

24 June 2015

Mr Bora Akdenis
Case Manager
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VICTORIA 3000

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Public File

Dear Mr Akdenis

Investigation No. 254 – Submission by Saha Thai Steel Pipe of 17 June 2015

Introduction

I refer to the submission by Saha Thai Steel Pipe Company Ltd (“Saha”) of 17 June 2015. The Saha submission contains a number of matters that Austube Mills Pty Ltd (“ATM”) would like to address.

Duty drawback

I refer to coverage of the above issue in the Visit Report relating to Saha, the recent submission by that exporter dated 17 June 2015 (published on 19 June 2015 on the EPR) and our own previous submissions. It is submitted that no grounds have been established to justify any adjustment to normal value on account of duty drawback.

In its EQR of 1 September 2014 the exporter attested, unequivocally, at Section G5 that there were no differences in costs for domestic and export sales and in Sections G3.1 and G4 stated that costs for both domestic and export sales were actual unit costs. Almost nine months later in its most recent submission Saha claims that its statements were false and that there is a difference in cost of production due to the impact of HRC import duties on the cost of domestic production and that the alleged cost difference modifies the domestic and export prices in different ways.

The claimed justification for this revisionist approach, unaccompanied by any supporting evidence, is that:

SAHA’s accounting records need to be compliant with the regulator’s generally accepted accounting practices and principles which demand SAHA has to have a single cost for each specific type/item of goods in its inventory.

Even if the claim is true it does not provide any defence to the submission of false statements to the Anti-Dumping Commission (“the Commission”). Saha is experienced in anti-dumping matters and has been professionally advised throughout this investigation. Clearly it was open to Saha to answer the EQR in a manner that ensured transparency and provided a basis for legitimate consideration of a possible adjustment to normal value. Its failure to do so strongly supports the view that, at the time of responding to the EQR, the experienced team in Saha did not consider that cost differences, if any, had modified domestic and export prices in different ways. It is only since the Commission’s visit team decided to raise the issue that the radical change in Saha’s approach has occurred.

The curious argument now advanced by Saha is that an adjustment is warranted because it has compiled an analysis that demonstrates ...*that Saha’s home market prices are higher than the Australian sales prices....* The alternative expression of this claim would be that the existence of dumping is itself evidence in support of claim for an adjustment based on an alleged cost difference so that the dumping is minimised or eliminated. Such a claim defies logic and ignores the myriad

factors (e.g. supply, demand, economic conditions, profit and market power) in addition to cost, that influence the formulation of prices in particular markets. In the absence of any analysis by Saha or the Commission of such factors, it is impossible to conclude that domestic and export prices have been modified in different ways by import duties on HRC.

Consequently, it is submitted that the Commission is obliged to reject the claims made by Saha in relation to this issue and that no adjustment to normal value should be made on account for import duties paid on HRC.

It is also noted that this issue was first raised in the course of the verification visit of 11 – 16 March 2015. As previously stated, it has taken Saha three months to file its revised claim and any supporting evidence. In addition to the implications for the verification process of the late submission of such evidence, we submit that any acceptance of Saha's claim by the Commission at this late stage would constitute a denial of natural justice to ATM.

ATM highlights with the Commission the Dumping and Subsidy Manual requirements concerning the onus and burden of proof¹:

“Section 269TAC(8) places a responsibility on the Commission, as part of its fact finding responsibility throughout an investigation or review, to make adjustments. The Commission seeks relevant data and makes adjustments where evidence exists that a particular difference has affected price comparability.”

It is further noted that:

“Exporters making adjustment claims also have a responsibility – in providing evidence in support because this information is normally in their possession. Claims should be provided in a timely manner to enable an examination of the circumstances and to verify the supporting accounting information.”

And,

“If an adjustment claim is made after the verification visit to the exporter, the Commission will assess its appropriateness having regard to the reliability of the information provided and the remaining time available to complete the report.”

