



Australian Government

Australian Customs and
Border Protection Service

CUSTOMS ACT 1901 - PART XVB

TERMINATION OF PART OF AN INVESTIGATION NO.177

**CERTAIN HOLLOW STRUCTURAL SECTIONS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF
CHINA, THE REPUBLIC OF KOREA, MALAYSIA,
TAIWAN AND THE KINGDOM OF THAILAND**

6 JUNE 2012

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
the Act	<i>Customs Act 1901</i>
ADA	the <i>Anti-Dumping Agreement</i>
Australian industry	the Australian industry producing HSS
ASA	Australian Steel Association
ATM	OneSteel Australian Tube Mills Pty Ltd
CCP	
CCP Notification	Thai <i>Central Commission on Prices of Goods and Services (CCP) Notification on Notifying of Cost, Price and Product Information regarding Steel Sheet B.E. 2554 (2011)</i>
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
CON177	<i>Customs and Border Protection Consideration Report No. 177</i> (the consideration report for this investigation)
China	People's Republic of China
the countries under consideration	China, Korea, Malaysia, Taiwan and Thailand
Customs and Border Protection	the Australian Customs and Border Protection Service
Dalian Steelforce	Dalian Steelforce Hi-Tech Co., Ltd
DFT	Thai Department of Foreign Trade
DIT	Department of Internal Trade (Thailand)
Exporter Questionnaire	Thai Exporter Questionnaire
GOC	Government of China
the goods	the goods the subject of the application ('HSS')
GOT	Government of Thailand
Government Questionnaire	Thai Government Questionnaire
GQ	Government Questionnaire (China)
G Steel	G Steel Public Company Limited
HRS	Hot-rolled steel (used in various context to mean HRC and narrow strip collectively; or hot-rolled coil and other types of hot-rolled steel)
HSS	certain hollow structural sections
Huludao	Huludao City Steel Pipe Industrial Co., Ltd
Zhejiang Kingland	Zhejiang Kingland Pipeline and Technologies Co., Ltd
Korea	the Republic of Korea
Minister	the Minister for Home Affairs
Orrcon	Orrcon Operations Pty Ltd
Pacific	Pacific Pipe Public Co. Ltd
PAD	preliminary affirmative determination
the Regulations	the <i>Customs Regulations 1926</i>

PAD177	Customs and Border Protection <i>Preliminary Affirmative Determination No 177</i>
PAD177A	Customs and Border Protection <i>Preliminary Affirmative Determination No 177A</i>
Price of Goods and Services Act	Thai <i>Price of Goods and Services Act B.E 2541 (1999)</i>
REP148	Customs and Border Protection Report No 148 (aluminium extrusions from China)
REP177	Customs and Border Protection <i>Report to the Minister No 177</i>
Qingdao Xiangxing	Qingdao Xiangxing Steel Pipe Co., Ltd
Saha	Saha Thai Steel Pipe Public Co., Ltd
Samchai	Samchai Steel Industries Public Company Limited
SEF	Statement of Essential Facts
SEF177	Customs and Border Protection <i>Statement of Essential Facts No 177</i> (the SEF for this investigation)
SIE	state-invested enterprise (used interchangeably with 'SOE')
SSI	Sahaviriya Steel Industries Public Company Limited
TER177	Customs and Border Protection <i>Termination of Part of an Investigation Report No177</i> (this report)
Thailand	the Kingdom of Thailand
the Manual	<i>Dumping and Subsidy Manual June 2009</i>
WTO	World Trade Organisation

1. SUMMARY AND RECOMMENDATIONS

This report sets out the reasons for recommending that:

- the investigation into the alleged dumping of hollow structural sections (HSS) exported to Australia from the Kingdom of Thailand (Thailand) be terminated; and
- the investigation into the alleged subsidisation of HSS exported to Australia from the People's Republic of China (China) by two Chinese exporters, Qingdao Xiangxing Steel Pipe Co., Ltd (Qingdao Xiangxing) and Huludao City Steel Pipe Industrial Co., Ltd (Huludao) be terminated.

1.1 Recommendations

It is recommended that:

- the CEO be satisfied that there has been no dumping of HSS by the following two Thai exporters and that, therefore, the investigation be terminated under s.269TDA(1) of the *Customs Act 1901*¹ (the Act) so far as it relates to those exporters:
 - Pacific Pipe Public Co. Ltd (Pacific); and
 - Saha Thai Steel Pipe Public Co., Ltd (Saha)
- the CEO be satisfied that the volume of HSS that has been exported to Australia over a reasonable examination period from Thailand that have been dumped is negligible and, therefore, the investigation be terminated under s.269TDA(3) so far as it relates to Thailand; and
- the CEO be satisfied that, in respect of HSS exported to Australia from the People's Republic of China (China) no countervailable subsidy has been received in respect of the goods or the countervailable subsidisation margin is not more than two per cent for the exporters Qingdao Xiangxing and Huludao, and, therefore, the subsidy investigation be terminated under s.269TDA(2) as far as it relates to those exporters.

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods covered by the application for the purpose of making a report to the Minister for Home Affairs (the Minister).

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

The CEO's powers under this Division have been delegated to certain officers of the Australian Customs and Border Protection Service (Customs and Border Protection).

1.2.2 Application

On 12 August 2011, ATM lodged an application requesting that the Minister publish a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand, and a countervailing duty notice in respect of HSS exported to Australia from China.

The CEO was satisfied that the application was made in the prescribed manner by a person entitled to make the application.²

1.2.3 Initiation of investigation

After examining the application, the delegate of the CEO was satisfied that:

- there is an Australian industry in respect of like goods; and
- there appears to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of goods the subject of the application, or for the publication of such notices upon the importation into Australia of such goods.³

The CEO decided not to reject the application, and notice of the initiation of this investigation was published on 19 September 2011.⁴

1.2.4 Preliminary Affirmative Determinations

On 23 December 2011, the CEO was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia and Taiwan, and made a preliminary affirmative determination (PAD)⁵ to that effect (PAD177).

On 6 June 2012, the CEO was satisfied that there were sufficient grounds for the publication of a countervailing duty notice in respect of HSS exported to Australia from China by all exporters except Huludao and Qingdao Xiangxing, and made a PAD to that effect (PAD177A).

Further details of these PADs are contained in Chapter 2 of this report.

1.2.5 Statement of essential facts

² s.269TB

³ s.269TC(1)

⁴ s.269TC(4)

⁵ s.269TD

On 23 April 2012, Customs and Border Protection placed its *Statement of Essential Facts No 177* (SEF177) for the investigation on the Public Record, on which the CEO proposed to base his recommendation to the Minister concerning the publication of a dumping duty notice and a countervailing duty notice in this investigation.

Interested parties were invited to lodge responses to SEF177 by no later than 14 May 2012.

Non-confidential versions of all submissions received are available on the Public Record for this investigation.

Further details of SEF177 are contained in Chapter 2 of this report.

1.2.6 Report 177

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows,⁶ the CEO must give the Minister a final report in respect of the goods the subject of the application.

The report is due to be provided to the Minister on or by 7 June 2012.

1.3 Findings

Following consideration of submissions received following the publication of SEF177, Customs and Border Protection has found that:

- HSS exported to Australia from Thailand by Pacific and Saha was not dumped;
- some HSS exported to Australia from Thailand had been dumped, but the volume of these dumped exports was negligible; and
- HSS exported to Australia from China by Qingdao Xiangxing had not been in receipt of countervailable subsidies; and
- HSS exported to Australia by Huludao had been in receipt of countervailable subsidies, but the countervailable subsidisation margin is not more than two per cent.

⁶ If the date by which the SEF must be placed on the Public Record is extended, this extends the date by which the final report is due to the Minister by a corresponding period – s269TC(4)(bf).

2. BACKGROUND

2.1 Initiation

On 12 August 2011, ATM lodged an application under s.269TB of the Act for the publication of a dumping duty notice in respect of certain HSS exported to Australia from China, the Republic of Korea (Korea), Malaysia, Taiwan and Thailand, and a countervailing duty notice in respect of HSS exported to Australia from China.

Following an examination of the application, the Delegate of the CEO of decided not to reject the application, and an investigation was initiated on 19 September 2011.

Customs and Border Protection published a notice in *The Australian* on 19 September 2011 notifying of the initiation of the investigation, and released Australian Customs Dumping Notice (ACDN) 2011/43, which contains further details on the investigation and is available at www.customs.gov.au.

The investigation period, used to determine whether dumping and subsidisation has occurred, is from 1 July 2010 to 30 June 2011. Customs and Border Protection is examining the Australian market and the economic condition of the industry from 1 July 2007 for the purposes of injury analysis.

2.2 Previous cases

Customs and Border Protection has previously conducted several investigations, (including reviews and continuation inquiries) into HSS and specific sub-categories of HSS from various origins.

These have included:

- 2006/2007 Investigation (No. 116);
- 2008/2009 Review (No. 143);
- 2008/2009 Investigation (No. 144);
- 2009 Continuation Inquiry (No. 147); and
- 2009/2010 Review (No. 153).

A summary of these investigations is in Customs and Border Protection's Consideration Report for this investigation (CON177).

2.3 Preliminary affirmative determination 177

The CEO may, at any time not earlier than 60 days after the date of initiation of an investigation, make a PAD in respect of goods the subject of an application.

In order to make a PAD, the CEO must be satisfied that:

- there appears to be sufficient grounds for the publication of such a notice; or
- it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods.

On 23 December 2011, the CEO, after having regard to the application and submissions made to the investigation, the CEO was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of HSS exported to Australia from China, Korea, Malaysia and Taiwan, and made a preliminary affirmative determination (PAD)⁷ to that effect (PAD177).

No PAD was made in relation to goods exported from Thailand or in relation to subsidies at that stage.

Following this PAD, Customs and Border Protection decided to require and take securities⁸ in respect of any interim dumping duty that may become payable in respect of HSS from China, Korea, Malaysia and Taiwan that were entered into home consumption on or after 10 January 2012.

2.4 Statement of essential facts 177

On 23 April 2012, Customs and Border Protection placed SEF177 on the Public Record, on which the CEO proposed to base his recommendation to the Minister concerning the publication of a dumping duty notice and a countervailing duty notice in this investigation.

SEF177 preliminarily found that:

- HSS exported to Australia from Thailand by Pacific and Saha was not dumped;
- some HSS exported to Australia from Thailand had been dumped, but the volume of these dumped exports was negligible; and
- HSS exported to Australia from China by Qingdao Xiangxing had not been in receipt of countervailable subsidies; and
- HSS exported to Australia by Huludao had been in receipt of countervailable subsidies, but the countervailable subsidisation margin is not more than two per cent.

Consequently, SEF177 proposed that:

- the investigation into the alleged dumping of hollow structural sections (HSS) exported to Australia from the Kingdom of Thailand (Thailand) be terminated; and
- the investigation into the alleged subsidisation of HSS exported to Australia from the People's Republic of China (China) by two Chinese exporters, Qingdao Xiangxing Steel Pipe Co., Ltd (Qingdao Xiangxing)

⁷ s.269TD

⁸ S.42

and Huludao City Steel Pipe Industrial Co., Ltd (Huludao) be terminated.

This report should be read in conjunction with SEF177.

Interested parties were invited to lodge responses to SEF177 by no later than 14 May 2012.

In accordance with s.269TEA(3), the CEO is not obliged to have regard to submissions received after 14 May 2012 if to do so would, in the CEO's opinion, delay the timely preparation of the final report to the Minister.

In making his termination decision, the CEO has had regard to all submissions received following the publication of SEF177, though limited regard was had to those received after 1 June 2012.

Non-confidential versions of all submissions received are available on the Public Record for this investigation.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection's visit reports, and other publicly available documents. It is available by request in hard copy in Canberra (phone (02) 6275 6547 to make an appointment), or online at <http://adpr.customs.gov.au/Customs/>.

Documents on the Public Record should be read in conjunction with this report.

The following submissions received in respect of Customs and Border Protections preliminary findings (as outlined in SEF177) regarding preliminary countervailing findings for Qingdao Xiangxing and Huludao and the proposed termination of Thailand, have been considered in formulating the findings contained in this report and its appendices.⁹

⁹ Numerous other submissions have been received following the publication of SEF177 and considered by Customs and Border Protection to the extent that they impact the findings in this report. The table provided lists those submissions that specifically relate to the findings in relation to Thailand, and the subsidisation of Qingdao and Huludao.

