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21 July 2021

The Director
Investigations 1
Anti-Dumping Commission

By Email: investigations1@adcommission.gov.au

Dear Director,

Reinvestigation of Certain Findings Reinvestigation of Certain Findings in Report No. 532 (REP 532) concerning Hollow Structural Sections (HSS) exported from the Kingdom of Thailand (Thailand)

AUSTUBE MILLS PTY LTD (AUSTUBE MILLS) RESPONSE TO ANTI-DUMPING COMMISSION PRELIMINARY REPORT

Austube Mills, a member of the Australian industry producing like goods the subject of REP 532, provides this submission to the Anti-Dumping Commission (the **Commission**) in response to the Commission's *Preliminary Reinvestigation Report*¹ (the **Preliminary Report**).

- Austube Mills submits that a number of the Commission's preliminary findings are inconsistent with
 - domestic law²;
 - the *Dumping and Subsidy Manual* (the **Manual**);
 - established policy and practice; and
 - past findings of the Commission and the Anti-Dumping Review Panel (**ADRP**),

and as a result, they render unsound the subsequent findings that relate to the determination of normal values, dumping margins and findings that dumping is unlikely to continue if the measures are allowed to expire.

- Austube Mills submits that the Commission's preliminary reinvestigation report continues to:
 - use incomplete and unverified information;
 - ignore relevant information, including information concerning alloyed and galvanised coil; and
 - in making flawed assumptions for its allocation of import duties to the domestic costs of coil.
- Austube Mills also submits that the in relation to its analysis of *Price Premium and price undercutting* that the Commission has:
 - disregarded relevant evidence provided by Austube Mills and verified by the Commission;
 - misunderstood and presented "estimated prices" as "prices actually achieved" by the Australian industry and importers in the Australian market;
 - used unverified and incomplete importers' data;
 - departed from the practise set out in the Manual and as performed in the original investigation in its price undercutting analysis.

¹ EPR Folio 532/033

² All references to legislation are to the *Customs Act 1901* unless otherwise stated.

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1. Allocation of a single cost for Hot Rolled Coil and Adjustment for Duty drawback

The Anti-Dumping Review Panel (**ADRP**) Member requested that the Commission reinvestigate three findings.

The first related to the Commission's approach in allocating a single cost of hot rolled coil (**HRC**) to the cost to make (**CTM**) for both exported and domestic HSS. The Member stated that:

I consider that ATM's contention that the ADC's acceptance of a single cost for HRC, is contrary to the requirement in s.43(2) of the CIO Regulation that costs for OCOT tests should "reasonably reflect competitive market costs associated with the production or manufacture of like goods", has validity. It would also appear to be contrary to the ADC's practice as set out in the Manual, that cost items that fall within the CTM include, "Import duties and other taxes (other than those subsequently recoverable by the entity from the taxing authorities)".

*It is noted that in INV 254 and INV 532 claims for adjustments for duty rebates or drawbacks were disallowed since there was no separate allocations of costs for HSS destined for the export or domestic markets. It is recognised that in the event that the cost of HRC could have been separately allocated for exported and domestic HSS sales, adjustments could subsequently have been claimed (**if appropriately proven**) in order to ensure a fair comparison, with a probable neutral effect on the dumping margin. In this regard an argument could be made for accepting a single cost for HRC for sales of HSS on both export and domestic markets, as reasonable (**emphasis added**)*

1.1 Adjustment to normal values in the Report

The Commission in the Preliminary Report has made a downward adjustment to the normal values for non-refundable duties payable on imported HRC for domestic production for Saha Thai Steel Pipe Public Company Limited³ (**Saha Thai**) and Thai Premium Pipe Co., Ltd⁴. (**TPP**). A downward adjustment for Pacific Pipe Public Co., Ltd. (**Pacific Pipe**) was not made.⁵

The Commission's reasoning for the adjustment was that if it is preferable to discard the verified single cost CTM of the exporters in favour of separate domestic and export CTM values, it would be appropriate to account for the duty drawback mechanism the Thai exporters use.

*Because there are differences in costs between markets which affect domestic and export sales comparability, **a downwards adjustment must be made** in accordance with section 269TAC(8)...⁶ (**emphasis added**)*

The Commission, however provides no evidence or reference to the fact that a price comparability analysis between domestic and export sales has been conducted to support a claim for the adjustment.

³ Preliminary Report, p.21

⁴ Preliminary Report, p.25

⁵ Preliminary Report, p.17

⁶ Preliminary Report, p.16

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The Commission also contradicts its above statement noting that the Manual describes the duty drawback mechanism as follows:

*Adjustment **may be allowed** for remission or drawback of import duties on inputs consumed in the production of the exported goods (i.e. inputs physically incorporated, as well as energy, fuels, oil and catalysts used) **if the claimant produces evidence.***

*Subsection 269TAC(8) refers to sales being modified in different ways by taxes. Import charges are a form of taxation and the adjustment for drawback of customs duty implements the requirement for an adjustment **where price comparability is affected due to differences in taxation.**⁷ (emphasis added)*

Applied here, no evidence has been produced by any of the claimants to establish that differences in taxation have affected price comparability.

