

STAUGHTONS

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PUBLIC RECORD VERSION CASE NO. 254

July 6, 2015

Received on 7 July 2015

Mr Bora Akdeniz
Assistant Director - Investigations
Anti-Dumping Commission
GH P O BOX 1632
Melbourne Vic 3001

Via email: Bora.akdeniz@adcommission.gov.au

Dear Mr Akdeniz

PUBLIC RECORD VERSION CASE NO. 254

I am writing on behalf of Commercial Metals Pty Ltd (CMC) and in response to Public Record Submission Nos 42 and 46 dated the 24th and 30th of June 2015 respectively.

In Submission No. 42 ATM states, inter alia, that it:-

“is also aware that (company) has advised customers that any amendment of Duty including imposition of Dumping Duty will not be to the buyer’s account.”

ATM further suggested that this indicated 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).”*

1. RESPONSE – Form of Measures

- 1.1 It needs to be understood that the current Measures on imports from Thailand are only of a provisional nature in that no interim dumping Duties have yet been imposed.
- 1.2 It is simply not clear what is being suggested. Any suggestion of proposed circumvention is strenuously denied, but in any event, is not relevant at the preliminary stage of only provisional Measures which in the case of Saha Thai have been reduced from 12.4% imposed from 16th March 2015 to 5.7% imposed from 1st June 2015.

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- 1.3 When provisional Measures are imposed an importer that is made liable has to form a view as to the likely conclusion.
- 1.4 CMC has reasonably concluded that its exporter has not exported at dumped prices (i.e. 2% or more).
- 1.5 If such a party as CMC legitimately believes that no Interim Dumping Duty should be imposed in due course, it has to be within its commercial rights to price accordingly.
- 1.6 Such a prior decision cannot be seen as the basis of a later anti-circumvention application after a duty is imposed if that is the ultimate determination that is made in this matter.
- 1.7 There is no law on absorption of provisional Measures. If provisional Measures are not passed on in full for prior orders caught up by a provisional Measure, that is not a reason to impose a more disruptive form of Interim Dumping Duty on a permanent basis.
- 1.8 If a final duty is imposed, any claims of circumvention should be based on sufficient evidence from ATM in relation to behaviour after final duty is in place.
- 1.9 In any event, as the Commission would be well aware, an importer that offsets a Dumping Duty against its profit margin is legitimately entitled to do so and there would only be a consideration if there was evidence an importer was compensated by its exporter.

FOB Level Export Price/Containerisation

In Submission No. 42 ATM states the following under the above heading:-

“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 requirement concerning export price.”

2. RESPONSE

- 2.1 ATM’s statement is simply wrong in that **generally** export prices are determined at the FOB level but Dumping Duties have only recently been levied at the ex-works level as in Case No. 234.
- 2.2 In this instance Saha Thai is referring to fully containerised cargo when the containers (FCLs) are packed/stuffed at Saha’s factory for export to Australia.
- 2.3 Saha Thai strenuously rejects any suggestions that it has exported at so called dumped prices but it claims any normal value determination should be at the ex-works level.

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- 2.4 The Commission would be aware from previous submission that for valuation purposes the place of export for containerised cargo exported to Australia is the place where the containers are packed/stuffed. (s154ACT).
- 2.5 For reasons including the fact that break-bulk shippers are no longer willing to pick up cargoes such as Saha Thai's exports to Australia, Saha Thai is now incurring temporary excessive costs because of the need to ship FCLs.
- 2.6 Any fair and reasonable comparison should take this problem out of the equation and the relevance of s154 provisions is apposite and should be adopted both for consistency and commercial sensibility in these circumstances.

In its Submission of 30th June 2015, No. 46, ATM has referred to a case 'US – Softwood Lumber V. 1, which for reasons I have detailed in *Further Submission is simply erroneous in its supposed logic and shows a misreading of the Anti-Dumping Agreement (ADA) and WTO jurisprudences. (*Submission on behalf of Saha Thai).

