



Anti-Dumping Commission
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CANBERRA ACT 2601

Mr Paul O'Connor
Member, Anti-Dumping Review Panel
c/- ADRP Secretariat
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By e-mail: ADRP@industry.gov.au

Dear Mr O'Connor,

**CERTAIN HOT ROLLED COIL STEEL EXPORTED FROM
JAPAN, THE REPUBLIC OF KOREA, MALAYSIA AND TAIWAN**

I write with regard to the public notice published on 29 January 2018, advising your intention to review the decision of the then Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) to publish a notice under subsection 269ZHG(1)(b) of the *Customs Act 1901*¹ (the Reviewable Decision). The Reviewable Decision was published on the Anti-Dumping Commission (Commission) website on 18 December 2017, referred to in Anti-Dumping Notice No. 2017/166.

I understand that the Commission has provided you with the confidential versions of documents referred to in *Anti-Dumping Commission Report No. 400*, as well as those referred to in *Statement of Essential Facts No. 400*, relevant dumping margin calculations and any confidential versions of submissions received. Please do not hesitate to ask if you require any further relevant information (as defined in section 269ZZK) associated with this matter.

I have considered the applications for the Reviewable Decision and have decided to make some comments on the various grounds raised therein. Please find attached my comments (**Attachment A** refers), which I submit for your consideration.

I remain at your disposal to assist you in this matter, and I and / or officers from the Commission would be happy to participate in a further conference if you consider it appropriate to do so.

Yours sincerely,

Dale Seymour
Commissioner, Anti-Dumping Commission

28 February 2018

¹ All legislative references are to the *Customs Act 1901* unless otherwise stated.

Attachment A

I make the following submissions in response to the grounds set out in the notice published on 29 January 2018. These grounds are with respect to the consideration by the Anti-Dumping Review Panel (ADRP) of the Reviewable Decisions of the Parliamentary Secretary and reported in *Anti-Dumping Commission Report No. 400* (REP 400).

I have grouped my submissions by reference to the grounds raised by China Steel Corporation (CSC), Chung Hung Steel Corporation (Chung Hung) and Shang Chen Steel Co., Ltd (Shang Chen) - in this Attachment, these three exporters are collectively referred to as “the applicants”. I note that the applicants have each raised two grounds of review in very similar terms, and that there are specific circumstances applying to each of the applicants which have also been referred to in the applicants’ confidential applications.

All of the matters raised by the applicants relate to the Commission’s approach to and its findings concerning the likelihood of dumping and material injury continuing or recurring. I note that section 7.3.2 in REP 400 sets out the Commission’s approach to its assessment. In a continuation inquiry and the assessment of whether dumping and injury will continue or recur, a range of factors are relevant and no one factor can necessarily provide decisive guidance. The Commission’s conclusions concerning Taiwan are set out in section 7.4.4 of REP 400, which is based on the analysis in chapter 7 more broadly.

I make specific observations in respect of each ground as follows.

GROUND ONE – The Commission erred in finding that future exports by the three applicant exporters were likely to be exported at dumped prices in the absence of measures

The applicants contend that the Commission has not achieved the relevant evidentiary threshold required by the Act. In summary, the applicants claim that there are flaws in the Commission’s assessment of excess production capacity, its apparent reliance on the applicants’ export prices to a third country (Vietnam), and to the apparent influence of prices paid in the Australian market for hot rolled coil (HRC) exported from the People’s Republic of China (China).

Capacity

As can be seen from **Confidential Attachment 5 – Exporter Capacity Analysis** to REP 400, the excess capacity available to each of the applicants varied in percentage terms. However, when examined in the context of the volume of HRC actually imported during the inquiry period (as set out in **Confidential Attachment 1 – Market Analysis**), the excess capacity was nevertheless large in absolute terms for each of the applicants in its own right.

Further, whilst **Confidential Attachment 1 – Market Analysis** suggests a slightly different pattern of trading relationships than has been claimed by Chung Hung, the Commission broadly agrees that the applicants have maintained relative stability in each of their trading relationships with their Australian customers. However, the Commission does not agree that this is “evidence” that the applicants “have not sought to increase their customer base in Australia” – they may have attempted to do so, but failed. More likely, there will be a range of reasons that explain the apparent stability in the market.

However, the Commission does not agree with the applicants' view that improvements in capacity utilisation during the inquiry period, achieved during a period when each was exporting HRC at undumped prices, "refutes the Commission's assertion that in the absence of measures, an exporter is likely to export at dumped prices in order to utilise its excess capacity." As noted above, this factor - the availability of excess capacity - is only one factor, and it is not necessarily decisive.

HRC exported from Taiwan to Vietnam

The Commission notes the concerns raised by the applicants as to the significance that the Commission may have placed on the evidence of prices for HRC from Taiwan and China in the Vietnam market. This matter was raised by the ADRP member in a conference held on 13 February 2018.²

The Commission considers that the conference summary is an accurate explanation of how the evidence was used. The evidence demonstrated that price competition occurs in Vietnam, and that prices for HRC from Taiwan and China appear to be in closer competition than prices from Korea or Japan in the Vietnam market.

The Commission compared prices for HRC exported from China with HRC exported from the countries subject to measures in the Australian market (and discussed below). Although not stated explicitly in REP 400 at section 7.4.4, the Commission found a similar pattern in the Australian market (that is, HRC from Taiwan and China appear to be in closer competition than prices from Korea or Japan). The Commission concluded that, in the absence of the anti-dumping measures, closer price competition between HRC exported from China and Taiwan was likely.

