



21 April 2020

Director Operations 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

**Expiry review – Hollow Structural Sections exported by
Sahathai Steel Pipe Public Company Limited from Thailand**

Dear Director,

This submission is made by Sahathai Steel Pipe Public Company Limited (Sahathai) to the expiry review of measures (Case 532) applying to exports of hollow structural sections (HSS) exported by Sahathai from Thailand. The purpose of the submission is to assist the Anti-Dumping Commission (the Commission) in making its preliminary finding regarding the likelihood of resumed dumping.

In summary, Sahathai contends that the Commission must conclude that if measures are to be removed, it is not likely to lead to a recurrence of dumping by Sahathai.

Expiry of measures – Recurrence of dumping

Section 269ZHF(2) of the Customs Act ("the Act") explicitly requires that the Commissioner:

must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

The Commission's Dumping and Subsidy Manual¹ provides further guidance on the threshold test for establishing whether recurrence of dumping is 'likely'. It explains that:

In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence where 'likely' has been taken to mean 'probable'...

¹ Dumping & Subsidy Manual; December 2013, page 153

The WTO Appellate Body said of Article 11 in *Corrosion Resistant Carbon Steel*²:

In view of the use of the word "likely" in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible.

The Act therefore requires that the Commissioner recommend expiry of the measures, unless there is positive evidence to demonstrate that the recurrence of dumping in the future is likely or probable (ie. implying a greater degree of certainty that the event will occur than a finding that the event is not "not likely").

Of relevance to Sahathai's particular circumstances are the findings by the Anti-Dumping Review Panel ("ADRP") in its review of canned pineapple exported from Thailand. The ADRP³ stated:

27. Undertaking a continuation inquiry requires a prospective examination of the likelihood of future dumping and material injury. In its reinvestigation report (REP 389) the ADC referred to the decision of the Federal Court in *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)*,⁸ where the Court held that the word "likely" in section 269ZHF(2) of the Act was taken to mean "more probable than not".

...

29. However, the ADC reviewed Kuiburi's export volumes, export strategy, production capacity and export prices and concluded that Kuiburi does not appear to be pursuing an aggressive export pricing strategy to Australia and has not shown a propensity to dump FSI pineapple into the Australian market in recent years. The ADC indicated Kuiburi's past export conduct is a reliable indicator of its likely future conduct, and that this does not support a finding that dumping is likely to recur, in the sense that it is more probable than not.

[Original emphasis]

In the case of Sahathai's exports of HSS to Australia since the original imposition of measures in August 2015, it has consistently exported the goods at prices well above its corresponding normal values. This is demonstrated by the Commission's non-dumping findings in this current review 553 (-13.1%), Review 445 (-3.6%), and duty assessments DA0072 (full refund) and DA0084 (full refund).

Importantly, Sahathai has exclusively supplied a single customer in Australia over the years, with no evidence of any strategy to expand its export volumes to Australia. This is undoubtedly the strongest available evidence to confirm that expiry of the measures is

² US – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan – WT/DS244/AB/R; para 111, pages 39-40.

³ ADRP Report No. 50 - Food Service and Industrial (FSI) Pineapple exported from the Kingdom of Thailand, pages 8-9.

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unlikely to lead to a recurrence of dumping by Sahathai. The available data confirms that since the imposition of duties, Sahathai has successfully demonstrated that it is exporting the subject goods at prices that are not dumped. Given Sahathai's history of exporting at non-dumped prices since the original imposition of measures, the Commissioner is obliged to recommend expiry of the measures in the absence of positive evidence showing that future dumping was likely.

Scope of expiry

It is also important that the Commission's assessment of the likelihood of recurrence of dumping focus on each exporter's particular circumstances and not at a country-wide level. Undertaking an individual assessment of the likelihood of resumed dumping is supported by subsection 269ZHF(1)(a)(ii) of the Act, which allows for a recommendation that the notice cease to apply to a particular exporter. Therefore, it is important that the Commission distinguish Sahathai's circumstances from other Thai exporters.

Yours sincerely



Methita Rachrongmuang

Chief Information Officer