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23 March 2016

Gavin Crooks
Case Manager, Operations 3
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VICTORIA 3000

Email: operations3@adcommission.gov.au

Public File

Dear Mr Crooks

Investigation No. 320 – Hollow Structural Sections exported from India and the UAE - Duty Drawback claim for UTP of UAE

Introduction

I refer to the exporter questionnaire response ("EQR" for the UTP Group of companies (hereafter referred to as "UTP") concerning the export of Hollow Structural Sections to Australia from the United Arab Emirates ("UAE"). Austube Mills ('**ATM**') has reviewed UTP's EQR and would like to comment on UTP's claim for duty drawback in respect of certain input taxes on the exported goods.

UTP's Exporter Questionnaire Response

UTP states the following at Section E-2.2 of its EQR:

> *"UTP is located in the Jebel Ali Free Zone (JAFZ) which provides for the exemption of Customs import and export duties. However, for goods produced by UTP which are then sold to domestic customers located outside of the JAFZ, the normal 5% Customs duty is payable on the domestic invoice value. Please note that this does not apply to domestic sales made to manufacturing customers as they are generally exempt from Customs duties in the UAE.*
>
> *Upon production of the domestic goods, UTP must submit a Customs declaration identifying the details of goods produced in JAFZ which are to be transported outside the zone. UAE Customs then issues invoices for duty payable before the goods are cleared to exit the JAFZ.*
>
> *Please refer to Confidential Exhibit E-2.2 for complete listing and details of customs duties paid by UTP on relevant domestic sales."*

UTP is seeking an adjustment to remove the effect of the 5 per cent duty paid on the goods under consideration produced by UTP within JAFZ and sold domestically in the UAE.

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Report No. 254

The issue of adjustment for fair comparison purposes (including duty drawback payable on inputs) was recently considered by the Anti-Dumping Commission ("the Commission") in Report No. 254. The Thai exporter Saha Thai Steel Pipe Public Company Ltd ("Saha Thai") sought an adjustment for duty drawback for imported hot rolled coil ("HRC") which attracted import duty when incorporated in HSS sold domestically. The Commission confirmed that :

> "*Subsection 269TAC(8)(c) of the Act provides that such an adjustment to the normal value is only allowable where it is [sic] established that normal value and export price of like goods are modified in different ways by taxes or the terms or circumstances of the sales to which they relate. That is, an adjustment should only be allowed when price comparability of domestic and export sales have been affected.*
>
> *Therefore, in order to decide whether an adjustment is warranted, the Commission is required to establish whether the duties paid for the imported HRC that is used in manufacturing of domestically sold HSS has modified Saha Thai's pricing of like goods sold on the domestic market in contrast to the goods exported*."

The Commission was not satisfied to allow for an adjustment for duty drawback for Saha Thai's domestic sales as:

1. There was an absence of financial records by Saha Thai that allocates the cost of the duty paid on imported HRC to HSS sold on the domestic market, and
2. An analysis of Saha Thai's domestic selling prices suggests that market forces determine selling prices as opposed to cost based pricing.

The Commission was not satisfied that the domestic selling prices for Saha Thai reflected the cost of the applicable import duty on HRC used in HSS manufacture. Saha Thai's cost records did not reflect any cost differential between domestic and export goods reflecting the duty impost on imported HRC used in domestic sales.

For UTP to be able to obtain duty drawback adjustment, the Commission must be similarly satisfied that sufficient evidence exists in UTP's financial records that:

1. There is a recorded cost differential in the cost of manufacture for HSS sold domestically from imported HRC that attracts a 5 per cent import duty (ie specifically the HSS sold to domestic customers who are not manufacturers or located within the JAFZ) and

2. The cost differential associated with the 5 per cent duty paid on imported HRC is reflected in UTP's domestic selling price for the HSS manufactured in the JAFZ and sold to domestic customers that are not manufacturers or are located outside the JAFZ

In the absence of the cost and selling price information supporting UTP's claims that it adjusts its domestic selling prices for goods manufactured in the JAFZ and sold domestically, an adjustment for duty drawback can not be made.

It is insufficient for UTP to simplistically demonstrate that it pays the 5 per cent import duty on the goods destined for domestic sale that were manufactured in the JAFZ. As the Commission has detailed in Report No. 254, there is a

[1] Refer Report No. 254, P. 26 & 27.

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requirement that the domestic selling prices must reflect an upward adjustment by UTP for the HRC import duty impost. Where market forces determine selling prices (as in the case of Saha Thai's domestic sales) it is unlikely that UTP can demonstrate that it includes a cost adjustment for the 5 per cent import duty on HRC in its domestic sales of HSS produced in the JAFZ.

Indeed, UTP's export questionnaire indicates that it is market forces that dictate the price differences between domestic customers not the amount of duty payable.

> *the domestic selling prices do not vary according the distribution channel or customer category. Rather, the selling prices are normally determined by individual negotiation on a transaction-by-transaction basis*[2]*…………………..*

The Commission's position to not allow for an adjustment for duty drawback on Saha Thai's domestic sales was affirmed by the Anti-Dumping Review Panel in ADRP Report No. 28. The ADRP agreed with the Commission that Saha Thai had not "sufficiently established" that a price modification of Saha Thai's domestic selling prices reflecting an import duty impost on HRC existed, and affirmed the Commission's decision.

<u>UTP's claim for adjustment</u>

ATM submits that the onus is upon UTP to demonstrate that its domestic selling prices for HSS produced within the JAFZ reflect an upward increase to reflect the 5 per cent HRC import duty cost. Where market forces determine the selling prices for HSS sold in the UAE it is unlikely that UTP can sufficiently evidence that its domestic selling prices for HSS manufactured within the JAFZ sell at a 5 per cent premium to HSS manufactured and sold domestically from its two other facilities not located in duty free zones.

ATM requests the Commission to be satisfied that a domestic selling price differential is evident for UTP's domestic sales of HSS manufactured within the JAFZ when contrasted with domestic sales of HSS manufactured from the two production facilities not located in Free Trade Zones. The pricing differential should reflect the 5 per cent import duty cost for imported HRC, with the selling price inclusive of the 5 per cent duty compared with the selling prices to local manufacturers that are within a similar FTZ. In the absence of a domestic price differential for HSS produced within the JAFZ when contrasted with remaining domestic selling prices, UTP should not be allowed an adjustment for duty drawback to normal value.

If you have any questions concerning this letter please do not hesitate to contact me on (07) 3909 6130 or ATM's representative John O'Connor on (07) 3342 1921.

Yours sincerely

Brett Willcox
Manager – Operations and Support Services

2 [2] UTP Export Quest onna re p 26