

In light of the evidence discussed above, the Commission considers that both alloy and non-alloyed HSS exported by Qingdao XiangXing is likely to be used for the same end use of rural applications and there is a degree of interchangeability of that HSS.

In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference.

Summary of findings and conclusion

³⁸ Investigation 177 Final Report, at Section 5.2.

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The Commission considers that the available evidence demonstrates that when comparing the alleged circumvention goods with the goods the subject of the notice that following observations have been made.

Pattern of trade

There has been no discernible 'switch' from non-alloyed to alloyed HSS. While there have been exports of alloyed HSS after the original notices were published, these have not replaced exports of non-alloyed HSS from Qingdao XiangXing and have been concurrent with exports of non-alloyed HSS to the same importer.

Physical modifications:

- the adding of boron to HSS to make alloyed HSS requires little to no adjustments to Qingdao XiangXing's manufacturing process, with the main difference being the use of a different feed material; and
- the physical differences between the alloyed and non-alloyed HSS supplied by Qingdao XiangXing are:
 - the alloyed HSS contains boron at concentrations of 0.0008% or greater; and
 - the alloyed HSS has a higher tensile strength.

Manufacturing cost and selling price

- the addition of alloys to HSS to make alloyed HSS has no difference in the cost to make for Qingdao XiangXing; and
- there is no difference in the selling price of both non-alloyed and alloyed HSS between Qingdao XiangXing and its Australian customers.

Marketing and trade channels/distribution:

- there is no difference in the way in which alloyed and non-alloyed HSS exported by Qingdao XiangXing is marketed; and
- alloyed HSS there is no difference between the sales transaction of Qingdao XiangXing's alloyed HSS compared to its non-alloyed HSS.

Interchangeability, end use and customer preferences and expectations:

- the end use of non-alloyed and alloyed HSS exported by Qingdao XiangXing in the inquiry period is the same and the products are likely to be interchangeable; and
- Senturion's customers specifically request for HSS to contain alloys and have different expectations about its performance when compared with non-alloyed HSS in the livestock yard application.

Noting the above, particularly the pattern of trade, physical difference of strength and customer expectations, the Commission considers that alloyed HSS exported by Qingdao XiangXing in the inquiry period has not been slightly modified for the purposes of subsection 48(2)(b) of the Regulations. Also refer to **Confidential Attachment 5** for further analysis.

Conclusion

The Commission finds that, in relation to alloyed HSS exported to Australia by Qingdao XiangXing, a circumvention activity has not occurred pursuant to subsection 48(2) of the Regulations, namely that there has not been a slight modification of goods exported to Australia.

6.1.3. Company A

As outlined at Paragraph 3.3. of this report, Company A was contacted by the Commission to complete an exporter questionnaire in relation to the inquiry. The company did not provide a response to the exporter questionnaire, or provide any correspondence or declaration that they had not been involved in a circumvention activity.

The Commission identified one possible importer of the circumvention goods from Company A, which was contacted for completion of an importer questionnaire. No response was provided by that importer.

In the absence of relevant information, the Commission has relied on all available information to make determinations in relation to goods supplied by Company A during the inquiry periods.

The Commission's primary source of reliable information relating to the goods supplied by Company A is data contained in the DIBP import records.

Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?

As outlined at Paragraph 3.2, the Commission has accessed import data for all importations during the inquiry period of goods classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90), which relate to alloyed HSS. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Company A to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in China. This HSS was described by the importer as 'other alloy steel pipe', 'pipes of other alloy steel' or 'steel pipes of other alloy steel' in its customs declaration.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from China.

Who is the exporter?

In addition to not cooperating with the inquiry, Company A did not provide information to the original investigations, or to any other historical investigation undertaken by the Commission to the best of its knowledge.

An internet search for Company A indicates that the company is a manufacturer of steel products company of steel and steel products.

There is however insufficient evidence to confirm whether Company A is the exporter and on the basis of this, will be treated as a supplier.

Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade³⁹ and export volumes;⁴⁰
- physical modifications;⁴¹
- manufacturing cost⁴² and selling price;⁴³
- marketing⁴⁴ and trade channels/distribution;⁴⁵ and
- interchangeability,⁴⁶ end use⁴⁷ and customer preferences and expectations.⁴⁸

³⁹ Subsection 48(3)(j) of the Regulations

⁴⁰ Subsection 48(3)(l) of the Regulations

⁴¹ Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d) of the Regulations

⁴² Subsection 48(3)(e) and (f) of the Regulations

⁴³ Subsection 48(3)(k) of the Regulations

⁴⁴ Subsection 48(3)(h) of the Regulations

⁴⁵ Subsection 48(3)(i) of the Regulations

⁴⁶ Subsection 48(3)(c) of the Regulations

⁴⁷ Subsection 48(3)(b) of the Regulations

⁴⁸ Subsection 48(3)(g) of the Regulations

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As outlined at Paragraphs 2.4.1 and 2.7.1, in relation to tariff classification (subsection 48(3)(m) of the Regulations), alloyed and non-alloyed HSS fall under different tariff classifications in Schedule 3 of the Tariff Act.

See below for the discussion of the comparison of the alleged circumvention goods to the goods the subject of the notice.

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Company A:

- supplied non-alloyed HSS to one importer in Australia from the beginning of the inquiry period and ceased exporting non-alloyed HSS in the third quarter of the 2012 calendar year;
- supplied alloyed HSS to the same importer in Australia from the fourth quarter of the 2012 calendar year;
- after ceasing supply of non-alloyed HSS to that importer, did not re-commence supply of non-alloyed HSS; and
- at times, the quarterly volumes of alloyed HS supplied from the end of the 2012 calendar year were at similar levels to non-alloyed HSS supplied before this date, but at other times these quarterly volumes were significantly less than the historical volumes of non-alloyed HSS to that importer.

The Commission notes the publication of the original notice on 3 July 2012 occurred a few months before the time that Company A ceased supplying non-alloyed HSS and commenced supplying alloyed HSS to Australia.

The Commission notes that there has been a discernible switch in supply by Company A from non-alloyed to alloyed HSS following the publication of the original notices.

Physical modifications

ATM's application submitted that the physical characteristics of non-alloyed and alloyed HSS are 'essentially the same'. It is considered this was in reference to alloyed HSS with minute amounts of boron or other alloys such that they exceed the threshold requirements for alloyed steel required by the notes to Chapter 72 of the Tariff Act.

The exact chemical composition of the alloyed steel supplied by Company A is not known. As noted above, the importer of the alloyed steel supplied by Company A has identified the products as 'other alloy steel pipe', 'pipes of other alloy steel' or 'steel pipes of other alloy steel'.

It is considered that the imports may be of alloyed HSS that contains one or several alloys of varying levels required to satisfy the requirements of tariff classification 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90).

The discernible switch in supply from non-alloyed to alloyed HSS indicates to the Commission that the alloyed and non-alloyed HSS exported by Company A during the inquiry period are physically similar, as one appears to have replaced the other to the same customer, which is likely to be for the same end uses (see further discussion below). Consequently, the Commission consider that the physical modification of the alloyed HSS exported by Company A is likely to be the addition of a small amount of an unknown alloy, such that the HSS can be described to the abovenamed alloyed pipe and tube tariff classifications.

In terms of the manufacturing process of Company A's alloyed HSS, the Commission notes that available evidence from other exporters of alloyed HSS and submissions made by ATM,⁴⁹ it is likely that the manufacturing process of the alloyed and non-alloyed HSS supplied by Company A is substantially similar (with modifications to the HRC used to make the HSS – use of alloyed HRC).

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is likely to be little to no difference in the general physical characteristics other than the presence of an unknown alloy at levels at or above the threshold required by the notes to Chapter 72 of the Tariff Act.

The difference between the manufacturing processes of each type of HSS is likely to be the use of alloyed or non-alloyed HRC with few other modifications to the process.

Manufacturing cost and selling price

Company A and its importer have not provided any information as to any differences in cost to manufacture or selling price of alloyed HSS compared to non-alloyed HSS.

ATM has contended that the cost of modification of HSS to include minute amounts of alloys (notably boron) is negligible.⁵⁰

This is supported by evidence gathered from other exporters of alloyed HSS from China during this inquiry (see above discussion).

The Commission finds that it is unlikely that the modifications made to the manufacturing process of Company A's alloyed HSS resulted in a significant cost difference compared to the cost to make non-alloyed HSS.⁵¹

In terms of selling price, responses from another exporter of alloyed HSS advise that there is no difference in selling price between alloyed and non-alloyed HSS to their importers⁵² while an importer of alloyed HSS from a different entity has advised that changes to its suppliers manufacturing cost resulting from making alloyed HRC would be

⁴⁹ Both in its application and during the 2 June 2015 meeting (refer to the public record of that meeting).

