



PUBLIC RECORD

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 381

REVIEW OF ANTI-DUMPING MEASURES

HOLLOW STRUCTURAL SECTIONS

EXPORTED FROM MALAYSIA

BY

ALPINE MANUFACTURING SND BHD COMPANY

April 2017

SEF 381 Hollow Structural Sections – Malaysia

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ABBREVIATIONS

ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
Alpine	Alpine Manufacturing SND BHD Company
the applicant, Croft	Croft Steel Traders Pty Ltd
China	People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
FOB	Free on Board
the goods, HSS	hollow structural sections
Korea	Republic of Korea
NIP	non-injurious price
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
SEF	statement of essential facts

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

On 31 October 2016, the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated this review in response to an application from Croft Steel Traders Pty Ltd (Croft or the applicant) to review the anti-dumping measures (in the form of a dumping duty notice) applying to certain hollow structural sections (HSS)¹ exported to Australia from the Malaysia as they apply to Croft's supplier Alpine Manufacturing SND BHD (Alpine).

The application for review is based on a change in the variable factors relevant to the taking of the anti-dumping measures in relation to Alpine. The variable factors relevant to the review are the normal value, export price and non-injurious price (NIP). The application states that the normal value and export price have changed.

Alpine is covered by specific anti-dumping measures applying to its exports of HSS to Australia from Malaysia.

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary)² in relation to the review.

1.2 Proposed recommendation

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Alpine as if different variable factors had been ascertained.

1.3 Final report

The Commissioner's final report and recommendations must be provided to the Parliamentary Secretary by **26 May 2017** or within such longer period as the Parliamentary Secretary allows.³

¹ Refer to the full description of the goods in section 3.3 of this report.

² 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 this inquiry, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

³ Subsection 269ZDA(1).

2 BACKGROUND

2.1 Application and initiation

On 14 October 2016, an application was lodged on behalf of Croft under subsection 269ZA(1) of the *Customs Act 1901* (the Act)⁴ for a review of the dumping duty notice as it applies to Alpine. The applicant is an importer of the goods and is therefore eligible to apply for a review in accordance with subsection 269ZA(1).⁵

Croft's application was not made earlier than twelve months after the publication of a notice declaring the outcome of the last review of the dumping duty notice, being 15 July 2015. The application therefore satisfies the requirements of subsection 269ZA(2)(a).

The review period for the purpose of this review is 1 July 2015 to 30 June 2016. The review is limited to examining whether the variable factors, relevant to the taking of the anti-dumping measures as they affect Alpine, have changed.

2.2 Previous cases

The anti-dumping measures 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* (REP 177).

The anti-dumping measures currently apply as follows:

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

A background to key cases⁶ in relation to the goods is summarised in Table 1 below.

Case type and no.	ADN ⁷ No.	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

⁴ All legislative references are to the *Customs Act 1901* unless otherwise stated.

⁵ An importer is an affected party as defined in subsection 269T(1).

⁶ Reports and documents relating to these cases are available on the Commission's public record at www.adcommission.gov.au

⁷ Anti-Dumping Notices are available on the Commission's website at www.adcommission.gov.au

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Case type and no.	ADN ⁷ No.	Date	Country of export	Findings
Exemption EX 0017	2014/51	17 June 2014	China, Korea, Malaysia and Taiwan	Exemption granted
Federal Court decision	2016/09	17 February 2016	China	Revised dumping duty applicable to Dalian Countervailing duty notice not applicable to Dalian
Anti-circumvention REP 291	2016/24	18 March 2016	China, Korea and Malaysia	Original notices amended to expand tariff classifications covered by the notices
Exemption EX0043	2016/52	16 May 2016	China, Korea, Malaysia and Taiwan	Exemption not granted

Table 1: Summary of cases undertaken in relation to the goods

2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party who considers it may be appropriate to review those measures as they affect a particular exporter of those goods or as they affect exporters of those goods generally, may apply for a review of those measures because one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed.⁸ The Parliamentary Secretary may also request that the Commissioner initiate a review at any time.⁹

A review application may not be lodged earlier than twelve months after publication of the notice implementing the original anti-dumping measures or the notice(s) declaring the outcome of the last review of the notice(s).¹⁰

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review of anti-dumping measures and report to the Parliamentary Secretary.¹¹ Within 110 days of the initiation, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF, on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures¹².

In making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:

⁸ Subsection 269ZA(1)(a)(i).

⁹ Subsection 269ZA(3).

¹⁰ Subsection 269ZA(2)(a).

¹¹ Subsection 269ZDA(1).

¹² Subsection 269ZD(1).