Saha has been unable to adequately demonstrate that a price differential is evident in domestic sales of HSS produced from imported and locally source HRC. Additionally, Saha has not been able to adequately demonstrate cost differentials for the domestic and export goods and attributes this to the requirements of compliance with domestic accounting standards. ATM submits that the Commission has verified Saha's sales of AS1163 equivalent goods on the domestic market (as distinct from sales of TIS 107 goods) and it would appear, from Saha's disclosures, that only a single cost for locally produced goods has been recorded.

As Saha cannot adequately substantiate cost differences between the domestic and exported goods, Saha's claim for adjustment for duty drawback must fail.

Ad-valorem measures

In its submission dated 17 June 2015, ATM detailed reasons that *ad valorem* measures are considered ineffective in removing the full impact of injury from dumping. ATM is not seeking measures that extend beyond that needed to remove the injurious effects of dumping. ATM would highlight with the Commission that where measures are collected that exceed the margin of injurious dumping, these may be refunded via the Duty Assessment process. A short-payment of interim dumping duty that occurs from measures based upon the *ad valorem* methodology cannot be subsequently collected from the importer.

¹ Dumping and Subsidy Manual, P.59.

ATM is also aware that [company] has advised customers that “Any amendment of duty, including imposition of Dumping Duty will NOT be to the buyers account²”. This indicates that certain importers and/or exporters are willing to absorb the cost of duty payments to maintain injurious prices in the Australian market, hence the need for measures that incorporate a fixed export price (i.e. based upon the combination method).

It is therefore critical that the correct form of measures is applied – in this case based upon the combination method – to ensure the remedy adequately removes the injurious effects of dumping.

FOB level export price/containerisation

Section 269TAB (1) defines the export price for goods exported to Australia as the “price paid or payable for the goods by the importer” but does not include any costs after exportation of the goods (i.e. freight costs, etc).

Saha is seeking to have the ex-factory price as the price point where dumping duties are levied. This request is inconsistent with the legislative requirements concerning export price.

Material injury and like goods

Saha has suggested that the Commission impact certain non-dumped imports of HSS in its injury assessment. ATM would highlight that in respect of boron-added goods, the Commission is currently investigating whether the goods circumvented measures in place on HSS. In respect of imports from new sources of supply (UAE and India), ATM contends that the volumes from these countries had only recently emerged during the 2013/14 period, and were in substantially smaller volumes than the goods exported from Thailand.

Saha has also included representations that the goods covered by the investigation extend beyond the production capability of ATM. This is not the case. The Commission was satisfied that it had reviewed “ATM’s operational capabilities” and was satisfied that the Australian industry produces like goods to the goods the subject of the application.

The Commission further noted that *“For goods that are unable to be manufactured by the Australian industry, the Commission notes that an exemption from anti-dumping measures may be granted on application.”*

NIP Methodology

Saha has suggested that it seeks to remind the Commission about the level of profit to be applied to a Non Injurious price (“NIP”). It is claimed that “record high prices” were evident in the period coinciding with the nine month period in 2008.

SEF No. 254 has indicated that the Commission has based the selected profit level for inclusion in an unsuppressed selling price on ABS data for the primary metal and metal product manufacturing industry for 2008-2009. ATM has included representations on this issue in its submission of 17 June 2015.

Closing remarks

Saha has not supplied adequate or sufficient information to satisfy the Commission’s concerns that an adjustment for duty drawback is justified for Saha’s normal value. Saha’s additional requests for the Commission to re-examine or re-visit certain matters (e.g. basis for profit on NIP) are not warranted in the absence of information demonstrating the assertions made.

For these reasons, ATM anticipates that the Commission’s dumping margin calculation for Saha will not be reduced.

² [Company] offer – January 2015 – refer Confidential Attachment 1.

If you have any questions concerning this submission please do not hesitate to contact ATM's representative Mr John O'Connor on (07) 3342 1921 or Mr Matt Condon on (02) 8424 9880.

Yours sincerely



Brett Willcox
Manager – Strategy and Business Planning