

22 December 2017

The Director, Investigations 4
Anti-Dumping Commission
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CANBERRA ACT 2601

Email: investigations4@adcommission.gov.au

Dear Director,

PUBLIC RECORD

Anti-Dumping Notice No. 2017/95 – initiation of a review of anti-dumping measures relating to Certain Hollow Structural Sections Exported to Australia from the People’s Republic of China, the Republic of Korea, Malaysia and Taiwan

This submission refers to the initiation of *Review No. 419* concerning Hollow Structural Sections (**HSS**) exported to Australia from the People’s Republic of China (**China**), the Republic of Korea (**Korea**), Malaysia and Taiwan, and the nature relevant information to which the Commission may have regard when determining the variable factors of non-cooperating and no volumes, or relatively low volumes, exporters.

In an email dated 22 August 2017, Alpine Pipe Manufacturing Sdn Bhd (**Alpine**) notified the Commission that it was refusing to participate in *Review No. 419*, as follows:

“After careful consideration by Management, Alpine Pipe Manufacturing SDN BHD (“Alpine”) have decided they cannot justify participating in this Review of Anti-Dumping Measures and will not be completing a Response to Exporter Questionnaire....sic”¹

This failure to participate therefore makes Alpine a non-cooperating exporter who is refusing the Commission access to necessary information.

Normal value determination

The *Dumping and Subsidies Manual* provides the following policy guidance in such circumstances when determining the non-cooperating exporter’s normal value based on all relevant information:

“13.2 POLICY

The Customs (Extensions of Time and Non-Cooperation) Direction 2015 provides direction on the matters which should be considered when determining whether a party is uncooperative.

¹ EPR419/14

Annex II of the ADA concerns the best information available for the purpose of Article 6.8. It provides that if an authority has to base its findings on information from secondary sources, this can include information supplied in the application but such information must only be used with due circumspection.

Annex II also states that authorities should, where practicable, have regard to information from other independent sources at their disposal such as published price lists, official import statistics, customs returns, and information obtained from other interested parties during the investigation. Also, it states that if a party does not cooperate this could lead to a less favourable result for that party.

There is an obligation to inform the relevant respondent that, if it fails to provide the required information, determinations may be made on the basis of the facts available.”²

Further, the practice of determining the non-cooperating exporter’s normal value is also outlined in the Dumping and Subsidy Manual as follows:

“13.3 PRACTICE

The Commission will consider all relevant evidence when working out a normal value under subsection 269TAC(6). As noted in Chapter 8 the Commission will not look for information from other sellers where an exporter has not cooperated. Adjustments to ascertain a normal value for the non-cooperating producer may be made (but the extent of any adjustments will necessarily be limited due to the non-cooperation).

Where there is no cooperation at all from producers in a country, regard will be had to any of the following:

- *price lists, provided there is supporting information from independent sources;*
- ***information from other independent sources (e.g. trade publications, trade statistics);***
- *industry publications and industry consultancy reports;*
- *information set out in the application if such information is considered reliable;*
- ***information gathered from other countries subject of the same investigation;***
- ***earlier dumping investigations.”³ [Emphasis Added]***

Austube Mills asserts that the best available information for the Commission is the normal value determined in the recently completed *Continuation Inquiry No. 379*. This is consistent with the Commission’s practice of having regard to information from “*Earlier dumping investigations*”.

Austube further asserts the use of a HRC price index such as [REDACTED] should be used to index the normal value as HRC represents more than 80% of the cost of producing HSS and this constitutes “*information from other independent sources (e.g. trade publications, trade statistics)*”. Confidential Table 1 summarises the quarterly [REDACTED] index between the *Continuation Inquiry 379* period of July 2015 to Jun 2016 and the *Review Inquiry 419* period of July 2016 to June 2017.

² Dumping and Subsidy Manual 2017 p 58

³ Dumping and Subsidy Manual 2017 p 58-60

	QTR 1	QTR 2	QTR3	QTR 4
Average HRC Price USD	July-Sept	Oct - Dec	Jan-Mar	Apr-jun
2015-16	■	■	■	■
2016-17	■	■	■	■
Index	■	■	■	■

Confidential Table 1 – [REDACTED] index⁴

Alternatively, due to the lack of public or subscription based information in Malaysia, Austube Mills suggests that “information gathered from other countries subject of the same investigation” could also provide sufficient information to index the normal value from previous inquiry 379 such that a contemporary dumping margin can be determined for the new review period.

Export price determination

Austube Mills requests that the Commission examines whether Malaysian exporters that are part of the Review Inquiry that have exported no volume or relatively low volumes of the goods during the Review Inquiry period. If no or low volumes of exports are found, Austube Mills requests that the Commission uses the newly introduced legislation under 269TAB(2) to consider alternative methodologies to determine an export price.

(2A) If an export price of goods exported to Australia is being ascertained for the purposes of conducting a review of anti-dumping measures under Division 5, the price may, despite subsection (1), be determined by the Minister in accordance with subsection (2B) if:

- (a) the price is being ascertained in relation to an exporter of those goods (whether the review is of the measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally); and*
- (b) the Minister determines that there is insufficient or unreliable information to ascertain the price **due to an absence or low volume** of exports of those goods to Australia by that exporter having regard to the following:*
 - (i) previous volumes of exports of those goods to Australia by that exporter;*
 - (ii) patterns of trade for like goods;*
 - (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.*

Note: If there is an absence of exports of those goods to Australia by that exporter, the Minister may deem such exports to have taken place for the purposes of ascertaining an export price: see subsection (2C).

(2B) For the purposes of subsection (2A), the export price of those goods is the price determined by the Minister to be the export price, having regard to any of the following:

⁴ Refer Confidential Attachment A

- (a) the export price for the goods exported to Australia by the exporter established in accordance with subsection (1) of this section for a decision of a kind mentioned in subsection (2D);*
- (b) the price paid or payable for like goods sold by the exporter in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country;*
- (c) the export price for like goods exported to Australia from the country of export by another exporter or exporters established in accordance with subsection (1) of this section for a decision mentioned in subsection (2D).*

(2C) For the purposes of conducting the review of anti-dumping measures under Division 5, if there is an absence of exports of those goods to Australia by the exporter, the Minister may deem such exports to have occurred for the purposes of applying subsections (2A) and (2B) of this section. [Emphasis Added]⁵

FOR AND ON BEHALF OF AUSTUBE MILLS PTY LTD

⁵ Customs Amendment (Anti-Dumping Measures) Act 2017