

22 May 2020

Mr Corey Hawke
Case Manager, Investigations 3
Anti-Dumping Commission
GPO Box 1632
Melbourne Victoria 3001

Public File

Dear Mr Hawke,

Anti-Dumping/Subsidisation Investigation No. 550 – Precision Pipe & Tube Steel exported from China, Korea, Taiwan, and Vietnam

1. Introduction

Orrcon Manufacturing Pty Limited (“Orrcon”) is an Australian manufacturer of Precision pipe & tube steel and is the applicant company for the above-noted Anti-Dumping and Subsidisation Investigation – refer ADC No. 2020/030.

In the conduct of this inquiry, the Anti-Dumping Commission (“the Commission”) has sought the views of Orrcon as to the appropriate basis for an Unsuppressed Selling Price (“USP”), Non-Injurious Price (“NIP”) and the form of measures to be applied.

This submission addresses Orrcon’s views.

2. Proposed USP/NIP

The USP is the selling price that the Australian industry could reasonable achieve in the market in the absence of dumped and/or subsidised imports. The Commission’s preferred approach, as outlined in Chapter 23 of the Dumping and Subsidy Manual, when establishing a USP is to consider the following hierarchy:

- Industry selling prices at a time unaffected by dumping;
- Constructed selling prices; industry cost-to-make-and-sell (“CTM&S”) plus profit; or
- Selling prices of un-dumped goods.

From the USP, the Commission will derive the NIP. The NIP is determined by deducting from the USP the costs incurred from the export Free-On-Board point (or another point if appropriate) to the relevant level of trade in Australia (e.g. at the distributor or customer level). The deductions normally include overseas freight, insurance, in-store costs, and amounts for importer selling, administration and warehousing expenses, and profit. The NIP will be used to determine, if appropriate, whether to recommend to the Minister that the lesser duty rule applies.

There are certain circumstances where the Minister may consider it inappropriate to have regard to the lesser duty rule. Subsections 8 (5BAAA) and 10 (3A) of the *Dumping Duty Act* detail certain circumstances where the Minister does not need to have regard to the lesser duty rule. These circumstances include:

- The normal value of the goods was not ascertained under subsection 269TAC(1) because a particular market situation was evident (under subsection 269TAC(2)(a)(ii));
- There is an Australian industry in respect of like goods that consists of at least two small to medium sized enterprises (“SMEs”), whether or not that industry consists of other enterprises; or
- A countervailable subsidy has been received in respect of the goods and the country in relation to which the subsidy has been provided has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”) for the compliance period.

(i) *Market selling prices*

Orrcon contends that the provisions of subsections 8 (5BAAA) and 10 (3A) of the Dumping Duty Act extend to the circumstances of Precision pipe and tube sold in China due to the existence of a “particular market situation” for the goods sold on the domestic market. Orrcon therefore submits that the lesser duty rule is not required to be considered by the Minister for exports of Precision pipe and tube from China.

Orrcon notes that the Commission’s preferred basis for determining a USP is the “industry selling prices unaffected by dumping”. Orrcon has contended that injury from dumping commenced in 2017. Market selling prices prior to 2017 may have been unaffected by dumping, however, the selling prices in 2016 reflect lower raw material hot rolled coil (“HRC”) input prices into the precision pipe production process. That is, HRC selling prices in 2019 are materially higher than the HRC selling prices of 2016 and hence the market selling prices of 2016 do not reflect input costs incurred by Orrcon (and other precision pipe manufacturers) of 2019.

Industry market selling prices from an earlier period are therefore unsuitable for determining a USP.

