



# **ANTI-DUMPING NOTICE NO. 2019/141**

*Customs Act 1901 – Part XVB*

## **Hollow structural sections Exported from the Kingdom of Thailand Initiation of a Continuation Inquiry into Anti-Dumping Measures**

*Notice under section 269ZHD(4) of the Customs Act 1901*

I, Dale Seymour, the Commissioner of the Anti-Dumping Commission, have initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of certain hollow structural sections (HSS, or the goods) exported to Australia from the Kingdom of Thailand (Thailand) by all exporters, is justified.

The anti-dumping measures are due to expire on 18 August 2020.<sup>1</sup>

### **1 The goods**

The goods subject to the anti-dumping measures are:

Certain electric resistance welded pipe and tube made of steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, whether or not including alloys. 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 pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 21 mm up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 950.0 mm. CHS with other than plain ends (such as threaded, swaged and shouldered) are also included within the goods coverage.<sup>2</sup>

The following categories of HSS are excluded from the goods:

- 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 1.6 mm (i.e. not used in structural applications); and
- stainless steel CHS and RHS sections.

<sup>1</sup> On and from 19 August 2020, if not continued, the anti-dumping measures would no longer apply.

<sup>2</sup> As set out in [ADN No. 2014/59](#) and [Anti-Dumping Commission Report No. 254](#).

The goods include all electric resistance welded pipe and tube made of 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.

## 1.1 Exclusions from the measures

As a result of *Ministerial Exemption Instrument No 1* of 2016,<sup>3</sup> certain HSS is exempt from the anti-dumping measures due to a Tariff Concession Order<sup>4</sup> granted in respect of:

Tubes, square or rectangular, electric resistance welded, complying with Australian / New Zealand Standard 1163:2009, Grade C350L0 or C450L0, with a perimeter not less than 1050 mm and having either:

- a) silicon content plus 2.5 times the phosphorus content NOT greater than 0.09%;
- b) silicon content greater than 0.14% and NOT greater than 0.24%.

## 1.2 Tariff classification

The goods may be classified in Schedule 3 to the *Customs Tariff Act 1995* as follows:

| Tariff Subheading | Statistical Code   | Description   |
|-------------------|--|---|
| 7306              |  | OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL: |
| 7306.30           |  | Other, welded, of circular cross-section, of iron or non-alloy steel:   |
| 7306.30.00        | <i>Exceeding 21 mm but not exceeding 60.3 mm external diameter:</i>  |   |
|                   | 31   | Wall thickness not exceeding 2.5 mm   |
|                   | 32   | Wall thickness exceeding 2.5 mm but not exceeding 3.6 mm  |
|                   | 33   | Wall thickness exceeding 3.6 mm   |
|                   | <i>Exceeding 60.3 mm but not exceeding 114.3 mm external diameter:</i>                                       |   |
|                   | 34   | Wall thickness not exceeding 3.2 mm   |
|                   | 35   | <i>Wall thickness exceeding 3.2 mm but not exceeding 4.5 mm</i>   |
|                   | 36   | <i>Wall thickness exceeding 4.5 mm</i>  |
|                   | 37   | <i>Exceeding 114.3 mm but not exceeding 165.1 mm external diameter</i>  |
|                   | 7306.50.00   | 45  |
| 7306.6            |  | Other, welded, of non-circular cross-section  |
| 7306.61.00        | <i>Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:</i> |   |
|                   | 21   | Wall thickness not exceeding 2 mm   |
|                   | 22   | Wall thickness exceeding 2 mm   |
|                   | 25   | Exceeding 279.4 mm perimeter  |
|                   | 90   | Other   |
| 7306.69.00        | 10   | Of other non-circular cross-section   |
| 7306.90.00        | 12   | Other   |

**Table 1: General tariff classification for the goods**

<sup>3</sup> [ADN No. 2016/116](#) refers, following exemption inquiry EX0044.

<sup>4</sup> Available on the Australian Border Force [website](#).