⁵⁰ Record of meeting between the Commission and ATM dated 2 June 2015

⁵¹ Refer to Paragraph 6.1.1. for a discussion of manufacturing cost differences.

⁵² Qingdao XiangXing exporter questionnaire

passed on to that company in its purchase price.⁵³ However, the Commission has determined in this case, any price impact is likely to be negligible.

It is therefore likely that any pricing difference between Company A and its importer of for alloyed HSS compared to non-alloyed HSS is likely to be minimal.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is little to no difference in the cost to produce alloyed HSS compared to non-alloyed HSS, or the pricing of each good.

Marketing and trade channels/distribution

ATM has submitted that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same.⁵⁴

No information is available as to the exact sales process of Company A's alloyed and non-alloyed HSS, though other interested parties that have provided information for the inquiry in relation to their imports and exports have submitted there is little to no difference in the sales process of non-alloyed and alloyed HSS. In the absence of relevant information, the Commission considers this is likely to be the case for Company A's exports as well.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is no difference in the way each good is marketed. In comparing the alleged circumvention goods with the goods the subject of the original notice, the Commission has found that there is little to no difference in the channels of trade and distribution for each good.

Interchangeability, end use, customer preference and expectations

The end use of Company A's alloyed HSS is not known, however ATM's application submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications. It is considered this submission was made in relation to alloyed HSS with small amounts of alloys such that they could be considered alloyed HSS for the purposes of the Tariff Act.

ATM has made the Commission aware of certain specialised alloyed HSS (pipe and tube) that do have a different end use to non-alloyed HSS, however these types of pipe and tube have undergone a quenching and tempering process that activates the strength properties of the alloy (boron) in the steel.⁵⁵

However, ATM has explained that the market for quench and tempered pipe and tube is very limited and the volumes of this type of pipe and tube would be minimal.⁵⁶

⁵³ Steelforce Trading importer questionnaire

⁵⁴ Record of meeting between the Commission and ATM dated 2 June 2015

⁵⁵ Record of meeting between the Commission and ATM dated 2 June 2015

⁵⁶ Record of meeting between the Commission and ATM dated 2 June 2015

The Commission has not encountered any other alloyed HSS that has a different end use to non-alloyed HSS throughout its inquiries, or cases where there is no interchangeability between alloyed and non-alloyed HSS.

No information has been provided to establish that the alloyed HSS supplied by Company A is quenched and tempered.

Import data obtained from DIBP indicates that exports of non-alloyed HSS ceased at the same time as exports of alloyed HSS commenced, coinciding with when the original notice was published. This indicates that the goods can be used interchangeably and have the same end use.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that the goods can be used interchangeably and the end use of each good has not changed. In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference.

Summary of findings and conclusion

The Commission makes the following observation in comparing the alloyed and non-alloyed HSS supplied by Company A, which are based on all available information including that supplied by ATM and other interested parties.

Patterns of trade and export volumes

There has been a clear switch in supply from non-alloyed to alloy HSS to the same importer after imposition of the anti-dumping measures.

Physical modifications:

- the physical characteristics are the same for both non-alloyed and alloyed HSS supplied by Company A with the main difference being the addition of an unknown alloy for the good to be classified as alloyed HSS; and
- the adding of an unknown alloy to HSS to make alloyed HSS requires minor adjustments to the manufacturing process of goods supplied by Company A.

Manufacturing cost and selling price:

- the addition of an unknown alloy to HSS to make alloyed HSS supplied by Company A has a small to negligible impact on cost to produce those goods; and
- the selling price of the alloyed HSS is more likely than not to be the same as the non-alloyed HSS;

Marketing and trade channels/distribution:

- it is more likely than not that there is no difference between the marketing process for non-alloyed HSS and alloyed HSS; and

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- the sales and ordering process for both non-alloyed and alloyed HSS is more likely than not to be the same.

Interchangeability, end use, customer preferences and expectations

- the alloyed HSS and non-alloyed HSS can be used interchangeably and have the same end use; and
- it is more likely than not that the customer preferences and expectations are the same for both the non-alloyed and alloyed HSS.

In the case of non-cooperation by the supplier of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed HSS supplied by Company A during the inquiry period has been slightly modified through a minor change to the manufacturing process.

Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by Company A to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, noting that there has been no information provided by the supplier of the circumvention goods or their importer with the inquiry, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?

As detailed at Paragraph 2.3.1, the goods subject to the original dumping duty notice are:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. 6.

Specific exclusions apply to certain types of HSS such as those that do not fit the sizing specifications of the additional information of the goods description, or precision HSS.

Additionally, an exemption from the anti-dumping measures imposed by the original notices applies to HSS that meet the requirements of TCO TC 1333313.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Company A through the use of alloyed (boron-added) HRC in its manufacturing process of HSS (as opposed to using non-alloyed HRC). The use of boron-added HRC results in the production of alloyed HSS.

The Commission is satisfied that, had Company A not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

Excluding cases where goods produced by Company A met the requirements of the abovementioned TCO or were specifically excluded from the goods description, the Commission is satisfied that the goods produced by Qingdao XiangXing would have been subject to the original notices.

The Commission considers that it does not have definitive evidence to establish whether all of Qingdao XiangXing's exports of alloyed HSS during the inquiry period fit into any of the excluded categories of steel or the exempted TCO. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed HSS did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods?

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2). These duties are referred to collectively as 'anti-dumping measures'.

As discussed above, anti-dumping measures (imposed by the original notice) apply to:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

The slight modification of the goods that has been performed by Company A results in the circumvention goods exported by Company A being considered alloyed HSS for the purposes of classification under subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) of the *Tariff Act*.

This modification means that the exported goods are no longer 'of carbon steel' and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Company A, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.1.4. Company B

PUBLIC RECORD

As outlined in Paragraph 3.3, Company B was contacted to provide a response to the exporter questionnaire, however responded that it was not the exporter of the circumvention goods but that Company C was the exporter of those goods. Company B did not provide any evidence that this was the case.

However, later correspondence received from Company C showed that Company B had forwarded the exporter questionnaire to Company C, as Company B had in fact supplied the circumvention goods to Australia that were manufactured by Company C.

The Commission notes that the exporter questionnaire contained instructions for entities that were not the manufacturer of the supplied goods to complete the questionnaire in so far as it applied to them. Company B did not do so.

Company C completed an exporter questionnaire however no Public Record version of the questionnaire was submitted.

Consequently, the Commission considers that neither Company B nor Company C have provided non-confidential responses to the exporter questionnaires, and the Commission should have limited regard to the information submitted in Company C's questionnaire response as no non-confidential summary has been furnished

The Commission identified one possible importer of the circumvention goods from Company B however no contact details were available for that importer. No information was provided by any other interested party in relation to the goods supplied by Company B or Company C.

The Commission's primary source of reliable information relating to the goods supplied by Company C is data contained in the DIBP import records. Some confidential information in Company C's response to the exporter questionnaire has been taken into account, as discussed in **Confidential Attachment 6**.

Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?

As outlined at Paragraph 3.2, the Commission has accessed import data for all importations during the inquiry period of goods classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90), which relate to alloyed HSS. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Company B to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in China. This HSS was described by the importer as 'boron scaffolding tube' in its customs declaration.

In its response to the exporter questionnaire, Company C declared that it had supplied alloyed HSS to Australia via Company B, and provided a detailed listing of its sales to Australia during the inquiry period. This list contained sales of alloyed HSS identified as containing boron. This forms **Confidential Attachment 7**.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from China.

Who is the exporter?

The information in Company C's confidential response to the exporter questionnaire indicates that company is the exporter of the circumvention goods supplied to Australia. Refer to **Confidential Attachment 6** for discussion.

Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?

Under Subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of Subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of Subsection 48(3) under the following categories:

- patterns of trade⁵⁷ and export volumes;⁵⁸
- physical modifications;⁵⁹
- manufacturing cost⁶⁰ and selling price;⁶¹
- marketing⁶² and trade channels/distribution;⁶³ and
- interchangeability,⁶⁴ end use⁶⁵ and customer preferences and expectations.⁶⁶

As outlined at Paragraphs 2.4.1 and 2.7.1, in relation to tariff classification (Subsection 48(3)(m) of the Regulations), alloyed and non-alloyed HSS fall under different tariff classifications in Schedule 3 of the Tariff Act.

