



Australian Government
Anti-Dumping Commission

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Attachment B

Anti-Dumping Commission response

Application for Review of Decision relating to

Hollow Structural Sections Exported From the Kingdom of Thailand

(Investigation 254)

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Abbreviations

ABF	Australian Border Force
ADRP	Anti-Dumping Review Panel
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADA	Anti-Dumping Agreement
APT	Australian Pipe and Tube Pty Ltd
CMC	Commercial Metals Pty Ltd
the Commission	The Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
HSS	Hollow Structural Sections exported to Australia from Thailand
Investigation 177	International Trade Remedies Branch Report No.177
ITM	Independent Tube Mills Pty Ltd
the Minister	the Minister for Industry, Innovation and Science
NTIS	National Temporary Imports and Securities
Orrcon	Orrcon Steel Pty Ltd
Pacific Pipe	Pacific Pipe Public Company Ltd
PAD	Preliminary Affirmative Determination
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry, Innovation and Science
Sahathai	Sahathai Steel Pipe Public Company Ltd
Samchai	Samchai Steel Industries Public Company Ltd
SEF	Statement of Essential Facts
Thailand	Kingdom of Thailand
USP	Unsuppressed Selling Price

Key points of note in reading responses to applicant claims

- (i) Whilst the anti-dumping legislation (Part XVB of the *Customs Act 1901* (the Act) and the *Customs Tariff (Anti-Dumping Act) 1975* (the Dumping Duty Act)) refers to the Minister, for the purposes of this response all references to the Minister or Parliamentary Secretary should be considered interchangeably. This approach reflects the Minister for Industry, Innovation and Science's delegation of responsibility for Ministerial decision-making (under the Act and the Dumping Duty Act) to the Parliamentary Secretary for the Minister for Industry, Innovation and Science.
- (ii) In drafting responses to the issues raised by the applicants to the Anti-Dumping Review Panel (ADRP), the Anti-Dumping Commission (the Commission) has had regard to all information submitted to it in accordance with legislative timeframes during the investigation up until the day the Final Report 254 (REP 254) was submitted to the Parliamentary Secretary. This information included the Statement of Essential Facts (SEF 254), visit reports and submissions from interested parties. In drafting this response the Commission has also had regard to the analysis the Commission performed during its investigation. The Commission confirms that, in drafting this response, no new information has been considered or further analysis undertaken.

The Commission's responses to the Applicant's claims

The Commission is hereby responding to the Applicant's claims in the order that they have been made in the three Applications.

COMMERCIAL METALS PTY LTD (CMC) APPLICATION

- 1. Securities taken in accordance with section 42 of the Act should have been cancelled in accordance with subsection 45(2) and the Commissioner's apparent failure to request cancelation of the securities after the expiry date of 15 July 2015 is an error.**

Comments by the Commission:

As it can be seen in the attached email (**Attachment 1 – Conversion of Securities**) and its corresponding attachment (**Attachment 2 – HSS NTIS Securities 150914 B**), the Commission promptly advised to the National Temporary Imports and Securities (NTIS) Division of Australian Border Force (ABF) which securities to be converted to interim dumping duties and which securities to be cancelled due to expiration of the legislated four-month period. Therefore, it is not correct that the Commission failed to cancel securities that are more than four months old (please refer to the Excel file named Attachment 2 - HSS NTIS Securities 150914 B that was sent to NTIS on 16 September 2015).

- 2. As there appears to be no request for an extension of time beyond the expiration period of four months from any Thai exporter of HSS subject to the taking of securities under section 42, the Parliamentary Secretary had no authority to publish a dumping duty notice under subsection 269TG(1).**

Comments by the Commission:

As the Commission correctly notified ABF about which of the collected securities to be converted to interim dumping duties and which of the securities to be cancelled on the basis of exceeding the legislative period (4 months), the Commission considers that there has not been any procedural mistakes made during the process and there have been no circumstances that would preclude the Parliamentary Secretary to publish a dumping duty notice under subsection 269TG(1).

