



Australian Government
Anti-Dumping Review Panel

ADRP REPORT No. 93

Certain Hollow Structural Sections
exported from the Kingdom of Thailand

October 2018

PUBLIC VERSION

Table of Contents	
ADRP REPORT No. 93	0
Abbreviations	2
Summary	4
Introduction	4
Background	5
Conduct of the Review	6
Grounds for Review	9
Consideration of Grounds	9
Recommendations/Conclusion	13

Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
ADA	Anti-Dumping Agreement
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
AUD	Australian Dollar
Assistant Minister	Assistant Minister for Science, Jobs and Innovation and Assistant Minister to the Minister for Jobs and Innovation
ATM	Austube Mills Pty Ltd
CTMS	Cost to make and sell
Commissioner	Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act, 1975</i>
FOB	Free on board
GAAP	Generally accepted accounting principles
Goods	Hollow Structural Sections as described in REP 445
HRC	Hot Rolled Coil
HSS	Hollow Structural Sections
IDD	Interim dumping duty
Review period	1 October 2016 to 30 September 2017
Manual	Dumping and Subsidy Manual, April 2017
Minister	Minister for Industry, Science and Technology
Pacific Pipe	Pacific Pipe Public Company Limited

PUBLIC VERSION

Parliamentary Secretary	The Parliamentary Secretary to the Minister for Jobs and Innovation
REP 445	The report published by the Commission in relation to Review of Anti-Dumping Measures Hollow Structural Sections exported to Australia from the Kingdom of Thailand dated May 2018
REQ	Exporter questionnaire response
Reviewable Decision	The decision of the Assistant Minister for Science, Jobs and Innovation made on 25 June 2018 and published on 27 June 2018.
SEF 445	Statement of Essential Facts of Review 445
Thailand	Kingdom of Thailand
Thai Pipe	Thai Premium Pipe Co Ltd
WTO	The World Trade Organization

Summary

1. This report has been prepared in response to an application by Austube Mills Pty Ltd (ATM) for review of the decision by the then Assistant Minister for Science, Jobs and Innovation, the Hon Zed Seselja (Assistant Minister) in relation to the review of measures of Certain Hollow Structural Sections (HSS) exported from the Kingdom of Thailand (Thailand) (the Reviewable Decision). The review application was made on 27 July 2018 within the prescribed timeframe.
2. The applicant claims that the reviewable decision in relation to exports by Thai Premium Pipe Co Ltd (Thai Pipe) was not correct or preferable as the ascertained normal value did not include an adjustment to account for the physical differences between the goods exported to Australia and the domestic sales.
3. The Anti-Dumping Review Panel (Review Panel) has reviewed the applicant's ground and considers that it has not established that the reviewable decision was not correct or preferable. On this basis, I have decided under s.269ZZK(1) of the Customs Act 1901 (the Act) to recommend that the Minister affirm the reviewable decision.¹

Introduction

4. An application to the Review Panel has been made by ATM for review of the decision of the Assistant Minister pursuant to s.269ZDB(1) of the Act, with respect to exports of HSS exported from Thailand by Thai Pipe. The decision was made by the Assistant Minister on 25 June 2018 and was to the effect that the dumping duty notice currently applying to the HSS exported to Australia by Thai Pipe (from Thailand) is to be taken to have effect as if different variable

¹ Pursuant to s.269ZZK (1) and (1A) of the Customs Act.

PUBLIC VERSION

factors had been fixed in respect of Thai Pipe, relevant to the determination of duty.²

5. Notice of the reviewable decision was published on 27 June 2018 and the application for review was made on 27 July 2018, within the time prescribed by the Act. The application was accepted by the Review Panel and notice published on the Review Panel's website on 13 August 2018 notifying of the review of the Reviewable Decision.³
6. Pursuant to s.269ZZK(1) and (1A), the Review Panel is required within 60 days of receipt of the application to make a decision on the application for review by:
 - recommending that the Minister affirm the reviewable decision; or
 - recommending that the Minister revoke the reviewable decision and substitute a specified new decision (subject to it be materially different to the reviewable decision.)

