ASA SEF Submission: Annexure 1 - Response to the SEF document:

Responding specifically to items in the SEF, the ASA offers the following comments:

1.3.1

The preliminary finding and conclusion that:

- "There is an Australian industry producing like goods" needs to be challenged. This affects approximately 40 per cent of the goods under consideration and is further dealt with under 3.4 Like Goods

- The second point is that 1.3.1 incorrectly indicates that there are four Australian producers of HSS. This is fundamentally incorrect. Onesteel Oil & Gas Pipe is was (prior to its closure) a division of the applican (Onesteel) in the same manner that ATM is.

Note the correct summary of HSS manufacturers is:

- 1. Onesteel – two divisions – ATM – significant closure of product groups
  - Oil & Gas Pipe (**closed**)[1]
- 2. Orrcon
- 3. ITM - discounted as insignificant despite their volumes during the period under investigation accounting for the majority of the Applicants claims of diminished sales volumes.

3.4 Like Goods

Comments about Australian industry & preliminary finding of like goods.

Further to the ASA submissions on Like Goods & the requirements of the Customs Act S269T(1), HDGP does not meet the relevant criteria. i.e:

(i) Physical likeness – For HDGP vs Industrially galvanised black pipe with resultant zinc dags, excessive internal zinc & the stark physical difference demonstrated during Customs verification visits

For large diameter pipe there is simply no like product domestically manufactured.

(ii) Commercial Likeness – HDGP vs Black + Zinc has $1000 cost extra, unrealistic lead time, reflected in lack of tonnes sold).

Note Duragal is more appropriately compared to painted Black pipe[2].

[1] Onesteel ASX Release 15 March 2012

[2] Australian Steel Association Submission – Route to Market, Onesteel ATM Application, Custom's Onesteel ATM Visit Report & Like Goods; 13th February 2012
Also Attachment 3: Non Like Goods in application

(iii) Functional likeness - conveyance of fluids & bending /fabrication unable to be undertaken with black pipe that has subsequently been industrially zinc coated.

(iv) Production Likeness -

The different & still prevalent production feed of Skelp in China, the unavailability of air blowing and straightening, post galvanising, are examples of notable production differences that result both in a different cost to make and sell but also 'unlike' product once manufactured.

Para 2 page 18 of SEF states that there are "hundreds" of potential models of HSS.

Sections 3.51 and 3.5.2 of the SEF then note two clear key product groups for which there are not like goods being HDGP and large diameter pipe.

Section 3.51 Whilst the ASA takes some relief that "Customs have not taken a full assessment of whether Duragal & Supagal is like to imported HDGP", it also requests urgent consideration of this matter in light of:

- Extensive submissions highlighting that the Duragal /Supagal are not like products[3]
- Demonstration of the different production processes during Customs verification visits
- Onesteel's own Substitution Tables that compare Duragal to painted Black pipe
- Independent technical advice that highlights that [4]:
-

"the two products are not interchangeable"

" there is manifestly no comparison between the products or their intended uses"

Similarly any reliance on the disingenuous claim of Black pipe being industrially post galvanised in any way being considered a Like Products has , the ASA consider been comprehensively and without question demonstrated to <u>not be able</u> to be considered as a like good:

(i) Not physically alike - Customs verification visit
(ii) Not commercially alike- Cost +$1,000; lead time, only (potentially) available as an invitation to treat
(iii) Not functionally alike - internal fluid transfer a/c not air blown
(iv) Not with Production Likeness - non airblown & straightened

Above would be reinforced by Onesteel confirming specifically the tonnes sold of, less than 65mm industrially galvanised black pipe since the August 2011 (8 months ago) closure of HDGP production.

[3] Australian Steel Association Submission – Route to Market, Onesteel ATM Application, Custom's Onesteel ATM Visit Report &
Like Goods; 13th February 2012

[4] HSS Case no 177: Graham Group Submission

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1.34: Economic Condition of the Industry - Injury

With regard to Section 1.34 of the SEF, it is commented that the Applicant experienced injury in a number of forms. Considering each:

(i) Price suppression -

The ASA has repeatedly advocated that imports represent the only source of independent competition for steel inputs for Australia's downstream manufacturers.

Accordingly there is a need to distinguish between prices being suppressed due to fair price competition and the attribution of injury due to alleged dumping.

It is particularly relevant to note that the Applicant had announced price increases of over **40 per cent** for the period under investigation[5]. As a corollary statement, the Applicant has additionally announced a further 6 per cent price[6] increase in the days prior to immediately the release of the Statement of Essential Facts.

Without viable independent supply options, as represented by imports, there is insufficient competitive pressures in place to curb the market power of the Applicant to radically drive up prices.

Unchecked, a 40 per cent plus increase in input costs would have a decimating effect on the competitiveness of Australia's manufacturing sector that is clearly not in the national interest.

(ii) Price depression – per above, though it is additionally noted per 8.4.1 of the SEF `downgraded product' is inappropriately included in the consideration of price depression.