- 3. The attribution of injury from other sources to dumped imports from Sahathai/ Thailand was flawed and the Commission needs to reassess the attribution of injury.**

Comments by the Commission:

Section 8.6 of Anti-Dumping Commission Final Report No. 254 (REP 254) analyses other causes of injury in length. Mainly, the Commission analysed the effects of:

- a) contraction in the market;
- b) increase in imports of alloyed HSS
- c) ATM's choice of distribution and selling system; and
- d) imports of HSS from countries that are not subject to dumping or countervailing duties.

The Commission acknowledges that, although imports from other countries may have contributed to the scale of injury that the Australian industry has experienced throughout the injury assessment period. However, the Commission is of the view that all injury cannot be associated other injury factors. The Commission maintains that although other injury factors may have contributed to the injury suffered by the Australian industry, the size of dumping and a strong causal link between dumping and price and profitability injury factors indicate that the other injury factors should not diminish the validity of the Commission's injury and causation findings.

The Commission maintains that, other possible causes of injury do not detract from the assessment that the dumping of HSS exported from Thailand has caused material injury to the Australian industry.

The Commission undertook volume and price analyses of imports from all other countries using the ABF's (formerly the Australian Customs and Border Protection Service) imports database during injury and causation assessments. However, the Commission notes that the ABF's imports database does not provide sufficient details for a conclusive analysis. The main problem is that the prices calculated from the ABF data pertain to different product mixes from the various countries. Therefore, it is not possible to identify different groups and grades of products and conduct an analysis of like goods with each other, e.g. comparing galvanised HSS imported from Thailand with other galvanised HSS imports. The Commission notes that HSS shows significant price differentials between diverse finishes and grades. Because of these reasons and the highly speculative nature of such an analysis, the Commission refrained from incorporating such analysis in REP 254.

Notwithstanding the issues mentioned above, please see the graph below depicting weighted average HSS export prices in Australian Dollars from the ABF's imports database, for the countries mentioned in CMC's application. Please note that the data set that the analysis has derived from is quite large but can be made available for the ADRP's review on request.

[Confidential Graph]

The Commission notes that

[REDACTED] [commercially sensitive]

product mix information], the analysis shows that the prices from Thailand [redacted] [confidential pricing information] during the investigation period (1 July 2013 to 30 June 2014).

Sections 4.2 and 5.3.1 of REP 254 explain that the Australian HSS industry consisted of three manufacturers after the closure of OneSteel Oil & Gas Pipe Pty Ltd. Both Orrcon Steel Pty Ltd (Orrcon) and Australian Pipe and Tube Pty Ltd (APT), formerly Independent Tube Mills (ITM), were sent letters inviting them to participate in the investigation. As explained in REP 254, Orrcon provided a submission to the Commission indicating its support for the application but did not provide any further submissions. APT did not provide any response to the letter and did not participate in the investigation.

The Commission emphasises that, during Investigation 177, both Orrcon's and ATM's production and sales figures were verified. Therefore, without the participation of APT and in the absence of up to date information regarding Orrcon's production and sales volumes, the Commission estimated total Australian industry production figures using verified data from Investigation 177.

The Commission further submits that its understanding of the HSS market and market share distributions did not change between publication of Statement of Essential Facts No. 254 (SEF 254) and REP 254. Essentially, the final report repeats the findings of SEF 254. The Commission notes that, it did not receive any submissions in response to SEF 254 from any of the interested parties, including APT (formerly ITM) and CMC, regarding its Australian market share distribution findings. As a result, in the absence of any updated data or any submission challenging its findings in SEF 254, the Commission had no reason to alter its findings in REP 254.

SAHATHAI STEEL PIPE PUBLIC COMPANY LIMITED (Saha Thai) APPLICATION

1. The Commissioner's recommendation to the Parliamentary Secretary to publish a Dumping Duty Notice in respect of Saha Thai's exports was erroneous because of the failure to allow for a duty drawback adjustment.

Comments by the Commission:

The Commission maintains that, in Section 6.4.1.2 of REP 254, the Commission comprehensively addresses this issue that Saha Thai raises in its application.

Subsection 269TAC(8)(c) of the Act provides that, such an adjustment to normal value is only allowable where it is established that the price for like goods upon which the normal value is based and the export price 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 the price comparability of domestic and export sales has been affected.