See below for the discussion of the comparison of the alleged circumvention goods to the goods the subject of the notice.

⁵⁷ Subsection 48(3)(j) of the Regulations

⁵⁸ Subsection 48(3)(l) of the Regulations

⁵⁹ Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d) of the Regulations

⁶⁰ Subsection 48(3)(e) and (f) of the Regulations

⁶¹ Subsection 48(3)(k) of the Regulations

⁶² Subsection 48(3)(h) of the Regulations

⁶³ Subsection 48(3)(i) of the Regulations

⁶⁴ Subsection 48(3)(c) of the Regulations

⁶⁵ Subsection 48(3)(b) of the Regulations

⁶⁶ Subsection 48(3)(g) of the Regulations

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Company C:

- exported a small volume of non-alloyed HSS to one importer in Australia in the third quarter of the 2013 calendar year;
- exported alloyed HSS to three different importers in Australia from the fourth quarter of the 2012 calendar year - one of these three importers is the same importer as the non-alloyed HSS was exported to.

The Commission notes the publication of the original notice on 3 July 2012 occurred at approximately the same time that Company C commenced supplying alloyed HSS to Australia.

Physical modifications

ATM's application submitted that the physical characteristics of non-alloyed and alloyed HSS are 'essentially the same'. It is considered this was in reference to alloyed HSS with minute amounts of boron or other alloys such that they exceed the threshold requirements for alloyed steel required by the notes to Chapter 72 of the Tariff Act.

As discussed above, the importer of alloyed HSS exported by Company C has identified that the goods are 'boron scaffold pipe'. The exporter questionnaire further identifies that the goods supplied by Company C are alloyed HSS containing boron at or above the level of 0.0008% concentration.

In terms of the manufacturing process of Company C's alloyed HSS, the Commission notes that available evidence from other exporters of alloyed HSS and submissions made by ATM,⁶⁷ it is likely that the manufacturing process of the alloyed and non-alloyed HSS supplied by Company C is substantially similar (use of alloyed HRC).

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is likely to be little to no difference in the general physical characteristics other than the presence of an unknown alloy at levels at or above the threshold required by the notes to Chapter 72 of the Tariff Act.

The difference between the manufacturing processes of each type of HSS is likely to be the use of alloyed or non-alloyed HRC with few other modifications to the process.

Manufacturing cost and selling price

Company C has not provided a non-confidential summary of data provided in their exporter questionnaire. The majority of the company's questionnaire response has thus been disregarded.

⁶⁷ Both in its application and during the 2 June 2015 meeting (refer to the public record of that meeting).

No other interested party has provided any information as to any differences in cost to manufacture or selling price of alloyed HSS compared to non-alloyed HSS.

ATM has contended that the cost of modification of HSS to include minute amounts of alloys (notably boron) is negligible.⁶⁸

This is supported by evidence gathered from other exporters of alloyed HSS from China during this inquiry (see above discussion).

The Commission finds that it is unlikely that the modifications made to the manufacturing process of Company C's alloyed HSS resulted in a significant cost difference compared to the cost to make non-alloyed HSS.⁶⁹

In terms of selling price, responses from another exporter of alloyed HSS advises that there is no difference in selling price between alloyed and non-alloyed HSS to their importers⁷⁰ while an importer of alloyed HSS from a different entity has advised that changes to its suppliers manufacturing cost resulting from making alloyed HRC would be passed on to that company in its purchase price.⁷¹ However, the Commission has determined in this case, any price impact is likely to be negligible.

It is therefore likely that any pricing difference between Company C and its importer of for alloyed HSS compared to non-alloyed HSS is likely to be minimal.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is little to no difference in the cost to produce alloyed HSS compared to non-alloyed HSS, or the pricing of each good.

Marketing and trade channels/distribution

ATM has submitted that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same.⁷²

Company C has not provided a non-confidential summary of data provided in their exporter questionnaire. The majority of the company's questionnaire response has thus been disregarded.

No other interested party has provided any information as to any differences in cost to manufacture or selling price of alloyed HSS compared to non-alloyed HSS.

Other interested parties that have provided information for the inquiry have submitted there is little to no difference in the sales process of non-alloyed and alloyed HSS. In the absence of relevant information, the Commission considers this is likely to be the case for Company C's exports as well.

⁶⁸ Record of meeting between the Commission and ATM dated 2 June 2015

⁶⁹ Refer to Paragraph 6.1.1. for a discussion of manufacturing cost differences.

⁷⁰ Qingdao XiangXing exporter questionnaire

⁷¹ Steelforce Trading importer questionnaire

⁷² Record of meeting between the Commission and ATM dated 2 June 2015

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is no difference in the way each good is marketed. In comparing the alleged circumvention goods with the goods the subject of the original notice, the Commission has found that there is little to no difference in the channels of trade and distribution for each good.

Interchangeability, end use, customer preference and expectations

Company C has not provided a non-confidential summary of data provided in their exporter questionnaire. The majority of the company's questionnaire response has thus been disregarded.

No other interested party has provided any information as to any differences in cost to manufacture or selling price of alloyed HSS compared to non-alloyed HSS.

ATM's application submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications. It is considered this submission was made in relation to alloyed HSS with small amounts of alloys such that they could be considered alloyed HSS for the purposes of the Tariff Act.

ATM has made the Commission aware of certain specialised alloyed HSS (pipe and tube) that do have a different end use to non-alloyed HSS, however these types of pipe and tube have undergone a quenching and tempering process that activates the strength properties of the alloy (boron) in the steel.⁷³

However ATM has explained that the market for quench and tempered pipe and tube is very limited and the volumes of this type of pipe and tube would be minimal.⁷⁴

The Commission has not encountered any other alloyed HSS that has a different end use to non-alloyed HSS throughout its inquiries, or cases where there is no interchangeability between alloyed and non-alloyed HSS.

No information has been provided to establish that the alloyed HSS supplied by Company C is quenched and tempered.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that the goods can be used interchangeably and the end use of each good has not changed. In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference.

Summary of findings and conclusion

The Commission considers that the available evidence demonstrates that when comparing the alleged circumvention goods with the goods the subject of the notice that following observations have been made.

⁷³ Record of meeting between the Commission and ATM dated 2 June 2015

⁷⁴ Record of meeting between the Commission and ATM dated 2 June 2015

Pattern of trade and export volumes

As there was no strong history of supply of non-alloyed HSS from Company C, there is no clear switch in supply for non-alloyed to alloyed HSS in the inquiry period.

However, in the absence of cooperation from interested parties, the Commission cannot be satisfied that Company C did not make a small exportation of alloyed HSS before immediately switching to supply of alloyed HSS with the same physical characteristics, end use and other characteristics to non-alloyed HSS, as detailed in this section).

Physical modifications:

- Physical characteristics are the same for both non-alloyed and alloyed HSS with the main difference being the addition of boron for the good to be classified as alloyed HSS; and
- the adding of a boron to HSS to make alloyed HSS requires minor adjustments to the manufacturing process of goods supplied by Company C;

Manufacturing cost and selling price:

- the addition of boron to HSS to make alloyed HSS supplied by Company C has a small to negligible impact on cost to produce those goods; and
- the selling price of the alloyed HSS is more likely than not to be the same as the non-alloyed HSS;

Marketing and trade channels/distribution:

- it is more likely than not that there is no difference between the marketing process for non-alloyed HSS and alloyed HSS; and
- the sales and ordering process for both non-alloyed and alloyed HSS is more likely than not to be the same.

Interchangeability, end use, customer preferences and expectations:

- the alloyed HSS and non-alloyed HSS can be used interchangeably and have the same end use; and
- it is more likely than not that the customer preferences and expectations are the same for both the non-alloyed and alloyed HSS.

In the absence of a non-confidential exporter questionnaire response by the supplier of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed HSS supplied by Company C during the inquiry period has been slightly modified through a minor change to the manufacturing process.

Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by Company C to Australia, refer to the discussion of Subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, noting that there has been no non-confidential questionnaire provided by the supplier of the circumvention goods or their importer, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?

As detailed at Paragraph 2.3.1, the goods subject to the original dumping duty notice are:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. 6.

Specific exclusions apply to certain types of HSS such as those that do not fit the sizing specifications of the additional information of the goods description, or precision HSS.

Additionally, an exemption from the anti-dumping measures imposed by the original notices applies to HSS that meet the requirements of TCO TC 1333313.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Company C through the use of alloyed (boron-added) HRC in its manufacturing process of HSS (as opposed to using non-alloyed HRC). The use of boron-added HRC results in the production of alloyed HSS.