1.2 Adjustments – Domestic law, the Manual Policy and Practise

Subsection 269TAC(8) states in relation to normal value adjustments for differences in taxation that:

Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:

*(c) **are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;***

that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price. (emphasis added)

Subsection 269TAC(8) **does not demand** that a downward adjustment to the normal value **must** be made because of a difference in costs between markets **but allows for** an adjustment **where prices are modified** in different ways by, in this instance, taxes such as the import duties, such that 'comparison with that export price' has been affected.

The Manual notes in regard to adjustments that:

15.2 POLICY

*Adjustments will be made if there is **evidence that a particular difference affects price comparability.**⁸ (emphasis added)*

15.3 PRACTICE

*The Commission seeks relevant data and **makes adjustments where evidence exists that a particular difference has affected price comparability.***

⁷ Preliminary Report, p.16

⁸ Manual, p.64

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*Exporters making adjustment claims also have a **responsibility to provide evidence in support** because this information is normally in their possession.*

*Adjustments may be based upon actual costs incurred, or selling prices achieved, for the sales transactions under examination. **Where based on costs**, it is subject to the principle that **adjustments will be made only where evidence indicates that price comparability has been affected**⁹. (emphasis added)*

1.3 Evidence for the adjustment

Austube Mills submits that the available evidence from *Continuation Inquiry No. 532 (CON 532)*; the subject of this reinvestigation; and from the original investigation, *Investigation No. 254 (INV 254)*, does not support, indicate or evidence that a difference in costs affects or modifies export prices and normal values such that an adjustment to the normal value is required to be made under s.269TAC(8).

CON 532 and the Reinvestigation

All the available evidence from CON 532 and the reinvestigation inquiry does not support that a difference in costs between export and domestic markets would affect price comparability. In fact, all the available evidence supports that differences in costs are not a factor in any pricing considerations for the export and domestic markets, as demonstrated below.

Firstly, the Exporter Questionnaire Response (**EQR**) does not show any information that the exporters account for any differential in costs when considering its prices for like goods in the domestic and export markets. Evidence of this conclusion may be found in the following extracts:

*Saha Thai's (export) sales processes are simply explained as follows: ... Our management negotiates sales quantity and value with customers.*¹⁰

*Saha Thai's domestic sales process is very simple: the customer places an order by telephone or email; negotiate the price, sale term and payment term;*¹¹

*(TPP domestic) Sales are not in accordance with the price list, **price are varies according to the market price***¹². (emphasis added)

Secondly, none of the three exporters asked for the adjustment as noted at Part E-3 of the EQR:

Are there any other adjustments required to ensure a fair comparison between the export price and the normal value (based on domestic sales, costs and/or third country sales)? If yes, provide details.

⁹ Manual, p.65

¹⁰ EPR 532/008, p.13

¹¹ EPR 532/008, p.18

¹² EPR 532/004, p.19

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- **An adjustment will only be made where there is evidence that the difference affects price comparability¹³¹⁴¹⁵. (emphasis added)**

None of the available information for CON 532 shows that the exporters have submitted, or that the Commission has found, at any time that pricing in the export and domestic markets is affected by a differential in costs.

Indeed, *Report No. 532 (REP 532)* states the following in regard to the exporters.

The Commission confirms that Saha Thai does not differentiate its costs on the basis of market, due to the similarity of products sold domestically and for export.¹⁶

The Commission confirms that TPP does not undertake costing on the basis of market, due to the similarity of products sold domestically and for export. In addition, TPP does not differentiate HRC feed according to market, as it uses the same type of steel to produce the relevant HSS product, regardless of destination market.¹⁷(emphasis added)

It is evident that on the verified information that the exporters do not differentiate their costs on the basis of the export or domestic market. Therefore, there is no evidence to support a claim for an adjustment due to a difference in costs affecting price comparability. To the contrary the available information indicates that pricing decisions for export and domestic sales is set by having regard to prevailing prices, not costs, in those markets.

Even the Preliminary Report supports this conclusion, noting that:

...each exporter did not record the individual cost components that comprise the value of the HRC in inventory and used in production¹⁸

HSS is not manufactured according to destination market and HRC inventory is valued using the weighted average method,¹⁹

The information provided in the reinvestigation questionnaires on duties paid for HRC imports was informative, but insufficient to enable the Commission to allocate total HRC costs according to destination market.²⁰ (emphasis added)

Again, the information contained in the Preliminary Report supports the conclusion that costs are not a determinative factor in pricing in the export and domestic markets and that the exporters were unable to provide any evidence to support an adjustment for a difference in costs between export and domestic markets that would affect price comparability.

¹³ EPR 532/008, p.21

¹⁴ EPR 532/004, p.23

¹⁵ EPR 532/005

¹⁶ REP 532, p.35

¹⁷ REP 532, p.40

¹⁸ Preliminary Report, p.9

¹⁹ Preliminary Report, p.11

²⁰ Preliminary Report, p.

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INV 254 and ADRP Report No. 28 (ADRP 28)

The issue of an adjustment for duty drawback was considered in Report No. 254 (**REP 254**) into the Minister in imposing the measures and in *ADRP 28*, the ADRP review of the Minister's decision in regard to INV 254.