In this case, the decision (and report) is due with the Minister no later than 12 October 2018.

7. The Senior Member of the Review Panel had directed in writing, pursuant to s269ZYA of the Act, that the Review Panel, for the purpose of this review be constituted by me.

Background

8. On 19 October 2017, the Commissioner of the Anti-Dumping Commission (Commissioner) initiated a review of measures applying to exports of HSS from Thailand under s.269ZA(1) of the Act following an application by Pacific Pipe Public Company Ltd. The review period was specified as 1 October 2016 to 30 September 2017 (review period).

² ADN No. 2018/88 refers.

³ Pursuant to s.269ZZI of the Act.

PUBLIC VERSION

9. The Anti-Dumping Commission (ADC) considered that the variable factors were likely to have changed for all exporters of goods from Thailand and recommended to the Assistant Minister that the review of measures be extended to include all Thai exporters.
10. A statement of essential facts (SEF) was published on 12 April 2018.
11. In May 2018, the Commissioner made a report to the Minister under s.269ZDA of the Act (REP 445).⁴ The report found that in relation to exports of HSS by Pacific Pipe (the applicant) and other exporters, the variable factors had changed.
12. The Commissioner recommended to the Minister that the dumping duty notice in respect of HSS have effect in relation to all exporters as if different variable factors had been fixed. The Assistant Minister accepted the recommendations and, on 25 June 2018, made the Reviewable Decision.

Conduct of the Review

13. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the decision under review, or revoke it and substitute a new specified decision, subject to the new decision being materially different to the Reviewable Decision.⁵
14. In undertaking the review, s.269ZZ(1) requires the Review Panel to determine a matter required to be determined by the Minister in a like manner as if it were the Minister having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.

⁴ Report No 445 The report published by the ADC in relation to Review of Anti-Dumping Measures Hollow Structural Sections exported to Australia from the Kingdom of Thailand dated May 2018.

⁵ Pursuant to s.269ZZK(1A) of the Act.

PUBLIC VERSION

15. With limited exceptions,⁶ in carrying out its function the Review Panel is not to have regard to any information other than to 'relevant information' as that expression is defined in s.269ZZK(6). For the purposes of the review, the relevant information is that to which the Commissioner had, or was required to have, regard when making the findings set out in the report to the Minister.⁷
16. In addition to relevant information, the Review Panel may have regard to conclusions based on relevant information that are contained in the application for review and any submissions received under s.269ZZJ.⁸ No submissions were received in relation to this review.
17. If a conference is held under s.269ZZHA of the Act, the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information and to conclusions reached at the conference based on that relevant information. No conferences were held in relation to this review.
18. The ADC provided relevant documents containing the confidential information which were part of the material relied upon by the Commissioner in making the recommendations to the Minister. These documents and the correspondence with the ADC concerning them were not made publicly available.
19. Unless otherwise indicated in conducting this review, I have had regard to the:
 - application for review (including documents submitted with the application or referenced in the application),
 - REP 445 and its confidential attachments;
 - the exporter's questionnaire response (REQ) and its confidential attachments; and

⁶ The exceptions are in s.269ZZK(4A) and s.269ZZHA(2).

⁷ Pursuant to s.269ZZK(6)(c).

⁸ Pursuant to s.269ZZK(4).

PUBLIC VERSION

- confidential correspondence between the ADC and Thai Pipe dated 3 April 2018 providing information on the sales made on the Thai domestic market.