The Commission is satisfied that, had Company C not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

Excluding cases where goods produced by Company C met the requirements of the abovementioned TCO or were specifically excluded from the goods description, the Commission is satisfied that the goods produced by Company C would have been subject to the original notices.

The Commission considers that it does not have definitive evidence to establish whether all of Qingdao Company C's exports of alloyed HSS during the inquiry period fit into any of the excluded categories of steel or the exempted TCO. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed HSS did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods?

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2). These duties are referred to collectively as 'anti-dumping measures'.

As discussed above, anti-dumping measures (imposed by the original notice) apply to:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

The slight modification of the goods that has been performed by Company C results in the circumvention goods exported by Company C being considered alloyed HSS for the purposes of classification under subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) of the *Tariff Act*.

This modification means that the exported goods are no longer 'of carbon steel' and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Company C, a circumvention activity has occurred pursuant to Subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.1.5. Company D

As outlined in Paragraph 3.3 of this report, Company D was not contacted by the Commission to complete an Exporter questionnaire due to no contact details being available.

No information was provided by any other interested party in relation to the goods supplied by Company D.

In the absence of relevant information, the Commission has relied on all available information to make determinations in relation to goods supplied by Company D during the inquiry periods.

The Commission's primary source of reliable information relating to the goods supplied by Company D is data contained in the DIBP import records.

Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the

Regulations)?

As outlined at Paragraph 3.3 the Commission has accessed import data for all importations during the inquiry period of goods classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90), which relate to alloyed HSS. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Company D to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in China. This HSS was described by the importer as ‘tube without fittings’, ‘pipe without fitting’, ‘high alloy steel tubes’, ‘high alloy tube scaffolding’, ‘tube steel alloy’, ‘gal alloy tube’, ‘scaffolding components tube without fitting’, ‘steel tube without fitting’ and ‘welded steel tubing’ in its customs declarations.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from China.

Who is the exporter?

Company D did not provide information to the original investigations, or to any other historical investigation undertaken by the Commission to the best of its knowledge.

An internet search for Company D indicates that the company is an importer and supplier. It is therefore unlikely that this company is the manufacturer of the supplied alloyed HSS and hence may not be the exporter of those good in line with the Commission’s established policy detailed in the *Dumping and Subsidy Manual*.

There is insufficient evidence to determine who the exporter of the goods supplied by Company D are in this case.

Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of Subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade⁷⁵ and export volumes;⁷⁶
- physical modifications;⁷⁷

⁷⁵ Subsection 48(3)(j) of the Regulations

⁷⁶ Subsection 48(3)(l) of the Regulations

- manufacturing cost⁷⁸ and selling price;⁷⁹
- marketing⁸⁰ and trade channels/distribution;⁸¹ and
- interchangeability,⁸² end use⁸³ and customer preferences and expectations.⁸⁴

As outlined at Paragraphs 2.4.1 and 2.7.1, in relation to tariff classification (subsection 48(3)(m) of the Regulations), alloyed and non-alloyed HSS fall under different tariff classifications in Schedule 3 of the Tariff Act.

See below for the discussion of the comparison of the alleged circumvention goods to the goods the subject of the notice.

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Company D:

- supplied a small volume of non-alloyed HSS to one importer in Australia in the fourth quarter of the 2013 calendar year and at no other time supplied non-alloyed HSS during the inquiry period;
- supplied alloyed HSS to the same importer in Australia from the second quarter of the 2014 calendar year; and
- supplied alloyed HSS to a different importer in Australia from the first quarter in the 2013 calendar year.

The Commission notes:

The publication of the original notice on 3 July 2012 occurred not long before the time that Company D commenced supplying alloyed HSS to Australia.

Physical modifications

ATM's application submitted that the physical characteristics of non-alloyed and alloyed HSS are 'essentially the same'. It is considered this was in reference to alloyed HSS with

⁷⁷ Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d) of the Regulations

⁷⁸ Subsection 48(3)(e) and (f) of the Regulations

⁷⁹ Subsection 48(3)(k) of the Regulations

⁸⁰ Subsection 48(3)(h) of the Regulations

⁸¹ Subsection 48(3)(i) of the Regulations

⁸² Subsection 48(3)(c) of the Regulations

⁸³ Subsection 48(3)(b) of the Regulations

⁸⁴ Subsection 48(3)(g) of the Regulations

minute amounts of boron or other alloys such that they exceed the threshold requirements for alloyed steel required by the notes to Chapter 72 of the Tariff Act.

The exact chemical composition of the alloyed steel supplied by Company D is not known. As noted above, the importer of the alloyed steel supplied by Company D has identified the products as 'tube without fittings', 'pipe without fitting', 'high alloy steel tubes', 'high alloy tube scaffolding', 'tube steel alloy', 'gal alloy tube', 'scaffolding components tube without fitting', 'steel tube without fitting' and 'welded steel tubing'.

It is considered that the imports may be of alloyed HSS that contains one or several alloys of varying levels required to satisfy the requirements of tariff classification 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90).

In terms of the manufacturing process of Company D's alloyed HSS, the Commission notes that available evidence from other exporters of alloyed HSS and submissions made by ATM,⁸⁵ it is likely that the manufacturing process of the alloyed and non-alloyed HSS supplied by Company D is substantially similar (use of alloyed HRC).

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is likely to be little to no difference in the general physical characteristics other than the presence of an unknown alloy at levels at or above the threshold required by the notes to Chapter 72 of the Tariff Act.

The difference between the manufacturing processes of each type of HSS is likely to be the use of alloyed or non-alloyed HRC with few other modifications to the process.

Manufacturing cost and selling price

Company D and its importer have not provided any information as to any differences in cost to manufacture or selling price of alloyed HSS compared to non-alloyed HSS.

ATM has contended that the cost of modification of HSS to include minute amounts of alloys (notably boron) is negligible.⁸⁶

This is supported by evidence gathered from other exporters of alloyed HSS from China during this inquiry (see above discussion).

The Commission finds that it is unlikely that the modifications made to the manufacturing process of Company D's alloyed HSS resulted in a significant cost difference compared to the cost to make non-alloyed HSS.⁸⁷

In terms of selling price, responses from another exporter of alloyed HSS advise that there is no difference in selling price between alloyed and non-alloyed HSS to their importers⁸⁸ while an importer of alloyed HSS from a different entity has advised that

⁸⁵ Both in its application and during the 2 June 2015 meeting (refer to the public record of that meeting).

⁸⁶ Record of meeting between the Commission and ATM dated 2 June 2015

⁸⁷ Refer to Paragraph 6.1.1. for discussion of manufacturing cost differences.

⁸⁸ Qingdao XiangXing exporter questionnaire

changes to its suppliers manufacturing cost resulting from making alloyed HRC would be passed on to that company in its purchase price.⁸⁹ However, the Commission has determined in this case, any price impact is likely to be negligible.

It is therefore likely that any pricing difference between Company D and its importer of alloyed HSS compared to non-alloyed HSS is likely to be minimal.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is little to no difference in the cost to produce alloyed HSS compared to non-alloyed HSS, of the pricing of each good.

Marketing and trade channels/distribution

ATM has submitted that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same.⁹⁰

No information is available as to the exact sales process of Company D's alloyed and non-alloyed HSS, though other interested parties that have provided information for the inquiry in relation to their imports and exports have submitted there is little to no difference in the sales process of non-alloyed and alloyed HSS. In the absence of relevant information, the Commission considers this is likely to be the case for Company D's exports as well.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is no difference in the way each good is marketed. In comparing the alleged circumvention goods with the goods the subject of the original notice, the Commission has found that there is little to no difference in the channels of trade and distribution for each good.

Interchangeability, end use, customer preference and expectations

The end use of Company D's alloyed HSS is not known, however ATM's application submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications. It is considered this submission was made in relation to alloyed HSS with small amounts of alloys such that they could be considered alloyed HSS for the purposes of the Tariff Act.

ATM has made the Commission aware of certain specialised alloyed HSS (pipe and tube) that do have a different end use to non-alloyed HSS, however these types of pipe and tube have undergone a quenching and tempering process that activates the strength properties of the alloy (boron) in the steel.⁹¹

However ATM has explained that the market for quench and tempered pipe and tube is very limited and the volumes of this type of pipe and tube would be minimal.⁹²

⁸⁹ Steelforce Trading importer questionnaire

⁹⁰ Record of meeting between the Commission and ATM dated 2 June 2015

⁹¹ Record of meeting between the Commission and ATM dated 2 June 2015

⁹² Record of meeting between the Commission and ATM dated 2 June 2015

The Commission has not encountered any other alloyed HSS that has a different end use to non-alloyed HSS throughout its inquiries, or cases where there is no interchangeability between alloyed and non-alloyed HSS.