In REP 254 the Commission's consideration of Saha Thai's claim for a duty drawback adjustment is detailed in pages 25 to 28, reproduced in relevant part below:

*Subsection 269 TAC(8)(c) of the Act provides that such an adjustment to normal value is **only allowable where it established that normal value and export price of like goods are modified in different ways by taxes or the terms or circumstances of the sales to which they relate. That is, an adjustment should only be allowed when price comparability of domestic and export sales have been affected***²¹. (emphasis added)

*The Commission has verified that Saha Thai's weighted average domestic HRC costs are higher than its weighted average imported HRC costs*²².

The Commission however, has continuing concerns that the selling price on the domestic market is modified when compared to export prices because of the payment of duty on imported HRC. The bases for these concerns are:

- ***an absence of financial records that allocates the cost of duty paid on imported HRC to HSS sold on the domestic market; and***
- ***a pricing analysis that suggests that domestic prices are determined by market forces as opposed to cost based pricing.***²³ (emphasis added)

the Commission compared domestic selling prices of all product groups Saha Thai sells to Australia (like goods) with corresponding Australian export prices and the different cost base for different types of HSS.

*Based on that analysis and using the information on market preferences in Australian and Thai markets, the Commission **considers that Saha Thai's domestic and export sales prices appear to be driven by market forces instead of marginal cost differences due to duties paid on imported HRC.***

*Accordingly, the Commission is of the view that it **cannot be established that Saha Thai's domestic or Australian export prices are modified in different ways by the effects of duties.** As a result, the Commission is **not satisfied that a duty drawback adjustment to Saha Thai's normal value is warranted.***²⁴ (emphasis added)

In ADRP 28 the Member's consideration of Saha Thai's claim for a duty drawback adjustment is detailed in pages 11 to 15, reproduced in relevant part below:

²¹ REP 254, p.26-27

²² REP 254, p.27

²³ REP 254, p. 27

²⁴ REP 254, p.

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*Saha Thai stressed the reference to a “fair comparison” and the word “comparability” suggest an objective standard. It argued that Art. 2.4 requires an allowance to be made to the price, irrespective of conscious decisions by the particular exporter. It argued that the Commission was **wrong to focus on whether Saha Thai, in making its pricing decisions, actually took into account differences in the incidence of import duty on HRC used in the manufacture of domestic and export HSS.** ²⁵ (emphasis added)*

*I consider that s 269TAC(8) of the Act **calls for a factual inquiry into the actual effect** of the particular differential incidence of taxation on either the price paid or payable for like goods or the export price. This follows from the **use of the expression “modified” and the focus in the sub-section on sales, rather than costs**²⁶. (emphasis added)*

The Commission noted that:

(a) Saha Thai’s accounting records did not identify a cost differential between identical products sold locally and exported; and

(b) in its exporter response, Saha Thai allocated import duty expenses on HRC across all its products, regardless of whether the HSS it produced was sold locally, or exported.

*One would ordinarily anticipate **that cost differences** associated with the differential imposition of import duty **would be a matter to which management was alive and which would constrain the domestic pricing options available to management.** However, if the incidence of import duty was relevant to the market price for HSS, one might have expected information on that point to be available and identified in Saha Thai’s exporter response.²⁷ (emphasis added)*

...suggests that the incidence of duty on HRC was not, in reality, a factor that was relevant to Saha Thai.²⁸

I am satisfied that the existence and the amount of any modification, to the normal value and the export price associated with drawback of duty on imported HRC used in domestic production was not sufficiently established. Consequently, it was not appropriate to make an allowance in respect of drawback in this case.²⁹

Pacific Pipe’s claim for a duty drawback adjustment is considered in REP 254 on pages 38 to 39 and in ADRP 28 in pages 10 to 11. The claim was rejected by both reports. TPP was not an exporter investigated in INV 254.

Austube Mills submits that information and findings from REP 254 and ADRP 28 are relevant to the Reinvestigation for CON 532. The available information and evidence shows that Thai exporters continue to set export price and domestic prices to prices in the market with no regard to the effect of duties on HRC on pricing decisions in those markets.

²⁵ ADRP 28, p.12

²⁶ ADRP 28, p.13

²⁷ ADRP 28, p.14

²⁸ ADRP 28, p. 15

²⁹ ADRP 28, p. 15

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Reinvestigation Request CON 532 ADRP 126

In the ADRP Member's request to the Commission for a reinvestigation of certain findings a summary of reasons was included of which the following is relevant to an adjustment for duty drawback:

It is recognised that in the event that the cost of HRC could have been separately allocated for exported and domestic HSS sales, adjustments could subsequently have been claimed (if appropriately proven) in order to ensure a fair comparison, with a probable neutral effect on the dumping margin.³⁰ (emphasis added)

Austube Mills submits that the claim for an adjustment for duty drawback **has not been appropriately proven**.

1.4 Conclusion on adjustment for Duty Drawback

Austube Mills submits that the available information from the original investigation, INV 254, the ADRP review in ADRP 28, information and evidence from CON 532 and the information and evidence in the Preliminary Report demonstrates that the claim for an adjustment for duty drawback has not been appropriately proven and should be disregarded.

Austube Mills further submits that the Commission should recalculate and publish the revised dumping margins without a duty drawback adjustment to determine if the degree of the negative dumping margins have decreased as it was the degree³¹ of the negative dumping margins that was the major factor that influenced the Commission's recommendation to allow the measures to expire.

