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PUBLIC RECORD VERSION

May 14, 2012

Ms Andrea Stone
Manager
International Trade Remedies Branch
Australian Customs & Border Protection
Canberra ACT 2600

Dear Ms Stone,

SEF No 177
Re: Meeting of 1ST May 2012

Thank you for the response re the meeting of 1st May 2012.

1. The submission I referred to during that meeting being in relation to comments expressed on ATM's "need for volume" and "lack of investment" was the one I forwarded on 29th March 2012 which included extracts of Onesteel-ATM publicly available documentation and information on those issues.
2. Given the possibility that my submission of 29th March may not have been considered I now restate some of the claims expressed in that submission. I have not supplied a non confidential version of my earlier submission of December 2011 which you consider contains confidential information that if published " could adversely affect the business of commercial interests of other interested parties".
3. I have however now addressed that matter in a separate response.
4. On the issue of ATM having the capability of supplying increasing volumes to the Australian market I was repeating our previously expressed claims that rather than have the will to invest in any new capacity Onesteel-ATM, since it wholly acquired the Smorgon Steel production facilities in August 2007, has ,as outlined in that subsequent submission, intentionally and strategically closed capacity to what it decided "right sized" production with the HDGP category being the most relevant plant closures.

5. We only need refer back to Report No 144, Section 6.4 to recall that when Onesteel-ATM mothballed, and subsequently closed, its HDG facility at Mayfield in October 2007 and August 2008 respectively, it was a period of unprecedented price levels and local demand with no dumped imports causing ATM any injury.
6. If ever there was an opportunity for ATM to increase its capability to supply the Australian market it was during that period when as detailed in Report No 144, ATM could not supply its own customers demand.
7. To demonstrate how relevant this period is for the two issues referred to is the fact that the FY 06/07 market for HDG was 110,000 tonnes with ATM, the only local producer of HDG, supplying 33,000 tonnes from its Mayfield facility, a market shortfall of 77,000 tonnes.

Imports of CHS have averaged 90,000 tonnes p.a. for the injury period and most of those imports have been to supply the shortfall on HDG locally produced goods. We allege that ATM is now no longer a truly commercial local producer of HDG.

8. It's only logical that if ATM cannot, or decides it will not produce specific goods that the market has historically and clearly continues to require, then it cannot claim to have lost sales to suppliers that have the capability and are prepared to satisfy the Australian market shortfall, other than itself sourcing such from imports which it has.

Factual - New Industry Private Investment.

9. Onesteel-ATM is a publicly listed corporate entity that essentially acquired most existing ATM assets from their original creators and it is now a corporation that is clearly and openly wanting to divest itself of the ATM assets as it has already done on two of its other "pipe" businesses, namely Onesteel selling its "Piping" business and closing its "O & G" pipe business from end of May 2012.
10. The inference is considered totally relevant:- Onesteel has informed the market by way of its recent name change and strategic direction that its future investment focus is on its captive mineral resources and not on the production of the GUC in question.
11. Why would it invest in operations it is trying to sell.

12. Given that Onesteel-ATM has historically targeted anti-dumping (and countervailing) actions against overseas mills that export goods in competition with its Distribution business while Onesteel-ATM continue to import those goods from other mills in other countries which are not included in their anti-dumping /countervailing actions, it can reasonably be concluded that Onesteel-ATM's strategic use of the Australian "dumping" system is to obtain a preferential market and competitive advantage for the Onesteel Distribution business which of course is not a local producer.
13. Such an outcome from this investigation is not only a reality but would be an abuse of process.
14. We welcome therefore the comment in SEF No 177 in section 3.5 which reads:
"If it was established that the Australian industry does not manufacture and offer for sale in Australia like goods to a particular and clearly identifiable subset of the HSS, it is open to the Minister to exclude that subset from a dumping duty notice and countervailing duty notice".
15. As previously claimed our opinion is that clearly there are two such subsets, namely:
- relevant goods having a wall thickness of 9mm or greater, and
 - circular HDG goods having a NB of up to 65mm, and even all HDG depending on the veracity of ATM's claimed external galvanizing of black pipe.

A third subset is considered to be red painted CHS for firefighting equipment.

Other Volume Considerations:

16. More on the issue of ATM being capable of supplying more volume from local production.
17. Onesteel's publicly reported results for the I.P. being FY 10/11, stated that:

"ATM volumes were down 5% compared to the prior year, but market share increased slightly"

Reference previously supplied as Non Conf. Attach # 5

18. It would be reasonable to assume that ATM 's volume included both local and imported product and based on published and industry data our estimate of that 5 % volume decline is around 9000 tonnes.
19. Section 8.2 of the ATM visit report on page 71 however ATM claim to have lost around 47,500 tonnes in lost sales to imports during the I.P and whilst no guidance is provided on what comprised those lost sales the majority of such would most likely have been HDGP which ATM had decided against producing.
20. In any event 47,500 tonnes of lost sales to imports is considerably more than the 5% stated by Onesteel in its FY 10/11 year report to the market place, shareholders and regulatory authorities in that the figure quoted by ATM is more likely to represent around 25% volume decline.
21. It has been stated before that ATM's claim that it has the capacity to supply the entire Australian market from local production is simply a misrepresentation in that it could only be valid if the entire Australian market was comprised of "Black" pipe.
22. As stated in section 6.1.1 on page 48 of the visit report, ATM categorise the following product groups of HSS:-
 - Black
 - Painted
 - ILG- i.e.: Supagal & Duragal
 - HDG
 - Downgrade
23. ATM's treatment of its Downgrade product as a distinct product category rather than be treated as "scrap" value is considered to not only cannibalize its prime sales of its other categories but can only be viewed as an attempt to accentuate price undercutting activity and these sales of an estimated 10,000 tonnes should be excluded by ACBPS from any price considerations.
24. There are, however, also specific sub sets of those product categories that are only included in the GUC not because of what ATM can and actually do produce but because of a veiled legality resulting from an applicable, but generic , Customs Tariff Classification.

