



**NON - CONFIDENTIAL**

15 June 2015

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Ms Kerry Taylor  
Director, Investigations  
Anti-Dumping Commission  
Level 35, 55 Collins Street  
Melbourne VIC 3000

Dear Ms Taylor,

**RESPONSE TO SEF NO. 254 – PACIFIC PIPE**

This submission, made on behalf of Pacific Pipe Public Company Limited (“Pacific Pipe”), is in response to Statement of Essential Facts (“SEF”) No. 254 concerning hollow structural sections (“HSS”) from Thailand.

**Pacific Pipe’s dumping margin v Saha’s dumping margin**

The irrationality of the Commission’s approach to the assessment of a 15.1% dumping margin (“DM”) in relation to Pacific Pipe’s exports is clearly illustrated by the fact that it exceeds its DM assessment in relation to Sahathai Steel Pipe Public Company Limited’s (“Saha’s”) exports by almost 10%, when –

- Saha’s export prices to Australia during the investigation period (“IP”) were lower than those of Pacific Pipe;
- because of these lower export prices, Saha’s export volume to Australia during the IP by far exceeded that of Pacific Pipe, with Saha’s exports having by far the largest share of Thai exports to Australia and Pacific Pipe having a minor share of them – total exports 31,500 mt; Pacific Pipe’s exports [REDACTED] mt, ([REDACTED] %);
- while Saha’s export prices were lower than Pacific Pipe’s, resulting in its large share of Thai exports, its selling prices and costs of like goods sold in the Thai domestic market must have been comparable with those of Pacific Pipe as they compete in a commodity market with the major input material (HRC) of both being at (comparable) international prices; and
- Pacific Pipe’s domestic sales of the goods under consideration (“GUC”) represent more than [REDACTED] % of its total sales of the GUC, whereas the vast majority of Saha’s sales of the GUC are into export markets. As Pacific Pipe’s domestic sales volume of the

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GUC is higher than that of Saha, it is unlikely that Pacific Pipe's domestic selling prices of the GUC are higher than those of Saha.

It is of note in this regard that Investigation No. 177 concerning HSS from Thailand determined an expected higher DM for Saha's exports than for Pacific Pipe's exports – Saha –3.5%; Pacific Pipe –6.1%.<sup>1</sup> This determination was affirmed by the Trade Measures Review Officer ("TMRO").<sup>2</sup>

In the circumstances outlined above, a rational approach to the assessment of the DM for Pacific Pipe's exports would result in a lower DM for those exports than that for Saha's exports, not one of 10% higher. Details of the Commission's irrational approach resulting in the inflated DM for Pacific Pipe's exports follow.

### Use of domestic sales of AS1163–C350 pipe for normal value ("NV") purpose

#### *Ineligibility*

Section 269TAC(1) of the Customs Act ("the Act") provides that –

*Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods. (emphasis added).*

Of the negligible volume of [REDACTED] mt of AS1163–C350 sold into the domestic market, [REDACTED] mt were not sold for home consumption in Thailand. In accordance with s269TAC(1), prices in these sales **are not eligible for NV assessment.**

Pacific Pipe does not produce AS1163–C350 for the Thai domestic market. Its domestic sales of this standard/grade are from export production over-runs and generally for export by Thai domestic customers.

Without supporting evidence, the Commission has assumed that the domestic customer who exported the [REDACTED] mt of AS1163–C350, [REDACTED], fabricated the pipe [REDACTED] [fabricated product] prior to exportation, when to the best of Pacific Pipe's knowledge, the said AS1163–C350 was purchased by [REDACTED] to export to its Australian subsidiary, [REDACTED], for fabrication [REDACTED] [fabricated product] in Australia. That is, **Pacific Pipe did not sell this pipe exported to Australia by [REDACTED] for home consumption in Thailand.**

#### *Unsuitability*

Putting aside this NV ineligibility because of their non-sale for consumption in Thailand, the Commission's use of domestic sales of AS1163-C350 for NV assessment is irrational, with prices in these sales clearly not providing for a fair comparison with export prices to Australia. It is of note in this regard that reasonableness and fairness underlie the anti-

<sup>1</sup> Termination Report No. 177, section 5.3.