2. ALLOCATION OF IMPORT DUTIES TO DOMESTIC PRODUCTION

Austube Mills contends that the Commission's Preliminary Report is materially compromised by the lack of co-operation by the exporters mills and that they should be treated as non-cooperating exporters.

If the Commission continues to:

- use incomplete and unverified information; and
- ignore relevant information, including information concerning alloyed and galvanised coil,

It will result in flawed assumptions being made in support of the allocation of import duties to the domestic costs of coil.

Austube Mills submits that the Commission should use the best available information as set out in this submission.

2.1 Exporters data, cooperation and best available information

Austube Mills notes the following in regard to the Thai exporters and import duties that the Commission found:

- it was not possible to trace HRC from source (origin) in the accounts;

³⁰ EPR ADRP 126 – Letter Request for Reinvestigation, p.3

³¹ EPR 532-30 Final Report p 62

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- it was also not possible to determine the actual country of origin of the HRC and whether duties were paid thereon³²;
- Saha Thai and Pacific Pipe did not provide any requested information in regard to import duties, refunds, drawbacks from Thai Customs, ERP system, trial balance and other records;
- Pacific Pipe did not provide details of cost accounting practises for recording duties, refunds and drawbacks;
- Saha Thai, TPP and Pacific Pipe did not provide revised cost to make (CTM) data demonstrating the reallocation of import duties paid for domestic production;
- Pacific Pipe did not provide a revised HRC purchase listing detailing import duties paid or payable³³; and
- Saha Thai, Pacific Pipe and TPP did not cost HSS production by destination market or record the origin of the HRC used in the production of domestic or exported HSS³⁴.

The Commission noted in the Preliminary Report that the information provided on duties paid for HRC imports was informative, **but insufficient** to enable the Commission to allocate total HRC costs according to destination market.³⁵

Article 6.8 of the WTO *Anti-dumping Agreement* provides that preliminary and final determinations (affirmative or negative) may be made on the facts available if an interested party either:

- refuses access to necessary information;
- otherwise does not provide necessary information within a reasonable period; or
- significantly impedes an investigation.³⁶

Austube Mills contends that the exporters have refused access to necessary information in not providing information concerning import duties from Thai Customs, ERP system, trial balance and other records, and in not providing revised CTM data demonstrating the reallocation of import duties.

Austube Mills notes that the available evidence supports the facts that the requested information was able to be provided by the Thai exporters but that the Thai exporters for reasons unknown have chosen not to provide such evidence.

Austube Mills refers to the U.S. *Department of Commerce* findings for reviews in regard to Saha Thai, the relevant reviews were referenced in the application³⁷, submissions³⁸ and REP 532³⁹.

The reviews referred to, U.S. *Department of Commerce Case No. A-549-502. U.S. International Trade Commission No. 731-TA-252* note the following in regard to information provided by Saha Thai:

³² ADRP 126 – ADRP Commission conference – p.3

³³ EPR CON 532/032, p.2

³⁴ Preliminary Report, p.13

³⁵ Preliminary Report, p.13

³⁶ The Manual, p.58

³⁷ EPR CON 532/002, p.11

³⁸ EPR CON 532/026, p.4

³⁹ REP 532, p.60

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*Saha Thai argues that if Commerce determines to make a PMS adjustment to the company's HRC cost, Commerce **should take into account Calculation worksheets showing the AD and safeguard imputed duties applicable to Saha Thai's POR steel purchases**⁴⁰.*

*Information on the record demonstrates that **domestically-produced HRC prices were higher than the imported HRC prices for the same grade**⁴¹.*

*Saha Thai represents one of the largest exporters of subject merchandise to the United States, and from the evidence on the administrative record of this segment of the proceeding, **Saha Thai did not pay the majority of the AD and safeguard duties to which it was subject.***

*Finally, **in its questionnaire responses and at verification, Saha Thai provided supporting documentation with respect to the amount of AD and safeguard duties that it actually did pay during the POR.***⁴² **(emphasis added)**

In the review period that overlapped with the period of inquiry (the six months from September 2018 to February 2019) for CON 532 the following is noted:

*Saha Thai has **demonstrated cooperation with the US authorities in supplying details** of 'Coil Used for Export'⁴³ and 'Country of Origin' and duties paid for an 'Adjustment to HRC Costs'⁴⁴*

*Finally, we discussed the duties Saha Thai reported paying on its imports of HRC. We requested, and a company official provided, the import tariff rate for HRC imposed by the Thai government. In response to the Commerce verifiers query, **Saha Thai officials provided support for its reported payments of [] in total duties and [] in safeguard (SG) and AD duties specifically.** A company official provided an invoice from the Thai Customs department for the SG and AD duties, an accounting journal entry for the [] in total duties, and a copy of the check used to pay the total duty amount of [].*⁴⁵ **(emphasis added)**

Further, Austube Mills contends that the exporters have significantly impeded the reinvestigation by not providing such data. Austube Mills notes that the Commission requested a second extension to the Reinvestigation Report noting that it had obtained additional data from two of the three relevant exporters from Thailand and the data had been analysed with the dumping margins re-calculated, however at this stage a quality check of those margins is still underway⁴⁶. The Preliminary Report notes the lack of information provided and the need to calculate dumping margins based on assumptions. It is likely that had the exporters provided the requested information in a timely manner then a second extension may not have been required or needed to be as lengthy.

