

PUBLIC RECORD

Austube Mills Pty Ltd
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15th April 2016

Mr 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 United Arab Emirates

PAD 320 - Provisional measures

I refer to the Anti-Dumping Commission's ("the Commission") preliminary affirmative determination ("PAD") No. 320 recently published in respect of certain hollow structural sections ("HSS") exported from India and the United Arab Emirates ("UAE").

Austube Mills ("ATM") welcomes the publication of PAD No. 320 and the imposition of provisional measures on exports of dumped HSS from India and the UAE entered for home consumption in Australia on or after 24 February 2016. ATM also concurs with the preliminary finding of the Commission that price undercutting by dumped exports has caused injury in the form of price depression, price suppression, and reduced profits and profitability, reduced return on investment, reduced employment and reduced capacity.

The provisional measures are warranted to prevent dumped goods causing further injury to the Australian industry manufacturing HSS.

ATM also welcomes the Commission's decision to impose the 'combination' form of measure as it is the most effective measure to ensure that the final dumping duty paid is reflective of the actual dumping by the exporter.

UTP Submission of 8 March 2016

UTP has submitted that the combination form of measures as imposed in PAD No. 320 is based upon "outdated and uncompetitive" information that disadvantages UTP in a 'price sensitive' market. This claim is not correct. The claim ignores the role of the final duty assessment process which ensures that the total of any interim duty overpaid in respect of all consignments to which the duty assessment relates, is repaid. In this manner Australia's Duty Assessment process ensures that when final duties are paid they are neither "outdated" nor "uncompetitive".

UTP's claims that the combination method makes them "uncompetitive" are also not consistent with their actions following the publication of the PAD. UTP's latest price offers further undercut the Australian Industry's selling prices contributing to ongoing injury impacting profit and profitability.

Following the publication of the PAD on the 24th of February, UTP has reduced their FIS price¹ into Australia by up to [REDACTED]². After the imposition of securities it would normally be anticipated that UTP would have increased their FIS prices by the *ad valorem* component, approximately [REDACTED] and passed on a further circa [REDACTED]⁴ due to increases in Hot Rolled Coil feed costs.

This has not happened and UTP are advising customers on their new offers that they will pay any duties.

[REDACTED]

Even though UTP's response to the imposition of preliminary measures and increasing coil costs is to further decrease prices, it is likely that they are based on a misguided confidence that UTP may not need to pay the final dumping duty. In the event that some securities are not able to be converted to final dumping duties [REDACTED], ATM urges the Commission to recommend that the Minister that retrospective measures be applied. ATM also takes heart from the fact that once the investigation has been completed and interim dumping duties are imposed, the combination form of measures will either act as a deterrent to this type of activity (as this form of duty circumvention is not economically sustainable into the medium term where the IDD is calculated according to the combination method) or trigger the circumstances for ATM to lodge and anti-circumvention inquiry based on duty absorption.

ATM rejects UTP's suggestion that *ad valorem* measures should be imposed by the Commission. Measures based upon the *ad valorem* methodology cannot guarantee the *effectiveness* of the implemented measures where exporters simply reduce the export price by an amount to offset the *ad valorem* duty rate. This is because under a final duty assessment, the total unpaid duty in excess of the interim duty already paid [REDACTED]. This is demonstrated via the following model.

¹ Confidential Offer 1 – Mar 2016

² Confidential Offer 2- Feb 2016

³ Confidential Offer 1- Mar 2016

⁴ Subsection 269Y(1), Customs Act 1901

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Ascertained normal value (ANV), \$/tonne	\$ 100		
Ascertained export price (AEP), \$/tonne	\$ 80		
		Year 1	
Actual Export Price (DXP), \$/tonne		80	
		Lowered price *	Increased Price *
		70	90
Ad valorem method			
ad valorem rate 25%		20	17.5
			22.5
IDD calculated using 'ad valorem' method		20	17.5
			22.5
Final duty payable, \$/tonne	ANV-DXP	20	30
			10
less refund		0	0
			12.5
Total Final Duty Liability		20	17.5
			10
Effectiveness of measures		100%	58%
			100%

Notes: * Assume no change in normal values

In the above example where exporters reduce prices, the ad valorem method suffered a 42% loss in effectiveness, resulting in an under collection of duty which comes at the expense of the Australian industry's ability to recover from injurious dumping. The *ad valorem* method therefore is punitive to the Australian industry (and exporters who are not dumping) as it cannot be guaranteed that *ad valorem* measures will not result in further material injury to the Australian industry manufacturing like goods.

Of all the forms of measures, the combination method ensures the most accurate outcome because when exporters respond by lowering price, and dumping is exacerbated, the full amount of final dumping duty is able to be collected. The following model demonstrates that the combination method achieves the most effective outcome, achieving alignment between the calculation of IDD and final duty liability.