<sup>2</sup> TMRO Report of 31 August 2012.

dumping discipline and Article 2.4 of the WTO AD Agreement provides, among other things that –

*A fair comparison shall be made between the export price and the normal value.*

Pacific Pipe's prices in domestic sales of AS1163–C350 cannot be fairly compared with its export prices because they are not representative of the domestic selling prices of like goods during the IP for reasons outlined hereunder.

With the exception of just ■ mt sold in March 2014, all domestic sales of AS1163-C350 were made in just the period July - September 2013. Notwithstanding this very low volume of domestic sales (■ mt) being sold in just three months, the Commission used the prices in these domestic sales as the basis for weighted average NVs over the IP to be compared with weighted average export prices ("EPs") over the IP vide s269TACB(2)(a) of the Act. **Normal values based on prices in just three months of domestic sales do not provide for a fair comparison with weighted average export prices over the IP.**

It was found in Investigation No. 177 that the standard and grade to which pipe is made do not influence Pacific Pipe's domestic selling prices and that price differences are for other reasons.<sup>3</sup> Because of this finding, NVs in that investigation were determined on the basis of the weighted average domestic invoice price of like goods of various standards/grades per model (shape, finish, thickness) and the DM established in accordance with s269TACB(2)(a) of the Act by comparing the weighted average of these NVs over the IP with the weighted average of EPs over the IP.<sup>4</sup>

It is of important note that the TMRO affirmed the NV and DM methodology outlined above, stating, among other things, that –

*Customs informed me that the Thai standard for HSS is lower than most and that HSS with a yield strength of 250MPa predominates in the Thai market. However, HSS of higher standards is often sold in the Thai domestic market without a clear price differential distinguishing between the yield strength differences. Although at times there are clear prices differences 250 and 350 MPa sold in the Thai domestic market, it also found frequent instances where these products are sold at the same price.<sup>5</sup> (emphasis added); and*

*According to Customs, irrespective of the marginal cost differences between products produced to the Australian Standard and those produced for the Thai domestic market, products made to Australian standards do not command a higher price in the Thai domestic market.<sup>6</sup> (emphasis added).*

Evidence before the Commission in this investigation proves that the above conclusions by Customs and the TMRO are correct as they relate to Pacific Pipe's domestic sales of like goods.

<sup>3</sup> Exporter Visit Report of January, section 9.2.5.

<sup>4</sup> Termination Report No. 177, section 5.3.3.

<sup>5</sup> TMRO Report of 31 August 2012, para 28.

<sup>6</sup> TMRO Report of 31 August 2012, para 31.

The Commission has found in this investigation that JIS G3466-STKR 400 (“STK400”) and TIS 107-HS41 (“HS41”) are also like goods to the AS1163-C350 exported to Australia. The evidence before the Commission summarised hereunder proves that it is factors other than standard/grade which have caused prices of domestic sales of AS1163-C350 (“C350”) to be significantly higher than those of these like goods of different standards/grades (the selling prices and HRC costs referred to are in relation to products of the same shape and finish – rectangular shape; natural finish):

a) *Selling price and HRC cost differences*

Month of sale	C350			HS41			STK400		
	Selling price (THB/kg)	HRC cost (THB/kg)	Margin (%)	Selling price (THB/kg)	HRC cost (THB/kg)	Margin (%)	Selling price (THB/kg)	HRC cost (THB/kg)	Margin (%)
Jul '13	████	████	████	████	████	████	████	████	████
Aug '13	████	████	████	████	████	████	████	████	████
Sept '13	████	████	████	████	████	████	████	████	████

b) *Relativity of selling prices and costs of C350 to HS41 and STK400*

Month of sale	HS41		STK400	
	Selling price (THB/kg)	HRC cost (THB/kg)	Selling price (THB/kg)	HRC cost (THB/kg)
July '13	████	████	████	████
August '13	████	████	████	████
September '13	████	████	████	████

It is the HRC cost of the finished product that is affected by the grade of the finished product and it is therefore clear from the above evidence that it is factors other than grade difference which have significantly contributed to the domestic selling price differences between C350 and HS41 and STK400.