(ii) *Previous Related-Product Determinations for USP – Hollow Structural Sections*

a) *China / Korea / Malaysia / Taiwan*

Hollow Structural Sections (“HSS”) measures as applicable to China, Korea, Malaysia, and Taiwan were recently reviewed (Investigation No. 419). In this review, the Commission noted that:

“For the purpose of this review, a weighted average USP has been determined based on a weighted average of all Australian industry CTMS data during the review period, plus an amount of profit achieved by Australian industry in the period of January to September 2008. This approach is consistent with the original investigation and Reviews 265, 266, 285 and Continuation 379, which established a profit in a period unaffected by dumping. The Commission acknowledges that the profit figure is now nine years old. However, despite the Australian industry’s improved profitability occurring during the review period, the Commission has confirmed that dumping is still occurring that is effecting the market.”

b) *Thailand*

HSS measures applicable to Thailand were also recently reviewed (Investigation No. 445 refers). With reference to the original anti-dumping investigation (No. 254), the Commission noted in this review that:

“During the original investigation, the Commission determined the USP utilising Australian industry’s CTMS for the investigation period plus an amount for profit achieved by the Australian industry during the period of January to September 2008. The Commission chose January to September 2008 as the period

to calculate profit because material injury, if any, to the Australian industry was negligible during that period.

For the purpose of this review, a weighted average USP for each finish (black, painted, galvanised) has been determined based on a weighted average of all Australian industry CTMS data during the review period plus an amount of profit achieved by Australian industry in the period of January to September 2008. This approach is consistent with the original investigation and Reviews 265, 266, 285, 419 and Continuation 379, which established a profit in a period unaffected by dumping. The Commission acknowledges that the profit figure is now ten years old. However, despite the Australian industry's improved profitability occurring during the review period, the Commission has confirmed that dumping is still occurring that is affecting the market.

Recommended USP/NIP

The Commission has verified Orrcon's CTM&S for the twelve months ending September 2019 and established that [confidential CTM&S details]. The 2019 period selling prices are suppressed per the continued presence of dumped and injurious imports from China, Korea, Taiwan, and Vietnam, and therefore cannot be used as a basis for a USP in the current investigation.

[Confidential Appendix A6.1 considerations], Australian selling prices for the subject goods have been influenced by dumping and subsidisation.

[Selling price trends], Orrcon concurs with the Commission's earlier approach vis-à-vis HSS that the most appropriate USP is that based on Australian industry's CTM&S plus an amount of profit. In this case, Orrcon's Confidential Appendix A6.1 [confidential Appendix A6.1 considerations].

3. Form of Measures

Orrcon refers the Commission to recent steel-related Form of Measures determinations, as follows:

- In HSS Review Investigation No. 419 (i.e. China, Korea, Malaysia, and Taiwan), the Commissioner proposed (and the Assistant Minister accepted) that:
 - “...duties be calculated:
 - in respect of any ICD that may become payable, as a proportion of the export price of the goods; and
 - in respect of any IDD that may become payable, using the floor price for exporters with a negative dumping margin in the review period and combination of fixed and variable duty method for other exporters.
- In the HSS Thailand Review Investigation No. 445 (with reference to the original Investigation No. 254), the Commission concluded that:
 - “...in respect of any IDD that may become payable:
 - using the floor price method for exporters with a negative or zero dumping margin in the review period; and
 - using the ad valorem duty method for all other exporters.

- In Zinc Coated (Galvanised) Steel Review Investigation No. 457 (i.e. China, Korea and Taiwan), the Commissioner proposed (and the Assistant Minister accepted) that:

“...duties be calculated:

- *in respect of any ICD that may become payable, as a proportion of the export price of the goods; and*
- *in respect of any IDD that may become payable, using the combination of fixed and variable duty method.*

Orrcon concurs with the Commission’s earlier approach in the above-noted inquiries that the most appropriate form of measure to apply to exporters of steel products, in this case Precision pipe & tube, is the combination duty method. Orrcon does not consider the alternate methods of duty sufficiently address injurious dumping in the pipe & tube steel industry.

4. Recommendations

Orrcon recommends that the Commission:

- (a) Determine a USP/NIP for Precision pipe & tube based on industry CMT&S, plus an amount for profit determined in a period unaffected by dumping; and
- (b) Apply IDD based upon the combination method for injurious exports from China, Korea, Taiwan, and Vietnam.

If you have any questions concerning this submission, please do not hesitate to contact me on [REDACTED].

Yours faithfully,

[REDACTED]
Manager – Trade Measures