⁴⁰ Preliminary Results Memorandum, p.5, 2017-16 Review.

⁴¹ Final Results Memorandum, p.8, 2017-16 Review

⁴² Final Results Memorandum, p.12-13, 2017-16 Review

⁴³ Document 3706094-02 A-549-502 Exhibit SR1-1

⁴⁴ Document 3753799-05 A-549-502 Exhibit 2 Quarterly duty payment receipts

⁴⁵ Document 4117627-02 A-549-502 Exhibit 1 Verification Report of Sales Response for Saha Thai

⁴⁶ ADRP 126 – Request for 2nd extension 8 June 2021

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Austube Mills submits that the exporters data in regard to the domestic CTM is unreliable, making any ordinary course of trade test (**OCOT**) and normal values based on s.269TAC(1) unreliable.

Austube Mills submits that normal values for Saha Thai and TPP should be constructed under s.269TAC(2)(c) using the best available information. The best available information is the verified export cost to make and sell (**CTMS**) of the exported goods with the coil costs in that CTMS by uplifted by 25 percent⁴⁷ plus an amount of profit based on the achieved profit for sales of like goods in the domestic market of Thailand.

Establishing a normal value in this manner ensures a fair comparison can be made between domestic and export prices.

Austube Mills submits that normal values for Pacific Pipe should be established under s.269TAC(6) using the best available information. Austube Mills notes that as Pacific Pipe did not export during the review period its export price was established under s.269TAB(3). Austube Mills submits that the best available information for a normal value for Pacific Pipe would be by reference to the constructed normal values of Saha Thai and TPP as noted above.

2.2 Assumptions and allocation of import duties on HRC

Austube Mills provides the follow observations on the Commission's assumptions in its allocation of import duties to HRC coil.

None of the exporters provided revised CTMS data demonstrating the allocation of import duties as requested by the Commission. Saha Thai did not provide information from its system that would aid in the verification of actual import duties paid or refunded as requested by the Commission. Pacific Pipe did not provided details on import duties, cost accounting practises or a revised HRC listing detailing import duties paid or payable as requested by the Commission. The assumptions are at best based on incomplete and unverified information.

The Commission states it **has not adjusted for costs for pre-galvanised HSS** because pre-galvanised HRC was **not subject to any trade remedy measures** in Thailand in the inquiry period⁴⁸. Austube Mills has noted in previous submissions that **anti-dumping duties continue to apply to zinc and galvanised steel** from four countries that can be used to manufacture HSS subject to the measures⁴⁹.

Thailand's semi-annual report to the World Trade Organisation (**Public Record Attachment 1** refers) shows that anti-dumping measures in force as of 31 December 2019 included measures applying to *Certain Hot Dip Plated or Coated with Aluminium Zinc Alloys of Cold Rolled Steel to exports from China, Korea, Taiwan and Vietnam*.

TPP was an exporter of pre-galvanised HSS which can be manufactured from the coil subject to import duties above.

The Preliminary Report notes that the Commission examined resources to identify the relevant trade remedy measures in force on **non-alloyed HRC imports** into Thailand during the inquiry period:

⁴⁷ 25 percent is the amount found by the Commission to represent import duties in the Preliminary Report.

⁴⁸ Preliminary Report, p.19

⁴⁹ EPR CON 532/016, p.2, CON 532/025, p3.

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*The Preliminary Report notes that trade remedy measures on **alloyed** and non-alloyed HRC were in force during the inquiry period, however, the **relevant measure for Thai exporters of HSS to Australia, importing HRC are measures on non-alloy HRC**⁵⁰. (emphasis added)*

Austube Mills draws to the Commission's attention that the relevant measure for Thai exporters of HSS includes the following description of the goods subject to the measures.

*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**.*⁵¹ (emphasis added)

Alloyed HRC can be used to manufacture the goods subject to the measures. The exclusion of galvanised and alloyed coils from the assumptions in the Preliminary Report raise serious doubts over the usefulness or conclusions drawn from the assumptions.

Austube Mills also notes that cold rolled coil can be used to make the goods and is subject to anti-dumping measures as previously advised to the Commission⁵². The Preliminary Report is silent on whether cold rolled coil was used to make HSS and whether it is included in the assumptions.

Further Austube Mills observes that the Preliminary Report states that:

*The differences in HRC costs are a result of non-refundable duties paid on HRC used in domestic production, and **duties which are either not paid (via a bonded warehouse) or refunded (via duty drawback) for HRC used in export production**.*⁵³ (emphasis added)

Austube Mills is concerned how duties which are not paid via a bonded warehouse are accounted for in the assumptions. The Commission raised similar concerns regarding bonded warehouses and import duties as noted in ADRP 28.

*The Commission was also concerned that Saha Thai's records did not enable it to identify the actual amounts of duty paid per tonne on HRC used in the manufacture of domestic HSS. The duty on imports varied depending on the country of origin. There were also discrepancies between the amount initially identified by Saha Thai as imported HRC for domestic use and the total production volumes. Although the calculation of duty paid was based on payments of duty through the bonded warehouse system, **it appears that not all HRC used by Saha Thai for domestically sold HSS was processed through the bonded warehouse system and, more significantly, some HRC processed through the bonded warehouse system was not used for HSS production, but was on sold**.*⁵⁴ (emphasis added)

This highlights a serious flaw in the Preliminary Report's assumptions and boundaries that:

⁵⁰ Preliminary Report, p.9

⁵¹ EPR 532/003, p.1

⁵² EPR CON 532/016, p.2, CON 532/025, p3.

