



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901

**REVIEW OF ANTI-DUMPING MEASURES
NO. 419**

CONSIDERATION REPORT

**CONSIDERATION OF AN APPLICATION FOR A REVIEW OF ANTI-
DUMPING MEASURES APPLYING TO**

HOLLOW STRUCTURAL SECTIONS

**EXPORTED TO AUSTRALIA FROM THE PEOPLE'S
REPUBLIC OF CHINA, REPUBLIC OF KOREA, MALAYSIA
AND TAIWAN**

July 2017

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ABBREVIATIONS

Abbreviation	Full title
ADN	Anti-Dumping Notice
the Act	the <i>Customs Act 1901</i>
ATM	Austube Mills Pty Ltd
China	the People's Republic of China
CHS	circular hollow sections
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	certain hollow structural sections as set out in section 2.3 of this report
HRC	hot rolled coil
HSS	hollow structural sections
ILG	in-line galvanised
Korea	the Republic of Korea
NIP	non-injurious price
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
review period	1 July 2016 to 30 June 2017
RHS	rectangular or square hollow sections

1 SUMMARY AND RECOMMENDATION

1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by the Australian manufacturer, Austube Mills Pty Ltd (ATM), for a review of the anti-dumping measures relevant to exports of hollow structural sections (the goods or HSS) to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan as they affect exporters of HSS generally. The anti-dumping measures are in the form of a dumping duty notice for China, Korea, Malaysia and Taiwan, and a countervailing duty notice for China.

The anti-dumping measures applying to exports of HSS to Australia from China, Korea, Malaysia and Taiwan were due to expire on 2 July 2017. By notice published on 26 June 2017, the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science¹ (Parliamentary Secretary) determined that the dumping duty notice and countervailing duty notice would continue in force after 2 July 2017 and that, from this same date, the notices would have effect as if different variable factors had been fixed relevant to the determination of duty.

The applicant contends that it is appropriate to review the anti-dumping measures applying to HSS on the basis that one or more of the variable factors relevant to the taking of the anti-dumping measures have changed. ATM alleges that the variable factors that have changed are export price, normal value and the amount of countervailable subsidy.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in dealing with an application for a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject an application, he is required to publish a notice indicating that he is proposing to review the anti-dumping measures covered by the application.

¹ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of these reviews, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

² All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

1.3 Findings and conclusions

For the reasons outlined in this report, the Commission is satisfied that:

- the application complies with section 269ZB; and
- there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures as they affect exporter of HSS generally have changed.

1.4 Recommendation

The Commission recommends that the Commissioner:

- not reject the application for a review of the variable factors for both the dumping duty notice and countervailing duty notice;
- initiate a review of the variable factors in relation to the dumping duty notice and the countervailing duty notice, as they affect exporters of HSS generally; and
- set the review period as 1 July 2016 to 30 June 2017.

2 BACKGROUND

2.1 History of the existing anti-dumping measures

The anti-dumping measures the subject of the review application were initially imposed by public notice on 3 July 2012 by the then Minister for Home Affairs following consideration of *International Trade Remedies Branch Report No. 177*. The measures currently apply as follows:

- the dumping duty notice applies to all exporters of HSS from China, Korea, Malaysia and Taiwan; and
- the countervailing duty notice applies to all exporters of HSS from China except Dalian Steelforce Hi-Tech Co Ltd, Huludao City Steel Pipe Industrial Co Ltd and Qingdao Xianxing Steel Pipe Co Ltd.

Since measures were initially imposed in July 2012, the Commission has conducted numerous inquiries relating to HSS. Full details can be found on the Commission's electronic public record at www.adcommission.gov.au. A summary of the inquiries in relation to the goods is set out in Table 1 below.