## 2 Background to the anti-dumping measures

Anti-dumping measures (in the form of a dumping duty notice) were initially imposed on exports of HSS from Thailand on 19 August 2015 by the relevant Minister after consideration of *Anti-Dumping Commission Report No. 254*.<sup>5</sup> The dumping duty notice applies to all exporters of HSS.

The investigation followed an application made by Austube Mills Pty Ltd (ATM) representing the Australian industry.

The measures applying to exports of HSS from Thailand were last examined by the Anti-Dumping Commission (the Commission) in *Anti-Dumping Commission Report No. 445* (REP 445), which resulted in an alteration of the variable factors applying to the affected exporters on 27 June 2018.<sup>6</sup>

The following table summarises the anti-dumping measures currently applying to exports of the goods to Australia from Thailand:

| Exporter                                    | Form of measure   | Fixed component of interim dumping duty |
|---|-------------------|---|
| Atlantic Pipe Company Limited               | floor price       | 0%                                      |
| Pacific Pipe Public Company Limited         | <i>ad valorem</i> | 5.6%                                    |
| Saha Thai Steel Pipe Public Company Limited | floor price       | 0%                                      |
| Thai Premium Pipe Co Ltd                    | <i>ad valorem</i> | 0.7%                                    |
| Uncooperative and all other exporters       | <i>ad valorem</i> | 8.7%                                    |

Table 2: Anti-dumping measures applying to HSS from Thailand

## 3 Applications for continuation of the anti-dumping measures

On 2 September 2019, a notice<sup>7</sup> was published on the Commission website ([www.adcommission.gov.au](http://www.adcommission.gov.au)) inviting certain persons to apply for the continuation of anti-dumping measures regarding the goods exported to Australia from Thailand in accordance with section 269ZHB(1) of the *Customs Act 1901* (the Act).<sup>8</sup>

On 29 October 2019, an application for continuation of the anti-dumping measures was received from Orrcon Manufacturing Pty Ltd (Orrcon). On 30 October 2019, an application for continuation of the anti-dumping measures was received from ATM. The Commission has considered both applications in determining whether the requirements to initiate a continuation inquiry have been met.

### 3.1 Australian industry producing like goods

Like goods is defined under section 269T(1). Sections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

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<sup>5</sup> The [report](#) is available on the Anti-Dumping Commission website.

<sup>6</sup> The [report](#) and the [notice](#) of the relevant Minister's decision (ADN No. 2018/88) are available on the Commission website.

<sup>7</sup> [ADN No. 2019/106](#) refers.

<sup>8</sup> All legislative references in this notice are to the *Customs Act 1901*, unless otherwise stated.

The applications state that:

- Australian Pipe and Tube Pty Ltd (APT), ATM and Orrcon are producers of the goods; and
- the Australian market is supplied by APT, ATM, Orrcon and by imports.

Having regard to the application, and having regard to previous verification activities undertaken by the Commission of ATM's and Orrcon's sales and production data, I am satisfied that, in relation to the goods the subject of the anti-dumping measures, both ATM and Orrcon produce like goods in Australia.<sup>9</sup> ATM and Orrcon therefore represent a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures.

In addition, ATM's application satisfies the requirements under section 269ZHB(1)(b)(i) as it was ATM's application under section 269TB that resulted in the existing anti-dumping measures.

### **3.2 Application of law to facts**

Division 6A of Part XVB sets out, among other things, the procedures to be followed in dealing with an application for the continuation of anti-dumping measures. Pursuant to sections 269ZHD(1) and (2), I must reject an application for the continuation of anti-dumping measures if I am not satisfied that:

- the application complies with section 269ZHC; or
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

### **3.3 Compliance with section 269ZHC**

I consider that ATM's and Orrcon's applications comply with the requirements of section 269ZHC because both applications are in writing, in a form approved by me for the purposes of this section, contain the information that the form requires, are signed in the manner indicated by the form, and were lodged in a manner approved under section 269SMS, being by email to the Commission's email address provided in the instrument under section 269SMS.