Having attempted to relate the US Case to Saha Thai's circumstance, ATM also includes an excerpt from the CMC Importer Visit Report that in its view somehow substantiated that Saha Thai's "alleged lower costs of production were not determinative of export prices".

3. RESPONSE

- 3.1 ATM's apparent conclusion makes no sense, nor does its perceived relevance of the US Case to Saha Thai, as ATM states:

*"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".*

- 3.2 ATM's so called evidence on that domestic pricing is clearly based on an analysis by some third party, no name market survey whereas the Commission needs to base its findings on verified data and information evidenced by the Commission's Visit Team to Saha Thai.
- 3.3 ATM also attempts to support its views on Saha Thai pricing by selectively emphasising the following line from the CMC Importer Visit Report:

"CMC had to react to the market demands even in an unfair competitive environment".

- 3.4 The reality is that CMC's imports ex Thailand compete in the single Australian market supplied by ATM, other Australian producers and other imports.

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3.5 In looking at the SEF, the most notable thing is the clear finding that other imports increased while Thai imports shrank in 2014, there were no findings of sales or volume injury as a result, but a failure to adjust for causation by these other imports.

3.6 Both the Anti-Dumping Agreement and Australia's legislation requires that injury from other causes not be attributable to any dumped goods.

4. MARKET SHARES & STRUCTURE

4.1 The SEF para 5.3.1, correctly states that there are three Australian producers supplying the Australian market, namely:

- ATM - (Arrium Ltd)
- Orrcon - (Bluescope)
- A.P.T.

SEF, however, also states that ATM and Orrcon accounted for more than an estimated 98 per cent of the Australian production.

4.2 This suggests that APT only accounted for 2% of local production.

4.3 CMC disputes this estimate on the basis that APT would have produced circa 24k Tonnes during the I.P. and it would seem that the Commission has not sought to verify APT's production.

4.4 The relevance being that on CMC's understanding APT's production was significantly more than 2% of total local production and that APT's sales must have impacted on ATM.

4.5 The Commission's market supply estimate for F.Y. 2014 was 380,000 Tonnes (5.1, SEF), and ATM's sales are stated as accounting for:-

- 60 per cent of Australian industry sales
- 30 per cent of total Australian market

4.6 Those percentages result in the following derived sales volumes:

- 114,000 Tonnes total Australian market for ATM (30%)
- 76,000 Tonnes total Australian market for Orrcon (20%)
- 2,000 Tonnes total Australian market for A.P.T. (0.5%)

4.7 Based on the SEF data therefore our construction of the Australia market supply for F.Y. 2014 would be:

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TABLE NO. 1

SUPPLY SOURCE	TONNES 000 (ROUNDED)	MARKET SHARE %
ATM	114	30
ORRCON	76	20
A.P.T.2	2	0.5
LOCAL TOTAL	192	50.5%
SAHA THAI		
OTHER IMPORTS		
TOTALS	380	100%

4.8 Conclusion

We respectfully suggest that the market supply and production estimates stated in Section 5 of the SEF are at odds with the depicted Australian market on page 21 of Section 54 of the SEF.

The graphic on page 21 of the SEF would indicate the local producer's sales to be in the order of 270,000 Tonnes which would suggest ATM's domestic sales to be circa 162,000 Tonnes or around 43 per cent of the Australian market, and other imports to be in the order of 80,000 Tonnes for F.Y. 2014.

5. NON DUMPED IMPORTS

- 5.1 If non-dumped imports clearly took away sales from ATM, they would have to have been price favourable. If they took Thai imports share also, it is also a valid assumption that they were priced at least as well as the 'CMC product' and hence were price setters.
- 5.2 The Commission has access to the available Customs database on imports which would have allowed the Commission to work out average pricing from those other countries in the same way as the Commission did for Thai imports from those sources.
- 5.3 The SEF 254 does that in respect of volumes, the Commission considers that it is not clear whether dumped imports from Thailand have caused the Australian industry Material Injury in the form of reduced sales volumes. The Commission also noted that Thai imports increased their market share only slightly in the I.P.
- 5.4 CMC submits that the Commission should also have worked out average pricing from those other countries as to do so is not some discretionary option but a WTO dictate.