Therefore, in order to determine whether an adjustment is warranted, the Commission is required to establish whether the duties paid for the imported HRC that is used in manufacturing domestically sold HSS has modified Saha Thai's pricing of like goods sold on the domestic market in contrast to the goods exported.

During the verification visit, the Commission verified that Saha Thai imports over 90% of the HRC it uses in production of HSS. Saha Thai has a bonded warehouse arrangement with Thai Customs which allows Saha to pay customs duties and anti-dumping duties only for the HRC that is used in production of HSS sold.

Saha Thai's accounting system does not track the source of HRC used in production. Therefore, Saha Thai claimed that it cannot allocate the duties paid only on the HRC used in production of HSS it sold domestically. In the cost to make and sell (CTMS) spreadsheets that Saha Thai submitted in its exporter questionnaire response (EQR), Saha Thai allocated the duties paid for imported HRC to all HRC used in the production of domestic and export sales and to HRC it sold in the domestic market. In other words, Saha Thai initially did not claim a duty drawback.

The Commission also notes that Saha Thai imports its HRC from various countries and there are both import duties and anti-dumping duties in place in Thailand for imported HRC. Therefore, Saha Thai's claims towards a flat ■ duty on imported HRC is not correct. During the verification visit, the Commission faced multiple difficulties in identifying the duty component of the cost of HRC Saha Thai used for the products it sold domestically.

The Commission found that:

- Saha Thai's accounting systems do not keep track of the source of the HRC used in production;
- some of the imported HRC is used for production of domestically sold products;
- there are HRC sales in domestic market in coil form without further processing; and
- not all HRC imports went through Saha Thai's bonded warehouse.

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At the verification visit, the Commission asked Saha Thai to remove the cost of duties paid from the CTMS for exported HSS and to allocate these duty payments to the CTMS of the HSS that is sold domestically. In response, Saha Thai stated that if the duties were to be allocated only on the CTMS of domestically sold HSS, then it would claim a duty drawback adjustment. Saha Thai provided the Commission with a total figure for duties paid and total HRC importation volume. When the Commission notified Saha Thai that its total HRC import volume was not in agreement with its total production volumes, Saha Thai stated that it had other imports that did not go through its bonded warehouse. These direct imports were not included in the list of imports provided to the Commission during the verification process. As a result, Saha Thai subsequently amended its HRC import volumes and duties paid figures after the Commission raised concerns with the calculations, highlighting that the figures used in the calculations did not match Saha Thai's general ledger records and production figures.

The Commission notes that, the direct HRC imports (that did not go through bonded warehouse) and duties paid for these transactions were not taken into account in the calculations during the verification visit. The Commission also notes that, as Saha Thai's accounting records did not keep track of the source of the HRC used in production, the actual percentage of duties paid per imported tonne of HRC used in domestic production was estimated for the purpose of this investigation, not for the purpose of determining the price on the domestic market.

Therefore, the Commission maintains that Saha Thai failed to accurately quantify the additional costs of duties it bore in relation to imported HRC used in the production of HSS sold domestically prior to being requested to do so by the Commission.

The Commission's analysis of Saha Thai's domestic sales prices with respect to its CTMS for the same product groups shows that some ██████% of domestic sales were at loss. It is also notable that, for some product subgroups, the entire domestic sales during the investigation period were at loss. It is noteworthy that the analysis at **Attachment 5 – Saha Thai profitability** does not include allocation of additional duty costs to CTMS figures and such an allocation would inevitably increase Saha Thai's domestic CTMS and would result in even more unprofitable domestic sales. Therefore, although the Commission does not consider that such an analysis would provide any indication of modification of prices in different ways by taxes, the analysis however shows that Saha Thai's claims of 100% profitability is not correct.

To support its duty drawback claim, Saha Thai relies on:

- the cost difference between HRC produced in Thailand and imported HRC;
- evidence showing that it paid duties for imported HRC that is used in the production of HSS sold in the domestic market; and
- a comparison of weighted average selling prices of like goods in its domestic market versus Australian exports prices.

The Commission has verified that Saha Thai's weighted average domestic HRC costs are higher than its weighted average imported HRC costs. The Commission also calculated that for comparable models, Saha Thai's weighted average domestic prices are higher than corresponding Australian export prices.