### **3.4 Assessment under section 269ZHD(2)(b)**

#### Applicants' claims

In their respective applications, ATM and Orrcon claim, among other things, that:

- exporters of the goods from Thailand have maintained distribution networks in the Australian market and exports have continued since the imposition of measures;
- the goods are highly price sensitive and price is one of the main considerations in customers' purchasing decisions, which indicates that the removal of the anti-dumping measures is likely to enable exporters to offer the goods at reduced prices, leading to an increased volume of the goods from Thailand;

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<sup>9</sup> See, for example, [Anti-Dumping Commission Report No. 379](#), which indicates that ATM and Orrcon account for the majority of Australian industry production of the goods. There is no evidence before the Commission which would suggest this is no longer the case.

- the removal of measures is likely to lead to a reduction in export prices which would result in a reduction in ATM's and Orrcon's prices, leading to price depression and price suppression;
- the dumping margins for Thai exporters for the 12 months ending 30 June 2019 have increased relative to the dumping margins determined in the most recently completed review of the anti-dumping measures (REP 445 refers);
- recent anti-dumping actions taken by the United States (US) and Canada demonstrate that exporters of HSS from Thailand (including exporters of the goods currently subject to anti-dumping measures in Australia) continue to export HSS to these countries at dumped prices;
- export volumes of HSS from Thailand are being adversely impacted by import tariffs imposed by the US and the European Union, which indicates that Thai exporters may seek to export HSS to alternative markets, including to Australia; and
- the removal of anti-dumping measures will adversely affect ATM's and Orrcon's ability to compete with import prices and adversely impact the Australian industry's sales volume, market share, capacity utilisation and profitability.

### Consideration of reasonable grounds

As part of their respective applications, ATM and Orrcon provided data to demonstrate that Australia continues to remain a significant export market (in terms of volume) for Thailand.

The Commission has examined information it obtained from the Australian Border Force import database and has found that the volume of HSS exported from Thailand by all exporters has declined (in absolute and relative terms) following the imposition of measures in August 2015, albeit volumes increased from the September 2017 quarter. The continuing and still significant volumes of these exports from Thailand demonstrates that Australia remains a significant market for the goods.

In REP 254 the Commission found that price is a significant factor in consumer purchasing decisions, and there is close price competition between the imported and the domestically produced goods. In its application, ATM provided data and market intelligence relevant to import price offers relevant to exports from certain Thai exporters (and exporters from other countries) to demonstrate that its domestic prices continue to be influenced by prices of the imported goods. Orrcon has also provided data in its application pertaining to pricing of HSS imported from Thailand and other countries.

Based on the evidence, I consider that ATM's assertions appear to demonstrate the negative impact that a price decrease would likely have had on its revenue, gross margin and profitability in the period 1 July 2018 to 30 June 2019. I also consider that ATM appears to demonstrate the impact that an increase in the export volumes of the goods from Thailand would likely have had on sales volumes and the Australian industry's market share. Orrcon has not provided an assessment of the potential impact that a price decrease may have on its revenue and profitability.

Noting the interim dumping duty actually paid, and noting that certain Thai exporters subject to relatively higher interim dumping duties<sup>10</sup> have not exported the goods to Australia in the 12 months ending 30 September 2019, I am satisfied there appears to be reasonable grounds to assert that the expiration of the anti-dumping measures might lead to lower export prices and increased volumes from Thailand.

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<sup>10</sup> Relative to exporters of the goods from Thailand only.

In those circumstances, the Commission considers that the Australian industry might experience pricing pressure which might lead to reduced profits and profitability.

### Conclusion

Having regard to ATM's and Orrcon's claims and other relevant information, and having examined the application, I am satisfied that, in accordance with section 269ZHD(2)(b), there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

I have therefore decided to not reject the applications.