It is also submitted that APT should have been included in the process for estimating local producer's production and sales.

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6. YEAR 2012 MARKET

6.1 Based on ATM data the Australian market supply for year 2012 was depicted as follows:

TABLE NO. 2

PRODUCT FINISH	TONNES (000)		ATM SHARE %
	TOTAL	ATM	
HOT DIPPED GAL	110		
I.L.G.	170		
PAINTED & BLACK	300		
TOTALS	580		

Source: Conf. Attach No. 1 att'd

6.2 Conclusions

- Market supply for F.Y. 2014 has declined 200k Tonnes on 2012, or 34% and ATM's sales volume has declined an apparent 110k Tonnes.
- Saha Thai and other Thai imports have not caused that decline.
- ATM states that Thai imports caused injury from June 2012.
- ATM had Hot Dipped Galv (HDGP) sales of [REDACTED] in 2012.
- Saha Thai supplies HDGP to Australian market.
- CMC asserts that as ATM's galvanising plant at Acacia Ridge has been fully decommissioned and as that Hot Dipped Galv. (HDGP) production was air-blown, the question needs to be asked of ATM as to what sizes and grades of its black pipe are now being outsourced 'batch' galvanising and if that involves the air-blown process.
- As indicated by Confidential Attachment No. 2, 125 NB and 150 NB were traditionally externally galvanized, as were 80 NB, 90 NB and 100 NB.
- The Onesteel Oil and Gas Pipe Pty Ltd operation ceased production 31/5/12.

7. CAUSATION

7.1 As ATM have observed in its Submission No. 46, CMC claimed that it had to react to the market demands even in an unfair competitive environment.

7.2 CMC's claim was a reference to imports of Alloy Steel Pipes from countries including China, Malaysia and Korea which are the very subject of the Commission's current inquiry on Anti-Circumvention, Case No. EPR 291.

7.3 Attachment No. 3 is an extract of the Arrium submission to the Standing Committee on Agriculture and Industry, 30th November 2014, being an inquiry into Anti-Circumvention, etc.

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CMC submits that the chart on Attachment No. 3 clearly demonstrates Arrium's position on circumvention and CMC rejects the Commission's statement in para 8.6.2 of the SEF that reads:

"The Commission acknowledges that certain alloyed HSS is being imported into Australia but notes that the injury suffered by the Australian industry due to the dumped imports from Thailand cannot be associated with alloyed HSS imports".

CMC has not imported any Alloy Steel Pipes the subject of the current Inquiry on Circumvention.

7.4 The Commission would be fully aware of the following factuals relating to relevant price effect considerations in the Australian market:

7.4.1 Substantive duty rates:

- Thai imports are zero duty as a result of the Australian and Thai Government's entering into a **Free** Trade Agreement (1st Jan 2010)
- Imports from Korea and Taiwan were dutiable at **5%** (DCT Rates).
- Imports from China were dutiable at **4%** (DCS Rates)
- Imports from Malaysia became duty free in January 2013.

7.4.2 Additionally as a result of Report No. 177 Dumping and Countervailing Measures were imposed as notified by ACDN No. 2012/31 of 3rd July 2012 as follows:

THAILAND

- Saha Thai – zero Dumping Duty

CHINA

- 'Dalian Steelforce' – effective rate of 13.4% Dumping and Countervailing

MALAYSIA

- 'Alpine' – 3% Dumping

KOREA

- 'Kukje' – 3.2% Dumping

TAIWAN

- 'Shin Yang' – 2.8% Dumping

7.4.3 CMC's understanding is that the stated exporters from Malaysia, Korea and Taiwan also had designated AEPs or floor prices.