No information has been provided to establish that the alloyed HSS supplied by Company D is quenched and tempered.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that the goods can be used interchangeably and the end use of each good has not changed. In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference.

Summary of findings and conclusion

The Commission makes the following observation in comparing the alloyed and non-alloyed HSS supplied by Company D, which are based on all available information including that supplied by ATM and other interested parties.

Patterns of trade and export volumes

- Company D commenced exporting alloyed HSS to one importer with no history of non-alloyed HSS exports to that importer, after the publication of the original notices; and
- Company D made a small volume exportation of non-alloyed HSS at the end of the 2013 calendar year to another importer and commenced exporting alloyed HSS to that exporter in mid 2014.

As there was no strong history of supply of non-alloyed HSS from Company D, there is no clear switch in supply for non-alloyed to alloyed HSS in the inquiry period.

However, in the absence of information from interested parties, the Commission cannot be satisfied that Company D did not make a small exportation of non-alloyed HSS before immediately switching to supply of alloyed HSS with the same physical characteristics, end use and other characteristics to non-alloyed HSS, as detailed in this section).

Physical modifications

- the physical characteristics are the same for both non-alloyed and alloyed HSS supplied by Company D with the main difference being the addition of an unknown alloy for the good to be classified as alloyed HSS; and
- the adding of an unknown alloy to HSS to make alloyed HSS requires minor adjustments to the manufacturing process of goods supplied by Company D.

Manufacturing cost and selling price:

- the addition of an unknown alloy to HSS to make alloyed HSS supplied by Company D has a small to negligible impact on cost to produce those goods; and

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- the selling price of the alloyed HSS is more likely than not to be the same as the non-alloyed HSS.

Marketing and trade channels/distribution

- it is more likely than not that there is no difference between the marketing process for non-alloyed HSS and alloyed HSS; and
- the sales and ordering process for both non-alloyed and alloyed HSS is more likely than not to be the same.

Interchangeability, end use, customer preferences and expectations

- the alloyed HSS and non-alloyed HSS can be used interchangeably and have the same end use; and
- it is more likely than not that the customer preferences and expectations are the same for both the non-alloyed and alloyed HSS.

In the case of no exporter questionnaire responses by the supplier of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed HSS supplied by Company D during the inquiry period has been slightly modified through a minor change to the manufacturing process.

Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by Company D to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, noting that there has been no information provided by the supplier of the circumvention goods or their importer with the inquiry, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?

As detailed at Paragraph 2.3.1, the goods subject to the original dumping duty notice are:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

Specific exclusions apply to certain types of HSS such as those that do not fit the sizing specifications of the additional information of the goods description, or precision HSS.

Additionally, an exemption from the anti-dumping measures imposed by the original notices applies to HSS that meet the requirements of TCO TC 1333313.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Company D through the use of alloyed (boron-added) HRC in its manufacturing process of HSS (as opposed to using non-alloyed HRC). The use of boron-added HRC results in the production of alloyed HSS.

The Commission is satisfied that, had Company D not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

Excluding cases where goods produced by Company D met the requirements of the abovementioned TCO or were specifically excluded from the goods description, the Commission is satisfied that the goods produced by Company D would have been subject to the original notices.

The Commission considers that it does not have definitive evidence to establish whether all of Company D's exports of alloyed HSS during the inquiry period fit into any of the excluded categories of steel or the exempted TCO. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed HSS did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods?

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsection 269TG(2) or 269TJ(2). These duties are referred to collectively as 'anti-dumping measures'.

As discussed above, anti-dumping measures (imposed by the original notice) apply to:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

The slight modification of the goods that has been performed by Company D results in the circumvention goods exported by Company D being considered alloyed HSS for the purposes of classification under subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) of the *Tariff Act*.

This modification means that the exported goods are no longer 'of carbon steel' and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Company D, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.2. Korean suppliers

6.2.1. Company F

As outlined in Paragraph 3.3 of this report, Company F was contacted by the Commission to complete an exporter questionnaire. The company did not provide a response to the exporter questionnaire, or provide any correspondence or declaration that they had not been involved in a circumvention activity.

The Commission identified one possible importer of the circumvention goods from Company F, which was contacted for completion of an importer questionnaire. No response was provided by that importer.

In the absence of relevant information, the Commission has relied on all available information to make determinations in relation to goods supplied by Company F during the inquiry periods.

The Commission's primary source of reliable information relating to the goods supplied by Company F is data contained in the DIBP import records.

Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?

As outlined at Paragraph 3.2, the Commission has accessed import data for all importations during the inquiry period of goods classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90), which relate to alloyed HSS. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Company F to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in Korea. This HSS was described by the importer as 'steel pipe piling' in its customs declaration.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from Korea.

Who is the exporter?

In addition to not responding to the exporter questionnaire, Company F did not provide information to the original investigations, or to any other historical investigation undertaken by the Commission to the best of its knowledge.

An internet search for Company F indicates that the company is a supplier of steel products to the construction and engineering industry. It therefore unlikely that this company is the manufacturer of the supplied alloyed HSS and hence may not be the exporter of those good in line with the Commission's established policy detailed in the *Dumping and Subsidy Manual*.

There is insufficient evidence to determine who the exporters of the goods supplied by Company F are in this case.

Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade⁹³ and export volumes;⁹⁴
- physical modifications;⁹⁵
- manufacturing cost⁹⁶ and selling price;⁹⁷
- marketing⁹⁸ and trade channels/distribution;⁹⁹ and
- interchangeability,¹⁰⁰ end use¹⁰¹ and customer preferences and expectations.¹⁰²

As outlined at Paragraphs 2.4.1 and 2.7.1, in relation to tariff classification (subsection 48(3)(m) of the Regulations), alloyed and non-alloyed HSS fall under different tariff classifications in Schedule 3 of the Tariff Act.

⁹³ Subsection 48(3)(j) of the Regulations

⁹⁴ Subsection 48(3)(l) of the Regulations

⁹⁵ Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d) of the Regulations

⁹⁶ Subsection 48(3)(e) and (f) of the Regulations

⁹⁷ Subsection 48(3)(k) of the Regulations

⁹⁸ Subsection 48(3)(h) of the Regulations

⁹⁹ Subsection 48(3)(i) of the Regulations

¹⁰⁰ Subsection 48(3)(c) of the Regulations

¹⁰¹ Subsection 48(3)(b) of the Regulations

¹⁰² Subsection 48(3)(g) of the Regulations

See below for the discussion of the comparison of the alleged circumvention goods to the goods the subject of the notice.

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Company F:

- did not export non-alloyed HSS during the inquiry period; and
- exported alloyed HSS to one importer in Australia from the fourth quarter of the 2012 calendar year in significant quantities.

The Commission notes the publication of the original notice on 3 July 2012 occurred a few months before Company F commenced supplying alloyed HSS to Australia.

Physical modifications

ATM's application submitted that the physical characteristics of non-alloyed and alloyed HSS are 'essentially the same'. It is considered this was in reference to alloyed HSS with minute amounts of boron or other alloys such that they exceed the threshold requirements for alloyed steel required by the notes to Chapter 72 of the Tariff Act.

The exact chemical composition of the alloyed steel supplied by Company F is not known. As noted above, the importer of the alloyed steel supplied by Company F has identified the products as 'steel pipe piling'.

It is considered the imports may be of alloyed HSS that contains one or several alloys of varying levels required to satisfy the requirements of tariff classification 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90).

In terms of the manufacturing process of Company F's alloyed HSS, the Commission notes that available evidence from other exporters of alloyed HSS and submissions made by ATM,¹⁰³ it is likely that the manufacturing process of the alloyed and non-alloyed HSS supplied by Company F is substantially similar (with modifications to the HRC used to make the HSS – use of alloyed HRC).

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is likely to be little to no difference in the general physical characteristics other than the presence of an unknown alloy at levels at or above the threshold required by the notes to Chapter 72 of the Tariff Act.

The difference between the manufacturing processes of each type of HSS is likely to be the use of alloyed or non-alloyed HRC with few other modifications to the process.

Manufacturing cost and selling price

¹⁰³ Both in its application and during the 2 June 2015 meeting (refer to the public record of that meeting).

Company F and its importer have not provided any information as to any differences in cost to manufacture or selling price of alloyed HSS compared to non-alloyed HSS.

ATM has contended that the cost of modification of HSS to include minute amounts of alloys (notably boron) is negligible.¹⁰⁴

This is supported by evidence gathered from other exporters of alloyed HSS from China during this inquiry (see above discussion).