## **4 Continuation inquiry**

### **4.1 Inquiry period**

For the purposes of this inquiry, I will use the period from 1 October 2018 to 30 September 2019 (the inquiry period) to determine whether the anti-dumping measures relating to the goods exported to Australia from Thailand should:

- remain unaltered; or
- cease to apply to a particular exporter or to a particular kind of goods; or
- have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or
- expire on the specified expiry date, 18 August 2020.

On 25 October 2019, I initiated a review of the anti-dumping measures applying to HSS exported from the People's Republic of China, the Republic of Korea, Malaysia, Taiwan and Thailand. Accordingly, for the purposes of this continuation inquiry, I may have regard to the variable factors established in the review of measures in order to assess whether dumping has occurred during the inquiry period.<sup>11</sup>

### **4.2 Public record**

I must maintain a public record for this inquiry. The public record must contain, among other things, a copy of all submissions from interested parties. Documents included in the public record may be examined at [www.adcommission.gov.au](http://www.adcommission.gov.au) or at the Commission's office by contacting the case manager on the details provided below.

### **4.3 Submissions**

Interested parties, as defined in section 269T(1), are invited to lodge written submissions concerning this inquiry, no later than the close of business on **22 December 2019**, being 37 days after publication of this notice. The Commission's preference is to receive submissions by email to [investigations1@adcommission.gov.au](mailto:investigations1@adcommission.gov.au).<sup>12</sup>

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<sup>11</sup> [ADN No. 2019/132](#) refers. Interested parties are therefore encouraged to provide responses to the exporter questionnaire for that review of measures by 1 December 2019. In responding to the questionnaire, interested parties should familiarise themselves with the proposed Model Control Codes relevant to HSS.

<sup>12</sup> As this day is a Sunday, submissions will be due on the next working day, 23 December 2019.

Submissions may also be addressed to:

The Director, Investigations 1  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

or faxed to +61 3 8539 2499.

Interested parties wishing to participate in the inquiry must ensure that submissions are lodged promptly. Interested parties should note that I am not obliged to have regard to a submission received after the date indicated above if to do so would, in my opinion, prevent the timely placement of the statement of essential facts (SEF) on the public record.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- (i) provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- (ii) satisfy me that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "FOR OFFICIAL USE ONLY". Interested parties must lodge a non-confidential version or a summary of their submission in accordance with the requirement above (clearly marked "PUBLIC RECORD").

#### **4.4 Statement of essential facts**

The dates specified in this notice for lodging submissions must be observed to enable me to report to the Minister for Industry, Science and Technology (the Minister) within the legislative timeframe. The SEF will be placed on the public record by **4 March 2020**, or by such later date as I may allow in accordance with section 269ZHI(3).<sup>13</sup> The SEF will set out the essential facts on which I propose to base a recommendation to the Minister concerning the continuation of the measures. Interested parties are invited to respond to the issues raised within 20 days of the SEF being placed on the public record.

Submissions received in response to the SEF within 20 days of the SEF being placed on the public record will be taken into account in completing my report and recommendation to the Minister.

#### **4.5 Report to the Minister**

A recommendation to the Minister will be made in a report on or before **18 April 2020** (or such later date as I may allow in accordance with section 269HI(3)).<sup>14</sup> The Minister must make a declaration within 30 days after receiving the report, or due to special circumstances, such longer period, ending before the day the dumping duty notice is due to expire, as the Minister considers appropriate.

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<sup>13</sup> The powers and functions of the Minister under section 269ZHI have been delegated to the Commissioner of the Anti-Dumping Commission. Refer to ADN No. 2017/10 for further information.

<sup>14</sup> As this day is a Saturday, submissions will be due on the next working day, 20 April 2020.

#### **4.6 Commission contact**

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2424 or email at [investigations1@adcommission.gov.au](mailto:investigations1@adcommission.gov.au).

Dale Seymour  
Commissioner  
Anti-Dumping Commission

15 November 2019