Submitted by	Submission title/description	Date
Saha	Response to SEF No. 177	27 April 2012
Dalian Steelforce Hi-Tech Co., Ltd (Dalian Steelforce)	Correction of methodological and technical errors in spread sheets	1 May 2012
Pacific	Response to SEF No. 177	11 May 2012
Samchai Steel Industries Public Company Ltd (Samchai)	Reponses made in relation to the Statement of Essential Facts 177 of 23 April 2012	13 May 2012
ATM	ATM Correspondence 2012/14 – OneSteel ATM Response to SEF No. 177	14 May 2012
Huludao	SEF Response by Huludao	14 May 2012
Zhejiang Kingland Pipeline Co., Ltd (Zhejiang Kingland)	SEF Response by Zhejiang Kingland	14 May 2012
Orrcon Operations Pty Ltd (Orrcon)	Submission in Response to Statement of the Essential Facts No. 177	14 May 2012
Government of China (GOC)	Investigation concerning hollow structural sections from China Submission in response to Statement of Essential Facts No. 177	16 May 2012
ATM	ATM Correspondence 2012/19 – HSS exported from Thailand	24 May 2012
ATM	Meeting briefing notes	19 April 2012
ATM	ATM Correspondence 2012/13 – Market Situation for HSS in Thailand	7 May 2012
ATM	ATM Correspondence 2012/17 – Market Situation for HSS in Thailand	22 May 2012
Saha	Saha Thai Steel Public Co., Ltd – Thailand	27 April 2012
Pacific	Pacific Pipe Public Company Ltd – Statement of Essential Facts No. 177	11 May 2012
Government of Thailand (GOT)	Letter to Customs and Border Protection	14 May 2012
Samchai	Samchai Steel Industries Public Company Ltd – Response to the Statement of Essential Facts No. 177	13 May 2012

2.5 Preliminary affirmative determination 177A

On 6 June 2012, following the publication of SEF177, and consideration of submissions received following the publication of SEF177, the CEO was satisfied that there were sufficient grounds for the publication of a countervailing duty notice in respect of HSS exported to Australia from China by all exporters except Huludao and Qingdao Xiangxing, and made a PAD to that effect (PAD177A).

Notification was made of this PAD in The Australian on 6 June 2012.

At the time of making PAD177A, having regard to the quantum of the dumping securities in place for goods entered for home consumption on or after 10 January 2012 (see above), the due date of its final report to the Minister in this investigation, and the operation of the collection and later conversion of securities system, Customs and Border Protection has decided to not require and collect countervailing securities to date.

However, if the CEO becomes satisfied at a later date that countervailing securities should be collected in order to prevent material injury occurring while the investigation continues, Customs and Border Protection may require and take such countervailing securities in the future. Any such imposition of countervailing securities will be subject to public notification.

2.6 Report 177

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows, the CEO must give the Minister a final report in respect of the goods the subject of the application.

The Minister granted an extension to the date by which SEF177 had to be placed on the Public Record, and this subsequently extended the period of time for provision of the final report to the Minister.

The final report is due to be provided to the Minister on or by 7 June 2012.

2.7 Relevant Legislation

Sub-section 269TDA(1) of the Act provides:

If:

- (a) application is made for a dumping duty notice; and*
- (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the CEO is satisfied that:*
 - (i) there has been no dumping by the exporter of any of those goods; or*
 - (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;*

the CEO must terminate the investigation so far as it relates to the exporter.

Sub-section 269TDA(2) of the Act provides:

If:

- (a) application is made for a countervailing duty notice; and*
- (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the CEO is satisfied that:*

- (i) no countervailable subsidy has been received in respect of any of those goods; or*
- (ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time after the start of the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);*

the CEO must terminate the investigation so far as it relates to the exporter.

A negligible volume in respect of countervailable subsidisation is defined as follows in s. 269TDA(16) of the Act.

For the purposes of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:

- (a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or*
- (b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or*
- (c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.*

Sub-section 269TDA(3) of the Act provides:

if:

- (a) application is made for a dumping duty notice; and*
- (b) in an investigation for the purposes of the application the CEO is satisfied that the total volume of goods the subject of the application:*
 - (i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and*
 - (ii) that have been, or may be, dumped;*

is negligible; the CEO must terminate the investigation so far as it relates to that country.

A negligible volume is defined as follows in s. 269TDA(4) of the Act:

For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:

- (a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and*
- (b) subsection (5) does not apply in relation to those first-mentioned goods.*

Sub-section 269TDA(6) of the Act provides that the volume of exports with negligible dumping margins may count in determining volume:

The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:

- (a) in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and*
- (b) in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.*

3. THE GOODS UNDER CONSIDERATION

The goods the subject of the application (the goods) are:

certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include in-line galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 21mm up to and including 165.1mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3mm. Categories of HSS excluded from the goods are conveyor tube; precision RHS with a nominal thickness of less than 1.6mm and air heater tubes to Australian Standard (AS) 2556.

The application includes the following information to clarify the nature of the goods.

Finishing

All HSS regardless of finish is included in the application.

Non-galvanised HSS is typically of painted, black, lacquered or oiled finished coatings.

CHS with other than plain ends (such as threaded, swaged and shouldered) are also included in the application.

Standards

HSS is generally produced to either the British Standard BS 1387 or the Australian Standard AS 1163 or international equivalent standards (including ASTM/JIS and KS).

HSS can also be categorised according to minimum yield strength. The most common classifications are 250 and 350 mega Pascals (MPa).

HSS may also be referred to as extra-light, light, medium or extra heavy according to its wall thickness.

Excluded goods

The following categories are excluded from the goods subject of the application:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation);
- precision RHS with a nominal thickness of less than 1.6mm (is not used in structural applications); and
- air heater tubes to A s.2556.

'Structural' sections

For clarification, the goods subject to the measures include all electric resistance welded pipe and tube made of carbon steel meeting the above description of the goods (and exclusions), regardless of whether or not the pipe or tube meets a specific structural standard or is used in structural applications.

4. SUBSIDY INVESTIGATION IN RESPECT OF HULUDAO AND QINGDAO XIANGXING'S EXPORTS TO AUSTRALIA

4.1 Preliminary countervailing findings (SEF177)

4.1.1 Countervailable programs

In SEF177, Customs and Border Protection preliminarily found that countervailable subsidies had been received by Chinese exporters of HSS under the following programs:

- Program 1: Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones
- Program 2: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'
- Program 5: Matching Funds for International Market Development for Small and Medium Enterprises
- Program 6: Superstar Enterprise Grant
- Program 7: Research & Development (R&D) Assistance Grant
- Program 8: Patent Award of Guangdong Province
- Program 10: Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years
- Program 11: Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)
- Program 12: Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai
- Program 13: Preferential Tax Policies in the Western Regions
- Program 14: Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipments
- Program 15: Innovative Experimental Enterprise Grant
- Program 16: Special Support Fund for Non State-Owned Enterprises
- Program 17: Venture Investment Fund of Hi-Tech Industry
- Program 18: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.
- Program 19: Grant for key enterprises in equipment manufacturing industry of Zhongshan
- Program 20: Hot rolled steel provided by government at less than fair market value
- Program 21: Water Conservancy Fund Deduction
- Program 22: Wuxing District Freight Assistance
- Program 23: Huzhou City Public Listing Grant
- Program 27: Huzhou City Quality Award

- Program 28: Huzhou Industry Enterprise Transformation & Upgrade Development Fund
- Program 29: Land Use Tax Deduction
- Program 30: Wuxing District Public List Grant
- Program 31: Anti-dumping Respondent Assistance
- Program 32: Technology Project Assistance
- Program 34: Balidian Town Public Listing Award
- Program 35: Preferential Tax Policies for High and New Technology Enterprises

4.1.2 Program 20

SEF177 made preliminary findings in relation to Program 20 that Chinese exporters of HSS have benefited from the purchase of hot-rolled coil (HRC) and narrow strip from Chinese state-invested enterprises (SIEs) at less than adequate remuneration.

This involved a preliminary finding that SIEs are 'public bodies' in terms of s.269T of the Act, as well as a preliminary finding that the adequacy of remuneration for HRC and narrow strip purchased from SIEs by HSS manufacturers should be determined as:

- an external (out-of-China) black HRC benchmark of weighted average verified Korean, Malaysian and Taiwanese black HRC prices; and
- an external pre-galvanized HRC benchmark of weighted average Taiwanese and Korean pre-galvanized HRC prices

adjusted in line with the following (where appropriate):

- the verified difference between HRC and/or narrow strip in China to arrive at a benchmark for narrow strip; and
- the verified per tonne HRC and narrow strip delivery cost in China to arrive at an ex-works benchmark price.

Details of this benchmark, as well as the finding that SIEs are public bodies, are contained in SEF177 (at Appendix C).

In SEF177, Huludao was preliminarily found to have received subsidy Program 20.

4.1.3 Exporter preliminary findings

SEF177 preliminarily found that, during the investigation period, Huludao had received financial contributions that conferred benefits to the exported goods. The total subsidy rate applicable to Huludao during the investigation period was calculated at 0.4%.

SEF177 also preliminarily found that, during the investigation period, Qingdao Xiangxing did not receive any financial contributions that conferred benefits to

the exported goods under any of the above-listed programs. The subsidy rate applicable to Qingdao Xiangxing was calculated as 0%.

4.2 Submissions following the publication of SEF

4.2.1 Qingdao Xiangxing investigation

ATM has made a submission in response to SEF177 in respect of Qingdao Xiangxing preliminary countervailing finding.

ATM submitted¹⁰ that Customs and Border Protection should not terminate its investigation in respect of Qingdao Xiangxing as the exporter was not visited by Customs and Border Protection and it cannot be verified that the exporter did not receive benefits under programs not referenced in its response to the Thai Exporter Questionnaire (the Exporter Questionnaire) response.

ATM considers that the subsidy margin for Qingdao Xiangxing should reflect the average subsidy margin of the selected cooperative exporters as a minimum (and not only those subsidy programs it has divulged in its response to the Exporter Questionnaire).

It is noted that the Exporter Questionnaire requested specific information in relation to investigated programs 1-20 (the original 20 programs), as well as whether any other programs were received by the exporter. The selected cooperating exporters were not asked specifically whether they received benefit under investigated programs 21 – 34, which Customs and Border Protection commenced investigations into following a verification visit with one selected cooperating exporter.

In its response to the Exporter Questionnaire, Qingdao Xiangxing did not identify that it received any additional program further to those alleged specifically in the questionnaire (original programs 1-20).

As explained in SEF177, Customs and Border Protection examined the data submitted by Qingdao Xiangxing in its Exporter Questionnaire, and found the data to be verifiable and without material deficiency. Customs and Border Protection conducted tests of the data submitted for completeness, relevance and accuracy. Customs and Border Protection therefore relied upon this data in calculating dumping and subsidy margins for Qingdao Xiangxing.

Customs and Border Protection considers that its analysis of the data submitted for Qingdao Xiangxing provides a reasonable basis to determine that exporter did not receive an above-negligible rate of countervailable subsidisation during the investigation period.

4.2.2 Program 20 – public bodies

¹⁰ ATM submission, 14 May 2012

In response to SEF177, the GOC's submission of 16 May 2012¹¹ notes its position (maintained throughout the investigation) that SIEs operating in the iron and steel industry in China are not public bodies, nor do they provide, or are authorised or delegated to provide, HRC or narrow strip to HSS producers for less than adequate remuneration.

The GOC particularly takes issue with Customs and Border Protection's finding, that 'the achievement of the GOC's industrial policy' is a government function. The GOC notes this finding is based on Article 36 of the *Law of the People's Republic of China on the State-Owned Assets of Enterprises* which provides;

A state-invested enterprise making investment shall comply with the national industrial policies, and conduct feasibility studies according to the state provisions; and shall conduct a transaction on a fair and paid basis, and obtain a reasonable consideration.

In SEF177, Customs and Border Protection noted this Article, and observed:

Customs and Border Protection considers this direction requiring SIEs to comply with national industrial policies, albeit related to investments in this instance, amounts to a direction that SIEs carry out a government function, namely the achievement of the GOC's national industrial policy objectives¹²

and considers this to be evidence to suggest that Chinese SIEs are public bodies.