20. In the Power Transformers review,⁹ the Hon Michael Moore discussed the scope of the ADRP:

‘It seems to me that having regard to the fact that the Panel will ordinarily have to undertake a review in a comparatively short time frame against a background where the Commissioner will have ordinarily undertaken an extensive process of investigation and reporting, and also having regard to the fact that the Panel can require the Commissioner to reinvestigate, the Panel's role in a review does not entail full reinvestigation of matters considered by the Commissioner and raised by interested parties in the application for review. The investigation by the Commissioner will often entail the evaluation by the Commissioner of material gathered in the investigation both from overseas and domestically. That evaluation may involve subsidiary conclusions or decisions involving assessment and judgment. I do not see the Panel's role as involving this type of evaluation afresh. **Rather the Panel's role includes, by way of illustration, assessing whether there has been inappropriate reliance on particular data to the exclusion of other data, assessing whether relevant data has been ignored, assessing whether there has been miscalculations or the misconstruction or misapplication of the Act or relevant regulations.** The Panel's powers to revoke or recommend the revocation of a number of types of reviewable decisions only arises if the reviewable decision was either not the correct decision (when there has been a decision which does not involve the exercise of a discretion) or, alternatively, not the preferable decision (when there has been a decision involving the exercise of a discretion). It is tolerably clear this is the

⁹ Extract from ADRP Report No. 24 – Power Transformers – Former Senior Panel Member of the Anti-Dumping Review Panel, Michael Moore.

statutory test having regard to the obligation (at various points in Division 9 of Part XVB) on an applicant for review to identify in the application reasons for believing that the decision was not the correct or preferable decision and the power of the Panel to reject an application if this is not done.’
[emphasis added]

Grounds for Review

21. The application for review relied on one ground, namely that the Minister’s determination of the ascertained normal value (ANV) for the exporter, Thai Pipe, did not include an adjustment to account for physical differences between the exported goods and the like goods (sold domestically).

Consideration of Grounds

22. ATM proposes that the main product sold by Thai Pipe in the Thai domestic market is unpainted HSS whereas the product exported to Australia is painted HSS. It suggests that it is unlikely that Thai Pipe would have sold sufficient quantities of painted HSS in the ordinary course of trade in the Thai domestic market, to determine a normal value under s.269TAC(1). Accordingly, it proposes that a specification adjustment (pursuant to s.269TAC(8)) should be made to the domestic selling prices to account for the ‘painting’ of the product to enable a comparison with the export price. It indicates that the painting of HSS would need to be undertaken at a different facility and incurs both a painting and transport cost. It suggests that the adjustment, for painting, be based on verified information from a different exporter.
23. ATM suggests that as the ADC did not conduct on-site verification, it was unable to ‘physically satisfy’ itself of the information provided by Thai Pipe. ATM also claims that it provided evidence of the ‘improbability that that the exporter produced for sale into the Thai domestic market goods with a painted finish in sufficient quantities’ and instead should rely on the information it provided.

PUBLIC VERSION

24. In REP 445, the ADC indicated that it had selected two exporters (Sahathai Steel Pipe Public Company Limited and Pacific Pipe Public Company Limited) to undertake on-site verification. It noted that these two exporters represented over 95% of exports of HSS to Australia from Thailand. It also stated that it had elected not to undertake on-site visits for two other exporters, who provided detailed REQ's, one of which was Thai Pipe.
25. The ADC found that Thai Pipe did have domestic sales of the same models exported to Australia. It stated that these domestic sales were arms length and in the ordinary course of trade and hence suitable for assessing a normal value under s.269TAC(1) of the Act. It made a number of adjustments under s.269TAC(8) to enable a comparison with the export price, though none of these related to 'painting' of the HSS.
26. Following a submission by ATM, the ADC confirmed its finding that there 'were sufficient sales of painted like goods on the domestic market by Thai Premium (Thai Pipe)'.¹⁰ (I have referred to Thai Premium as Thai Pipe in this report). The ADC also stated that it had benchmarked these normal values with the normal values calculations for Pacific Pipe Public Company Limited and Sahathai Steel Pipe Public Company Limited and found the variations to be within acceptable levels.
27. Section 269TAC(1) provides that the normal value of goods exported to Australia, is the price of like goods sold in the ordinary course of trade in arms length transactions by the exporter.
28. Section 269TAC(8) enables adjustments to be made to the domestic selling prices in relation to particular differences so that such differences would not affect the comparison of the normal value and the export price.

¹⁰ REP 445, Section 4.5.6, pages 26 - 28.