7.4.4 Customers are forced to acquire imports by ATM's unwillingness to supply a competitor at truly competitive rates. In CMC's view, the SEF simply stopped at the conclusion as to ATM's motivation, without it would seem thinking about whether this is a non-dumping cause, which it clearly is.

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7.5 CMC is aware from 'Onesteel' correspondence provided to the Commission that ATM's legally related distribution operation accounts for 50 per cent of ATM's domestic sales.

ATM sells directly to other 'tier one' distributors including Bluescope and the Southern Steel Group.

It is at this level of sale that CMC claimed ATM's prices were generally higher due to ATM commanding a domestic price premium because of quicker delivery times, etc.

7.6 CONCLUSION

Saha Thai imports had no Duty, no Dumping Duty and compared to the exporters nominated in 7.4.2 should have had a clear price advantage in its exports to Australia.

8. INJURY FROM ATM'S REFUSAL TO SUPPLY

8.1 CMC considers the conclusion in para 8.6.3 of the SEF as to distribution is problematic.

8.2 CMC, however, has to compete for sales at the second tier level group of stockists and distributors that ATM supplies targets, via its agent [REDACTED]

8.3 The Commission has been provided with [REDACTED] market price offers which clearly indicate a trend to lower pricing than the Saha Thai product.

8.4 The following is a brief comparison of ATM apparent offers for July 2015 delivery via its two routes to end market customers:-

PRODUCT	[REDACTED]	[REDACTED]
BLUE PAINTED RHS		
BASE	[REDACTED]	[REDACTED]
1.6MM		
2.0MM		

NOTES:

(1) Prices are FIS A\$ per Tonne

(2) Sources - ** [REDACTED] July 2015

Delivery price offer and

* [REDACTED]

(3) *Based on sighted documentation

(4) ** Copy provided ADC

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8.5 Conclusion

[REDACTED]

9. LIKE-GOODS

9.1 CMC questions the SEF Statement included in para 3.5.1 which reads:-

*“The Commission reviewed ATM’s operational capabilities table and observed that ATM had the capacity to manufacture all the products covered in its application with the exception of **HDG HSS** and **RHS** between 800mm and 950mm.*

(emphasis added)

9.2 CMC’s understanding is that ATM has no capacity to produce HDG HSS which the SEF would seem to confirm.

9.3 As a general comment, CMC considers the description of like-goods for this Investigation are based more on the harmonized Customs Tariff Schedule than an actual description of the goods physically produced by ATM and the other two local producers, and which are offered for sale in the normal course of business.

10. ATM’S FUTURE

10.1

[REDACTED]

(Relevant correspondence)

10.2 Given that doubt and uncertainty it would appear from the correspondence in question that the distribution operation of Arrium Ltd is preparing to secure alternative supply sources.

10.3 Whilst CMC strenuously rejects the current determination on Saha Thai’s exports the prospect of prospective Dumping Duties could provide the Onesteel Metalcentre operation with an unfair market advantage by having exclusivity on supply from countries such as the UAE, India and Vietnam.

11. Summary

CMC has never claimed to be the price leader in the Australian market. That role can only be attributed to ATM which is demonstrably the volume supplier to the market via its legally related distribution operation which sells at a price premium and its third party agent, [REDACTED] that clearly provides ATM product to second tier distributors at a lower discounted price.

There is also the issue of the Onesteel Distribution Operation selling imported product from the UAE (e.g. HDGP) and the closure of locally manufactured farm gates (Albury) under the ‘Cyclone’ brand has on our understanding resulted in the Onesteel Distribution Operation now importing those gates in a “CKD” form. (Surrogate imports of Galv. Tube).

As stated previously, CMC has not imported the Alloy Steel Pipe and this dynamic should be the real concern for ATM.

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CMC also claims the Commission has underestimated the impact of APT sales on the Australian market.

12. Contact Details

Please contact the writer for any further information or clarification and thank you for your consideration.

Regards

A handwritten signature in black ink, appearing to read 'M J Howard', with a large, stylized initial 'M'.

M J Howard