The GOC questions "how compliance with a law which is an emanation of government policy can be characterised as the exercise of a government function, or can in anyway be considered to constitute the vesting of government authority".

Customs and Border Protection clarifies that it's finding that SIEs exercise government authority in the performance of a government function, namely the achievement of the GOC's industrial policies, is based, not only on the above law, but on a significant body of evidence that suggest that SIEs play an integral and leading role in the implementation of various GOC policies and plans in relation to the steel industry. This evidence, including the provisions of a number of policies and laws and evidence of SIEs implementing these policies, is outlined in Appendix C of SEF177.

Customs and Border Protection highlights that it is the degree of control exhibited in a multitude of GOC industrial policies in respect of the iron and steel industry that leads to the conclusion that SIEs in complying with these policies are performing a government function.

¹¹ GOC submission of 16 May 2012

¹² Section V(v) of Appendix C to SEF177.

This is observed in the context of the statement made in the Appellate Body's report in the *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, dispute (DS379), which recently considered the meaning of 'public body' in accordance with Article 1.1(a)(1) of the SCM Agreement. The Appellate body's report notes, in relation to the existence of manifold items of evidence permitting inferences that entities are public bodies:

*...where the evidence shows that the formal indicia of government control are manifold and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.*¹³

GOC in its submission of 16 May 2012, the GOC also objects to the following statement made in SEF177:

It is further noted that the GOC was likely to be in possession of further information that may have assisted in Customs and Border Protection's analysis of these matters and provided further evidence of indicia 1 and 2 in particular (particular the annual report of identified SIEs), but that information was not provided.

The GOC asserts that the implication that the GOC withheld information, and the assumption that the information would have proved the case against it, are both incorrect and unfairly prejudicial.

The GOC submits that the reason why no evidence can be cited of the vesting of government authority in SIEs is because there is no such vesting and no government programs to provide HRC or narrow strip to HSS producers at inadequate remuneration.

Customs and Border Protection again notes that the *Interim Measures for the Administration of Comprehensive Performance Evaluation of Central Enterprises, Order of the State-owned Assets Supervision and Administration Commission of the State Council (No. 14)* requires enterprises whose investment contribution duties are performed by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) to undertake comprehensive performance evaluations in respect of financial and management performance. Further, in response to question D2.19 of the GQ, the GOC indicated that there are SIEs in the steel sector in China for which SASAC performs the role of capital contributor.

Customs and Border Protection therefore considers that the GOC is in possession, for at least some SIEs in the steel sector, information relevant to the questions concerning ownership, governance, performance and profit, and

¹³ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R at [318]

enterprise functions.

In relation to the provision of requested annual reports the GOC, following the publication of SEF177,¹⁴ has observed Customs and Border Protection's position on this matter, but has referred to its response to Question C3.11 of the Government Questionnaire (GQ) in which it explained that in many cases this information was not routinely collected by the GOC in the ordinary course of its administration and hence could only provide information that it gathered from public sources.

The GOC has further noted in response to SEF177 that several of those companies identified by Customs and Border Protection (and annual reports requested from) are not publicly listed companies and are not required to publish annual reports to the public.

Customs and Border Protection notes these observations offered by the GOC, and notes that it considers that, even in the absence of this requested information, sufficient evidence exists to consider that the requirements of this indicia of public bodies has been found in relation to Chinese iron and steel industry SIEs.

4.2.3 Benchmark used for adequacy of remuneration

ATM, the GOC, Huludao, Zhejiang Kingland, Dalian Steelforce and various other interested parties have made a number of submissions in response to SEF177 regarding the appropriate benchmark to be used in calculating the benefit conferred by Program 20, which impacts on Customs and Border Protection's countervailing findings with respect to Huludao.

These included submissions that:

- 'there is no legal right to use an external benchmark (based on data out of Chinese markets) under World Trade Organisation (WTO) or Australian law, either at all or in the circumstances of this case'.¹⁵
- the Taiwanese data should not be used in the benchmark as it is unreasonable due to the fact that HRC is supplied to the Taiwanese exporter by a related party;¹⁶
- the external benchmark needs to be adjusted to take account of the comparative advantages of the Chinese HRC and narrow strip markets;¹⁷
- several other benchmark options are more appropriate, including:
 - Taiwanese export prices;
 - ATM's own HRC purchases from BlueScope Steel (net of all rebates);

¹⁴ GOC submission of 23 May 2012

¹⁵ Government of China submission of 16 May 2012

¹⁶ ATM submission of 14 May 2012

¹⁷ Various interested parties, including in the Huludao submission of 14 May 2012 and Dalian Steelforce Hi-tech Co. Ltd (Dalian Steelforce) submission of 1 May 2012.

- ATM's own purchases of imported HRC net of all rebates and other discounts;
- the lowest, undumped HRC cost available;¹⁸
- the black benchmark is too high, and the relativity between the black and pre-galvanised benchmark is too small;¹⁹ and
- the benchmark is not representative of an actual competitive market price, or a price that could be accessed by Chinese HSS manufacturers.²⁰

After considering those matters raised in response to SEF177, as well as all other relevant information and further analysis, Customs and Border Protection has determined its black HRC benchmark to be the weighted average of verified domestic black HRC costs incurred by verified selected cooperating HSS exporters from Korea, Malaysia and Taiwan,²¹ at comparable terms of trade and conditions of purchase to those observed in China.

This black benchmark has undergone data cleansing since SEF177, to ensure as far as possible that only grades of HRC used by those exporters in the manufacture of HSS itself have been include in the benchmark.

Further, Customs and Border Protection has adjusted and applied this benchmark to take account of:

- the increased purchase price of pre-galvanised HRC over black HRC, with reference to the quarterly average purchase price difference between the Steel Business Briefing (SBB) China domestic Shanghai HRC price and the China domestic Shanghai pre-galvanised HRC price;²²
- differences in delivery terms observed in China (ex-works, delivered); and
- the reduced cost of narrow strip in China.

Customs and Border Protection does not consider that any adjustments/alterations needed to be made to the benchmark to account for:

- differences in quality, availability, or marketability; or
- comparative advantage.

This results in the following 8 categories of benchmark, to be used as appropriate in determining the adequacy of remuneration for HRC and/or narrow strip paid by HSS exporters.

¹⁸ Various interested parties, including the Australian Steel Association (ASA) submission of 14 May 2012 and Huludao submission of 14 May 2012.

¹⁹ Dalian Steelforce submission of 1 May 2012.

²⁰ Various interested parties, including the Huludao submission of 14 May 2012.

²¹ Kukje Steel Co., Ltd, Alpine Pipe Manufacturing Sdn Bhd and Shin Yang Steel Co., Ltd

²² Reported by SBB as VAT-inclusive, but VAT removed for the purposes of establishing the benchmark.

Benchmark	Basis of calculation
Black HRC delivered	Weighted average of verified domestic black HRC cost used in HSS manufacture of Korean, Malaysian and Taiwanese exporters, delivery included.
Black HRC ex-works	Black HRC delivered benchmark above, minus verified quarterly average delivery costs from one cooperating Chinese exporter
Black narrow strip delivered	Black HRC delivered benchmark above, minus the quarterly verified average difference between HRC and narrow strip purchase prices by the cooperating Chinese exporters.
Black narrow strip ex-works	Black narrow strip delivered benchmark above, minus verified quarterly average delivery costs from one cooperating Chinese exporter.
Pre-galvanised HRC delivered	Black HRC delivered benchmark above, plus purchase price for galvanising differential (based on SBB Shanghai data).
Pre-galvanised HRC ex-works	Pre-galvanised HRC delivered benchmark above, minus verified quarterly average delivery cost from one cooperating Chinese exporter.
Pre-galvanised narrow strip delivered	Pre-galvanised HRC delivered benchmark above, minus the quarterly verified average difference between HRC and narrow strip purchase prices by the cooperating Chinese exporters.
pre-galvanised narrow strip ex-works	Pre-galvanised narrow strip delivered benchmark above, minus verified quarterly average delivery costs from one cooperating Chinese exporter.

This benchmark has been applied to purchases of HRC and narrow strip manufactured by SIEs during the investigation period, to arrive at an amount of total benefit under this program for each selected cooperating exporter individually.

The main difference in this approach to that within SEF177, is that the pre-galvanized HRC benchmark has been arrived at by using the black benchmark (three countries/region) that is adjusted for the SBB difference between black and pre-galvanized coil in China, rather than consisting of the cost of pre-galvanized HRC incurred by exporters in Korea and Taiwan.

4.2.4 Calculation of benefit under program 20 – Huludao

In response to SEF177, Huludao²³ submitted that there were instances where it had identified the manufacturer of its HRS as not being an SIE, but that these has incorrectly been considered SIEs by Customs and Border Protection. This has been corrected in the final calculations of Program 20 for Huludao.

4.3 Final subsidy findings - Huludao and Qingdao Xiangxing

Having regard to all relevant information, Customs and Border Protection has found that:

- during the investigation period, Qingdao Xiangxing did not receive financial contributions that conferred benefits to the exported goods; and
- during the investigation period Huludao received financial contributions that conferred benefits to the exported goods under countervailable subsidy programs (including Program 20), however the overall subsidy margin attributable to Huludao's exports of HSS is negligible (0.01%, when calculated as a percentage of the export price).

Calculation of Huludao's subsidy margin is contained in **Confidential Appendix 1**.

4.4 Conclusion – Qingdao Xiangxing and Huludao

Under s.269TDA(2) of the Act, if the CEO is satisfied that there has been no countervailable subsidy received, or negligible level of countervailable subsidy received by an exporter, the CEO must terminate the investigation so far as it relates to the exporter.

Section 269TDA(16) sets out the negligible level of countervailable subsidisation for goods exported from China as 2%.

Therefore, the CEO must terminate the countervailing investigation so far as it relates to Huludao and Qingdao Xiangxing.

²³ Submission of 14 May 2012

5. DUMPING INVESTIGATION IN RESPECT OF THAILAND

5.1 SEF177 preliminary findings

5.1.1 Market Situation and costs reasonableness

Following allegations made by ATM in its application, this investigation has involved an assessment as to whether there was a situation in the Thai domestic market for HSS, during the investigation period, such that selling prices of HSS in that market were not suitable for the determination of normal value under s.269TAC(1) of the Act (i.e. a 'market situation' or 'particular market situation' existed).

These allegations focussed on claims that the Government of Thailand (GOT) set and enforced a maximum 'price ceiling' on hot-rolled steel (HRS – which includes HRC) that served to artificially depress the price of HRS in Thailand during the investigation period. ATM further alleged that, as HRS makes up the majority of the cost to make and sell HSS, this depressed HRS prices would also artificially lower the domestic price of HSS in Thailand, making these prices unsuitable for use in determining normal value.

In SEF177, after having regard to all relevant information, Customs and Border Protection preliminarily found that there was not a market situation in the Thai HSS market during the investigation period such that sales in that market are not suitable for use in determining normal value under s.269TAC(1).

Customs and Border Protection also determined that the costs of production recorded by Thai HSS manufacturers are reasonable for working out such costs in accordance with Regulation 180(2) of the *Customs Regulations 1926* (the Regulations) (see Appendix 2 for discussion of Regulation 180(2)).

However, in SEF177, Customs and Border Protection noted that its assessment in relation to market situation claims in Thailand were ongoing at the time of publishing that SEF.

5.1.2 Dumping - Thailand

In SEF177, Customs and Border Protection preliminarily determined that:

- Saha;
- Pacific; and
- Samchai Steel Industries Public Company Limited (Samchai)

should be classified as 'selected cooperating exporters' for the purposes of this investigation. All other exporters from Thailand were considered to be 'selected non-cooperating exporters' for the purposes of this investigation.

This categorisation has not changed since SEF177.

The preliminary dumping margins for Pacific, Saha and Samchai, was established in SEF177 accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The preliminary dumping margins in SEF177 were as follows:

Exporter	Product dumping margins
Pacific	-6.1%
Saha	-3.5%
Samchai	13.1%

In SEF177, Customs and Border Protection has preliminarily found that HSS exported to Australia by Pacific and Saha was not dumped.