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However, the Commission is not of the view that the selling price on the domestic market is modified when compared to export prices because of the payment of duty on imported HRC.

During the investigation, Saha Thai provided an affidavit (**Attachment 4**) in a confidential submission.

The affidavit is taken from one of Saha Thai's major customers [REDACTED] and explains that [REDACTED] purchases both painted and black AS1163 (the main grade exported to Australia) from Saha Thai and pays approximately [REDACTED] THB/kg premium for black AS1163 as these black products are preferred in the Thai domestic automotive market while painted are not.

It is evident that of the two very comparable products (one being painted the other unpainted "black" and all other specifications being the same and being manufactured using the **same grade of HRC**), the prices of painted AS1163 products are significantly lower than black AS1163 products, despite the additional cost of painting for painted AS1163.

From the evidence collected from Saha Thai's customer [REDACTED], we understand that, contrary to Saha Thai's arguments about its prices being effected by duties paid, the domestic price for black AS1163 products is higher **due to higher demand and market preference** for these products in Thai domestic market.

The Commission concluded that there was evidence showing that, for Saha Thai's main export products (painted AS1163), prices have not been modified by the effects of duties paid on imported HRC.

The Commission therefore does not consider that the price comparability between domestic and export prices has been affected by the duties paid on imported HRC used in production of domestically sold products.

Based on that finding, the Commission rejected the duty drawback adjustment claimed by Saha Thai, as outlined in Section 6.4.1.2 of REP 254.

2. The Commissioner erred in not informing the ABF to cancel securities that expired on 15 July 2015 and as a result the Parliamentary Secretary was precluded from publishing a retrospective dumping duty notice under subsection 269TG(1).

Comments by the Commission:

As it can be seen in the attached email (**Attachment 1 – Conversion of Securities**) and its corresponding attachment (**Attachment 2 – HSS NTIS Securities 150914 B**), the Commission promptly advised NTIS which securities to be converted to interim dumping duties and which securities to be cancelled due to expiration of the legislated four-month period. Therefore, it is not correct that the Commission failed to cancel securities that are more than four months old (please refer to the Excel file named Attachment 2 - HSS NTIS Securities 150914 B that was sent to NTIS on 16 September 2015).

As a result, the Commission considers that there has not been any procedural mistakes made during the process and there have been no circumstances that would preclude the Parliamentary Secretary from publishing a dumping duty notice under subsection 269TG(1).

3. The Commissioner erred by rejecting the legislation defining place of export for containerised cargo and therefore failed to include this requirement in his recommendations in REP 254.

Comments by the Commission:

In considering Saha Thai's request to calculate dumping margins on ex-works level for its full container load (FCL) exports, the Commission has had regard to information collected and verified during Saha Thai's exporter verification visit. At the verification visit, the Commission was satisfied that Saha Thai's domestic sales transactions included delivery to its customers around the Bangkok region. The Commission also verified that all exportation expenses, including bank charges, terminal handling, clearing expenses, port expenses, lighterage, inland insurance and bill of lading charge are included under the 'handling and other expenses' column of the export sales spreadsheet. The Commission understands that most of Saha Thai's exports have been in break bulk shipments and a smaller volume of exports has been via FCL shipments. It has also been verified that when FCL exports take place, Saha Thai included containerisation expenses in its declared export expenses.

As noted in section 6.2 of the Commission's *Dumping and Subsidy Manual*, the Commission considers that goods are exported when they leave the country of export. The Manual further states that an ex-works price may be used, for example, in a situation where charges are all inclusive of local and international charges and that it is impracticable to segregate them.

Having verified that Saha Thai actually incurred these expenses in its export sales and that they are able to be separated from expenses incurred after the goods have left Thailand, the Commission does not consider it appropriate to depart from its standard practice. The Commission considers that a dumping margin calculation at FOB level provides a more accurate comparison of expenses incurred between domestic sales and export sales irrespective of whether the goods have been containerised before shipment.

As a result, the Commission does not agree that dumping margin calculations should be on ex-works level and considers that an FOB level calculation is necessary to be able to account for cost differences between Saha Thai's domestic sales versus Australian export sales.