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- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.¹³

The Commissioner may also have regard to any other matters that the Commissioner considers relevant to the review.¹⁴

During the course of a review, the Commission will examine whether the variable factors have changed. Variable factors in this particular review are a reference to:

- the ascertained export price;
- the ascertained normal value;
- the amount of the countervailable subsidy; and
- the NIP.¹⁵

At the conclusion of a review of anti-dumping measures, the Commissioner must provide a final report that makes a recommendation to the Parliamentary Secretary that the dumping duty notice and/or countervailing notice¹⁶:

- remain unaltered; or
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

Following the Parliamentary Secretary's decision, the Parliamentary Secretary must give notice advising interested parties of the decision¹⁷.

2.4 Responding to this SEF

This SEF represents an important stage in the review. It informs interested parties of the facts established to date and allows them to make submissions in response. It is important to note that the SEF may not represent the final views of the Commissioner.

The Commissioner must have regard to submissions received in relation to this SEF within 20 days of the SEF being placed on the public record in making his final report to the Parliamentary Secretary.

Responses to this SEF should be received by the Commissioner no later than **1 May 2017**. The Commissioner is not obliged to have regard to any submission made in

¹³ Subsection 269ZDA(3)(a).

¹⁴ Subsection 269ZDA(3)(b).

¹⁵ Subsection 269T(4E).

¹⁶ Subsection 269ZDA(1)(a).

¹⁷ Subsection 269ZDB(1)(a)

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response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.¹⁸

The Commissioner must report to the Parliamentary Secretary by **26 May 2017**.

Submissions should preferably be emailed to operations2@adcommission.gov.au.

Alternatively, they may be posted to:

Director Operations 2
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

A guide for making submissions is available at the Commission's web site www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2467 to make an appointment), or online at www.adcommission.gov.au.

Documents on the public record should be read in conjunction with this SEF.

¹⁸ Subsection 269ZHF(4).

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Australian industry produces HSS that has characteristics closely resembling those of the goods under consideration. The Commission considers that HSS manufactured by the Australian industry are like goods to the goods subject to measures (the goods – see below).¹⁹

3.2 Legislative framework

The Commissioner must be satisfied that the “like” goods to the goods subject to measures are produced in Australia.

Subsection 269T(2) of the Act specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with subsection 269T(3) of the Act, for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia.

3.3 The goods subject to measures

The goods subject to the anti-dumping measures and therefore this review 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.

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.

3.3.1 Tariff classification of the goods

The goods are currently classified to the following tariff subheading of 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)²⁰

¹⁹ In accordance with the definition of ‘like goods’ under subsection 269T(1).

²⁰ 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).

- 7306.69.00 (statistical code 10)
- 7306.50.00 (statistical code 45)²¹
- 7306.69.00 (statistical code 10).

The goods exported to Australia from Malaysia are not subject to a rate of duty.

3.4 Like goods produced by the Australian industry

During the original investigation, the then Australian Customs and Border Protection Service (ACBPS) found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods;
- the like goods were wholly manufactured in Australia; and
- there was an Australian industry consisting of four Australian companies that produce like goods in Australia.

The Commission conducted onsite verification visits to Austube Mills Pty Ltd and Orrcon Pty Ltd as part of Continuation Inquiry 379. As a result of the information verified during those visits, the Commission remains satisfied for the purposes of this review that there is an Australian industry producing like goods.²²

²¹ Ibid.

²² 052 EPR 379 – see chapter 3 of SEF 379 for the Commission's most recent assessment of the goods and like goods as part of Continuation 379 that is running in conjunction with this review.

4 EXPORTER INFORMATION

4.1 Exporter questionnaire

The Commission provided Alpine with an exporter questionnaire to complete. Alpine's response to the exporter questionnaire (REQ) included information concerning its organisation, domestic sales, export sales and costs to make and sell (CTMS).

4.2 Reliability of data supplied by Alpine

The Commission attended Alpine's premises and conducted an on-site verification of the data and information that was provided in its REQ. The Commission is satisfied that the data and information that was provided by Alpine is a reasonably complete, reliable and accurate description of its organisation, export sales, domestic sales and its CTMS.

5 VARIABLE FACTORS – DUMPING DUTY NOTICE

5.1 Finding

The Commissioner finds that the variable factors relevant to the taking of anti-dumping duties in relation to HSS exported to Australia by Alpine have changed.

The Commissioner proposes to recommend to the Parliamentary Secretary that the variable factors of export price, normal value and NIP be altered.

5.2 Determination of exporter

5.3 The exporter

For all Australian export sales during the inquiry period, the Commission is satisfied that Alpine is exporter of the goods.²³

5.4 The importer

In relation to HSS exported to Australia by Alpine, the verification team considers that the customer listed for each shipment in the Australian sales listing was the beneficial owner of the goods at the time of importation, and therefore was the 'importer' of the goods.

5.4.1 Conclusion – export price

The Commission is satisfied that Alpine's Australian sales listing is complete, relevant and accurate and recommends that the export price be determined under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

Export price calculations form **Confidential Appendix 1**.