Further, although Samchai exported HSS to Australia at dumped prices in the investigation period, Customs and Border Protection calculated in SEF177 that the total volume of HSS exported to Australia by Samchai and all selected non-cooperating Thai exporters, when added to the volume of all other Thai exporters except Pacific and Saha, was less than 3% of the total Australian import volume of all HSS exported to Australia in the investigation period.

Accordingly, Customs and Border Protection preliminary found that the volume of HSS exported to Australia from Thailand in the investigation period that has been, or may be, dumped was negligible²⁴ (less than 3%).²⁵

5.2 Submissions in response to SEF177

5.2.1 Market situation

Customs and Border Protection has received a number of submissions in response to its preliminary assessment of Thai market situation claims as set out in SEF177.

The assessment of these claims are contained in Appendix 2 of this report.

5.2.2 Product specification, grade or coating differences

ATM considers that Customs and Border Protection has not addressed certain differences between HSS sold domestically by Thai exporters, and the goods exported to Australia.

²⁴ S. 269TDA(3)

²⁵ S. 269TDA(4)

ATM submitted²⁶ that Customs and Border Protection should make upward adjustments to normal values to account for certain differences in specification, grade or coating, including the following:

- mass tolerances, noting for example standard ASTM A500 allows for minus 10%, while AS 1163 allows for only minus 4%;
- minimum yield strengths, noting for example the variations between 250, 270, 350 and 450 MPa;
- impact testing; and
- painting versus oiled coatings.

Customs and Border Protection considers it has properly accounted for factors that were demonstrably affecting price comparisons between export and domestic sales of HSS. It has, for example, ensured its approach to model matching and adjustments took account of differences in prices arising from the various forms of HSS finish, and from the various thicknesses of HSS. The evidence showed, and interested parties generally agreed, that clear price distinctions exist between these product attributes.

While it is possible that other product characteristics may have also influenced export price, the evidence did not support the need to adopt an approach to model matching or to adjustments (when comparing domestic prices to export prices) to take account of such differences. For example, analysis of the domestic price data for the two Thai exporters that were visited did not support an argument that clear domestic price distinctions existed in accordance with the different HSS standards.

Similarly, it was not apparent that price varied in the Thai domestic market because of variations in the minimum yield strength, or because of impact testing. This is not to say that such variations do not affect export price in some instances, but the need to adjust normal value for such factors is not evident.

Having regard to the above, Customs and Border Protection is not convinced there is any need to revise its approach to model matching, or to normal value adjustments, on the basis of specification differences or grade differences. It has already taken account of differences in finishes.

ATM also submitted²⁷ that a number of other adjustments to normal value are required for proper comparison to export price. In particular, ATM claimed that adjustments are required to recognise differences in:

- costs of operational complexity – changing paint lines, grades, thicknesses;
- impact of paint coatings on lower overall yields (e.g. product unsatisfactory due to poor coating); and

²⁶ ATM submission of 14 May 2012

²⁷ ATM submission of 14 May 2012

- costs of traceability and individual length line marking to comply with Australian standards.

Customs and Border Protection considers that accounting for such differences in costs that result from each of these items would require an extraordinarily high degree of precision in cost accounting.

In Customs and Border Protection's experience with HSS, these are matters that would not be routinely accounted for in assigning direct costs by any HSS manufacturer, including the Australian manufacturers. In addition, it is likely that the aggregate unit cost of such items for exported goods, to the extent that differs from similar or other unit costs that are applicable only to the domestic sales, is unlikely to be material and therefore unlikely to be reflected in any price differences. Accordingly, Customs and Border Protection considers these items do not warrant adjustment to normal value.

Further to the discussion above as to why Customs and Border is satisfied with its approach to model matching and adjustments, the issue of making proper comparisons between minimum yield strengths deserves further examination in relation to HSS exported from Thailand.

It was apparent that HSS with minimum yield strengths of 250 MPa and 350 MPa were exported to Australia in the investigation period. At times, the export prices varied according to these grades, with the 350 MPa exported at a higher price than the 250MPa. This is in line with ATM's expectations for the Australian market. However, the evidence indicates that the HSS sold domestically in Thailand is usually sold with a minimum yield strength of 250 MPa, noting that Customs and Border Protection has observed a proportion of domestic sales of 350 MPa. This means exports that comprise a mixture of 250 MPa and 350 MPa grades have been compared with normal values based primarily on 250 MPa grades. While ATM may consider this a mismatch, Customs and Border Protection considers the comparison is valid in the circumstances.

The evidence indicates that there is no consistent pattern in Thai domestic process for HSS to support the argument that differences in minimum yield strengths have a material affect on prices. Given this evaluation, and the fact that Thai export prices to Australia did not always show pricing differences according to minimum yield strengths, Customs and Border Protection considers there are not sufficient grounds to make an upward adjustment to normal values for comparison to 350 MPa HSS export prices.

5.2.3 ATM's assertion of two-tier pricing

ATM submitted²⁸ that the Thai HSS manufacturers are able to utilise what it describes as a 'two-tier pricing system' that is in place in relation to certain raw material inputs, including HRC.

²⁸ ATM submission of 14 May 2012

ATM considers a "blue corner rebate scheme" exists in Thailand, that refunds the duties (import and anti-dumping) on HRC imports that are value added and then exported, would have afforded the Thai HSS producers a lower unit cost of production for exported HSS when compared with domestic HSS. ATM appear to be suggesting that if costs were allocated more directly between HSS production for domestic and export sales, the domestic cost of production for HSS would be higher, and that this would drive a different outcome when ordinary course of trade tests were conducted. ATM expects the normal value, and dumping margin, to increase as a result.

Customs and Border Protection acknowledges that, to the extent the Thai exporters avail themselves of any duty refunds on eligible raw materials, the net cost of production, as verified for Pacific and Saha, has effectively been averaged over domestic and export production.

However, the cost data obtained and verified by Customs and Border Protection is not in sufficient detail to allow the re-assignment of costs on the basis suggested by ATM, if that were warranted. However, for that to have a material effect on dumping margins would require a number of assumptions to hold.

Firstly, ATM assumes that the Thai HSS producers acquire and use imported raw materials wholly, or primarily, for the manufacture and sales of exported HSS. It is also assumed that the net cost of raw materials (after refund of duties) is lower than raw material costs incurred when purchasing raw materials from Thai suppliers. Lastly, it is assumed that any difference in cost of production generated from such a division of costing calculations is not also a reasonable basis for an approximately equal and opposite downward adjustment to normal value to make it properly comparable to export price.

Customs and Border Protection has undertaken an analysis of the verified data supplied by the Thai selected cooperating exporters and considers the evidence confirms that a considerable proportion of imported HRC used in production of HSS sold domestically.

Having regard to this fact, and to the relativities of HRC prices verified for imports and domestic purchases, it is not clear that any consistent HRC cost differences would be generated for domestic and export HSS.

It is also relevant to note the Thai HSS exporters did not make a claim for an adjustment to normal value based on any duty drawback that was received in relation to duties paid on imported raw materials that were subsequently exported in finished goods.

In the circumstances, Customs and Border Protection considers it was reasonable for the Thai exporters to report their costs of production on an average basis. Customs and Border Protection considers the average costs are suitable for assessing ordinary course of trade tests, or constructed normal value, as required.

5.2.4 Submissions made in respect of Pacific's preliminary findings

Pacific has disputed in its submission of 11 May 2012,²⁹ Custom and Border Protection's preliminary finding that there is insufficient evidence that the date of sale of exports should be the proforma invoice date.

In this submission, Pacific asserts that according to Footnote 8 to Article 2.4.1 of the WTO *Anti-dumping Agreement* (ADA) the date of sale is the date of the document which establishes the material terms of the sale. Pacific claims that this is the proforma invoice date.

Footnote 8 of Article 2.4.1 of the ADA relates to the conversion of currency.

Customs and Border Protection has considered the evidence presented by Pacific and notes that the date used for the purposes of currency conversion remained that of the proforma invoice. However, Customs and Border Protection is still of the view that there is insufficient basis for departing from invoice dates for period matching when comparing export and domestic sales.

In this submission, Pacific also contends Customs and Border Protection's preliminary finding in respect of denying adjustments to the normal values and export prices for selling commission.

Custom and Border Protection considers the evidence presented by Pacific in relation to commissions is not a sufficient basis for an adjustment to the normal value. In particular, Customs and Border Protection considers that it is not clear whether the magnitude of those commissions reasonably reflects the difference, if any, in functions or services undertaken by the commissioned company in respect of export and domestic sales.

5.2.5 Submission made - Samchai's preliminary findings

Samchai submitted³⁰ that it did not recognise the importance of adjustments which it considers were necessary to properly take account of the difference between actual and theoretical weights of HSS sold domestically and sold for export to Australia. Samchai advised that revised data was available but it did not provide such data with its submission.

Customs and Border Protection understands from the Samchai submission that it reported its export sales data with reference to theoretical volumes. The submission also states that Samchai listed in domestic sales data the theoretical weight of the HSS.

In this case it appears the unit prices in both export and domestic prices would have been generated with reference to theoretical volumes. Therefore the

²⁹ Pacific submission, 11 May 2012

³⁰ Samchai submission of 13 May 2012

existing comparison of unit prices undertaken by Customs and Border Protection for assessing dumping is reasonable.

5.2.6 Other claims

Customs and Border Protection has considered other claims raised by ATM in its submission on 24 May 2012.³¹ In particular, ATM has expressed concern at the discrepancies in dumping margins of the three Thai exporters.

Customs and Border Protection has examined the factors contributing to these different dumping margins and does not consider that these comparisons indicate errors in methodology.

ATM has submitted that the implications from Customs and Border Protection preliminary findings with respect to Saha and Pacific, is that Thai domestic prices are lower than South Korean prices, and that this conclusion cannot be correct given the significant protection afforded to both Thai HRC and HSS producers, significant dumping margins on imported HRC into Thailand and the lack of access to low cost raw material in Thailand.

ATM has also provided data and deduced calculations for Pacific, asserting that this demonstrates that the deduced margin is only sufficient to cover raw material costs and yield losses. ATM considers the margin is not sufficient to recover any conversion costs or overheads, concluding that Pacific's HSS export prices to Australia do not recover all costs.

Customs and Border Protection has verified cost, normal value and export data for Saha and Pacific and therefore given greater weight in its assessments to this data in preference to the anecdotal evidence provided by ATM.

5.3 Final findings – dumping

5.3.1 Market situation and costs reasonableness

Following consideration of these submissions, Customs and Border Protection has determined that no 'market situation' existed in the Thai HSS market during the investigation period that rendered domestic sales of HSS unsuitable for determining normal value under s.269TAC(1).

For the same reasons, it is considered that the cost of HRC incurred by Thai manufacturers of HSS was reasonable during the investigation period, for the purposes of working out costs in accordance with the Regulations.

5.3.2 Final dumping findings in relation to Saha's exports

Export price

³¹ ATM submission, 24 May 2012

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Saha's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(1) of the Act using Saha's quarterly weighted average domestic invoice prices for like goods, by model, where those sales were in the ordinary course of trade. Negative adjustments were made in relation to domestic credit, freight and packing expenses. Positive adjustments were made in relation to export credit, packing and other charges. Further positive or negative adjustments for specification differences were made, in ensuring appropriate model comparisons, in those instances where sufficient quantities of domestic sales in the ordinary course of trade for certain models were unavailable. In such cases the next most comparable model was used and adjusted for the price difference attributable to the difference in specification.

Dumping margin

The dumping margin for Saha was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Saha is -3.5%.

Calculation of Saha's dumping margin is contained in
Confidential Appendix 3.

5.3.3 Final dumping findings in relation to Pacific's exports

Export price

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Pacific's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(1) of the Act using Pacific's quarterly weighted average domestic invoice prices for like goods, by model, where those sales were in the ordinary course of trade. Negative adjustments were made in relation to domestic credit, freight and handling costs. Positive adjustments were made in relation to export painting, freight and handling costs.

Dumping margin

The dumping margin for Pacific was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Pacific is -6.1%.

Calculation of Pacific's dumping margin is contained in **Confidential Appendix 2**.

5.3.4 Final dumping findings in relation to Samchai's exports

Export price

Export prices were established in accordance with s.269TAB(1)(a) of the Act, using Samchai's quarterly weighted average export invoice prices, by model, excluding any part of that price that relates to post-exportation charges.