The Commission finds that it is unlikely that the modifications made to the manufacturing process of Company F's alloyed HSS resulted in a significant cost difference compared to the cost to make non-alloyed HSS.¹⁰⁵

In terms of selling price, exporter questionnaire responses from another exporter of alloyed HSS advise that there is no difference in selling price between alloyed and non-alloyed HSS to their importers¹⁰⁶ while an importer of alloyed HSS from a different entity has advised that changes to its suppliers manufacturing cost resulting from making alloyed HRC would be passed on to that company in its purchase price.¹⁰⁷ However, the Commission has determined in this case, any price impact is likely to be negligible.

It is therefore likely that any pricing difference between Company F and its importer of for alloyed HSS compared to non-alloyed HSS is likely to be minimal.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is little to no difference in the cost to produce alloyed HSS compared to non-alloyed HSS, of the pricing of each good.

Marketing and trade channels/distribution

ATM has submitted that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same.¹⁰⁸

No information is available as to the exact sales process of Company F's alloyed and non-alloyed HSS, though other interested parties that have provided information for the inquiry in relation to their imports and exports have submitted there is little to no difference in the sales process of non-alloyed and alloyed HSS. In the absence of relevant information, the Commission considers this is likely to be the case for Company F's exports as well.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is no difference in the way each good is marketed. In comparing the alleged circumvention goods with the goods the subject of the original notice, the Commission has found that there is little to no difference in the channels of trade and distribution for each good.

¹⁰⁴ Record of meeting between the Commission and ATM dated 2 June 2015

¹⁰⁵ Refer to Paragraph 6.1.1. for discussion of manufacturing cost differences.

¹⁰⁶ Qingdao XiangXing exporter questionnaire

¹⁰⁷ Steelforce Trading importer questionnaire

¹⁰⁸ Record of meeting between the Commission and ATM dated 2 June 2015

Interchangeability, end use, customer preference and expectations

The end use of Company F's alloyed HSS is not known, however ATM's application submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications. It is considered this submission was made in relation to alloyed HSS with small amounts of alloys such that they could be considered alloyed HSS for the purposes of the Tariff Act.

ATM has made the Commission aware of certain specialised alloyed HSS (pipe and tube) that do have a different end use to non-alloyed HSS, however these types of pipe and tube have undergone a quenching and tempering process that activates the strength properties of the alloy (boron) in the steel.¹⁰⁹

However ATM has explained that the market for quench and tempered pipe and tube is very limited and the volumes of this type of pipe and tube would be minimal.¹¹⁰

The Commission has not encountered any other alloyed HSS that has a different end use to non-alloyed HSS throughout its inquiries, or cases where there is no interchangeability between alloyed and non-alloyed HSS.

No information has been provided to establish that the alloyed HSS supplied by Company F is quenched and tempered.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that the goods can be used interchangeably and the end use of each good has not changed. In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference.

Summary of findings and conclusion

The Commission considers that the available evidence demonstrates that when comparing the alleged circumvention goods with the goods the subject of the notice, the following observations have been made.

Pattern of trade and export volumes

As there was no history of supply of non-alloyed HSS from Company F, there is no clear switch in supply for non-alloyed to alloyed HSS in the inquiry period.

However, in the absence of information from interested parties, the Commission cannot be satisfied that Company F did not immediately commence supply of alloyed HSS with the same physical characteristics, end use and other characteristics to non-alloyed HSS, as detailed in this section).

Physical modifications:

¹⁰⁹ Record of meeting between the Commission and ATM dated 2 June 2015

¹¹⁰ Record of meeting between the Commission and ATM dated 2 June 2015

PUBLIC RECORD

- Physical characteristics are the same for both non-alloyed and alloyed HSS with the main difference being the addition of a chemical element for the good to be classified as alloyed HSS; and
- the adding of an unknown alloy to HSS to make alloyed HSS requires minor adjustments to the manufacturing process of goods supplied by Company F.

Manufacturing cost and selling price:

- the addition of an unknown alloy to HSS to make alloyed HSS supplied by Company F has a small to negligible impact on cost to produce those goods; and
- the selling price of the alloyed HSS is more likely than not to be the same as the non-alloyed HSS.

Marketing and trade channels/distribution:

- it is more likely than not that there is no difference between the marketing process for non-alloyed HSS and alloyed HSS; and
- the sales and ordering process for both non-alloyed and alloyed HSS is more likely than not to be the same.

Interchangeability, end use, customer preferences and expectations:

- the alloyed HSS and non-alloyed HSS can be used interchangeably and have the same end use; and
- it is more likely than not that the customer preferences and expectations are the same for both the non-alloyed and alloyed HSS.

Patterns of trade and export volumes:

- Company F did not export non-alloyed HSS to Australia during the inquiry period; and
- Company F exported alloyed HSS to one importer in Australia from the fourth quarter of the 2012 calendar year.

In the case of no exporter questionnaire response provided by the supplier of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed HSS supplied by Company F during the inquiry period has been slightly modified through a minor change to the manufacturing process.

Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by

Company F to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, noting that there has been no information provided by the supplier of the circumvention goods or their importer with the inquiry, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?

As detailed at Paragraph 2.3.1, the goods subject to the original dumping duty notice are:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

Specific exclusions apply to certain types of HSS such as those that do not fit the sizing specifications of the additional information of the goods description, or precision HSS.

Additionally, an exemption from the anti-dumping measures imposed by the original notices applies to HSS that meet the requirements of TCO TC 1333313.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Company F through the use of alloyed (boron-added) HRC in its manufacturing process of HSS (as opposed to using non-alloyed HRC). The use of boron-added HRC results in the production of alloyed HSS.

The Commission is satisfied that, had Company F not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

Excluding cases where goods produced by Company F met the requirements of the abovementioned TCO or were specifically excluded from the goods description, the Commission is satisfied that the goods produced by Company F would have been subject to the original notices.

The Commission considers that it does not have definitive evidence to establish whether all of Company F's exports of alloyed HSS during the inquiry period fit into any of the excluded categories of steel or the exempted TCO. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed HSS did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods?

Sections 8 of the Dumping Duty Act refer to the imposition of dumping duties by virtue of a notice under subsection 269TG(2).

Section 10 of the Dumping Duty Act refers to the imposition of countervailing duties by virtue of subsection 269TJ(2). As no subsection 269TJ(2) notice has been issued in relation to HSS from Korea, section 10 of the Dumping Duty Act is not applicable to exports from Company F.

As discussed above, anti-dumping measures (imposed by the original notice) apply to:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

The slight modification of the goods that has been performed by Company F results in the circumvention goods supplier by Company F being considered alloyed HSS for the purposes of classification under subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) of the *Tariff Act*.

This modification means that the exported goods are no longer 'of carbon steel' and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Company F, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.2.2. Kukje Steel Co., Ltd (Kukje)

A submission dated 29 June 2015 was received from Kukje, as well as a response to the exporter questionnaire.

In the submission and questionnaire response, Kukje contended that they had not exported any volumes of alloyed HSS during the inquiry period.

Import data obtained from DIBP confirms this submission and no action is to be taken in relation to exports by Kukje from Korea.

6.3. Malaysian Exporters

6.3.1. Company E

As outlined in Paragraph 3.3 of this report, Company E was contacted by the Commission to complete an exporter questionnaire. The company did not provide a response to the exporter questionnaire, or provide any correspondence or declaration that they had not been involved in a circumvention activity.

The Commission identified one possible importer of the circumvention goods from Company E, which was contacted for completion of an importer questionnaire. No response was provided by that importer.

In the absence of relevant information, the Commission has relied on all available information to make determinations in relation to goods supplied by Company E during the inquiry periods.

The Commission's primary source of reliable information relating to the goods supplied by Company E is data contained in the DIBP import records.

Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?

As outlined at Paragraph 3.2, the Commission has accessed import data for all importations during the inquiry period of goods classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90), which relate to alloyed HSS. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Company E to Australia during the inquiry period were declared under this tariff classification (that is, alloyed HSS), and declared as having originated in Malaysia. This HSS was described by the importer as 'alloy hollow section' in its customs declaration.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from Malaysia.

Who is the exporter?

The Commission has observed a switch in Company E's supply to one importer from non-alloyed HSS to alloyed HSS (see below). That importer imported non-alloyed HSS during the investigation period of Investigation 177.

Company E was visited as part of Investigation 177 and for the purposes of that investigation, the Commission found that Company E was the exporter of the non-alloyed HSS supplied by that company during that investigation's investigation period.