⁵³ Preliminary Report, p.16

⁵⁴ ADRP 28, p.15

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*Any manipulation of HRC costs in the single CTM and allocated to domestic and export production **must** then also **equal the total HRC cost** reported in the **single CTM** in the inquiry period. ⁵⁵ (emphasis added)*

Duties not paid on imported coil are not part of the total HRC cost report in the single CTM and are therefore not part of the allocation to domestic production. Yet the tonnes of imported coil for which no duties have been paid are part of the single CTM and part of the allocation of duties to domestic production.

Consider the scenario where one thousand tonnes of imported coil are entered into the single CTM. 500 tonnes incur the 25% import duties which are entered into the CTM whilst the other 500 tonnes incur no duties in the bonded warehouse. The import duties for those one thousand tonnes in the single CTM is 12.5%, not the full 25% that should be part of any allocation of duties.

The information in regard to this is incomplete, unverified and unreliable at best. Any sensible commercially minded manufacturer would seek to maximise the cash flow benefits by utilising the non-payment of duties via a bonded warehouse compared to the payment and duty refund process in the alternative.

Austube Mills also notes that the assumptions and allocations make no mention of, and do not appear to take into account third country exports with all three exporters reported third country sales⁵⁶. It is highly likely that all three exporters utilised bonded warehouses to avoid the payment of duties on the exported HSS and there is no separate cost to make and sell requested for third country sales as there is for domestic and Australian sales.

Finally, the Preliminary Report states that:

The unit HRC cost for domestic HSS cannot be greater than 25 per cent of the HRC cost for export because this would exceed the ad valorem safeguard plus general customs duty rates applied to imported HRC.⁵⁷

Austube Mills observes that the limitation does not take into account any price premium that local producers of HRC in Thailand may command. A price premium has been observed by the Commission for the Australian producer of HRC⁵⁸ and there is an expectation that local producers would be expected to achieve a price premium over imported products as noted by the member in ADRP 28.

*Further, the **domestic market price for HRC will be the result of a number of factors, not just the price of the imported HRC**. One would anticipate that there **would be non-price advantages associated with the use of locally produced HRC**, such as improved reliability and delivery times, which domestic producers of HRC may take into account in charging prices which **do not precisely equal the domestic market price of imported product**.⁵⁹ (emphasis added)*

The limitation imposed by the Commission in its assumptions appears to exclude higher priced domestic coil that was likely used to manufacture the like goods.

⁵⁵ Preliminary report, p.11

⁵⁶ EPR CON 532/004, p.24, Con 532/006, p.26, CON 532/008, p.22

⁵⁷ Preliminary Report, p.14

⁵⁸ EPR CON 400/051, p.26

⁵⁹ ADRP 28, p.11

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2.3 Conclusion on assumptions and the allocation of import duties

Austube Mills submits that the above identified flaws, shortcomings and errors in the assumptions used in the Preliminary Report to allocate import duties in the determination of the cost of manufacture under s. 43 of the Regulations render the calculations for OCOT testing, normal values and dumping margins unreliable.

Austube Mills submits that the Commission should calculate normal values as noted in section 2.1 above using the best available information.

3. PRICE PREMIUM AND UNDERCUTTING

Austube Mills contends that the available evidence supports that:

- there is a quantifiable price premium that Australian industry can achieve in the market for HSS;
- the price premium should be taken into account in making comparisons with Thai prices in any undercutting exercise; and
- the **estimated prices** the Commission has used in its price undercutting exercise are unreliable and unsuitable for the price undercutting exercise and that the Commission should use the best available information as set out in this submission.

Austube Mills submits that a price undercutting exercise taking into account the above and the revised dumping margins will demonstrate that the Thai exporters do not have a significant price advantage over the Australian industry.

Austube Mills further submits that given the lack of any significant price advantage it is likely that the Thai exporters will resume or continue dumping to remain competitive in the Australian market.

3.1 Price Premium

In its application to the ADRP Austube Mills noted it had provided the Commission with evidence of price competition from Thailand and [REDACTED] other countries, (including [REDACTED]) detailing offers on a [REDACTED] basis between [REDACTED] from [REDACTED] different sources including the [REDACTED] from Thailand. The import parity pricing (IPP) worksheet was updated with offers to [REDACTED] following initiation of the Continuation Inquiry⁶⁰. (*commercially sensitive*)

The IPP worksheet evidenced the link between import prices and Austube Mills achieved prices on [REDACTED] HSS as shown in the Confidential chart below. (*commercially sensitive*)

Commercially sensitive chart

Evidence of the link between Thai export pricing, the IPP and Austube Mills pricing was shown in the Confidential Charts [REDACTED] provided to the Commission that showed prices from [REDACTED] the [REDACTED] IPP. (*commercially sensitive*)

The Chart shows a **generally consistent gap** between Austube Mills selling price and the average FIS import price **that reflects the price premium** that Austube Mills can achieve in its sales of HSS. The Chart and associated data was