Normal value

Normal values were established in accordance with s.269TAC(1) of the Act using Samchai's quarterly weighted average domestic invoice prices for like goods, by model, where those sales were in the ordinary course of trade. Negative adjustments were made in relation to domestic freight. Positive adjustments were made in relation to export freight and packing.

Dumping margin

The dumping margin for Samchai was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for Samchai is 13.1%.

Calculation of Samchai's dumping margin is contained in
Confidential Appendix 3.

5.4 Conclusion – dumping from Thailand

Customs and Border Protection has found that HSS exported to Australia by Pacific and Saha was not dumped. Accordingly, the CEO must terminate the investigation so far as it relates to Pacific and Saha on the basis that there was no dumping of HSS by these exporters in the investigation period.³²

Although Samchai exported HSS to Australia at dumped prices in the investigation period, Customs and Border Protection has calculated that the total volume of HSS exported to Australia by Samchai, when added to the volume of all other Thai exporters except Pacific and Saha (i.e. the selected non-cooperating exports), is less than 3% of the total Australian import volume of all HSS exported to Australia in the investigation period.

Accordingly, the CEO must terminate the investigation, in so far as it relates to Thailand on the basis that the volume of HSS exported to Australia from Thailand in the investigation period that has been, or may be, dumped is negligible³³ (less than 3%).³⁴

³² S. 269TDA(1)

³³ S. 269TDA(3)

³⁴ S. 269TDA(4)

6. RECOMMENDATIONS

It is recommended that:

- the CEO be satisfied that there has been no dumping of HSS by the following two Thai exporters and that, therefore, the investigation be terminated under s.269TDA(1) of the *Customs Act 1901*³⁵ (the Act) so far as it relates to those exporters:
 - Pacific Pipe Public Co. Ltd (Pacific); and
 - Saha Thai Steel Pipe Public Co., Ltd (Saha)
- the CEO be satisfied that the volume of HSS that have been exported to Australia over a reasonable examination period from Thailand that have been dumped is negligible and, therefore, the investigation be terminated under s.269TDA(3) so far as it relates to Thailand; and
- the CEO be satisfied that, in respect of HSS exported to Australia from the People's Republic of China (China) no countervailable subsidy has been received in respect of the goods or the countervailable subsidisation margin is not more than two per cent for the exporters Qingdao Xiangxing and Huludao, and, therefore, the subsidy investigation be terminated under s.269TDA(2) as far as it relates to those exporters.

³⁵ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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APPENDIX 2 – ASSESSMENT OF MARKET SITUATION AND EXPORTER COSTS REASONABLENESS – THAILAND

This appendix outlines Customs and Border Protection's findings in relation to:

- allegations of a 'market situation' in the Thai domestic HSS market that renders domestic HSS sales unsuitable for determining s.269TAC(1) normal values; and
- the related assessment of the reasonableness of Thai exporters' costs to make HSS.

PART I INTRODUCTION

I(i) Allegations of a market situation - Thailand

In its application, ATM claimed that the GOT has set and enforced a maximum (or 'ceiling') price for domestic HRC (also referred to as HRS) in Thailand, which has artificially depressed the price of this HRC.

ATM further submitted in its application that this price ceiling has had an effect on the domestic selling prices of HSS in Thailand as a 'significant proportion' of the cost to make and sell HSS is represented by HRC, and the price of HSS in Thailand is therefore artificially low as a result of lower HRC input prices.

Consequently, ATM submitted that domestic prices for HSS in Thailand are not suitable for calculating 'definitive' normal values in the investigation period (i.e. a particular market situation exists that renders domestic sales unsuitable for determining normal values under s.269TAC(1)).

In alleging the existence of this price ceiling, ATM's application submitted a market survey report commissioned in early 2011 that examined the Thai HRC and HSS market. ATM submitted that this research indicated that:

...the Thai Government sets a ceiling for the maximum price for raw material hot rolled coil ('HRC') used in the manufacture of HSS.³⁶

ATM submitted that this 'ceiling' had been set at 24.50 Baht/Kg since March 2009.

ATM further submitted that the WTO 2003 Trade Policy Review on Thailand (WT/TPR/S/123) listed the status of HRC in Thailand as a 'controlled good', for which prices are 'maintained'.

In CON177, it was accepted that ATM provided evidence to establish

³⁶ ATM Application for Publication of a Dumping Duty Notice and a Countervailing Duty Notice, August 2011

reasonable grounds to initiate inquiries into the alleged market situation in Thailand as part of the investigation.

Consequently, shortly after initiation of the investigation, Customs and Border Protection forwarded the GOT the Thai Government Questionnaire (Government Questionnaire) for completion, containing questions and requests for information relevant to assessing the allegations of a particular market situation in Thailand.

Customs and Border Protection also included specific requests for information and data in the Exporter Questionnaire (for completion by Thai exporters) that related to these allegations.

(ii) Australian legislation, policy and practice

Thailand as a market economy

Australia treats Thailand as a market economy for anti-dumping purposes, and Customs and Border Protection conducts its investigations in the same manner for Thailand as it does for other market economy members of the WTO.

Irrespective of the country subject of the investigation, the Australian anti-dumping framework allows for rejection of domestic selling prices in market economies as the basis for normal value where there is a 'market situation' making the sales unsuitable, as outlined below.

The Act

Market situation

S.269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold domestically in the ordinary course of trade in arm's length transactions.

Whether domestic sales of goods are in the ordinary course of trade is determined by a comparison with the cost to make and sell (cost of manufacture or production plus administrative, selling and general costs) those goods, in line with s.269TAAD.

However, s.269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the Minister³⁷ is satisfied that:

'...the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)'.

³⁷ In this case, the Minister for Home Affairs.

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction³⁸ or third country sales.³⁹ Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

As with the determination of costs for conducting ordinary course of trade tests under s.269TAAD, s.269TAC(2)(c) provides that a cost construction of normal value comprises the sum of what the Minister determines to be the cost of production or manufacture of the exported goods (on the assumption the goods were sold domestically in the ordinary course of trade rather than being exported) and the administrative, selling and general costs associated with the sale and the profit on that sale.

S.269TAC(2)(d) provides that where the Minister directs that third country sales be used for normal value, it will be based upon the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country.

Determination of costs of manufacture

For the purposes of s.269TAAD and s.269TAC(2)(c), Regulation 180(2) requires that if:

1. an exporter keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
2. those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the cost of production or manufacture using information set out in the exporter's records.

Policy and practice

Market situation

The *Dumping and Subsidy Manual June 2009* (the Manual)⁴⁰ sets out the established policy and practice of Customs and Border Protection in conducting anti-dumping and countervailing investigations.

In relation to the examination of whether a market situation exists, the Manual states:

'Sales that would otherwise be relevant for determination of normal value may be unsuitable because the price does not reflect a fair price in

³⁸ S.269TAC(2)(c)

³⁹ S.269TAC(2)(d)

⁴⁰ Available online at http://www.customs.gov.au/webdata/resources/files/Microsoft_Word_-_Final_Dumping_Subsidy_Manual_June_2009v1.pdf

normal market conditions. The legislation does not define market situations that would render domestic sales as unsuitable. The investigation and analysis of each case must fully set out the reasons for the unsuitability of sales before determining normal value under succeeding provisions of s.269TAC of the Act.

In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) of the Act because of the situation in the market of the country of export, Customs and Border Protection may have regard to factors such as:

- whether the prices are artificially low; or*
- whether there is significant barter trade; or*
- whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s. 269TAC(1) of the Act.*

Government influence on prices or costs could be one cause of 'artificially low pricing'. Government influence means influence from any level of government.

In investigating whether a market situation exists due to government influence, Customs and Border Protection will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.⁴¹

The Manual also states:

Prices may also be artificially low or lower than they would otherwise be in a competitive market due to government influence and distortion of the costs of inputs. Again the mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. Rather, Customs and Border Protection looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. It should be noted government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices.⁴²

However, in considering whether government influence on the costs of inputs has created a market situation, Customs and Border Protection notes that, where it is not shown that this government influence has had any significant impact or caused distortion of the cost of these inputs, no particular market situation will be considered to exist.

⁴¹ Customs and Border Protection Dumping and Subsidy Manual June 2009, pp 26-27

⁴² Ibid, pp 27.

It is considered that an assessment as to whether a market situation exists in a particular market constitutes a positive test. That is, before actual selling prices are rejected, Customs and Border Protection needs to identify a 'market situation', and be satisfied that the 'market situation' renders the sales of like goods to the goods under consideration sold in that market not suitable for normal value purposes.

Determination of costs of manufacture

Where the conditions of Regulation 180(2) are not met, it is Customs and Border Protection's position that the costs records kept by that exporter are not required to be used in working out their costs of manufacture, and Customs and Border Protection may resort to other information to calculate these costs.⁴³

In cases of government influence in markets, Customs and Border Protection considers it is possible that government influence on certain costs of manufacture can be such that these costs are not reasonably reflective of competitive market costs. It is considered that this is a question of the degree of the influence.

I(iii) Focus of this assessment

In light of the requirements of the Act and Regulations, and the nature of the market situation allegations, the focus of this appendix is to establish the nature of the GOT regulations in relation to the price of HRC in Thailand, and what distorting influence (if any) this is considered to have had on the cost of HRC in Thailand, before considering whether this influence has:

- created a market situation in the Thai HSS market that renders sales of HSS in that market unsuitable for calculating normal value under s.269TAC(1); and/or
- rendered the cost of HRC recorded in the records of Thai exporters unreasonable for use in working out the cost of HSS in accordance with the Regulations.

Throughout this appendix, this alleged price ceiling will be referred to as 'GOT price measures'.

I(iv) SEF177 preliminary assessment

In SEF177 (placed on the Public Record on 23 April 2012), Customs and Border Protection made a preliminary assessment that:

⁴³ For example, in the recent investigation into aluminium extrusions from China (REP148), Customs and Border Protection found that the conditions of Regulation 180(2) were not met as, although the records of Chinese exports were kept in accordance with the GAAP, the cost of primary aluminium in these records was not reasonably reflective of competitive market costs. Customs and Border Protection instead substituted the prevailing London Metals Exchange (LME) price of primary aluminium for the costs of Chinese manufacturers.

- there was not a market situation in the Thai HSS market during the investigation period such that sales in that market are not suitable for use in determining normal value under s.269TAC(1); and
- the cost of HRC incurred by Thai manufacturers of HSS was reasonable during the investigation period, for the purposes of working out costs in accordance with the Regulations.

This SEF177 assessment had regard to:

- those matters raised by ATM in its application;
- various submissions from interested parties (including additional submissions lodged by ATM itself);
- three responses to the Exporter Questionnaire;⁴⁴ and
- a response from the GOT to the Government Questionnaire and associated correspondence.

However, SEF177 noted that the GOT's response to the Government Questionnaire was quite limited in the data it provided, delays were experienced in receiving approval from the GOT for it to be placed on the Public Record, and Customs and Border Protection had planned to write to the GOT for further information as at the date of publishing SEF177 (see Appendix B of SEF177).

Furthermore, prior to SEF177, Customs and Border Protection undertook verification visits to two Thai exporters of HSS,⁴⁵ during which it discussed the allegations of a market situation, and their understanding of how GOT price measures work. Details of these verification visits are contained within the Exporter Visit Reports of each visit, available on the Public Record.

However, in SEF177 (at Section 6.3), it was noted that:

...publicly available information recently observed by Customs and Border Protection is considered to provide some further support to ATM's allegations of a market situation in Thailand.

In SEF177, Customs and Border Protection considered this information warranted further consideration and investigation into the allegations of a market situation in Thailand, and noted that that the investigation into these matters was continuing.

⁴⁴ Submitted by the selected cooperating exporters (Pacific, Saha and Samchai).

⁴⁵ Pacific and Saha

(v) Submissions received following the publication of SEF177 and further information received

Submissions and meetings

As noted at Section 2.4 of this report. Customs and Border Protection received various submissions following the publication of SEF177 that contained material relevant to the assessment of whether a market situation existed in Thailand during the investigation period (and the reasonableness of Thai exporters' costs). Information contained in these submissions has been considered in making this final assessment of a market situation in the Thai HSS market.⁴⁶

Details of these submissions are noted in Section 2.4 of this report.