A significant factor causing the domestic selling price of C350 to be higher than that of HS41/STK400 is the fact that the █████ mt of C350 purchased by █████ for export in the September '13 quarter is an **extremely low volume and was the only purchase by this customer during the IP.**

***Insufficiency***

In its test of the sufficiency of the volume of domestic sales of AS1163-C350 for the purpose of DM assessment in the Preliminary Affirmative Determination (“PAD”), the Commission rationally determined the relativity of the volume of domestic sales of like goods to the GUC exported to Australia for the purpose of s269TAC(14) of the Act by the comparison of the volume of all domestic sales of AS1163-C350 rectangular hollow sections (“RHS”) and square hollow sections (“SHS”) during the IP with all export sales of AS1163-C350/C350LO RHS and SHS during the IP. The result of this test was that the volume of domestic sales of

AS1163-C350 RHS and SHS was less than 5% of export sales of AS1163-C350 RHS and SHS to Australia.

Notwithstanding this result, the Commission used domestic selling prices of AS1163-C350 for the purpose of NVs of exports of AS1163-C350/C350LO and hence determined a highly inflated 15.6% DM for the PAD.

When Pacific Pipe challenged the use of domestic selling of AS1163-C350 prices for NV assessments because the volume of sales of AS1163-C350 was less than 5% of the export volume of AS1163-C350/C350LO on the ground that to do so was inconsistent with s269TAC(14), for what can only be considered as a means of retention of its highly inflated PAD DM, the Commission irrationally revised its sufficiency test by including pipe thicknesses in the comparison of the volumes of domestic and export sales of AS1163-C350/C350LO for the purpose of s269TAC(14).

Section 269TAC(14) refers to the relativity of the volume of domestic sales of "like goods" to the volume of exports of the GUC, it does not refer to the volume of sales of identical goods. All domestic sales of AS1163-C350 RHS/SHS meet the s269T(1) "like goods" definition in respect of all export sales of AS1163-C350/C350LO RHS/SHS and it was rational for the Commission to use all domestic and export sales of AS1163-C350/C350LO in its sufficiency test for the purpose of the PAD DM assessment. There is no rationality in the use of AS1163-C350/C350 pipe of individual thicknesses for the purpose of s269TAC(14) as the Commission did for the purpose of the SEF DM assessment, and we reiterate that it could only have been done to preserve its highly inflated PAD DM.

### **Summary**

It is clear from the foregoing that selling prices of domestic sales of AS1163-C350 pipe are ineligible and unsuitable for NV assessments and to use them for this purpose is irrational. The Commission's use of them for NV assessments in its PAD and SEF DM assessments has resulted in a highly inflated DM, the likely purpose of their use, and they should not be used for the final DM assessment for Pacific Pipe's exports.

### **Commission adjustments**

In response to its exporter questionnaire the Commission was informed that –

*Pacific Pipe uses the sales' staff of related company Tamose Trading Co Ltd to sell "standard" pipe in domestic market and pays Tamose a commission (■%) for these services. For the export market, Pacific Pipe is responsible for sales activities and staff of Tamose Trading are used for export document processing, for which Pacific Pipe pays Tamose Trading a commission (■%).<sup>7</sup>*

Pacific Pipe's payment of these commissions to related company, Tamose Trading Co Ltd ("Tamose"), for the said services was verified by Customs' verification team in Investigation No. 177<sup>8</sup> and further evidence has been provided in respect of them per my email to Bora Akdeniz of 23 May 2015.

<sup>7</sup> Exporter Questionnaire Response ("EQR"), section A-3.12.

<sup>8</sup> Exporter Visit Report of January 2012, sections 9.1.3 and 9.2.4.

Furthermore, the Commission has evidence that these commissions payable to Tamose are included Pacific Pipe's general ledger selling expenses as "Intercompany Commission" per code GL 61210300.

That these commissions are paid to a related party (Tamose) and considered intercompany payments has no relevance to the consideration of whether adjustments are necessary to enable fair comparison of export price and normal value vide s269TAC(8) of the Act.

As previously verified by Customs in Investigation No. 177 and further evidenced to the Commission in this investigation, the domestic price paid for like goods and the export price of the goods exported to Australia are modified in different ways by the circumstance of direct selling expenses incurred in domestic sales including a 2% commission paid to Tamose and direct selling expenses incurred in export sales to Australia including a 0.5% commission paid to Tamose. This difference in direct selling expenses incurred in domestic and export sales to Australia affects export price and normal value comparison and therefore s269TAC(8) adjustments must be made.

