

30 June 2015

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

Received on 30 June 2015

PUBLIC FILE VERSION

Dear Ms Taylor

Dumping Investigation No. 254 – Hollow Structural Sections Exported from Thailand

We refer to the submission of Saha Thai Steel Pipe dated 15 June 2015, in which the exporter seeks to justify its claimed adjustment to normal value for alleged ‘exempted duties in inputs of hot rolled coil used in the production of goods for export’.

The Australian industry has previously opposed this claim on the basis of the reliability of the evidence asserted in support of this claim, and also, in its submission dated 24 June 2015:

“the myriad of factors (e.g. supply, demand, economic conditions, profit and market power) in addition to cost, that influence the formulation of prices in particular markets.”

Further to this submission, the Australian industry wishes to highlight that the claimed adjustment should be opposed by the Commission on the basis that, the difference, if it indeed exists, does not in fact affect the price comparability between the domestic sales and exported goods.

The WTO Disputes Settlement Panel in *US – Softwood Lumber V* considered that there is no requirement to adjust for any and all differences but rather only those differences demonstrated to have affected the price comparability:

“We consider that Article 2.4 (of the WTO Anti-dumping Agreement) does not require that an adjustment be made automatically in all cases where a difference is found to exist, but only where – based on the merits of the case – that difference is demonstrated to affect price comparability. An interpretation that an adjustment would have to be made automatically where a difference in physical characteristics is found to exist would render the term ‘which affect price comparability’ nugatory. Further, such an interpretation would make little sense in practice, as not all differences in physical characteristics necessarily affect price comparability.”¹

Reflecting further on the meaning of the term comparability in Article 2.4, the *Panel in US – Softwood Lumber V* concluded that an investigating authority must, based on the facts before it, on a case-by-case basis decide whether a certain factor is demonstrated to affect price comparability:

“The identified differences concerning the products sold in the two markets must affect the comparability of normal value and export price for the obligation to make due allowance to apply. Article 2.4 does not define what comparability means, but includes a non-exhaustive list of factors which may affect price comparability. Comparability is a term which, in our view, cannot be defined in the abstract. Rather, an investigating authority must, based on the facts before it, on a case-by-case basis decide whether a certain factor is demonstrated to affect price comparability. We can imagine situations where although differences exist, they do not affect price comparability. For instance, this could occur

¹ UNITED STATES – FINAL DUMPING DETERMINATION ON SOFTWOOD LUMBER FROM CANADA (WT/DS264) WT/DS264/R (13 April 2004), para. 7.165

where in the exporting country all cars sold are painted in red, while cars exported are all black. The difference is obvious; in fact, it is one of those differences listed in Article 2.4 itself – a difference in physical characteristics. However, there might be no variable cost difference among the two cars because the cost of the paint – whether red or black – might be the same. **If instead of differences in cost, we were looking at market value differences, we might reach the same conclusion if either the seller or the purchaser, would be willing to sell or purchase at the same price, regardless whether the car is red or black.**² [emphasis added]

Applied here, there is significant evidence currently before the Commission to indicate that any difference between the prices of goods sold in the domestic Thai market, and the price of goods exported to Australia.

CONFIDENTIAL ATTACHMENT A contains a detailed analysis of the Thai domestic market for hollow structural sections (HSS). What is evident from the market analysis report is that Saha Thai is not a market leader, or price maker, and therefore must necessarily set its domestic sales price in line with prevailing market conditions. Indeed, the attached market analysis report demonstrates the significant competitive conditions in the domestic Thai HSS market. To demonstrate this finding, the market analysis report finds at p. 17:

“Domestic Sales

- Three major pipe producers have sold their products in various channels; the main channel will be through distributors across the country and another one is to offer the products in government project (auction) or large projects by private companies.
- The price they charge is varied on the channels they sell. As pipe is the mass product, the price to end users in general market has to be related to average market price, the pipe producers would leave margin room for distributor at least 10%, and will be larger on the bigger order volume.
- On the other hand, government would set the middle price for products in the auction, the bidder will discount their price from that middle price in order to win the project. In this case, it can be said that government is the end user but its charged price will be lower than price to general end user.
- There is no brand logo on black pipe in Thai market (only galvanized pipe does) thus there is no brand differentiation and distributors purchase pipe from producers they can get the highest margin. This market is highly competitive”

In other words, the domestic sales price is not driven by the alleged difference in the cost of production, but rather prevailing domestic Thai market conditions. This position is also supported in terms of the pricing decisions around export sales to Australia. Indeed, the evidence of the importer, Commercial Metals Pty Ltd, (Public File Folio 017) states at page. 26:

“CMC explained it had not imported any of the alloyed goods under consideration. CMC explained that it believed that this practice is one of the reasons the market price for HSS has fallen as CMC claimed that it was forced to follow the market prices. CMC stated that it believed it was not driving HSS prices down but any other competitor, **CMC had to react to the market demands even in an unfair competitive environment.**” [emphasis added]

In other words, the alleged lower costs of production were not determinative of export prices.

² *Ibid.*, para. 7.357.

Concluding Remarks

In conclusion, the Australian industry submits that the claimed adjustment is not merited under anti-dumping law or practice and should not be permitted by the Commission on the basis that the claimed cost differences between the domestic and export products do not, on the evidence here affect price comparability and therefore do not require adjustments by the authorities.

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

Yours sincerely



Brett Willcox
Manager – Strategy and Business Planning