Case type and no.	ADN No. ³	Date	Country of export	Findings
Investigation REP 177	2012/31	3 July 2012	China, Korea, Malaysia and Taiwan	Dumping and countervailing duties imposed
Reinvestigation REP 203	2013/35	13 May 2013	China, Korea, Malaysia and Taiwan	REP 177 affirmed with variation to dumping duty applicable to Dalian Steelforce (China)
Exemption EX 0017	2014/51	17 June 2014	China, Korea, Malaysia and Taiwan	Exemption granted ⁴
Federal Court decision	2016/09	17 February 2016	China	Revised dumping duty applicable to Dalian Steelforce Countervailing duty notice not applicable to Dalian Steelforce
Anti-circumvention REP 291	2016/24	18 March 2016	China, Korea and Malaysia	Original notices amended to expand the description of the goods covered by the notices
Exemption EX0043	2016/52	16 May 2016	China, Korea, Malaysia and Taiwan	Exemption not granted

³ Anti-Dumping Notices are available on the Commission's website at www.adcommission.gov.au

⁴ Exemption EX 0017 was replaced, effective 16 January 2016, by Ministerial Exemption Instrument No1 of 2016.

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Case type and no.	ADN No. ³	Date	Country of export	Findings
Continuation REP 379	2017/70	21 June 2017	China, Korea, Malaysia and Taiwan	Measures continued and revised variable factors
Review REP 381	2017/71	22 June 2017	Malaysia	Changed variable factors for Alpine Manufacturing

2.2 The current application

On 23 June 2017, ATM lodged an application requesting a variable factor review of the anti-dumping measures applying to HSS exported to Australia by all exporters from China, Korea, Malaysia and Taiwan. ATM's application was lodged prior to the publication of a notice, on 26 June 2017, declaring the outcome of the last review of the dumping duty notice.⁵

ATM claims that there has been a change in certain variable factors (being export price, normal value and the amount of countervailable subsidy received) relevant to the taking of the anti-dumping measures.

ATM stated that the application was supported by another Australian HSS manufacturer, Orrcon Steel Limited.

The application is not prevented by subsection 269ZA(2), which requires that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a dumping duty notice or a notice declaring the outcome of the last review of the dumping duty notice.

Pursuant to subsection 269ZC(1), the Commissioner must examine the application and, within 20 days after receiving it, decide whether to reject the application. As such, the decision to reject the application must be made no later than 13 July 2017.

If the Commissioner is not satisfied, having regard to the application and to any other information that he considers relevant, of one or more of the matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

2.3 The goods subject to the anti-dumping measures

The goods the subject of the current anti-dumping measures (the goods or HSS) 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. 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 in-line galvanised (ILG), pre-galvanised or hot-dipped galvanised (HDG) and non-galvanised HSS.

⁵ Anti-Dumping Commission Report No.381.

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

As a result of *Anti-Dumping Commission Anti-Circumvention Inquiry No. 291*, the anti-dumping measures were altered to specify different goods that are to be the subject of the original notices (to include two additional tariff classifications for certain exporters as specified below).

2.4 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37)
- 7306.61.00 (statistical codes 21, 22 and 25)
- 7306.61.00 (statistical code 90)⁶
- 7306.69.00 (statistical code 10)
- 7306.50.00 (statistical code 45)⁷

⁶ These tariff subheadings only apply to: Dalian Steelforce Hi-Tech Co. Ltd. (China); Tianjin Friend Steel Pipe Co. Ltd. (China); Tianjin Ruitong Iron and Steel Co. Ltd. (China); Roswell S A R Limited (China); and Alpine Pipe Manufacturing SDN BHD (Malaysia).

⁷ Ibid.

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative background

Subsection 269ZB(1) requires that the application be in writing, be in a form approved by the Commissioner for the purposes of that section, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Without otherwise limiting the matters that can be required by the form, subsection 269ZB(2) provides that an application must include:

- a description of the kind of goods to which the anti-dumping measures the subject of the application relate; and
- a description of the anti-dumping measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the anti-dumping measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount;
- if the application is based on circumstances that in the applicant's view indicate that anti-dumping measures are no longer warranted, evidence (in accordance with the form) of the circumstances.

