

Austube Mills Pty Ltd
ABN 21 123 666 679

Head Office - Industrial Drive, Mayfield NSW 2304
PO Box 156, Newcastle NSW 2300
Ph: +61 2 4935 4498



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The Director,
Operations 4
Anti-Dumping Commission

By Email: investigations4@adcommission.gov.au

PUBLIC FILE VERSION

Dear Director,

***Review Inquiry No. 419 concerning hollow structural sections exported from China, Korea, Malaysia and Taiwan:
Australian industry member's response to Statement of Essential Facts***

Austube Mills Pty Ltd (ABN 21 123 666 679) (**ATM**), a member of the Australian industry producing like goods, refers to *Statement of Essential Facts No. 419 (SEF 419)* and makes the following observations. References to headings and sub-headings correspond with those contained in SEF 419.

SUMMARY

Following consideration of SEF 419, ATM makes the following observations:

- the Commission's proposal to recommend the latter specification date for the commencement of the altered measures is inconsistent with legislative intent and possibly represents a fettering of the Minister's discretion;
- the Commission's determination of the export price for Dalian Steelforce is the correct and preferable decision;
- the Commission's proposed 'inventory carrying cost' adjustment for Huludao is unsound and needs to be reviewed;
- there is no evidentiary basis to make the 'theoretical weight' adjustment claimed by Huludao in this review inquiry;
- the exporter [desktop] verification report for Tianjin Youfa has yet to be published. ATM will respond to the substantive disclosure made therein once published;
- ATM considers the normal value methodology applied to those models of goods not sold domestically by Kukje as unsound. ATM also questions the basis for the 'specification' adjustments proposed given that some normal values have been determined under s 269TAC(2)(c);
- If instances of targeted dumping have been found in the case of certain exporters, then this needs to be addressed.

2.4 Submissions received in relation to the initiation of the review – The Commission’s Assessment

In its 24 July 2017 submission, ATM advocated for the Parliamentary Secretary to specify the review initiation date as the date from which any alterations to the dumping or countervailing duty notices take effect. In responding to this submission, the Commission advised that in accordance with its ‘established practice’, it would recommend that the “*outcome of the review have effect from the date the Minister publishes a notice advising the results of the review*”.¹ With respect, this proposed approach is both (a) inconsistent with the clear legislative intent of the most recent amendments to the *Customs Act*, and (b) suggests a fettering of the Minister’s clear discretion to specify a different date of effect under paragraph 269ZDB(6)(a).

The Explanatory Memorandum to the *Customs Amendment (Anti-Dumping Measures) Bill 2017*, states that the intention of the latest legislative amendments to the review of measures provisions under Division 5 of the Customs Act, were to:

This will allow specific information to be used to determine an export price and limit Exporters’ ability to subvert the anti-dumping framework and benefit from inappropriately reduced rates of duty that do not remedy the injurious effects of dumping.

...

The amendments accord with the intent of reviews of anti-dumping measures under Division 5 of the Customs Act, which is to ensure the rate of duty in force accurately reflects the level of duty necessary to combat the identified dumping or subsidy.

...

This level of duty may be ineffective in preventing future dumping particularly where market prices for the goods have increased.² (emphasis added)

...

The purpose of retrospectively applying the specific methods... [f]ailing to do so, could allow Exporters to subvert the intent of the anti-dumping system and produce an unfair outcome for Australian industry.³ (emphasis added)

Indeed, since publishing SEF 419 on 19 March 2018, and making public the Commission’s intention to not recommend the Minister specify the altered measures take effect from the earlier date of initiation of the review, ATM has observed a precipitous decline in one exporter’s export price offers to Australia, defying the trend in material input costs, specifically, hot rolled coil costs.⁴ By not specifying that the changed measures take effect from the date of initiation of the review, this exporter has taken advantage of its historic (lower) floor price to cause further injury to the Australian industry prior to the floor price being adjusted upwards.