PACIFIC PIPE PUBLIC COMPANY LTD (Pacific Pipe) APPLICATION

Comments by the Commission on Pacific Pipe’s Preliminary Comment

The Commission considers that the information in Pacific Pipe’s preliminary comment is not relevant information as defined by subsection 269ZZK(6) and misleading.

The Commission understands that Pacific Pipe bases its comparison on some unfounded assumptions about Saha Thai’s domestic and Australian sales prices. Of particular importance, Pacific Pipe asserts that as Saha Thai’s Australian sales volumes are larger, Saha Thai’s export prices must be cheaper. Pacific Pipe also considers that as it is a larger volume supplier in Thai domestic market, it is unlikely that its domestic sales prices are higher.

The Commission considers that, it appears Pacific Pipe assumes the price factor to be the only determinant of sales volumes and one can establish a direct and measurable link between sales prices and corresponding sales volumes.

The Commission bases its calculations on actual domestic and export sales prices and maintains that the analysis of domestic and export sales prices of like goods of companies investigated supports its dumping margin calculation results.

[REDACTED]

[confidential pricing information]

Verified Australian Domestic Sales Prices (AU\$)				
MONTH	CMC (Saha Thai)	MISO (Samchai)	TKM (Pacific Pipe)	STEMCOR (Samchai)
1/07/2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/08/2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/09/2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/10/2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/11/2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/12/2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/01/2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/02/2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/03/2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/04/2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/05/2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/06/2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The Commission also submits that, while Pacific Pipe’s dumping margin is higher than Saha Thai’s, it is less than of Samchai’s dumping margin.

1. Use of ineligible and unsuitable domestic sales of AS1163-C350 for calculating normal values.

The Commission's Consideration:

Before responding to the applicant's ineligibility and unsuitability claims, the Commission would like to clarify certain issues and highlight some facts pertaining to the investigation:

- From the very beginning and for all cooperating exporters, the Commission's approach to model matching was based on shape (circular, rectangular and square), finish (galvanised, painted, black, lightly oiled), grade (in MPa which has close correlation with the standard the products are manufactured to), impact test requirements (Australian Standard products designated with L0 require low temperature impact testing) and diameter group (it was observed that certain sizes attracted price extras).
- Subsection 269TAC(2)(a) gives direction on whether sales of like goods sold for home consumption in the country of export are relevant and suitable for the purpose of determining a price under subsection 269TAC(1). Specifically, this provision states in part that normal value cannot be ascertained under subsection 269TAC(1) when there is an absence or low volume of relevant sales. Low volume of like goods sold for home consumption is defined in section 269TAC(14) as being less than **5%** of the total volume of goods the subject of application that are exported to Australia by the exporter.
- In comparing export models to domestic models of HSS, the Commission initially matched identical domestic models with the export models. Where there were insufficient volumes of sales of the identical models (per s.269TAC(14)), the Commission first matched another model beginning with different impact testing requirements, then finish and lastly shape and thickness. In matching a model that is not identical, the Commission made specification adjustments accordingly.
- Therefore, the sufficiency of Pacific Pipe's domestic sales (per s.269TAC(14)) was calculated by comparing volumes of each group of products exported to Australia with the total volume of domestic sales of like goods that are matched with export models.
- Regarding the sufficiency of AS1163-C350 products that the applicant claims to be sold in insufficient volumes, please see the numbers below:

Total exported C350 that is matched with domestic C350-Black	██████████ MT
Total C350-Black sold in domestic market and used in model matching	██████████ MT
Sufficiency ratio	5.4%

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- Therefore, the Commission maintains that the volume of Pacific Pipe's AS1163-C350 sales was sufficient to be considered in normal value calculations.

Ineligibility

Pacific Pipe asserted in its application that its domestic AS1163-C350 sales were ineligible to be considered in normal value calculations claiming that the majority of these products were not consumed in the Thai domestic market. The Commission maintains that sales of these AS1163-C350 products were listed in Pacific Pipe's domestic sales in Pacific Pipe's exporter questionnaire response. The Commission notes that these sales were made to four different customers and one of these customers bought the majority of the goods sold during the investigation period.