HRC exported from China

The applicants refer to a number of cases to explain the relevant legislative test for recommending that measures be continued. The Commission considers that its approach is consistent with those case extracts. The Commission explained its approach to assessing the likelihood of injury recurring if the measures were not continued in REP 400 at section 7.2. The Commission's assessment "of the likelihood of certain events occurring and their anticipated effect [...] necessarily requires an assessment of a hypothetical situation. [...] [T]he Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner's conclusions and recommendations must nevertheless be based on facts."

The Commission's findings are based on the facts available to the Commission relating to the inquiry period (as was defined in REP 400), from which the Commission drew reasonable inferences concerning the likely behaviours of exporters (and importers) in a market unhindered by the anti-dumping measures. As a result of considering the available evidence, the Commission was satisfied that the expiration of the measures against exports of the goods from Taiwan would lead to a continuation of the dumping and the material injury that the measures were intended to prevent.

² A non-confidential summary of that conference is available on the [ADRP website](#).

In the course of the inquiry the Commission undertook a comparison between the level of the anti-dumping measures and the actual prices being paid for HRC exported from Taiwan. The analysis, contained in **Confidential Attachment 1 – Market Analysis** and referred to in some detail in section 7.3.2.5 of REP 400, provides important context to the above factors. The Commission’s analysis demonstrates that “prices from Taiwan appear to more closely correlate to the current anti-dumping measures than HRC from any exporters from the other subject countries.”

In other words, the Commission concluded that Taiwan prices were effectively being held to an arbitrary price point (that is, prices tended to be set by reference to the relevant floor price) rather than fluctuating in response to normal market forces. Whilst the applicants contend that certain facts (such as Taiwan’s share of the Australian market and its relative stability) supports a view that Chinese exports have had little impact on Taiwanese export volumes or market share, and that Taiwanese exports do not compete on price with Chinese exports, the Commission considers that this is predominantly a function of the present anti-dumping measures.

The applicants point to the relatively significant negative dumping margins calculated, and claim that “for the Commission’s assumption to be valid, it would require evidence demonstrating that [the exporter] would reduce its prices by more than [its dumping margin].”

The Commission notes that such an analysis was not undertaken during the inquiry, and has not been referred to in REP 400. However, the Commission considers that such an analysis (based on a cursory examination of **Confidential Attachment 4 – Price Analysis** to REP 400) would be likely to show a price differential between HRC from China and Taiwan which exceeds each of the dumping margins found for the applicants in several quarters.

GROUND TWO – The Commission erred in finding that future exports by the three applicant exporters were likely to lead to a recurrence of material injury in the absence of measures.

The test in subsection 269ZHF(2) is whether the Minister is “satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.” As noted by the ADRP concerning an earlier continuation inquiry,

“While what has occurred with exports and the Australian market during the inquiry period is relevant to a continuation inquiry, it cannot be determinative. It is relevant to the extent it indicates what is likely to happen if the measures expire.”³

This is how the Commission approached the task of assessing the materiality of the injury that might recur. The Commission does not consider that its approach was inconsistent with the approach contemplated by the applicants.

³ [ADRP Report No. 44](#) *Clear float glass from the People’s Republic of China, the Republic of Indonesia and the Kingdom of Thailand*; paragraph 46.

Factors examined

Turning to the factors that were examined in REP 400, the Commission has established that the goods exported from Korea and Japan are unlikely to be dumped and to cause material injury in the future, hence the measures were not continued in respect of those countries. As was noted in REP 400, the volumes from these sources are likely to be small. It is reasonable to infer that the Commission found that HRC exported from these countries will have minimal injurious effect on the Australian industry.

The Commission considers that HRC exported from China is a present feature of the market, and BlueScope's economic performance has improved in spite of the presence of those goods. Again, it is reasonable to infer that the Commission found that HRC exported from China has had minimal injurious effect on the Australian industry.

The Commission notes that sections 7.4.4 and 7.5 of REP 400 indicate an expectation that the absence of the anti-dumping measures would result in the dumping of HRC by exporters from Taiwan, which would place price pressure on the Australian industry. Noting the Australian industry's only recent return to profitability, that price pressure will likely see the Australian industry cut its prices in order to maintain market share. In the context of the economic condition of the Australian industry (as set out in chapter 5 of REP 400), the Commission found that a recurrence of dumping is likely to result in material injury.

Comparison of export prices and non-injurious price

The Commission considers that the applicants' arguments concerning their relative export prices and the non-injurious price is somewhat circular. Given the Commission's view that the existing anti-dumping measures have tended to prop up Taiwan export prices (which is the intent of the present measures in order to prevent further material injury from occurring), it does not then follow that the absence of injury during the inquiry period is a rational basis for not continuing the measures that achieved that outcome.

Further, the Commission's task is not to consider whether injury occurred during the inquiry period. Ostensibly, this is the purpose of a comparison between the export price and the non-injurious price, and is one of the tests undertaken by the Commission during an original investigation. Noting that the market is already impacted by the anti-dumping measures, such a comparison in a continuation inquiry appears to be of little relevance.

Conclusion

As a general comment, I consider the applicants have placed undue weight on a limited number of factors, potentially at the expense of the totality of the evidence.

I remain of the view that, having given due consideration to the matters raised by the applicants, and addressed in this Attachment, the approach taken in the continuation inquiry, and as outlined in REP 400, ought to be considered as being consistent with the relevant legislation and has resulted in the correct and preferable decision.