In addition, following SEF177, Customs and Border Protection facilitated meetings with:

- ATM on 21 May 2012; and
- the ASA on 1 May 2012

during which the issue of the existence of a particular market situation in Thailand was discussed.

Records of these meetings are available on the Public Record.

Further GOT information

Following the publication of SEF177, and the receipt of information shortly prior to its publication that was considered to warrant further investigation (see above) Customs and Border Protection wrote to the GOT on 26 April 2012, to request the provision of further information to that provided in the Government Questionnaire response.

In a submission dated 14 May 2012, the GOT responded to this request, answering a number of questions and providing translated copies of:

- the Thai '*Price of Goods and Services Act B.E 2541 (1999)*' (hereafter referred to as the Price of Goods and Services Act); and
- the '*The Central Commission on Prices of Goods and Services (CCP) Notification on Notifying of Cost, Price and Product Information regarding Steel Sheet B.E.2554 (2011)*' (hereafter referred to as the CCP Notification).

⁴⁶ Noting the limitations placed on consideration of late submissions, outlined in Section 2.4 of this report.

PART II NATURE OF GOT PRICE MEASURES

II(i) Introduction

Customs and Border Protection has examined the available evidence and arguments made by interested parties to arrive at an assessment of the nature of GOT price measures on HRC during the investigation period.

In doing so, Customs and Border Protection has:

- outlined the available evidence of the nature of the GOT price measures; and
- made an assessment as to the nature and effect of these measures during the investigation period.

This evaluation of the available evidence, and subsequent assessment as to the nature of the GOT price measures is outlined below.

II(ii) GOT position – ‘recommended price’

Within its response to the Government Questionnaire and subsequent submissions to the investigation, the GOT has maintained that, although there were GOT price measures on HRC in Thailand during the investigation period, these did not take the form of a price ‘ceiling’ or maximum price, but rather a ‘recommended’ price for those goods.

The GOT has further submitted⁴⁷ that:

...the DIT has set the “Recommended Price”, these are only non-binding reference prices to inform consumers. The Thai Government does not control particular prices or costs of Hot-Rolled Steel Coil. Those process or costs are set by free market forces. In fact, the reference prices do not even apply to much of the steel in the Thai market, including imports and exempted grades and end use applications.

This position is reflected throughout GOT submissions to the investigation.

The GOT has submitted⁴⁸ that the ‘suggested price’ is purely for monitoring purposes and does not represent an enforced ceiling.

The GOT has further submitted,⁴⁹ that the reference price has remained at the same level for at least 3 years.

II(iii) Thai legislation - Price of Goods and Services Act

⁴⁷ GOT letter of 6 December 2011

⁴⁸ GOT submission of 14 May 2012

⁴⁹ GOT submission of 14 May 2012.

The GOT has provided Customs and Border Protection with a translated copy of the Price of Goods and Services Act, and submitted⁵⁰ that:

"The Act" aims for consumers to receive fair treatment in the consumption of prices and services and to prevent that the prices of goods and services should not be unreasonable raised as well as to assure that enough goods and services should be supply for domestic consumption.

In its response to the Government Questionnaire, the GOT explained that the Department of Internal Trade (DIT) is the GOT entity responsible for the implementation of the Price of Goods and Services Act.⁵¹

Specific provisions

Chapter I of the Price of Goods and Services Act provides for the establishment of a Central Commission on Prices of Goods and Services (CCP), within the Thai DIT.

Section 9 of the Price of Goods and Services Act provides the CCP has the following powers and duties.

- (1) to issue a Notification prescribing any particular goods or services as controlled goods or services under section 24;
- (2) to prescribe measures to be implemented with respect to controlled goods or services under section 25;
- (3) to order a producer or a distributor of controlled goods or services to give statements of fact under section 26;
- (4) *to give approval to the Notification issued under section 27;*
- (5) *to prescribe rules, procedures and conditions for the display of prices of goods or services under section 28;*
- (6) *to prescribe rules and procedures for the determination of the acts which are considered as amounting to the unreasonable lowering or raising of prices or resulting in the fluctuation of prices of goods or services under section 29 paragraph two;*
- (7) *to prescribe regulations on payment of rewards and awards under section 33;*
- (8) *to supervise and give directions to the extent that is necessary in order to ensure that the distribution of*

⁵⁰ GOT response to the Government Questionnaire at 5.2.

⁵¹ Ibid at 5.1

controlled goods or services is sufficient for public demand. In this regard, the CCP may entrust the Provincial Commission on Prices of Goods and Services, the Secretary-General or a competent official to act on its behalf;

- (9) *to consider a complaint that a grievance or injury is suffered in consequence of an act which has an adverse effect on prices;*
- (10) *to invite any particular person to give a statement of fact, explanation, advice or opinions;*
- (11) *to perform any other act as provided by law to be the powers and duties of the CCP.*

[Emphasis added by Customs and Border Protection]

Section 24 of the Price of Goods and Services Act states the CCP has the power to issue a Notification prescribing a certain good as 'controlled'.

Further, Section 25 of the Price of Goods and Services Act provides that, after a Notification is made under Section 24, the CCP shall have the power (among others) to:

- fix purchase or distribution prices of controlled goods at a maximum or minimum;
- fix maximum rates of profit that distributors can earn on controlled goods;
- prescribe rules, measures or conditions to prescribe rules, measures and conditions which must be observed with regard to the production, import, export, purchase, distribution or storage of controlled goods;
- prescribe measures for preventing the hoarding or possession of the controlled goods in excess of a set quantity.

Further, Section 26 of the Price of Goods and Services Act provides:

The CCP has the power to issue a notification requiring the producer, distributor, purchaser for redistribution or importer for redistribution of the controlled goods or services to notify the Secretary-General the name, purchase price, distribution price, standard, quality, size, quantity, unit weight, including the name and quantity of the article which is the component part of such goods or services and their other characteristics as are on the date of the prescription by the Commission.

[Emphasis added by Customs and Border Protection]

The GOT response to the Government Questionnaire confirmed the above duties and responsibilities, noting the CCP have the authority to regulate

measures and take control over prices to prevent behaviour that could take advantage of consumers, and to request manufacturers to reveal prices of goods and services.

From the above, it is clear that the GOT's CCP has broad powers to issue notifications and impose measures (including the determination of prices) under the Price of Goods and Services Act, including those that set minimum and maximum prices for goods.

Non-compliance provisions

The *Act on Price of Goods and Services* provides for penalties for non-compliance with CCP measures. Penalties include fines and imprisonment for a term not exceeding one year, for failure to make a declaration as required by the terms of a notification of the CCP, and fines and imprisonment for a term not exceeding five years for obstructing the work of the CCP (or other GOT agency/representative).⁵²

ATM's submission of 6 January 2012 made note of these penalties, submitting that observed prices may be lower than the GOT price to avoid penalties associated with breaching the price, which it is considered would only involve a breach of a suggested price having regard to the above.

II(iv) The Supervisory List

In its application,⁵³ ATM provided a document entitled *Products under Supervisory for 200 Items as of October 2006* (the Supervisory List) which prescribes steel sheet (hot-rolled,⁵⁴ cold-rolled coil and stainless) as a 'priority watch list' item – amongst five other priority items and a larger list of 'watch list' items (200 in total).

ATM has submitted⁵⁵ that this list identifies those items over which the CCP has 'explicit price controls' or has issued notifications under the Price of Goods and Services Act.

However, despite ATM submitting that the Supervisory List names those items over which the GOT has explicit controls, further evidence submitted by ATM itself indicates that inclusion on this listing does not mean that the CCP has imposed specific measures that set or limits on the price of listed goods.

For example, an attachment to ATM's submission of 19 January 2012 (presented in the meeting of 12 January) indicates that producers of products on the Supervisory List are prohibited from raising prices without first notifying the CCP. This attachment also states that 'explicit permission' is not required for manufacturers to raise prices, but they are asked to 'cooperate' with the

⁵² Price of Goods and Services Act, Articles 38 and 37 respectively.

⁵³ And again within a submission of 19 January 2012, following a meeting with Customs and Border Protection on 12 January 2012

⁵⁴ Considered to be HRC

⁵⁵ ATM submission of 19 January 2012

DIT on this matter and that 'producers tend not go forward with price increases without at least a verbal approval' due to concern they may later be instructed to reduce their prices or 'see their product added to the control list'.

In addition, ATM's submission of 19 January 2012 attached a 2009 Bank of Thailand (BOT) discussion paper entitled *Monetary Policy and Underlying Inflation Pressures: The Essence of Monetary Policy Design*.⁵⁶ This paper outlined the approach taken by the BOT to specifically exclude goods subject to price control by the Thai CCP from its inflation calculations, due to their distorting effect.

ATM submits that that this provides evidence of the likely impact of the alleged price ceiling on HRC in Thailand.

However, it is observed that this BOT paper identifies that the GOT has been 'closely monitoring the prices of over 200 items' since 2005, but has a package of 'six measures' on certain utilities that 'entail free or reduced prices' for low-income households.⁵⁷ The BOT paper does not make reference to any price control on steel or steel products.

This indicates that the Supervisory List in fact refers to items that are 'monitored' by the CCP, rather than subject to price controls.

Further, it is noted that the provided Supervisory List is dated October 2006, and that the Act on Price of Goods and Service provides for annual revisions of pricing measures by the CCP. It is therefore conceivable that steel sheet has been re-categorised in this list (e.g. potentially no longer a 'priority' item).

II(v) 2003 WTO Trade Policy Review

As submitted by ATM in its application, the WTO's 2003 Thai Trade Policy Review report notes that 'structural steel' (which ATM has advised includes HRC) was on the list of GOT-controlled goods at that time, and that the GOT could introduce minimum and maximum selling prices of these listed goods.⁵⁸

It is considered that this is evidence of the existence of GOT control over certain forms of steel in the past. Though it is noted this review was undertaken in 2003.

II(vi) Credit News SSI profile

In 2007 it was reported by *Credit News* in its company profile for Sahaviriya Steel Industries Public Company Limited (SSI) reported:⁵⁹

⁵⁶ DP/01/2009

⁵⁷ Ibid, at pages 13 and 14.

⁵⁸ WT/TPR/S123 at pages 70 and 71.

⁵⁹ Announcement No.510, 13 December 2007. Available at <http://ssi.listedcompany.com/misc/SSI510-08.pdf> (accessed 6/4/2)

The price of steel in Thailand has also risen, but to a lesser extent, as the price is controlled by the Ministry of Commerce (MOC). Though the MOC abolished the ceiling price for steel sheets in March 2004, any steel trading company which wants to raise the steel price must submit the proposed price to the Department of Internal Trade (DIT) not less than seven days before it becomes effective.

...

The DIT monitors daily the price and market situation for controlled products. In addition, every month since November 2004, the DIT has announced the recommended price for steel sheets. Steel prices will reflect not only changes in the price of major raw materials, i.e. hot-rolled and cold-rolled steel sheets, but also changes in the costs of scrap and slab. The recommended price in October 2007 for hot-rolled coil and hot-rolled plate were Bt25-Bt25.5 per kg. and Bt26-Bt27 per kg., respectively.

[Emphasis added by Customs and Border Protection]

SSI is understood to be the largest HRC producer in Thailand.

This report makes clear references to the existence of a 'recommended' price for HRC, and the abolition of the ceiling price on 'steel sheets' in 2004.

Customs and Border Protection considers the term 'steel sheets' in this article refers to HRC (noting the context in which this terms is used, and that several other references to 'steel sheets' from Thai sources clearly relate to HRC).⁶⁰

It is noted that this article clearly reports that the price 'ceiling' on steel sheets was abolished in 2004, and that, at the time of the Credit News Article in December 2007, the GOT price measures on HRC were 'recommended' prices.

II(vii) CCP Notification

In its submission of 14 May 2012, the GOT provided a translated copy of the CCP Notification (see Section I(v) of this appendix).

The terms of this CCP Notification require:

(2) Producers and importers of designated Steel Sheet for subsequent selling shall notify the Commission information on; name and classification of the product, cost of production, cost of importation, cost of sale and selling price of Steel Sheet, in accordance with 3, updated as of the issued date within 30 days.

⁶⁰ See CCP Notification below.

