

11 December 2015

The Director
Operations 1
Anti-Dumping Commission

By email: operations1@adcommission.gov.au

cc. Mr Paul Sexton
 General Manager

 Mr Dale Seymour
 Commissioner

Dear Director,

Circumvention of securities imposed
Re. Dumping Investigation No. 301: Rod in coils exported from China

I refer to the above ongoing investigation, and the publication of *Preliminary Affirmative Determination Report No. 301* and imposition of securities under section 42 of the *Customs Act 1901*¹ on 27 November 2015.

At the outset, OneSteel welcome the improved timeliness of the preliminary affirmative determination in this case. OneSteel also support the Commissioner's finding that it was necessary to require and take securities to prevent material injury occurring to the Australian industry while the investigation continued. Unfortunately, the form of securities taken has already facilitated attempts by certain exporters and importers to circumvent the securities imposed.

Evidence of this circumvention activity is contained in a confidential attachment to this submission. In summary, it is clear on the face of this evidence that importers are prepared to avoid the intended effect of the securities imposed by continuing to undercut the Australian industry by the full extent of the preliminary dumping margins found.

As matters currently stand, Australia's anti-circumvention legislation does not extend to circumvention activity conducted during the Commission's ongoing investigation where securities have been imposed. Unless addressed through other means available to the Commission, this makes a mockery of the stated purpose of paragraph 269TD(4)(b) that securities be imposed where the Commission is satisfied that they are "required and taken to prevent material injury occurring to the Australian industry while the investigation continues".

Given the exporters' and importers' clear contempt for the Commission's processes, the Australian industry submits that there are several options open to the Commissioner to address this circumvention activity:

¹ References in this submission to statutory provisions are references to the *Customs Act 1901*.

- taking securities in the form of cash deposits under section 43;
- amending the security to be an amount worked out in accordance with the combination of the fixed and variable duty method; and
- considering the future publication of a retrospective dumping duty notice as permitted by the circumstances under subsection 269TN(3).

Securities in the form of cash deposits

The Australian industry observes that subsection 269TD(4) provides:

“If the Commissioner makes a preliminary affirmative determination:

- (a) the Commissioner must give public notice of that determination; and
- (b) the Commonwealth may, at the time that determination is made or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the Commissioner is satisfied ***that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.*** [emphasis added]

It is noted that the Commonwealth has indeed taken taken securities under section 42. By *Australian Dumping Notice (ADN) No. 2015/142*, the Commonwealth has nominated to take the security in the form of a documentary (or non-cash) security under section 43.

However, on the basis of the evidence contained in the confidential attachment to this submission, the manner and form of the proposed security to be taken has failed to satisfy the conditions of paragraph 269TD(4)(b), specifically, it fails to “prevent material injury... occurring while the investigation continues”. As a matter of policy and statutory interpretation, the form and nature of the security to be taken under section 43 must be read within the context of other provisions of the Act, namely paragraph 269TD(4)(b).

In this case, as the evidence supports the contention that material injury has **not** been prevented “while the investigation continues”, then it is entirely appropriate for the Commonwealth to change the nature and form of measure imposed. The Australian industry submits that only the taking of cash deposits can achieve the stated purpose of the legislation, given the stated actions of the importer in this case already.

Amending the security amounts to be determined in accordance with the combination of the fixed and variable duty method

Given that certain exporters and/or the importers have already indicated their intention to circumvent the intended effect of the security amounts, then the Australian industry submits that it is appropriate for the Commission to amend the security amounts imposed to be determined in accordance with the combination of the fixed and variable duty method.

This is necessary in order for the securities required and taken by the Commonwealth to be relevant and effective, given that the Commissioner has otherwise stated that he is satisfied of the need to impose securities to prevent material injury in the context of the ongoing investigation. Unless the security amounts are amended, as proposed, the purpose of the taking securities is rendered nugatory.

Publication of a retrospective dumping duty notice


The Australian industry submits that the confidential attachment includes evidence that the importer knew, or ought to have known, at all relevant times, that the goods were dumped. Given too that the volumes of the goods prior to imposing securities on 27 November 2015 were a large quantity in a short period of time, then it is appropriate for the Commission to explore whether or not a retrospective dumping duty notice should be finally imposed for operation in the period up to 90 days prior to the imposition of the security as provided for under subsection 269TN(3).

Conclusions

Although OneSteel is appalled by the contempt shown by the exporters and importers in this investigation for the authority of the Commission, the company is confident that there is sufficient power within Australia's anti-dumping legislation to address these clear examples of unashamed circumvention. I suggest that by applying a combination of the three mechanisms proposed in this submission, the Commission will frustrate these early attempts at circumvention, and prevent material injury to the Australian industry from occurring while the investigation continues.

I would be pleased to discuss any aspect of this submission in further detail with you.

Yours sincerely



Matt Condon
Manager – Trade Development
OneSteel Manufacturing Pty Ltd

Att: Confidential attachment