Ascertained normal value (ANV), \$/tonne	\$ 100		
Ascertained export price (AEP), \$/tonne	\$ 80		
		Year 1	
Actual Export Price (DXP), \$/tonne		\$ 80	
		Lowered price *	Increased Price *
		\$ 70	\$ 90
Combination duty method			
-Fixed Amount (ad valorem) 25%	\$ 20	\$ 20	\$ 23
-Variable amount (where DXP < AEP) AEP-DXP	\$ -	\$ 10	\$ -
IDD calculated using "combination" method	\$ 20	\$ 30	\$ 23
Final duty payable, \$/tonne	ANV-DXP	\$ 20	\$ 30
			\$ 10
less refund		\$ -	\$ -
			\$ 13
Total Final Duty Liability		\$ 20	\$ 30
			\$ 10
Effectiveness of measures		100%	100%
			100%

Notes: * Assume no change in normal values

UTP's continued aggressive offers into the Australian market also demonstrate that the threat of future injury is real and validates the Commission's decision to impose measures to prevent ongoing injury caused by dumping. Following the imposition of the PAD, and an increase of HRC cost prices, (the major feed material for HSS) by approximately [REDACTED]/t across the Asian region⁵, it would have been expected that UTP increase their prices into Australia by approximately AUD [REDACTED]/t. In actual fact UTP have dropped prices by up to [REDACTED]/t, a differential of

⁵ Confidential Price Chart SBB

[REDACTED] /t compared to the expected price movement. This action is contrary to their claims in the document URGENT SUBMISSION – CASE320⁵ in which UTP claims that:

“UTP does not reduce prices by reduction in its profit margin but only when external factors such as lower Hot Rolled Coil (HRC) prices allows UTP to pass on the cost savings to its customers”

ATM questions whether other claims made by UTP in various submissions are also contrary to the actual behaviour in the market.

ATM notes the allegations in the UTP submission dated 8 March 2016 that suggests “the applicant” is importing hot-dipped galvanised steel from Vietnam. For clarification, Austube Mills is not importing the nominated goods from Vietnam.

Surya Global steel Submission 20 – 19th March 2016

Surya have submitted that because “the Commission has enacted the combination duty method” it is a breach of Article 9 of the Anti-Dumping Agreement as they have the potential to “collect duties over and above the full dumping margin”. This is not correct.

The Australian industry notes that the Commissioner is free to recommend to the Assistant Minister, within the limits prescribed by the *Customs Tariff (Anti-Dumping) Regulation 2013 (the Dumping Duty Act)*, the different types of duty. There is nothing in the *WTO Anti-Dumping Agreement* that explicitly identifies the form that the IDD must take, and there is nothing that explicitly prohibits the use of variable anti-dumping duties⁶.

Indeed, as referenced earlier in the submission, Australia’s Duty Assessment process ensures that the final duty paid doesn’t exceed the dumping margin for the relevant period of time. Australia has applied the combination method over an extended period of time and its application has never been challenged in the WTO.

Surya’s claim that the impact of applying a measure in relation to the AEP “has resulted in total market disruption” is unsubstantiated with no basis of fact. The market continues to be adequately supplied by a range of domestic and foreign producers.

Surya also claim that dumping measures have “the intent of protecting the Australian industry”. Again this statement is incorrect. The intent of dumping measures is to create a level playing field for all market participants (Australian Industry and exporters) by removing injury caused by the dumping, this is not protectionism. Anti-dumping measures applied in accordance with WTO guidelines are an instrument utilised by many countries to allow free and fair competition.

⁶ Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, WT/DS241/R, 22 April 2003 at [7.355]

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Closing remarks

ATM welcomes the publication of PAD No. 320 and the imposition of measures based upon the combination methodology (involving a fixed and variable component). It is ATM's view that the combination method remains the most effective form of anti-dumping measure to address injurious dumping. The combination method includes a fixed and variable component, with the AEP set at a level based upon the weighted-average export price during the investigation period. In the current circumstances where the majority of goods exported from India and UAE are of galvanised HSS, the combination method represents an effective means of ensuring that the AEP is established at a level that is representative of domestic selling prices (or the fully absorbed production cost plus profit) for galvanised HSS in the exporting country.

In circumstances of global steel oversupply, ATM does not consider that measures based upon the ad valorem or fixed duty method adequately discourage exporters who are highly motivated to reduce stock and make a sale from further reducing export prices (and, where margins are low, from absorbing the provisional or interim measure applied). In a rising market a floor price duty alone does not attract a fixed component of measure that is representative of the dumping margin for the relevant exporter during the investigation period and therefore does not address the injury from dumping that has already occurred. Hence the combination form of measures is the most appropriate (and effective) form of measures to discourage further injurious dumping by the exporter in either a rising or falling market.

In preparing final recommendations for consideration by the Parliamentary Secretary, ATM requests the Commission to recommend that the combination methodology be applied against future HSS exports from India and the UAE.

If you have any questions concerning this letter please do not hesitate to contact me on (07) 3909 6130.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B Willcox', with a stylized flourish at the end.

Brett Willcox
Manager – Operations and Support Services