⁶⁰ Confidential Application to the ADRP for CON 532, p.11

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discussed with the Commission during the verification visit as part of evidence of the effect of import prices on Austube Mills pricing and evidence of the price premium.⁶¹

A comparison of Austube Mills quarterly price for HSS to the quarterly IPP for the inquiry period shows a price premium ■■■.⁶² (*commercially sensitive*)

Austube Mills provided the Commission with verified examples of the link between IPP, the effect on Austube Mills pricing and the price premiums achieved. These examples showed price premiums achieved on competing offers from ■■■, on a like for like comparison basis. (*commercially sensitive*)

Austube Mills also provided the Commission with evidence of a price premium to its ■■■ customer (**Confidential Att 1**) which notes the following:

*Mechanism has the ■■■. (**emphasis added**)*

(commercially sensitive)

The above indicates an identified price premium ■■■, that is ■■■ that accounts for a price premium, applying to Austube Mill's ■■■ customer in regard to goods exported from Thailand for the inquiry period. (*commercially sensitive*)

The Commission verified Austube Mills information and data and as noted in REP 532 concluded that:

Because of the Australian industry's ability to supply from stock with shorter delivery timeframes than imported sources, the Australian industry is generally able to command a small price premium.⁶³

In summary, Austube Mills provided evidence to the Commission of:

- a quantified identified price premium of ■■■.
- quantifiable and verified price premiums of ■■■ it achieved with ■■■ customers.
- quantifiable and verified price premiums ■■■ over the inquiry period. (*commercially sensitive*)

The Commission found in REP 532 that the Australian industry is able to command a price premium.

Therefore, Austube Mills fails to understand what further evidence it can provide to the Commission to establish the quantum of its price premium in the Australian market.

3.2 Price undercutting

The Preliminary Report notes that the Manual provides an explanation of the price undercutting analysis usually performed by the Commission and used in REP 532 and provided an excerpt from the Manual and the method used.

⁶¹ ADRP application, p.23

⁶² ADRP application, p.19

⁶³ REP 532, p.22

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*The Commission normally examines the **weighted average net realised prices**, for example monthly, **achieved by importers of the goods and Australian industry at equivalent levels of trade** and any other necessary adjustments to ensure a meaningful comparison. In some cases, **where sales data for imports and local industry allows a more detailed analysis of prices to the same customer, the Commission can determine the amount of price undercutting per unit of quantity (this affords a more precise measure of the undercutting).**⁶⁴*

*The Commission's price analysis in REP 532 was performed by comparing **prices actually achieved** for sales of comparable MCCs in the Australian market **by the Australian industry** (weighted average of selling prices from both ATM and Orrcon) with the weighted average selling **prices achieved by importers** of HSS from Thailand. (**emphasis added**)*

With respect, the above assertions are incorrect.

The Commission did not use **prices actually achieved** by the Australian industry, the Commission:

***estimated** an Ex Works (EXW) equivalent price for HSS in Australia. (**emphasis added**)*

The Commission did not use **prices achieved by importers**, the Commission used:

*the verified Australian sales of importers of HSS from Thailand. Where this sales information was not provided, **the FOB export price plus post exportation and selling expenses from the relevant importer.***

***estimated** an Ex Works (EXW) equivalent price for HSS in Australia.⁶⁵ (**emphasis added**)*

Prices for the Australian industry **are not actually achieved prices**, they are estimated prices. Import prices **are not actually achieved prices** but estimated prices for one exporter based on FOB prices plus expenses from another exporter and estimated prices EXW for the other importer.

The approach taken by the Commission is a departure from the Manual which notes, as per above, that:

where sales data for imports and local industry allows a more detailed analysis of prices to the same customer, the Commission can determine the amount of price undercutting per unit of quantity (this affords a more precise measure of the undercutting).

The approach above is also a departure from the original investigation, INV 254, and WTO practice.

As noted in submissions to the inquiry and in Austube Mills' application to the ADRP the Commission in INV 254 compared:

*the **weighted average FIS prices** over the investigation period of imported RHS AS1163-C350L0 Black goods sold by visited importers against **ATM's weighted average FIS prices** for RHS AS1163-C350L0 Black products. In doing so, the Commission **only compared the sales by importers where the grades and finish of the products are identifiable on the sales listings.***

⁶⁴ Preliminary Report, p.

⁶⁵ REP 532, p.57

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It is important to note that the price comparison in INV 254 was based on verified FIS prices by importers compared to Austube Mills net prices for each product at a comparable level of trade for all 12 months of the investigation period.⁶⁶ (emphasis added)

Austube Mills also noted that the analysis appears to rely on unverified and incomplete data including:

the incomplete importer questionnaire response provided by one importer.

The Commission being unable to reconcile the sales listing to audited accounts and being unable to confirm that the import listing in the import database was a complete list of imports over the review (inquiry) period for the other importer.⁶⁷ (emphasis added)

Austube Mills further noted that:

It appears that a substantial part of the information relied on by the Commission to conduct a price comparison exercise for HSS from Thailand consist of unverified or incomplete information. The reliability of the calculation of prices based on the FOB price plus post exportation and selling expenses from the relevant importers is further questionable given that it is unlikely that such expenses were verified to audited statements.