There are no sustainable grounds for the Commission to not make these commission adjustments when –

- the EQR clearly explains the amounts of these commissions and their nature;
- in Investigation No. 177, Customs' verification team sighted evidence of payment of these commissions and their nature;
- Pacific Pipe has provided further evidence to this investigation of payment of these commissions and their inclusion in its selling expenses.

It is of important note that the Commission requested no further evidence in relation to the amounts and nature of these commissions.

### **Import duty drawback adjustment**

A s269TAC(8) NV adjustment should be made for the import duty drawback reported in section E-2.2 of Pacific Pipe's EQR because its domestic prices and prices paid for exports are modified in different ways by the import duty (tax) paid on imports of the HRC used in the production of HSS and adjustment is necessary to enable comparison of these prices.

Pacific Pipe's domestic prices of HSS are modified by import duty payable on HRC used in the production of HSS as market prices of HSS in Thailand are essentially import parity prices, ie they are modified by the amount of import duty paid on HRC.

Pacific Pipe's export prices are not so modified as Pacific Pipe receives a drawback of the import duty paid on its HRC imports.

Customs' verification team in Investigation No. 177 verified Pacific Pipe's drawback of import duty in respect of its exports to Australia<sup>9</sup>, and this investigation has been provided with evidence of the amount of the drawback credited to its general ledger during the IP.

<sup>9</sup> Exporter Visit Report of January 2012, section 9.1.5.

The Customs' verification team in Investigation No. 177 also sighted a report by the US Department of Commerce to the effect that it made adjustment for the duty drawback received by Pacific Pipe<sup>10</sup>.

It is of important note that the Commission requested no further evidence in support of the import duty drawback adjustment claim.

### **No on-site verification**

On-site verification visits of Saha and Samchai Steel Industries Public Company Limited ("Samchai") were conducted by the Commission but for reasons not known by Pacific Pipe, no such verification visit of Pacific Pipe was conducted.

Pacific Pipe is of the view that the non-conduct of an on-site verification visit of it has significantly contributed to the Commission's highly inflated DM per its SEF as Pacific Pipe was not given adequate opportunity to provide evidence/explanation of the several factors affecting the Commission's DM assessment.

Furthermore, no Verification Report was available to Pacific Pipe to enable its follow up on the several contentious issues in relation to the Commission's DM assessment per the SEF prior to its publication, whereas Saha and Samchai were provided with Verification Reports upon which they could follow up.

It is of important note that the Commission did not respond to our request of 15 May 2015 for an early meeting to discuss its DM assessment of 15.1% per the SEF.

### **Conclusion**

The Commission must be aware that something is wrong with its 15.1% DM assessment for Pacific Pipe's exports when –

- a) this DM for Pacific Pipe's exports is almost 10% higher than the DM for Saha's exports which are of much higher volume than those of Pacific Pipes because their prices are lower than those of Pacific Pipe; and
- b) verification of cost and sales data in Investigation No. 177 proves that Pacific Pipe's domestic sales of the GUC are affected by factors other than standard/grade, a fact confirmed by evidence submitted to the Commission in this investigation, and weighted average net invoice prices of exports to Australia and weighted average net invoice prices of ordinary course of trade ("OCOT") domestic sales of like goods over the IP (including AS1163-C350) compare as follows:

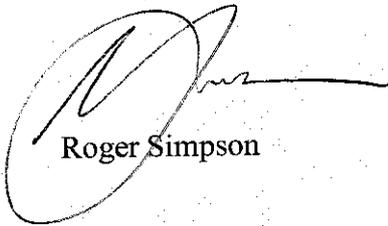
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<sup>10</sup> Ibid.

Type	Finish	Export price (THB/mt)	OCOT domestic price (THB/mt)	Difference (%)
SHS	Painted			
	Natural			
RHS	Painted			
	Natural			
CHS	Painted			
All (wtd.ave)	All			

The Commission has ignored the ineligibility and unsuitability of Pacific Pipe's selling prices of domestic sales of AS1163-C350 for reasons outlined above and has relied solely upon its irrational, secondary, sufficiency finding in relation to these sales to enable their use to determine the NVs which have led to the inflated 15.1% DM in respect of Pacific Pipe's exports.

Yours sincerely,



Roger Simpson