5.5 Normal value

The Commission is satisfied that there was a sufficient volume of domestic sales made in the ordinary course of trade for two of the six model groups of HSS exported to Australia during the inquiry period. For those model groups where there were insufficient domestic sales of an identical model group, the Commission used a surrogate model group as discussed in section 2.3 of the verification report and made specification adjustments outlined in section 6.6 of the verification report.

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8) of the Act, and

²³ The Commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

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considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Specification	Add or deduct the differences in specification.
Domestic delivery	Deduct the cost of domestic delivery.
Domestic credit	Deduct the cost of domestic credit.
Container stuffing	Add the cost of container stuffing.
Level of trade	Remove end user sales from the normal value.
Export delivery to FOB	Add the cost of export delivery to FOB.
Export credit	Add the cost of export credit.

5.5.1 Conclusion – normal value

The Commission is therefore satisfied that the prices paid in respect of domestic sales of HSS are suitable for assessing normal value under subsection 269TAC(1).

Details of normal value calculations are at **Confidential Appendix 2**.

5.6 Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding quarterly weighted average normal value for the investigation period, in accordance with paragraph 269TACB(2)(a) of the Act.

The dumping margin in respect of HSS exported to Australia by Alpine for the investigation period is **53.1 per cent**.

Details of the preliminary dumping margin calculation are at **Confidential Appendix 3**.

6 NON-INJURIOUS PRICE

6.1.1 General

Under subsection 8(5BA) and 10(3D) of the *Customs Tariff (Anti-Dumping) Act 1975*, the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury or a recurrence of the injury. Subsections 269TACA(a) and (c) of the Act identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to the relevant level of trade in Australia.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

6.1.2 Assessment of USP and NIP

During the original investigation, the then ACBPS determined the USP utilising Australian industry's CTMS for the investigation period plus an amount for profit during the period of January to September 2008. The then ACBPS chose January to September 2008 as the period to calculate profit because material injury, if any, to the Australian industry was negligible during that period. A separate USP was calculated by finish and the NIP for each finish was then calculated by deducting amounts for post exportation costs. The methodology was not subject to reinvestigation.

For the purpose of this review, a weighted average USP has been determined based on a weighted average of all Australian Industry CTMS data during the review period plus an amount of profit achieved by Australian industry in the period of January to September 2008. This approach is consistent with the original investigation and Reviews 265, 266 and 285, which established a profit in a period unaffected by dumping. The Commission acknowledges that the profit figure is now nine years old. However, the Commission has confirmed dumping by Alpine during the review period, which establishes the market is effected by dumping during the review period. The NIP has been calculated to FOB delivery terms by deducting from the USP amounts for:

- importer profit;
- importer expenses;
- Australian customs duty, port charges, delivery commission, storage and handling; and
- overseas freight and insurance.

The Commission notes that, during Investigation 177, a NIP was determined for exporters of the goods separately for each finish, as anti-dumping measures were also established separately for each finish of the goods. This was not subject to reinvestigation.

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However, since finalising Investigation 177, the Federal Court of Australia has ruled that anti-dumping measures cannot be determined at a model (e.g. finish) level.²⁴ As such, the Commission considers that NIPs for the goods should not be calculated by finish as they were during Investigation 177, but rather only one weighted average combined NIP should be determined as described above. This has been performed for this review.

In the context of this review, the sum of the ascertained export price and the dumping margin for Alpine is lower than the NIP and hence the NIP is not the operative measure during this review period. I

Details of the USP and NIP calculations are at **Confidential Appendix 4**.

²⁴ Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870

7 EFFECT OF THE REVIEW

7.1 Summary of findings

The Commissioner has found that, in relation to exports to Australia of HSS from Malaysia by Alpine during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed;
- the NIP has changed.

The Commissioner has also found that the NIP was greater than the sum of the ascertained export price and the dumping margin found for the review period and should therefore not be the operative measure²⁵ for HSS exported by Alpine.

7.2 Recommended measures

The Commissioner proposes to recommend to the Parliamentary Secretary that the form of anti-dumping measures applicable to exports of HSS by Alpine be a combination of fixed and variable duty pursuant to subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. This is consistent with the method used in the original dumping duty notice.

The Commissioner proposes to recommend to the Parliamentary Secretary that the interim dumping duty rate be **53.1 per cent**.

A summary of the effect of changed variable factors on the anti-dumping measures is at **Confidential Appendix 5**.

²⁵ The operative measure is the lesser of the normal value or non-injurious price.

8 LIST OF APPENDICES

Confidential Appendix 1	Export price calculation
Confidential Appendix 2	Normal value calculation
Confidential Appendix 3	Dumping margin calculation
Confidential Appendix 4	USP and NIP calculations
Confidential Appendix 5	Summary of variable factors