PUBLIC VERSION

29. Section 269TAC(14) describes when sales in the domestic market may be considered 'low-volume' and hence considered unsuitable for use in determining the normal value based on such sales. Low-volume is defined as domestic sales of like goods being less than 5% of the volume exported to Australia by the exporter.
30. In considering ATM's ground regarding whether the Reviewable Decision was not correct or preferable (whether an adjustment to the normal value for painting is required), it is first necessary to consider whether there were sufficient domestic sales of the 'like product' during the review period in the Thai domestic market.
31. ATM questions whether there were sufficient sales by Thai Pipe of painted HSS sold on the Thai domestic market for normal value purposes. I reviewed the confidential information contained in the Thai Pipe's REQ relating to the sales volumes (and prices) of the HSS exported to Australia, the domestic sales volumes (and prices) of the 'like product' (same product codes as the exported goods) as well as the total domestic sales by Thai Pipe for the review period. Thai Pipe had also provided to the ADC its catalogue of its HSS product range (including product codes).
32. I confirmed the calculation of the volume of domestic sales of the like goods to the export sales (same product codes). This revealed that the domestic sales of the product codes sold to Australia, exceeded five percent and hence were not considered 'low-volume' in terms of s.269TAC(14). As stated in REP 445, the ADC found there were sufficient volume of domestic sales of the 'like' HSS exported to Australia by Thai Pipe which enabled such sales to be considered for the purposes of normal value under s.269TAC(1) of the Act. I do not disagree with this finding.
33. I also considered the ADC spreadsheets containing the cost to make and sell calculations of HSS and noted that the domestic sales of the like goods were profitable and hence met the ordinary course of trade requirements pursuant to

PUBLIC VERSION

s.269TAAD of the Act. There was no other information available that suggested the sales were other than in the ordinary course of trade.

34. Thai Pipe also provided a description (with supporting evidence) of the process from receipt of hot rolled coil (HRC) through to its sales invoicing to demonstrate that the same HRC was used in the products sold for export to Australia and in domestic sales of the like goods.¹¹
35. My assessment of this information is that the ADC had information that demonstrated that Thai Pipe had domestic sales (of sufficient quantities) of the same product codes as those goods exported to Australia. The ADC also had information that established that these domestic sales were in the ordinary course of trade. Accordingly, these domestic sales could be considered suitable for normal value purposes under s.269TAC(1).
36. Given there were domestic sales by Thai Pipe of the 'like goods' (to those exported to Australia), it is unnecessary to make an adjustment for 'painting' as claimed by ATM. That is, as the goods sold domestically were identical to those exported (as described by the product codes in the catalogues provided by Thai Pipe) an adjustment to reflect differences between the domestic and export prices for type of finish is unnecessary.
37. The applicant also raised an issue regarding the reliance placed on this information by the ADC given it was not subject to an on-site verification. I have examined the process undertaken by the ADC including the supplied additional information from Thai Pipe. In my opinion, the ADC took appropriate steps in its desk-top verification process of Thai Pipe's information to validate and rely on it for normal value purposes.

¹¹ Email from Thai Pipe dated 3 April 2018 providing confidential invoices and production process information regarding domestic and export sales.

PUBLIC VERSION

38. On this basis, I found no evidence to suggest that the ADC erred in its consideration of normal value, or that an adjustment for physical differences was necessary. For this reason, the ground raised by ATM, fails to establish that the Minister's determination of the normal value for Thai Pipe was incorrect due to failing to include an adjustment for physical differences.

Recommendations/Conclusion

39. For the above reasons, I do not consider that the then Assistant Minister erred in the determination of the normal value for Thai Pipe, as the applicant has not established that the reviewable decision was not correct or preferable.
40. On this basis, I have decided under s.269ZZK(1) of the Customs Act 1901 to recommend that the Minister affirm the reviewable decision.
41. Interested parties may be eligible to seek a review of this decision by lodging an application with the Federal Court of Australia, in accordance with the requirements in the *Administrative Decision (Judicial Review) Act 1977*, within 28 days of receiving notice.



Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel
12 October 2018