

# MinterEllison

27 October 2015

Mr Dale Seymour  
Commissioner  
Anti-Dumping Commission  
Ground Floor, Customs House Docklands  
1010 La Trobe Street  
DOCKLANDS VIC 3008

By email: [dale.seymour@adcommission.gov.au](mailto:dale.seymour@adcommission.gov.au)

Dear Mr Seymour

## **Proposed SEF 291 - Certain Hollow Structural Sections (HSS) - Anti-circumvention Inquiry**

We act for Austube Mills Pty Ltd in the above matter.

We refer to recent discussions between our client and officers of the Commission on the content of any altered dumping notice that may be proposed in the forthcoming SEF. On this subject there are two issues that we wish to address: the scope of any altered original notice and the goods description in any altered original notice.

On the first issue we submit, with respect, that you have exceeded your authority by purporting in Anti-Dumping Notice No. 2015/58 (**inquiry notice**) to reject our client's application in so far as it relates to Taiwan. An application for an anti-circumvention inquiry based on the circumstance set out in subsection 48(2) of the *Customs (International Obligations) Regulation 2015 (Regulation)* does not require the establishment of the occurrence of a circumvention activity in relation to exports from each of the exporting countries specified in the original notice and s.269ZDBE(2)(b) of the *Customs Act 1901 (Act)* makes it clear that positive consideration of an application by the Commissioner only requires the identification of reasonable grounds for asserting the occurrence of one or more circumvention activities relating to the original notice. The absence of authority in these provisions to pursue a differential approach based on country of export is maintained in s.269ZDBE(6) which, for the purposes of the publication of an inquiry notice, only authorises a goods description by reference to 'the kind of goods', not their origin.

Furthermore, s.269ZDBE of the Act only authorises the Commissioner to reject an application or to accept it. It does not permit the partial rejection and partial acceptance contained in the inquiry notice. Similarly, s.269ZDBEA of the Act only authorises the termination of an anti-circumvention inquiry if you are satisfied that no circumvention activity has occurred. The section does not permit partial termination in relation to one of a number of countries of export included in the original notice.

In these circumstances we submit that as a matter of law and policy it is not open to you to give the Minister a report recommending that he declare specified alterations to the original notice only in respect of exports from China, Korea and Malaysia. While s.269ZDBH(2)(b) does contemplate the addition of foreign countries to be covered by the original notice (eg, to counter circumvention activities of the type set out in s.269ZDBB(3) and (4) of the Act) there is nothing in Division 5A of Part XVB to support the elimination of a foreign country from the application of the original notice. In addition, the Act provides no authority for remedying a circumvention activity by way of a dumping duty notice additional to the original notice. A remedy can only be provided by way of an alteration to the original notice which, in the present matter, should apply to any exports of HSS from Taiwan that fall within any altered specification of goods made by the Minister pursuant to s.269ZDBH(2)(a) of the Act.

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We further submit that from a policy perspective the objective of the recently introduced Regulation would be totally compromised if the Minister purported to exclude exports of HSS from Taiwan from the scope of the altered original notice. If the Minister is satisfied that the addition of an alloy in the manufacturing process carried out by an exporter from one of the countries nominated in the original notice is a circumvention activity it must also be such an activity if undertaken in any of the nominated countries. To exclude Taiwan from the altered original notice would constitute an invitation to exporters in that country to add an alloy in the manufacturing process with a view to substantially increasing their share of the Australian HSS market at the expense of our client and exporters from China, Korea and Malaysia.

The Minister, on your recommendation, has already recognised the preventative intent of the anti-circumvention provisions in his decision on Report No. 241 – Aluminium Extrusions from China. In that matter the Minister applied the altered original dumping notice prospectively to parties who had not taken any part in the alleged circumvention activity and who, in some cases, had not exported the circumvention goods to Australia. In our submission the Minister must maintain that established policy position in the present matter.

We turn now to consideration of the specification of different goods in any declaration made by the Minister in the present matter pursuant to s.269ZDBH. The original notice under s.269TG(1) and (2) of the Act is set out in Gazette No. S108 of 3 July 2012. The present specification of the goods that may be altered is:

*...certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.*

We submit that in order to counter present and prospective circumvention activities in relation to HSS the altered specification of the goods should be as follows:

*Certain electric resistance welded pipe and tube made of steel, whether or not containing alloys, in circular and non-circular hollow sections, in pre-galvanised, galvanised and non-galvanised finishes, being goods classified to the following tariff subheadings in Schedule 3 of the Customs Tariff Act 1995:*

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

*but excluding:*

- *conveyor tube made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1mm on outer surface and 0.25mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6mm in order to maintain vibration free rotation and minimum wind noise during operation;*
- *circular products having an outside diameter less than 22mm and greater than 165.1mm;*
- *oval, square and rectangular products having a perimeter greater than 1277.3mm;*
- *precision rectangular hollow sections with a nominal thickness of less than 1.6mm; and*
- *air heater tubes to Australian Standard (AS) 2556.*

If you require any further information or clarification please do not hesitate to contact us.

Yours faithfully  
**MinterEllison**



John Cosgrave  
Director  
Trade Measures

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Anti-Dumping Commission | 27 October 2015  
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