Austube Mills questions how the Commission could be satisfied that all relevant expenses, such as the cost of providing credit to its customers were included and what level of profit, if any was applied, was verified and considered, given the incomplete response.⁶⁸ (emphasis added)

Austube Mills submits that given the incomplete importer responses, the inability to be satisfied that the sales and import listing of the other importer was complete that the importers' data and information should be considered unreliable at best.

Austube Mills submits that the best available information for price undercutting in the Australian market is the verified information provided to the Commission by Austube Mills.

The link between export prices from Thailand and import prices offered to the same customers on the same product at the same time at the same level of trade has been verified by the Commission as noted above. The level of undercutting was presented in the IPP workbook to the Commission and comprised information verified by the Commission.

3.3 Conclusion on Price Premium and undercutting

Austube Mills contends that the available evidence demonstrates that a price premium is achieved on its sales of HSS in the Australian market and that the Commission should take into consideration the price premiums that Australian industry can achieve in the market in making the necessary comparisons with the Thai export prices as part of the analysis of price undercutting.

Austube Mills further submits that:

⁶⁶ ADRP application, p. 10

⁶⁷ ADRP application, p.7

⁶⁸ ADRP application, p.7

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- the above identified flaws, shortcomings and errors in the **estimated** Australian industry and import prices in the Australian market renders the price undercutting exercise conducted by the Commission unreliable;
- the Commission should use the best available information for a price undercutting exercise, that information being the prices as verified in the import parity pricing workbook provided to the Commission; and
- the evidence supports that the Thai exporters do not have a significant price advantage in the Australian market such that it is likely that dumping would continue or recur for the exporters to remain competitive in the Australian market.

4. Likelihood of dumping and material injury continuing or recurring

The ADRP Member requested that should the dumping margins of the Thai exporters found in REP 532 change as a result of the reinvestigation request into coil costs then consideration should be given as to whether this impacts the Commission's assessment of the likelihood of dumping and material injury continuing or recurring⁶⁹.

The ADRP Member also requested the Commission to have regard to the submissions of Austube Mills and other interested parties, to both the Commission and the Review Panel, as well as to other relevant documents and information⁷⁰.

4.1 Likelihood of dumping continuing or recurring

Austube Mills has submitted that:

- the Commission's assumptions in the allocation of coil costs are flawed and rely on incomplete, inaccurate and unverified data and conclusions;
- due to the exporters lack of cooperation and unreliable information that normal values should be calculated using the best available information under paragraphs (1) and (6) of s.269TAC; and
- an adjustment to the normal values for duty drawback should not be allowed as there is no evidence to support the adjustment.

Austube Mills draws the Commission's attention to "Conf Att 2 Thai Dumping" provided in its application for the continuation of the measures. The calculations for the dumping margins in the attachment relied on a constructed normal value based on an East Asia coil price with 14% anti-dumping duties.

The calculations showed dumping margins, for the year ended 30 June 2019, similar to the positive dumping margins found in the original investigation. Increasing the anti-dumping duties to 25%⁷¹ in the calculations shows positive dumping margins for the great majority of the period since the imposition of the measures and positive margins since at least May 2017⁷².

Austube Mills submits that the East Asia coil price data is a reliable estimate for the import price for HRC coil that would be used by the Thai exporters to manufacture painted HSS.

⁶⁹ ADRP 126, Request for Reinvestigation

⁷⁰ ADRP 126, Request for Reinvestigation

⁷¹ This is done by changing the calculation in "Column F" in the dumping tab of Conf Att 2 from 1.14 to 1.25.

⁷² Safeguard measures on HRC imported to Thailand have been in place since June 2017.

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Austube Mills submits that the available evidence demonstrates and supports a significant change in dumping margins to those found in REP 532.

Austube Mills further submits that the change in dumping margins supports the likelihood that dumping will continue or recur if the measures were allowed to expire.

4.2 Likelihood of material injury continuing of recurring

Austube Mills has submitted that:

- evidence as provided to, and verified by, the Commission shows quantified, identified, quantifiable and verified existence of price premiums achieved by Austube Mills in the Australian market for HSS, contrary to the preliminary findings of the Commission;
- the price undercutting exercise conducted by the Commission relies on unverified, incomplete estimated importers data and estimated Australian industry prices, not actual prices achieved as misrepresented in the Preliminary Report;
- the price under cutting exercise is contrary to Commission practise and the original investigation; and
- the price undercutting exercise is unreliable for the reasons noted above and in this submission.

Austube Mills submits that the verified information and evidence provided through the continuation inquiry and to the ADRP supports:

- the existence of a price premium;
- the causal link between export prices from Thailand and Austube Mills selling prices in the Australian market;
- the causal link between Thai export prices and the economic performance of the Austube Mills; and
- the causal link between the likelihood of injury continuing or recurring should dumping continue or recur.

Austube Mills further submits that the available evidence supports the likelihood of material injury continuing or recurring if the measures were to expire.

4.3 Conclusion

Austube Mills submits that the Reinvestigation Report should find that:

- An adjustment to normal values for duty drawback should not be allowed;
- the dumping margins found in the Reinvestigation have changed from the dumping margins found in REP 532;
- the change in dumping margins would mean it is likely that dumping would recur or continue;
- a price premium exists in the Australian market for HSS; and
- evidence price undercutting in the Australian market supports that material injury would continue or recur.

For and on behalf of the Australian industry member, Austube Mills.