4.3.4 Dalian Steelforce

Export Price

ATM acknowledges the Commission’s careful consideration of commercial and other factors influencing the price between the exporter and the importer, and considers that the Commission’s conclusion that export sales made by the exporter to the related customer during the review period were not arms length transactions. Therefore, the calculation of the export price under paragraph 269TAB(1)(c) using the deductive methodology is the correct and preferable decision (given the unavailability of paragraph 269TAB(1)(b) due to the role of the intermediary trader).

¹ SEF 419, p. 13.

² Explanatory Memorandum to the *Customs Amendment (Anti-Dumping Measures) Bill 2017*, p. 2.

³ *Ibid.*, p. 3.

⁴ CONFIDENTIAL ATTACHMENT

4.3.5 Huludao

Adjustments

Inventory carrying cost

Before allowing the claimed adjustment for 'inventory carrying cost' the Commission must first consider whether or not there is evidence to positively suggest that the claimed cost associated with carrying inventory for the domestic market in fact affects price comparability between export and domestic sales. Here questions arise of whether or not Huludao in fact routinely records this cost in the ordinary course of their business, and accounts for it in its routine pricing decisions; or whether in fact, it has just calculated this cost for the purpose of responding to the exporter questionnaire.⁵

Even if sufficient evidence is found that differences in inventory carrying costs are found to affect price comparability between export and domestic sales, then it would likely be on the basis that inventory carrying costs for export sales have also been found. If that is so, then it follows that an adjustment for inventory holding charges in relation to export sales is also necessary.⁶ ATM considers it untenable for Huludao to argue that it does not incur inventory carrying costs with respect to export sales. To do so, would suggest that production is immediately shipped. This is unrealistic.

Theoretical weight

In *Continuation Inquiry No.379*, Huludao claimed the 'theoretical weight' adjustment in its response to *Exporter Questionnaire*.⁷ However, following on-site verification, both the verification team⁸ and the Commission,⁹ refused Huludao its claimed 'theoretical weight' adjustment to the normal value. So to, in this *Review Inquiry No. 419*, the verification team did not allow the (again) claimed 'theoretical weight' adjustment.¹⁰ Despite numerous recent attempts to claim the 'theoretical weight' adjustment, which has been consistently denied, SEF 419 appears to place undue weight on an unverified submission of Huludao following verification, claiming the adjustment, without any evidence supporting the claim. The *Dumping and Subsidy Manual* describes the Commission's practice in relation to allowing adjustments as follows:

Exporters making adjustment claims also have a responsibility to provide 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.

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.¹¹

Applied here, given that the claimed adjustment has been refused in the most recent on-site verified inquiry, and indeed by the verification team in this review, then in order for the Commission to reach the requisite level of satisfaction required that the adjustment is justified, more than a statement referring the Commission to decisions

⁵ This approach was most recently applied in *Steel Reinforcing Bar – Nervacero S.A. – Exporter Visit Report* (EPR Folio No. 418/039), p. 16.

⁶ This was found recently in *Steel Reinforcing Bar – PT Ispat Panca Putera – Exporter Visit Report* (EPR Folio No. 418/031), p. 11.

⁷ EPR Folio No. 379/015, p. 22.

⁸ In *HSS – Huludao City Steel Pipe Industrial Co., Ltd – Exporter Visit Report* (EPR Folio No. 379/059)

⁹ In Final Report 379 - Hollow Structural Sections exported from China, Korea, Malaysia and Taiwan (EPR Folio No. 379/070)

¹⁰ *HSS – Huludao City Steel Pipe Industrial Co., Ltd – Exporter Visit Report* refers (EPR Folio No. 419/037.1)

¹¹ Anti-dumping Commission, *Dumping and Subsidy Manual* (April 2017), p. 61.

dating back to 2012¹² and 2013¹³ is required. Therefore, insufficient evidence has been provided to the Commission, and the claimed adjustment should again be refused.