Subsection 269ZC(2) specifies the matters which must be considered in making a decision whether to reject an application. If the Commissioner is not satisfied of the matters referred to in subsection 269ZC(2), he must reject the application. The matters to be considered are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

3.2 Assessment of the application for a review of variable factors

3.2.1 Compliance with section 269ZB

The application lodged by ATM:

- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*) and contains such information as the form requires (including evidence in support of the amount by which the variable factors have changed since last

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ascertained and information on the causes of the change to the variable factors and whether these causes are likely to persist);

- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relates;
- provides a description of the anti-dumping measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the variable factors relevant to the taking of the anti-dumping measures that have changed; the amount by which the variable factors have changed; and information that establishes that amount.

The Commission is satisfied that the application complies with section 269ZB of the Act.

3.2.2 Variable factors

The following sections address the applicant's claims that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of the anti-dumping measures in respect of the goods have changed.

The variable factors relevant to the taking of the anti-dumping measures

Pursuant to subsection 269T(4E) of the Act, the variable factors relevant to a review under Division 5 of anti-dumping measures are defined as:

- if the goods are the subject of a dumping duty notice, the ascertained or last ascertained:
 - normal value of the goods; and
 - export price of the goods; and
 - non-injurious price of the goods.
- if the goods are the subject of a countervailing duty notice, the ascertained or last ascertained:
 - amount of countervailable subsidy received in respect of the goods; and
 - export price of the goods; and
 - non-injurious price of the goods.

The anti-dumping measures on HSS exported to Australia from the nominated countries were due to expire on 2 July 2017. Following consideration of *Anti-Dumping Commission Report No. 379 (REP379)*, the Parliamentary Secretary, by notice published on 26 June 2017, determined that the dumping duty notice and countervailing duty notice would continue in force after 2 July 2017 and that, after 2 July 2017, the notices would have effect as if different variable factors had been fixed relevant to the determination of duty.

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In its application for review, ATM claimed that the variable factors relevant to the measures in place at the time it made its application (the old measures) and the measures it anticipated would be in place as a result of Continuation Inquiry 379 (the new measures) had changed.

The investigation period for the original investigation that established the majority of the old measures was 1 July 2010 to 30 June 2011. However, the old measures applying to the particular Chinese exporter - Tianjin Youfa Steel Pipe Co Ltd and the Korean exporter - Kukje Steel Co Ltd, were based on reviews, both with inquiry periods of 1 July 2013 to 30 June 2014.

The inquiry period for the Continuation Inquiry was 1 July 2015 to 30 June 2016.

Under section 269ZC of the Act, the Commissioner must reject the application if, inter alia, he is not satisfied that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of the anti-dumping measures have changed. In the present circumstances, the Commission considers that the Commissioner needs to be satisfied that there appear to be reasonable grounds for asserting that the measures in place at the time of ATM's application (ie the old measures) have changed.

Another possible view is that the Commissioner needs to be satisfied that there appear to be reasonable grounds for asserting that the measures in place at the time of his decision (ie the new measures) have changed. Accordingly, the Commission has considered whether there appear to be reasonable grounds for asserting that the old and the new measures have changed.

The Commission considers that the Commissioner must be satisfied that there appear to be reasonable grounds for asserting that one or more of the variable factors has changed. It is not necessary for there to be reasonable grounds for asserting that all the variable factors have changed.

Ascertained normal value

This variable factor is relevant to the dumping duty notice.

ATM noted that the Commission has estimated⁸ that the input material, hot rolled coil (HRC) accounted for over 90 per cent of the cost of manufacturing HSS and is, therefore, a key determinant of domestic prices and normal values. ATM provided a chart of domestic HRC prices in Korea, Taiwan and China from October 2010 to April 2017. The prices were obtained from the global steel industry consultancy company, MEPS (International) Ltd.