Specific Sub Sets:**25. Most painted product is either Red or Blue painted.**

1. Red painted comprise circular products being piping specifically for use in manufacturing fire fighting systems and as such these tonnes do not enter the competitive general distribution market which accounts for around 90% of HSS sales. We recommend that these tonnes which ATM appear to claim are not priced on import parity considerations should be excluded from any material injury consideration.
2. Blue painted comprise non circular RHS/SHS. The specific sub sets of Blue painted include dimensions and wall thicknesses that ATM cannot physically produce. For purposes of pure clarity in terms of this investigation this subset is identified by having a wall thickness of 9mm or greater.
3. ATM cannot produce any RHS/SHS in any grade of any dimension requiring a wall thickness of 9mm or greater. These specific goods should be excluded from the GUC and even more certainly they should be excluded from any material injury analysis.
4. ATM, on our industry information is, in a practical sense, even more limited in its production capability of RHS/SHS than the 9mm or more wall thickness in that dimensionally its limitations are 800mm and since practically all RHS/SHS is produced to the structural standard AS/NZ 1163, its limited to producing these structural grades up to 6mm thickness.
5. However for purposes of clarity and simplicity we are recommending that only RHS/SHS with a wall thickness of 9mm or more be excluded on the basis of these goods being identified as a specific sub set within the GUC.

Other Sub Sets:

6. HDG circular pipe is the other most relevant category of so termed HSS goods that must be excluded from the GUC for essentially three reasons.

Firstly, ATM's claim that it now outsources its hot dipped galvanised product has to be duly and positively tested on the basis that it is simply not feasible to have the greater volume of HDG CHS required by the market, being less than 65NB, externally galvanised by the hot dipped process as industry and market experience would not only render that product uncompetitive, but simply unacceptable.

We acknowledge that Acacia Ridge black pipe goods with a NB of 80mm or more, being the larger diameter, less volume sizes, have been externally galvanized but we strongly dispute any claim that the volume, smaller diameter sizes are, or, can be externally galvanized in order that they be directly competitive with the air blown, straight length imports.

7. Secondly, on an historical basis and certainly for this injury period, there has been a significant shortfall supplied by imports. It is generally accepted that most imports of CHS, being up to 80%, are HDG to the universal standard BS 1387.
8. As is demonstrated by ABS stats imports of CHS, from all sources, have averaged 90,000 tonnes over the past five years which means that even if the HDG component is only 70%, over 60,000 tonnes of HDG have been imported on average over the injury period to satisfy the market shortfall.
9. From around December 2007 ATM produced HDG CHS at the recently acquired Acacia Ridge plant and from August 2008, the Acacia Ridge HDG facility was capped at around 27,000 tonnes p.a. ensuring the 60,000Tonnes plus shortfall still had to be supplied by imports, or by Duragal and Supergal.
10. Thirdly, expert advice combined with over fifty years of Australian case history, demonstrate that there is no product that directly competes with HDG CHS in the Australian market. ACBPS has been provided with that expert opinion.
11. The suggestion that Duragal or Supagal competes with HDG is contrary to factual experience and the single example posed by ATM must be subjected to closer scrutiny, because if it were truly valid, ATM would have produced and sold far greater volumes of Duragal and Supergal.

ATM Investment:

26. Contrasting Onesteel's obvious lack of confidence in this industry is the private investment that established the new producer ITM during the very investigation period of FY 2010/2011 (I.P)
27. ITM has commissioned a modern, efficient mill and any reasonable person would accept that the necessary private investment required for establishing a new industry entrant would only be committed following a detailed market analysis and on the expectation that there will be a profitable return on investment.

28. ITM may not have responded to ACBPS by offering relevant data in the prescribed format and whilst the ACBPS may not be obliged to otherwise engage with "an ITM", its factual investment to become a new market entrant during the I.P not only belies the ATM claim of a negative investment environment, but it must, in our opinion, be taken into consideration by the ACBPS when determining causality.

ATM has been the only local producer of HDG during that period and rather than make any investment in an attempt to supply more volume ATM has reduced its capacity to supply. We say it is now zero.

29. As stated, up to October 2007 ATM produced HDG CHS at its Mayfield plant and for the FY 06/07 it is estimated ATM supplied the market with some 33,000 tonnes in an estimated market size of 110,000 tonnes, a market shortfall of 77,000 tonnes or 70%. The Mayfield HDG facility was mothballed in October 2007 following Onesteel's total acquisition of ATM in August 2007 and was subsequently closed by Onesteel in August 2008.

RECOMMENDATIONS:

30. The CEO recommend to the Minister that the clearly identified sub-sets of goods included in the GUC be excluded on the basis of either there not being available from ATM's local production or that the imports of such a subset are not injurious to ATM's local production.
31. The CEO recommend to the Minister that imports needed to satisfy an obvious and continuing market shortfall be excluded from any material injury analysis on the basis that they are in the public and national interest.
32. The reality in respect of this investigation is that most imports from countries other than China have, contrary to the applicants unreliable calculations have very low dumping margins and whilst imports from China are not at present in that category, most imports from China are considered to be the HDG needed to satisfy the market shortfall.

Sincerely,



M J HOWARD - Representative