When the Commission enquired about Pacific Pipe's AS1163-C350 sales, Pacific Pipe claimed that the customer which purchased the majority of these products had eventually exported¹ these products to its subsidiary in Australia and provided its customer's registration documents in Thailand showing that the company was registered as an exporter. The Commission however noted that the company is a manufacturer² of [redacted] [product] in Thailand and its core and only business is fabricating [redacted] (by using HSS extensively) at its premises in Thailand. The Commission also observed that this company presents itself as the first manufacturer of [redacted] in Thailand and states that it has two manufacturing plants in Thailand.

On the second document provided by Pacific Pipe, the Commission sighted that the company's subsidiary in Australia was in the process of being de-registered from the records of the Australian Securities and Investments Commission.

Subsection 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export that are arm's length transactions by the exporter. Sections 269TAAD and 269TAA set out the tests for 'ordinary course of trade' and 'arms length transactions' respectively.

The Commission found that Pacific Pipe's domestic AS1163-C350 sales were arms length transactions made in the ordinary course of trade and in sufficient volumes, therefore eligible and suitable to be considered in normal value determination.

With respect to whether the goods are 'consumed in the country of export' the Commission is of the view that, when the goods are substantially changed so that they

¹ Pacific Pipe initially claimed in a confidential email sent to the case manager by its representative that these products were exported to Australia with insufficient fabrication to change the character of the pipe purchased, i.e. cut to length and holes drilled. Later, in its submission dated 3 July 2015, Pacific Pipe claimed that these products were sold to a local customer for export to its subsidiary to be fabricated in Australia.

² Based on the information in the company's website [redacted]

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take on different characteristics to the point where they are no longer recognised as the goods, they are said to be 'consumed'. The Commission considers that during fabrication of [REDACTED] from HSS (and various other input materials like roofing, plumbing, wires, wall claddings, carpets etc.) the HSS used in this fabrication process is substantially changed so that it takes on different characteristics to the point where the goods are no longer recognised as HSS.

With respect to AS1163-C350 sales by Pacific Pipe, the Commission is of the view that Pacific Pipe did not provide any supporting evidence to support its claim that AS1163-C350 sold to its customer was subsequently exported by its customer as HSS. The information available to the Commission indicates that the majority of AS1163-C350 sold domestically is used in the fabrication of [REDACTED] in Thailand. The Commission considers that HSS used in fabrication of a [REDACTED] no longer has the characteristics of the goods under consideration and accordingly has been consumed on the Thai domestic market.

The Commission notes further that if the fabricated products were exported to Australia, they would be described as something other than HSS ([REDACTED] or components of [REDACTED]), and exported under a different tariff classification.

In conclusion, the Commission is of the view that the sales of AS1163-350 are domestic sales. The best available evidence suggests that these products were used in the fabrication of other products in Thailand and have therefore been consumed in Thailand.

Unsuitability

Pacific Pipe also claims that its domestic AS1163-C350 sales were unsuitable to be used in normal value calculation as these sales do not provide a fair comparison with export prices to Australia. Pacific Pipe claims that the small volumes of sales of this product have caused the sales price to be inflated as opposed to the specific grade and standard of the product.

Subsection 269TAC(2)(a) gives direction on whether sales of like goods sold for home consumption in the country of export are relevant and suitable for the purpose of determining a price under subsection 269TAC(1). Specifically, this provision states in part that normal value cannot be ascertained under subsection 269TAC(1) when there is an absence or low volume of relevant sales. Low volume of like goods sold for home consumption is defined in section 269TAC(14) as being less than five per cent of the total volume of goods the subject of application that are exported to Australia by the exporter.

As explained above, the Commission is satisfied that the domestic sales of AS1163-C350 are greater than five per cent of the volume of the matching goods exported to Australia by Pacific Pipe.

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Consequently, the Commission considers that sufficient volumes of these products were sold during the investigation period and the timing of these sales does not impact price comparability.