The information provided by ATM shows that the reported HRC prices for China, Korea, and Taiwan for the period June 2016 to May 2017 were significantly different

⁸ Statement of Essential Facts 379 p19

to the prices in the periods 2010/11, 2013/14 and 2015/16 as shown at **confidential appendix 1**.

While HRC price data were not available for Malaysia, ATM stated that it understood that Malaysian HRC pricing had followed a similar trend to the other nominated countries. To support this view, it provided examples of media reports from December 2016 indicating that Malaysian domestic steel prices had risen by over 10 per cent year-on-year.

The Commission examined indicative Malaysian HRC pricing sourced from a reputable steel pricing service. The information shows that average Malaysian HRC pricing in 2016/17 had changed from 2015/16. The Commission also compared the 2016/17 HRC pricing with information on the 2010/11 Malaysian HRC pricing obtained during the original investigation into HSS⁹ and found that the pricing in 2016/17 was also different to 2010/11. The Malaysian HRC pricing is at **confidential appendix 2**.

The Commission considers that ATM has provided information to establish that HRC prices applying during the period used to establish the normal values in relation to both the old and new measures have changed. As there is an established nexus between HRC prices and HSS prices, the information provided by ATM is a reasonable basis on which to assert that the normal values of exports to Australia from the nominated countries have changed.

Ascertained export price

This variable factor is relevant to the dumping duty notice and the countervailing duty notice.

ATM stated that the increasing HRC prices in 2016/17 compared to 2015/16 meant that export prices had changed (although ATM stated that it had observed that export prices to Australia from the nominated countries had not increased to fully reflect the rise in HRC prices, particularly for one exporter).

ATM provided media commentary about the continued strong demand for steel in China to support its belief that the higher HSS pricing would be sustained.

The Commission compared the weighted average export prices of HSS from the nominated countries for the period 1 July 2016 to 31 May 2017 (2016/17), sourced from the Australian Border Force's import database, to the ascertained export prices relevant to the taking of the old measures and the new measures (**confidential appendix 3**). The comparison shows that actual weighted average export prices in 2016/17 were different to ascertained export prices relevant to the old measures and the new measures.

⁹ Australian Customs and Border Protection Service Report No. 177

Amount of countervailable subsidy received

This variable factor is relevant to the countervailing duty notice applying to exporters from China.

ATM claimed that the amount of countervailable subsidy received by Chinese HSS exporters had changed due to the existence of a new subsidy program. ATM stated that there was substantial evidence that private bodies acting under the entrustment or direction of the Chinese government or a public body were supplying HRC to HSS manufacturers at less than adequate remuneration.

ATM provided no evidence in relation to its claim of private entities providing HRC to HSS exporters under the entrustment or direction of the Chinese government or a public body at less than adequate remuneration. Further, the Commission is unaware of any information that might suggest that this is the case.

3.3 Conclusions and recommendations

The Commission has considered the application for a review of the variable factors in accordance with sections 269ZB and 269ZC. Based on the application and other relevant information set out in this report, the Commission is satisfied that there appear to be reasonable grounds for asserting that the ascertained normal value and ascertained export price have changed. The Commission is not satisfied, on the evidence available, that there appear to be reasonable grounds for asserting that the amount of countervailable subsidy received has changed. Nevertheless, as there appear to be reasonable grounds for asserting that export price (a variable factor of the countervailing duty notice) has changed, the review should include the countervailing duty notice applying to China. In the course of the review, the Commission will consider any evidence presented on the existence of new countervailable subsidy programs.

The Commission is satisfied that:

- the application complies with section 269ZB; and
- there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of the anti-dumping measures have changed.

The Commission recommends that the Commissioner:

- not reject the application for a review of the variable factors for both the dumping duty notice and countervailing duty notice as they apply to exporters generally; and
- set the review period as 1 July 2016 to 30 June 2017.