Simply put, the Applicant's inability to manufacture product that is fit for purpose and is resultantly downgraded and sold at a discount cannot be attributed or related to import pricing.

Accordingly, as a matter of principle, downgrades should be excised from price and volume material injury considerations.

(iii) Decreased sales volume -

There simply cannot be any claim of material injury due to decreased sales volume.

Notably:

- The market declined by 10 per cent in FY2011[7].
- Imports from the countries under investigation **declined** by 18 per cent during the period under investigation.

  It strains the bounds of logic for a group of imports to be ascribed as causing material injury by virtue of their price and yet in the same period manage to concede 18 per cent by volume.

[5] Onesteel Operational Site Tour 2 May 2011 (pages 18 and 38)
[6] Onesteel Price Increase: 13 April 2012 -- Attachment 1
[7] SEF 5.4 Market Size: page 24

- Reinforcing this, Onesteel ATM gained market share, therefore by its' own volition, Onesteel ATM have chosen to sacrifice price in order to gain additional volume and share.

- ASA also detailed that ATM has made a series of conscious, strategic decisions that have adversely affected its business, including refusing to directly sell to large segments of the market, and a lack of investment over the investigation period with particular reference to ATM's decision in 2007/2008 (the peak period for HSS profits) to limit its HDG HSS capacity and to focus on 'high end' HSS products.

In addition to the above factors there were significant other attributable factors that in conjunction with the above overwhelm any consideration of the imports from the countries under consideration being the causal link of the Applicant's claims of material injury.

- a new Australian manufacturer (ITM) entered the HSS market during the investigation period, and has grown significantly since that time by investing in new technology. This investment is in contrast to the Applicant's divestment strategy and negates claims that material injury was to the industry as opposed to the Applicant.

- The exchange rate has been formally noted by Onesteel as impacting competitiveness and prices attainable in media releases to the market[8]

- Imports from countries not subject to the investigation, including those from Onesteel's exclusive import channels, <u>rose</u> by 66 per cent during the PUI.

The Australian Steel Association contends that it is impossible to make any fair and reasonable assessment of material injury without consideration of the price and volume of the Applicants imports, and the extent to which they contribute to the 66 per cent increase in volumes in the 2010/11 year.

Furthermore the ASA request and urge that AC&BPS investigate the extent to which the claims of material injury were attributable to the Applicant's exit strategy to displace inefficient Australian manufactured HSS with exclusive imports not subject to this Application.

(iv) Lost profit & profitability

– the closure of HDGP manufacture at Mayfield and the recently announced Oil & Gas Pipe closure have enabled Onesteel to realise profits and positive cashflows as it has implemented its transition to an import & distribute strategy. This is counter to the SEF finding.

-Additionally, Onesteel have been insulated as their quarterly HRC purchases quarterly pricing is benchmarked against import parity HRC prices.

[8] Onesteel 2011 Annual Report

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1.35: Material Injury:

The Australian Customs & Border Protection Service Anti Dumping Manual states

"Before any remedial action can be taken against dumped and/ or subsidised imports, it must be demonstrated that the Australian industry producing like goods is injured, and that the injury is caused by dumping (and or subsidised) imports[9].

Therefore prior to determining a finding of material injury there needs to be:

(i) A demonstration that there is material injury

(ii)Clearly establishment that it affects the **whole Australian industry** and not just an interested party.

(iii) In addition, for measures to be imposed there must also be a **direct** or discernable **causal link** between the material injury and the dumping / subsidisation[10]

The ASA therefore request AC&BPS to clarify the extent to which the `uplifted' (artificial) construction of costs & attribution of profit margins enabled a discernable link to be established & how this can be attributed as causal in light of the clear and direct impact of:

- A **five fold** increase in import volumes countries not subject to this investigation.
- Imports from the countries alleged to have dumped significantly **declining (by 23%)** during the period under investigation[11]'
- A 10 per cent decrease in the market in FY2011[12]
- A new Australian market participant during the period under investigation[13] that of itself accounts for lost volume claims by the Applicant.
- Extensive commentary by the Applicant in ASX and industry presentations that the Australian exchange rate was a major factor affecting financial performance.

5.4 : Market Size

The 10% decrease in FY2011 is noted.

6.3: Market Situation Assessments

Consideration of:

S269TAC(1) & (2) requirements being met. Comparison of normal values from independent exporters deemed not to be subsidised.

Note the reference to theAluminium extrusion case that we understand is the subject of legal challenge.

[9] Australian Customs and Border Protection Services Dumping & Subsidy Manual June 2009 21 Causation;21.1 Context
[10] Productivity Commission Inquiry Report No48, 18 December 2009,6.4, page 109
[11] References to be incl
[12] Statement of Essential Facts No 177, 5.4 Australian Market Size; page 24
[13] Statement of Essential Facts No 177, 9.93 New Australian Industry entrant; page 63