Any producers and importers of the products under 3 for subsequent selling undertaking business transactions after this notification being enforced shall notify the information required in paragraph one not less than 7 days before being sold.

(3) The designated Steel Sheet in (2) means standard Steel Sheet which possesses certain quality, thickness, width, coating number and surface quality as follows...[specifications of relevant steel sheet].⁶¹

(4) In the case of producers and importers of Steel Sheet for subsequent selling requiring to amend product descriptions and/ or to sell Steel Sheet, as stated in 3, with higher prices than which have been notified previously in accordance with 2, the aforementioned producers and importers shall notify the office of the Central Commission on Prices of Goods and Services 7 days in advance before administering the sale and/or the proposed amendment.

[Emphasis added by Customs and Border Protection]

The GOT advised that the CCP Notification, in respect of HRC in Thailand, is issued and enforced by virtue of sections 9(2) and (3); Section 25(3), (4) and (5); and Section 26 of the Price of Goods and Services Act (outlined and reproduced above in Section II(iii) of this appendix).

The CCP Notification was issued on 2 February 2011, however the GOT has advised it was subsequently terminated on 2 February 2012 since 'there was no prices fluctuations'.⁶²

The CCP Notification appears to establish that:

- current producers and sellers of specific HRC, within 30 days of the issue of the CCP Notification, of their prices, costs, and other information related to the HRC they supply;
- new producers and sellers that are established after the CCP notification is issued, must notify of these matters within 7 days of them selling this HRC; and
- where producers and sellers seek to amend the prices in their original notification to a higher amount, they must notify the CCP 7 days in advance of making this sale.

Customs and Border Protection has not identified any provisions within the CCP notification that indicate that the CCP (or other GOT authority) have the ability to reject this notified increase in prices.

It is also noted that the CCP Notification does not make any reference to a suggested HRC price, or the quantum of this price, but rather appears to

⁶¹ This includes specifications of steel sheet understood to be commonly used to manufacture HSS.

⁶² GOT letter of 14 May 2012

impose administrative/reporting requirements on HRC producers and distributors.

II(viii) Credit News SSI Profile

In the abovementioned *Credit News* 2007 company profile for SSI, it is stated that:

The price of steel in Thailand has also risen, but to a lesser extent, as the price is controlled by the Ministry of Commerce (MOC). Though the MOC abolished the ceiling price for steel sheets in March 2004, any steel trading company which wants to raise the steel price must submit the proposed price to the Department of Internal Trade (DIT) not less than seven days before it becomes effective.

...

The DIT monitors daily the price and market situation for controlled products. In addition, every month since November 2004, the DIT has announced the recommended price for steel sheets. Steel prices will reflect not only changes in the price of major raw materials, i.e. hot-rolled and cold-rolled steel sheets, but also changes in the costs of scrap and slab. The recommended price in October 2007 for hot-rolled coil and hot-rolled plate were Bt25-Bt25.5 per kg. and Bt26-Bt27 per kg., respectively.

[Emphasis added by Customs and Border Protection]

II(ix) Quantum of GOT price measures

In its response to the Exporter Questionnaire, Pacific (as part of a submission that the GOT price measures are a recommended price rather than a ceiling) provided Customs and Border Protection a translated copy of a notification in relation to HRC from the DIT's website.

This notification, entitled '*Suggested HRC Price*' states that the suggested HRC price as of March 2009 is 24.00 -24.50 Baht/kg ex-factory (excluding VAT).

ATM's application submitted that the GOT price for HRC in the investigation period was similar to this amount (though ATM contends this was an enforceable price ceiling rather than a recommended price during the investigation period).

The Government Questionnaire Response also provides information as to the GOT price measure as of 2 February 2011, which is similar to that reported in the *Suggested HRC Price* document and ATM's application.

II(x) Exporter Questionnaire responses and submissions

In its response to the Exporter Questionnaire, alongside its provision of the *Suggested HRC Price* document, Pacific submitted that Thai suppliers of HRC are able to sell above this GOT price without 'permission' from the GOT, but that they must inform the GOT of sales above the suggested price seven days in advance.

Saha, has submitted a similar understanding of the GOT price measures in its response to the Exporter Questionnaire.

In response to the SEF, Samchai asserted⁶³ that

...there is no government price control or 'capped price' of HRC in Thailand and to date only suggested prices exist together with the list 'Product under Supervisory for 200 Items'.

II(xi) Comments of SSI President

Customs and Border Protection observes the recent comments of Mr. Win Viriyaprapaikit (President of SSI) in relation to SSI's second quarter 2011 performance:

*This was a challenging quarter for all Thai steel manufacturers as we experienced extraordinarily negative factors such as 1) rapidly and continuously increasing cost of raw materials due to major flood and hurricane in Australia while the government still capped the sales price ceiling of hot-rolled coil...*⁶⁴

It is noted that this statement relates directly to the investigation period.

Noting the above comments, Customs and Border Protection wrote to the GOT on 26 April 2012, and requested the GOT to explain how SSI's comments that the 'capping' of prices of HRC contributed to company losses reconciles with the GOT's position that controls on the price of HRC only amount to a recommended price.

The GOT submitted that:

"...after thorough consideration of the information acquired from the DIT and SSI, the CEO of a public company is responsible for enhancing equity prices and statements attributing losses to alleged price controls and better conditions to other factors is not a reliable source of evidence. The DFT⁶⁵ respectfully considers that a press

⁶³ Samchai Steel Industries Public Company Ltd – Response to the Statement of Essential Facts No. 177, 13 May 2012

⁶⁴ As quoted by *Thailand Press Release News* in SSI reports a net loss of 1,072 million Baht in Q2/11, available online at <http://www.thailand4.com/fin/2011-08-15/813fbded5c98f8623e230a7c927fc0f4/> (accessed 20 April 2012)

⁶⁵ The Thai Department of Foreign Trade (the GOT department charged with coordinating the GOT response to his investigation)

report from a CEO supporting the share price of a company should be disregarded, as there was no price controls on steel sheet used by the domestic industries".⁶⁶

ATMs submission of 22 May 2012 disputes the explanations of the GOT, and asserts that Customs and Border Protection must have regard to the comments of HRC market participants in Thailand that have confirmed that Thai domestic HRC prices are suppressed by the GOT imposed price ceiling.

Further, a submission lodged by Samchai on 13 May 2012 also responded to the reported comments of SSI, asserting;

"Samchai has no reason to change the facts as reported in its EQ Response and cannot understand the statement made concerning the "...Government still capped prices of HRC". As is known to the steel industry of Thailand, a "suggested price" for HRC exists. The last published suggested price for HRC was made for the 2nd period March 2 2009. Prices excluding VAT were 24.00-24.50 Baht per kg".⁶⁷

[Emphasis added by Customs and Border Protection].

II(xii) Other reports and articles

Subsequent to the publication of SEF177, ATM has provided Customs and Border Protection with additional evidence of public statements made by SSI and G Steel Public Company Limited (G Steel, another major Thai HRC producer), which it asserts supports its claim that there exists a 'ceiling' price for HRC in Thailand during the investigation period. This evidence is outlined below.

MetalBulletin news article accompanying ATM submission of 7 May 2012

SSI is reported as stating "...the domestic price of commercial-grade HRC did not keep pace with the cost increases, as the suggested HRC ceiling price set by the department of internal trade from the ministry of commerce in Thailand had been kept at 24,500 baht per tonne".⁶⁸

Finance Analysts' Report of Kim Eng Research Pte Ltd accompanying ATM submission of 7 May 2012

The only SSI hit was a loss of around –Bt391mn on high slab costs with the HRC price not keeping pace with the cost increase due to the ceiling price set by the Department of Internal Trade and from dumping by Chinese producers.⁶⁹

⁶⁶ GOT letter of 15 May 2012, pg. 2

⁶⁷ Samchai submission of 13 May 2012.

⁶⁸ MetalBulletin 'Sahaviriya Steel Industries posts \$35.8 million loss in Q2', 15 August 2011

⁶⁹ Kim Eng Research Pte Ltd, 'Sahaviriya Steel Industries (SSI) A 2Q11 loss of Bt1bn with more 2H11 losses', 16 August 2011.

ATM has contended that the above evidence attributed to SSI supports its claim that the HRC ceiling price in Thailand was actively enforced by the Thai Government's Ministry of Commerce, and that Thai domestic HRC prices were suppressed by the Government and not determined according to competitive market forces throughout the investigation period.

G Steel Annual Report 2011 accompanying ATM submission of 7 May 2012

*In Thailand, the pricing regulations deployed by the Department of Internal Trade on hot rolled steel sheet are being eased up. Resulted from the producers' good cooperation for a very long period of time holding the prices at a reasonable level that caused no troubles to consumers, the producers can decide with customers the selling prices based on market mechanism or normal business conditions.*⁷⁰

[Emphasis added by Customs and Border Protection]

ATM submits that the statement of G Steel in its annual report support its contention that price of HRC in Thailand has been suppressed or an extended period of time, forcing producers to hold their prices of HRC at a certain level for an extended period of time.

However, Customs and Border Protection notes the comments of G-Steel made for its 2011 financial year (October 2010 – September 2011, covering 9 months of the investigation period) that GOT pricing measures on HRC have been 'eased up' and that producers can now determine their HRC pricing based on 'market mechanism or normal business conditions'.

Various other articles

ATM has also provided a listing of links to publicly available new articles,⁷¹ which it asserts report the enforcing of price measures on steel products by the GOT, and evidence of requests by the Thai steel industry for steel price rises.

Customs and Border Protection acknowledges that a number of articles were submitted as evidence, and the below comments are representative of these articles.⁷²

- *"The Nation reported that Thailand's internal trade department will soon dispatch officials around the country to check steel inventories in a bid to discourage hoarding, which could aggravate the pain already felt by*

⁷⁰ G- Steel Annual Report 2011, pg. 9

⁷¹ Provided as part of ATM's meeting agenda for a meeting with Customs and Border Protection on 19 April 2012. To date, ATM has not provided a non-confidential version of this agenda. However the information contained within it (links to news articles) is considered to be publicly available information in any case.

⁷² Refer to ATM submissions, 23 March 2012, ATM meeting briefing notes 19 April 2012 and 7 May 2012.

the construction industry... Some steel makers have been stocking up on speculation that the Commerce Ministry will soon approve a THB 7 per kilogram hike in the steel price;⁷³

- *"(Mr. Yanyong Phuangrach, Director- General of the Department of Internal Trade) reiterated that the entrepreneurs are not allowed to increase their steel prices during this period";⁷⁴ and*
- *Internal Trade Department Director-General Yangyong Phuangrach said the Ministry would only consider allowing steel prices to increase if domestic diesel prices rose by another Baht 5 per litre*".⁷⁵

It is noted the first two of these articles were published in 2008, while the third article appears (from the website provided) to have been published in 2009.

Customs and Border Protection requested,⁷⁶ in the context the above statements, that the GOT provide a full explanation of the nature and extent of its measures with respect to HRC in the investigation period.

Customs and Border Protection also requested the GOT to provide a full description of any administrative measures by which DIT, or any other government authority, sets, reviews or monitors HRC prices in Thailand.

The GOT response on 13 May 2012, contained the following reply;

"...concerning the alleged reports on GOT strictly enforcing price controls in responses to subjugate fluctuation of steel prices, it was paramount to the DIT to be seen as an Agency that could protect consumers. In this respect, GOT had undertaken several measures including 1) Mandatory display retail prices of goods, 2) Establishment of Sub-Committee on Prices Determination of Steel Rod, Section and Steel Sheet to oversee the price movement and trend of subject goods, and 3) Issuing of Notifications on Notifying of Cost, Price and Product Information. As the DFT has explained with supporting evidences, no price controls were exercised on the subject goods during the stated period".⁷⁷

In this response the GOT further contended that:

"Within the POI,⁷⁸ it is the understanding of the DFT that Customs was satisfied that raw materials costs of the domestic industry reflected market conditions. Press reports in 2008 fall outside the investigation

⁷³ www.steelguru.com, 'Thailand to prevent steel hoarding as prices' 19 May 2008

⁷⁴ National New Bureau of Thailand Public Relations Department, 'Commerce Ministry: Steel Prices Still Maintained' 5 June 2008

⁷⁵ The Nation, 'Hike to be allowed if diesel prices rise', available at http://www.clickthaihome.com/news/news_detail.asp?nID=26032&p=1&s=15&t=17

⁷⁶ In a letter to the GOT on 26 April 2012

⁷⁷ GOT response, 15 May 2012

⁷⁸ Period of investigation or investigation period

period for the allegation of dumping. Therefore, it is not a substitute for evidence obtained during onsite verification. There is also common understanding that discrepancy of information is prevalent in the media, rendering it unsuitable as evidence above that supplied by the DFT in respect of this investigation". ⁷⁹

[Emphasis added by Customs and Border Protection]

In its submission of 22 May 2012, ATM challenges this explanation offered by the GOT that it has in place price monitoring for the purpose of protecting consumers.