Consequently, Company E was considered the exporter of the non-alloyed HSS to the importer who has since begun importing alloyed HSS.

The Commission's established knowledge of both the importer and Company E, lead to the conclusion that there is unlikely to have been changes in the manufacturing or supply relationship for alloyed HSS from non-alloyed HSS to suggest that Company E was not the exporter of alloyed HSS.

On the balance of evidence, it is more likely than not that Company E is the manufacturer of the goods and is the exporter.

Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- a) patterns of trade¹¹¹ and export volumes;¹¹²
- b) physical modifications;¹¹³
- c) manufacturing cost¹¹⁴ and selling price;¹¹⁵
- d) marketing¹¹⁶ and trade channels/distribution;¹¹⁷ and
- e) interchangeability,¹¹⁸ end use¹¹⁹ and customer preferences and expectations.¹²⁰

As outlined at Paragraphs 2.4.1 and 2.7.1, in relation to tariff classification (subsection 48(3)(m) of the Regulations), alloyed and non-alloyed HSS fall under different tariff classifications in Schedule 3 of the Tariff Act.

See below for the discussion of the comparison of the alleged circumvention goods to the goods the subject of the notice.

Patterns of trade and export volumes

Information contained in DIBP's import records shows that Company E:

- exported non-alloyed HSS during the inquiry period to multiple importers; and
- exported alloyed HSS to one importer in Australia from the fourth quarter of the 2013 calendar year; and

¹¹¹ Subsection 48(3)(j) of the Regulations

¹¹² Subsection 48(3)(l) of the Regulations

¹¹³ Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d) of the Regulations

¹¹⁴ Subsection 48(3)(e) and (f) of the Regulations

¹¹⁵ Subsection 48(3)(k) of the Regulations

¹¹⁶ Subsection 48(3)(h) of the Regulations

¹¹⁷ Subsection 48(3)(i) of the Regulations

¹¹⁸ Subsection 48(3)(c) of the Regulations

¹¹⁹ Subsection 48(3)(b) of the Regulations

¹²⁰ Subsection 48(3)(g) of the Regulations

- no other importer purchased alloyed HSS from Company E during the inquiry period.

In relation to the one importer that imported alloyed HSS during the inquiry period, the DIBP import data shows:

- that importer commenced importing small volumes of non-alloyed HSS in the third quarter of calendar year 2011 and this continued throughout the inquiry period;
- the importer commenced importing alloyed HSS in volumes that were significantly larger than the previous importations of non-alloyed HSS and this continued throughout the remainder of the inquiry period; and
- that importer also commenced importing alloyed HSS from Dalian Steelforce at the same time as imports of alloyed HSS commenced from Company E.

As noted at Paragraph 6.1.1, alloyed HSS exported by Dalian Steelforce has been found to be involved in a circumvention activity.

Physical modifications

ATM's application submitted that the physical characteristics of non-alloyed and alloyed HSS are 'essentially the same'. It is considered this was in reference to alloyed HSS with minute amounts of boron or other alloys such that they exceed the threshold requirements for alloyed steel required by the notes to Chapter 72 of the Tariff Act.

The exact chemical composition of the alloyed steel supplied by Company E is not known. As noted above, the importer of the alloyed steel supplied by Company E has identified the products as 'alloy hollow section'.

It is considered the imports may be of alloyed HSS that contains one or several alloys of varying levels required to satisfy the requirements of tariff classification 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90).

In terms of the manufacturing process of Company E's alloyed HSS, the Commission notes that available evidence from other exporters of alloyed HSS and submissions made by ATM,¹²¹ it is likely that the manufacturing process of the alloyed and non-alloyed HSS supplied by Company E is substantially similar (use of alloyed HRC).

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is likely to be little to no difference in the general physical characteristics other than the presence of an unknown alloy at levels at or above the threshold required by the notes to Chapter 72 of the Tariff Act.

The difference between the manufacturing processes of each type of HSS is likely to be the use of alloyed or non-alloyed HRC with few other modifications to the process.

Manufacturing cost and selling price

¹²¹ Both in its application and during the 2 June 2015 meeting (refer to the public record of that meeting).

Company E and its importer have not provided any information as to any differences in cost to manufacture or selling price of alloyed HSS compared to non-alloyed HSS.

ATM has contended that the cost of modification of HSS to include minute amounts of alloys (notably boron) is negligible.¹²²

This is supported by evidence gathered from other exporters of alloyed HSS from China during this inquiry (see above discussion).

The Commission finds that it is unlikely that the modifications made to the manufacturing process of Company E's alloyed HSS resulted in a significant cost difference compared to the cost to make non-alloyed HSS.¹²³

In terms of selling price, exporter questionnaire responses from another exporter of alloyed HSS advise that there is no difference in selling price between alloyed and non-alloyed HSS to their importers¹²⁴ while an importer of alloyed HSS from a different entity has advised that changes to its suppliers manufacturing cost resulting from making alloyed HRC would be passed on to that company in its purchase price.¹²⁵ However, the Commission has determined in this case, any price impact is likely to be negligible.

It is therefore likely that any pricing difference between Company E and its importer of alloyed HSS compared to non-alloyed HSS is likely to be minimal.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is little to no difference in the cost to produce alloyed HSS compared to non-alloyed HSS, of the pricing of each good.

Marketing and trade channels/distribution

ATM has submitted that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same.¹²⁶

No information is available as to the exact sales process of Company E's alloyed and non-alloyed HSS, though other interested parties that have provided information for the inquiry have submitted there is little to no difference in the sales process of non-alloyed and alloyed HSS. In the absence of relevant information, the Commission considers this is likely to be the case of Company E's exports as well.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that there is no difference in the way each good is marketed. In comparing the alleged circumvention goods with the goods the subject of

¹²² Record of meeting between the Commission and ATM dated 2 June 2015

¹²³ Refer to Paragraph 6.1.1. for a discussion of manufacturing cost differences.

¹²⁴ Qingdao XiangXing exporter questionnaire

¹²⁵ Steelforce Trading importer questionnaire

¹²⁶ Record of meeting between the Commission and ATM dated 2 June 2015

the original notice, the Commission has found that there is little to no difference in the channels of trade and distribution for each good.

Interchangeability, end use, customer preference and expectations

The end use of Company E's alloyed HSS is not known, however ATM's application submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications. It is considered this submission was made in relation to alloyed HSS with small amounts of alloys such that they could be considered alloyed HSS for the purposes of the Tariff Act.

ATM has made the Commission aware of certain specialised alloyed HSS (pipe and tube) that do have a different end use to non-alloyed HSS, however these types of pipe and tube have undergone a quenching and tempering process that activates the strength properties of the alloy (boron) in the steel.¹²⁷

However ATM has explained that the market for quench and tempered pipe and tube is very limited and the volumes of this type of pipe and tube would be minimal.¹²⁸

The Commission has not encountered any other alloyed HSS that has a different end use to non-alloyed HSS throughout its inquiries, or cases where there is no interchangeability between alloyed and non-alloyed HSS.

No information has been provided to establish that the alloyed HSS supplied by Company E is quenched and tempered.

The Commission has compared the alleged circumvention goods to the goods the subject of the original notice and has found that the goods can be used interchangeably and the end use of each good has not changed. In comparing the customer preferences and expectations relating to the alleged circumvention goods and the goods the subject of the original notice, the Commission found that there is no difference.

Summary of findings and conclusion

The Commission considers that the available evidence demonstrates that when comparing the alleged circumvention goods with the goods the subject of the notice that following observations have been made.

Patterns of trade and export volumes:

Company E commenced exporting HSS to Australia in mid-2013, after the publication of the original notices. This importer also commenced importing goods from Dalian Steelforce that have been found to have been involved in a circumvention activity at the same time as imports of alloyed HSS started from Company E.

This pattern indicates that Company E commenced exporting slightly modified goods to that importer following the imposition of the anti-dumping measures.

¹²⁷ Record of meeting between the Commission and ATM dated 2 June 2015

¹²⁸ Record of meeting between the Commission and ATM dated 2 June 2015

Physical modifications:

- Physical characteristics are the same for both non-alloyed and alloyed HSS with the main difference being the addition of a chemical element for the good to be classified as alloyed HSS; and
- the adding of an unknown alloy to HSS to make alloyed HSS requires minor adjustments to the manufacturing process of goods supplied by Company E;

Manufacturing cost and selling price:

- the addition of an unknown alloy to HSS to make alloyed HSS supplied by Company E has a small to negligible impact on cost to produce those goods; and
- the selling price of the alloyed HSS is more likely than not to be the same as the non-alloyed HSS.