4.3.6 Tianjin Youfa

ATM observes that as at the date of this submission, the exporter [desktop] verification report of Tianjin Youfa has yet to be placed on the public file. In these circumstances it is impossible for ATM to engage substantively with SEF 419 with regard to this exporter, or to Tianjin Youfa's submission dated 12 March 2018.¹⁴ ATM reserves the right to comment further on the Commission's treatment of Tianjin Youfa and the exporter's submission following placement of the exporter's [desktop] verification report on the public record.

4.4.1 Kukje

Normal Value and Adjustments

It is unclear to ATM why the Commission has departed from its usual practise of determining normal values for those models exported to Australia; but incapable of an exact match with models sold domestically; being nevertheless determined under s 269TAC(1) with adjustments under s 269TAC(9). In fact, the Commission advises that 'specification' adjustments have been made, which ATM would consider unnecessary if the normal value was determined under s 269TAC(2)(c) as suggested. Therefore, ATM is concerned that adjustments to the normal value have been double-counted.

TREATMENT OF TARGETED DUMPING BY EXPORTERS

Further to its observations outlined above, ATM is also concerned by the behaviour of certain exporters, specifically, [redacted] [named exporters] that suggests that they sold the goods to Australia during the review period at export prices that differed significantly among different periods of time, especially in the second-half of the review period. ATM submits that closer analysis of the verified exporter data of [redacted] [named exporters] will reveal significant fluctuations in the dumping margins across the quarters of the review period calculated using the *weighted average to weighted average* approach.

For these reasons, ATM submits that [redacted] [named exporters] are likely to have engaged in 'targeted dumping', and it is appropriate for the Commission to use the *weighted average to transaction method* to work out whether dumping has occurred under s 269TACB(3).

Accordingly, the Commission should now calculate dumping margins for [redacted] [named exporters] by comparing the respective export transactions determined in relation to *individual transactions* during the review period with the *weighted average of corresponding normal values* over that period. This means applying the weighted average to transaction method to determine dumping margins.

Subsection 269TACB(3) requires individual export prices to be compared with the weighted average of corresponding normal values, and that this is to be used in relation to all export sales in the relevant period, in this case, the entire review period.

¹² Investigation No. 177.

¹³ Reinvestigation No. 203.

¹⁴ EPR Folio No. 419/041.

ATM observes that s 269TACB(6) prescribes the manner of determining a dumping margin in relation to circumstances where a comparison is made under s 269TACB(3), and only in relation to the particular transactions with export prices that are less than the weighted average of corresponding normal values. Subsection 269TACB(6)(a) provides that the goods exported to Australia in each such transaction are taken to have been dumped. The Customs Act also provides at s 269TACB(6)(b) that the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values. The focus of s 269TACB(6) is on the particular transactions where the individual export price is less than the weighted average of corresponding normal values. Subsection 269TACB(6) is silent on how to treat the goods exported to Australia in other transactions. In these circumstances, when using the method under subsections 269TACB(3) and (6), the Commission should not take into account offsets for negative dumping margins arising from transactions where the export price was higher than the weighted average of corresponding normal values. This interpretation has been previously found by the Commission to be consistent with the intention of these provisions, which is, to unmask and take into account export prices that differ significantly among different purchasers, regions or periods. In doing so, the Commission will identify and address 'targeted' or 'masked' dumping that can cause material injury. This approach was found by the Commission to be available under Australian law and that it is consistent with WTO jurisprudence in Report 219 - Power Transformers exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam, 2 December 2014.

CONCLUSIONS

In light of the above submission the Commission is encouraged to review its proposed recommendations to the Minister.

Should you have any questions concerning this submission, please do not hesitate to contact ATM.

FOR AND ON BEHALF OF THE AUSTRALIAN INDUSTRY

AUSTUBE MILLS PTY LTD