ATM asserts the intention of the price 'ceiling' extends beyond the mere monitoring of prices, and is a tool of the GOT to influence market outcomes, either to support downstream industries via suppressed raw material input prices and/or suppress retail pricing to benefit consumers, supporting broader GOT economic policy.

II(xiii) Assessment – nature of GOT price controls

After reviewing the available evidence and arguments posed by interested parties, Customs and Border Protection considers that while there is evidence to suggest that the GOT may have, at some stage, placed a ceiling price on domestic HRC prices, the balance of available evidence suggests the nature of the GOT price measures during the investigation period took the form of:

1. a 'recommended' price for HRC; and
2. administrative provisions under the CCP Notification that impose reporting requirements on sellers and producers of HRC (including the notification of the CCP of selling price increases seven days in advance).

Important considerations in this assessment are:

- the CCP Notification, which sets out the GOT measures in respect of HRC, which appear to create reporting obligations, monitoring of HRC prices but do not set an enforceable price ceiling (see Section II(vii));
- the comments of G-Steel in its 2011 annual report that *producers can decide with customers the selling prices based on market mechanism or normal business conditions* (see Section II(xii)); and
- the reference to a 'recommended' HRC price in the DIT *Suggested HRC Price* (see Section II(x)).

This conclusion is also supported by Customs and Border Protection's assessment of the impact of the GOT price measures as set out in PART III of this appendix below (which observes sales above the recommended price, refuting the claim that it is an enforceable 'ceiling' price).

⁷⁹ GOT response, 15 May 2012

However, despite the consideration that the GOT price measures did not take the form of a ceiling or maximum price during the investigation period, it is noted that that the GOT plays an active role in monitoring the price of HRC in Thailand.

Customs and Border Protection considers that the available evidence indicates that past GOT price measures are likely to have included enforced price ceilings in the past, and is mindful of evidence presented by ATM (in particular recent references by SSI to the government capping of HRC selling prices) as well as a number of reported references to price control measures with respect to HRC. However, the balance of evidence suggests that this ceiling has not been in force for some time, and particularly not during in the investigation period.

PART III IMPACT OF GOT PRICE MEASURES

After assessing the nature of the GOT price measures during the investigation period (a 'recommended price' and price reporting requirements), Customs and Border Protection has turned to assess whether these measures have:

- created a market situation in the Thai HSS market during the investigation period; and/or
- affected the reasonableness of the cost of HRC recorded in the cost to manufacture of HS exporters.

To make this assessment, Customs and Border Protection has assessed the impact of the GOT price measures on HRC prices in Thailand.

III(i) Observed prices and market behaviour - domestic prices

After considering the information outlined at Section II(ix), Customs and Border Protection considers that GOT price measures in relation to HRC were at a recommended price of approximately 24.00 – 24.50 Baht/kg during the investigation period.

Customs and Border Protection has compared this recommended price to observed market prices to establish the practical effect of this price in the Thai HRC market.

Customs and Border Protection has examined domestically-purchased HRC price information submitted by the selected cooperating exporters in their Exporter Questionnaire responses. This HRC purchase price data was verified with two of the three selected cooperating exporters (Saha and Pacific - as discussed in each entity's exporter visit report).

Over the investigation period, Customs and Border Protection observed instances of HRC purchases made above the recommended price by selected cooperating HSS exporters, as well as purchase prices of domestic HRC below the recommended price.

Samchai⁸⁰ has further submitted that quotations between suppliers of HRC in Thailand vary.

The GOT of Thailand has submitted data as part of its Government Questionnaire Response and repeated in its submission on 12 April 2012, this data displays HRC selling prices across the investigation period, sourced from the Ministry of Commerce, Bureau of Trade and Economic Indices. This data corresponds with the price trend of verified data of Thai exporters and displays sales both below and above the alleged ceiling price.

⁸⁰ Samchai submission of, 13 May 2012

ATM has submitted data in its submission on 28 March 2012, sourced SSI Investor Report, as well as data from Steel Business Briefing (SBB, an independent steel pricing data source) in respect of the HRC East Asia data. ATM asserts that this data demonstrates that GOT ceiling price on HRC has significantly suppressed prevailing HRC prices. However, Customs and Border Protection notes the SSI data provided by ATM displayed that, on at least one occasion, SSI's selling price exceeded the GOT alleged price ceiling.

Customs and Border Protection has also undertaken a comparison of the prices of Thai exporters with Asian domestic HRC market trends, comparing the verified domestic HRC prices of HSS manufacturers in Korea, Malaysia and Taiwan, as well as publicly available SBB East Asia HRC prices. This has shown that, over the investigation period, Thai domestic HRC prices were at times above the prevailing regional domestic prices, though generally followed the trend of these domestic Asian region prices.

Customs and Border Protection has observed the relationship and trend of:

- actual HRC purchases prices paid by Saha, Pacific, and Samchai;
- data provided by the GOT and ATM (SSI data); and
- the recommended price, over the investigation period.

Form this analysis, Customs and Border Protection considers this analysis does not exhibit domestic pricing behaviour that would be expected in a market with an effective price ceiling.

This analysis forms Appendix B Confidential Attachment 1.

In its submission of 6 January 2012, ATM claimed that actual Thai HRC prices are likely to be below the alleged ceiling price due to the penalties imposed by the Thai Ministry of Commerce if the ceiling is exceeded.

Without turning its attention to the applicability of these sanctions to GOT measures as the CCP Notification (though it seems unlikely that these penalties would be invoked for a breach of the simple administrative requirements of the CCP Notification in any case),⁸¹ Customs and Border Protection observes that the relativity between the GOT Price Measures and the actual purchase prices of HRC observed in Thailand, does not support this argument.

III(ii) HRC imports

Data submitted in the application indicates that HRC imports represent a significant proportion of the HRC market in Thailand. Further, in its submission of 6 January 2012, ATM observed 'in 2010, demand for HRC was

⁸¹ Noting that the GOT, in it's Government Questionnaire response, stated that 'The recommended price is not enforcing by law for sellers to comply', at Question 5.3.3

approximately 5.5 million tonnes, 3.5 millions tonnes were produced locally while a further 2.2 million tonnes was imported'.

Customs and Border Protection notes that a significant proportion of imported HRC was used by HSS manufacturers examined during the investigation.

This indicates to Customs and Border Protection that imported HRC remained an important supply alternative for HRC users, and must logically have remained at competitive prices in comparison with domestic HRC supply throughout the investigation period.

In response to this position, ATM has submitted that the GOT currently has anti-dumping measures in place on HRC exporters from 16 countries.⁸² However, ATM has submitted that imported HRC that is subsequently further-worked and re-exported is exempted from dumping and other duties that would otherwise apply, and hence creates an incentive to purchase dumped imports for later export.

ATM has submitted evidence in support of the duty exemptions on HRC destined for re-export as part of its submission on 7 May 2012, including an SBB news article from the 16 February 2011, reporting on Thailand implementing preliminary anti-dumping duties on coil. This SBB article states:

*Some importers and users will be exempt from the duty. These include those who process the targeted HRC imports into finished products for re-export at premises within recognised Thai Industrial Zones, those operating plants with a licence issued by the Board of Investment, and those who import for re-export under Customs rules and regulations such as bonded warehouses.*⁸³

ATM has also drawn Customs and Border Protection attention to the findings of US Department of Commerce in its Administrative Review Decision in relation to its findings of a 'blue corner rebate scheme' applicable to Thai exporters Saha and Pacific. In this review, the US Department of Commerce found evidence of a duty draw back scheme on imported HRC that was value added and then re-exported.⁸⁴

Noting the above, Customs and Border Protection considers it reasonable to find that a duty scheme allowing for such exemptions does exist in Thailand.

Consequently, ATM has asserted⁸⁵ that the majority of imported HRC consumed by Thai HSS manufactures is imported under this scheme, converted to HSS for export, and hence avoids otherwise applicable duties.

⁸² Supported by WTO document G/ADP/N/223/THA, Thailand, Definitive Anti-Dumping Measures in Force as of 31 December 2011

⁸³ SBB, 'Thailand slaps preliminary AD duties on coil, plate imports', 16 February 2011.

⁸⁴ ATM submission 14 May 2012, USDOC Administrative Review for Pipe and Tube from Thailand.

⁸⁵ ATM submission of 19 April 2012

ATM has asserted that this creates a 'two tier pricing system'. This argument is considered further at Section 5.2.3 of this report.

Customs and Border Protection has conducted an analysis of the verified data of one Thai exporter and found that the volume of imported HRC exceeds the volume of exports of HSS (including exports to countries other than Australia), and therefore considers that at least some imported HRC is being used in the manufacture of domestic Thai HSS.

Customs and Border Protection considers therefore that its expectation that imports do represent a competitive supply alternative, despite anti-dumping duties that may apply, remains valid. It would be reasonable, therefore, to expect that import competition is a factor in influencing prevailing Thai HRC prices.

III(iii) Assessment - impact of GOT pricing measures

From its analysis of the available evidence, Customs and Border Protection considers that the GOT price measures for HRC appear to have had limited, if any, impact on the price of HRC in Thailand.

As outlined above, Customs and Border Protection has observed specific examples of purchases above the GOT price measure (as Customs and Border Protection understands them to be), as well as purchase prices during the investigation period below the 'recommended' price.

In addition, Customs and Border Protection's comparison of the prices of Thai exporters with Asian domestic HRC market trends (see Section III(I) above) has shown that, over the investigation period, Thai domestic HRC prices were at times above the prevailing regional domestic prices of HRC.

It is considered that this indicates two things:

- 1) the GOT price measures do not serve to constrain HRC sellers in the Thai market from seeking and achieving higher prices (though additional information requirements may be imposed in order to do this); and
- 2) the GOT price measures were, for much of the investigation period, somewhat higher than the prevailing market prices of HRC in Thailand in any case, rather than a price limiter (it is considered that, if the GOT price measures were in fact suppressing prices, the observed prices paid for HRC would be much closer to the GOT price measures level).

Therefore, Customs and Border Protection considers that the available evidence indicates that the GOT price measures did not significantly suppress or otherwise distort HRC prices in Thailand during the investigation period.

In addition, it is noted that, despite the existence of anti-dumping measures on certain HRC imported to Thailand, imports remained an important supply alternative for HRC users, and logically remained at competitive prices in

comparison with domestic HRC supply throughout the investigation period. It seems the competition with imported HRC is an important market factor contributing to the prevailing levels of HRC prices on Thailand.

PART IV SUMMARY AND CONCLUSION

It is considered that the balance of available evidence indicates the following.

- The recent GOT price measures in place (including during the investigation period) operate as a 'recommended' or 'suggested' price, alongside administrative provisions of the CCP Notification, requiring Thai HRC producers to notify the DIT in advance of doing so (not less than seven days before the price rise becomes effective).
- The GOT role in HRC pricing is limited to imposing price reporting obligations for sellers of HRC, monitoring of HRC prices, and publication of recommended HRC prices.
- The 'suggested' price has had little if any effect on the cost of HRC in Thailand during the investigation period.

It is therefore considered, that the GOT measures on HRC in Thailand have not had a distorting effect on the price of HRC during the investigation period, or in turn on the price of HSS in Thailand.

Consequently, Customs and Border Protection has found that no 'market situation' existed in the Thai HSS market during the investigation period that rendered domestic sales of HSS unsuitable for determining normal value under s.269TAC(1).

Furthermore, for the same reasons, it is considered that the cost of HRC incurred by Thai manufacturers of HSS was reasonable during the investigation period, for the purposes of working out costs in accordance with the Regulations.