Marketing and trade channels/distribution:

- it is more likely than not that there is no difference between the marketing process for non-alloyed HSS and alloyed HSS; and
- the sales and ordering process for both non-alloyed and alloyed HSS is more likely than not to be the same.

Interchangeability, end use, customer preferences and expectations:

- the alloyed HSS and non-alloyed HSS can be used interchangeably and have the same end use; and
- it is more likely than not that the customer preferences and expectations are the same for both the non-alloyed and alloyed HSS.

In the case of no exporter questionnaire provided by the supplier of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed HSS supplied by Company E during the inquiry period has been slightly modified through a minor change to the manufacturing process.

Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?

For a detailed discussion of use or purposes of non-alloyed and alloyed HSS supplied by Company E to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, noting that there has been no information provided by the supplier of the circumvention goods or their importer with the inquiry, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?

As detailed at Paragraph 2.3.1, the goods subject to the original dumping duty notice are:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

Specific exclusions apply to certain types of HSS such as those that do not fit the sizing specifications of the additional information of the goods description, or precision HSS.

Additionally, an exemption from the anti-dumping measures imposed by the original notices applies to HSS that meet the requirements of TCO TC 1333313.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Company E through the use of alloyed (boron-added) HRC in its manufacturing process of HSS (as opposed to using non-alloyed HRC). The use of boron-added HRC results in the production of alloyed HSS.

The Commission is satisfied that, had Company E not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the HSS produced by the company would be non-alloyed HSS.

Excluding cases where goods produced by Company E met the requirements of the abovementioned TCO or were specifically excluded from the goods description, the Commission is satisfied that the goods produced by Company E would have been subject to the original notices.

The Commission considers that it does not have definitive evidence to establish whether all of Company E's exports of alloyed HSS during the inquiry period fit into any of the excluded categories of steel or the exempted TCO. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed HSS did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods?

sections 8 of the Dumping Duty Act refer to the imposition of dumping duties by virtue of a notice under subsection 269TG(2).

Section 10 of the Dumping Duty Act refers to the imposition of countervailing duties by virtue of subsection 269TJ(2). As no subsection 269TJ(2) notice has been issued in relation to HSS from Malaysia, section 10 of the Dumping Duty Act is not applicable to ex[ports from Company E.

As discussed above, anti-dumping measures (imposed by the original notice) apply to:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

The slight modification of the goods that has been performed by Company E results in the circumvention goods exported by Company E being considered alloyed HSS for the purposes of classification under subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) of the *Tariff Act*.

This modification means that the exported goods are no longer ‘of carbon steel’ and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

Conclusion

The Commission finds that, in relation to alloyed HSS supplied to Australia by Company E, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

6.4. Summary of findings of circumvention activities

The Commission has found that circumvention activities, specifically the slight modification of goods exported to Australia, have occurred.

The following activities have been found to have occurred:

| Supplier | Exporter | Country of export | Nature of circumvention activity | Notice that circumvention activity relates to |
|--------------------|-------------------|--------------------------|---|--|
| Steelforce Trading | Dalian Steelforce | China | Slight modification of goods – addition of boron | Subsections 269TG(2) and TJ(2) |
| Company A | Unknown | China | Slight modification of goods – addition of unknown alloys | Subsections 269TG(2) and TJ(2) |
| Company B | Company C | China | Slight modification of goods – addition of boron | Subsections 269TG(2) and TJ(2) |
| Company D | Unknown | China | Slight modification of goods – addition of unknown alloys | Subsections 269TG(2) and TJ(2) |
| Company E | Company E | Malaysia | Slight modification of goods – addition of unknown alloys | Subsection 269TG(2) |
| Company F | Unknown | Korea | Slight modification | Subsection |

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| | | | | |
|--|--|--|--|----------|
| | | | of goods – addition of unknown alloys | 269TG(2) |
|--|--|--|--|----------|

Table 6 – Summary of circumvention activities found to have occurred

7. PROPOSED ALTERATION TO THE NOTICES

7.1. Legislative provisions

Subsection 269ZDBG(1) provides that, after conducting an anti-circumvention inquiry in relation to the original notice, the Commissioner must give the Minister a report recommending either:

- the original notice(s) remain unaltered; or
- the following:
 - the original notice(s) be altered because the Commissioner is satisfied that one or more circumvention activities in relation to the original notice(s) have occurred; and
 - the alterations to be made to the notice(s).

7.2. ATM's proposed changes

ATM's application for the anti-circumvention inquiries submit that that the Parliamentary Secretary should alter the original notices to capture the alleged circumvention activities by expanding the description of the goods subject to the notice to the following:

Certain electric resistance welded pipe and tube made of non-alloyed or alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

This modification would have the impact of extending the original notices to all alloyed HSS, regardless of country of export, exporter/supplier or alloy content.

7.3. Approach – limited modification

As outlined in Chapter 6, the Commission has found that the circumvention activities detailed in Table 6 have occurred.

ATM's proposed alterations to the notice discussed at Paragraph 7.2 extend the original notices in a manner that is broader than the circumvention activities that the Commission has found to have occurred.

It is the Commission's position that, once satisfied that a circumvention activity has occurred, the Commissioner should take only the action required to remedy the activities that have been found. The Commissioner's recommendations to the Parliamentary Secretary should be designed to specifically address the circumvention activities, rather than extend the notice in a broader sense.

Consequently, it is proposed that a 'limited modification' to the original notices be made, as detailed below.

7.4. Proposed alteration to the notices

In light of the findings outlined in Chapter 6 that circumvention activities have occurred in relation HSS exported from China, Malaysia and Korea, the Commissioner proposes to recommend that the original notices relating to HSS be altered to amend the description of the goods subject to the notices to be as follows.

Section 269TG(2) notice

The goods description in the original dumping duty notice is recommended to be amended so the first sentence reads as follows:

- *certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes;*
and
- *certain electric resistance welded pipe and tube made of alloy steel containing boron, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, exported from:*
 - **China by Dalian Steelforce Hi-Tech Co.;**
 - **China by Company C;****and**
- *certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes:*
 - **exported from China by any exporter and supplied by:**
 - **Company A;**
 - **Company D;**
 - **exported from Korea and supplied by Company F;**
 - **exported from Malaysia by Company E.**

The text in **bold** above indicates changes to the first sentence of the original notice.

All other elements of the goods description are to remain unchanged.

Section 269TJ(2) notice

The goods description in the original countervailing duty notice is recommended to be amended to the first sentence reads as follows:

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- *certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes;*

and

- ***certain electric resistance welded pipe and tube made of alloy steel containing boron, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, exported from:***
 - ***China by Dalian Steelforce Hi-Tech Co.;***
 - ***China by Company C;***

and

- ***certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes exported from China by any exporter and supplied by:***
 - ***Company A;***
 - ***Company D.***

The text in **bold** above indicates changes to the first sentence of the original notice.

All other elements of the goods description are to remain unchanged.

8. DATE OF EFFECT

8.1. Legislative provisions

Subsection 269ZDBH(1)(b) requires that, when making a declaration that an original notice is to be altered, the Parliamentary Secretary's declaration must specify the date from which those changes take effect.

Subsection 269ZDBH(8) provides that, when specifying a date in a declaration under (1)(b), the Parliamentary Secretary is not able to specify a date earlier than the date of publication of the public notice of initiation of an anti-circumvention inquiry.

8.2. ATM's submission

ATM's application requests that, when specifying a date from which changes to the notices would take effect following the anti-circumvention inquiries, this should be the date of the public notification of the initiation of the inquiries.

This was again proposed in ATM's submission of 27 October 2015.

8.3. Proposed date of effect of changes to original notices

To ensure any alteration to the original notice provides an effective remedy to the injurious effects caused by circumvention behaviour, it is necessary to alter the original notices in such a way that the changes are applied both retrospectively and prospectively.

The Commission proposes to recommend that the original notices be altered so as to have effect from the date of initiation of this inquiry, 11 May 2015.

APPENDICES AND ATTACHMENTS

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|----------------------------------|--|
| Confidential Attachment 1 | DIBP import data listing |
| Confidential Attachment 2 | Dalian Steelforce Australian sales listing |
| Confidential Attachment 3 | Confidential information relating to goods exported by Dalian Steelforce |
| Confidential Attachment 4 | Qingdao XiangXing mill test certificates |
| Confidential Attachment 5 | Confidential information relating to goods exported by Qingdao XiangXing |
| Confidential Attachment 6 | Confidential information relating to goods exported by Company C |
| Confidential Attachment 7 | Company C Australian sales listing |