2. Sales commission adjustment.

Comments by the Commission:

The Commission highlights that subsection 269TAC(8) allows adjustments to be made to the normal value where particular differences exist between export prices and normal value that affect price comparability. Pacific Pipe has claimed that an adjustment should be made to account for a sales commission paid to a related trading company and stated in its application to the ADRP that:

- *Pacific Pipe pays commissions to Tamose Trading Co Ltd ("Tamose") as follows:*
 - *█████% of net export invoice amounts for assistance in export document processing; and*
 - *█████% of net domestic invoice amounts for sales services in relation to "standard" pipe sales in the domestic market.*

Pacific Pipe further states in its application that *"Tamose is a separate corporate entity which does not sell like goods to those exported to Australia by Pacific Pipe. Tamose sells commercial grade; the like goods sold by Pacific Pipe are standard grade"*.

The Commission acknowledges that Pacific Pipe recorded the sales commissions it paid to its related party Tamose in its accounting ledgers as "intercompany commissions" and notes that Pacific Pipe's sales expenses in its CTMS spreadsheets also included these sales commissions. The Commission notes that Tamose is identified in the verification visit report for Investigation 177 as a subsidiary company through which Pacific Pipe sells its commercial (not produced to comply with a particular standard) products in its domestic market.

It is notable that Pacific Pipe admits that Tamose does not sell Pacific Pipe's product groups that are subject to this investigation in the Thai domestic market. Due to this ambiguity and due to the fact that the commission rates are arbitrarily fixed and there was no evidence provided showing that these intercompany commissions reflect the actual selling costs incurred for sales transactions, the Commission examined the validity and reasonability of such an adjustment.

The Commission maintains its position that, if Tamose had sold any of the products that the Commission assessed as like goods to the goods Pacific Pipe exported to Australia, the sales through Tamose would have been considered together with Pacific Pipe's own sales and essentially these two companies would have been considered as one entity and no inter-company payments would have been allowed in the CTMS.

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Therefore, the Commission maintains that the affiliation between Pacific Pipe and Tamose cannot be considered irrelevant.

The Commission also notes that Pacific Pipe claimed a level of trade adjustment in its exporter questionnaire response and stated that it incurred marketing costs in its domestic market that it did not incur in its export sales to Australia. This is in contradiction to Pacific Pipe's claim that commissions paid to Tamose are for Pacific Pipe's use of Tamose's sales personnel. Pacific Pipe later wanted to withdraw its level of trade adjustment claim in favour of its claim for an adjustment for commissions paid.

As a result, the Commission maintains that an adjustment for inter-company commissions paid to Pacific Pipe's related party Tamose is not warranted. The Commission emphasises that for the accuracy and fairness of dumping margin calculations, these inter-company commissions have been removed from Pacific Pipe's CTMS figures.

The Commission also notes that, despite verification of these amounts in the financial records of Pacific Pipe both in this investigation and as part of Investigation No 177, the then Australian Customs and Border Protection Service did not allow an inter-company commission adjustment in Pacific Pipe's dumping margin calculations in Investigation 177 due to similar concerns the Commission has raised in this investigation. The Commission's findings in Investigation 254 are consistent with the findings in Investigation 177.

3. Duty drawback adjustment.

Comments by the Commission:

The Commission notes that Pacific Pipe acknowledges that it uses domestic HRC for the products sold domestically and imported HRC is used for exported products. As a result of this practice, Pacific Pipe essentially does not pay any duties for its imported or domestically sourced HRC because almost 100% of duties are refunded under the duty drawback scheme.

However, Pacific Pipe claims that the price of domestically purchased HRC is essentially at parity with imported **duty paid** HRC. The Commission does not consider that such a claim constitutes a legal and legitimate basis for an adjustment to normal value. Such an approach is against the Commission's common practices. Pacific Pipe's proposition also assumes that all fully absorbed import costs of HRC converge at a certain point and the domestic HRC prices are set on par with that price point. However, the Commission is aware that there are various price points of imported HRC and import and anti-dumping duties in Thailand varies between 0% and up to 45% in certain cases.

The Commission maintains that the conditions in subsection 269TAC(8) have not been met and an adjustment for duty drawback is not warranted for duty drawback payments Pacific Pipe received during the investigation period. The fact that the US Department of Commerce allegedly made an adjustment for duty drawback in a similar investigation into goods exported to the United States is not relevant to this investigation.

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