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12 October 2020

Panel Member Blumberg
Anti-Dumping Review Panel
C/- Legal, Audit & Assurance
Department of Industry, Science, Energy and Resources
10 Binara Street
Canberra City ACT 2601

By Email: adrp@industry.gov.au

Dear Panel Member,

ADRP Review No. 126: HOLLOW STRUCTURAL SECTIONS (HSS) EXPORTED FROM THE KINGDOM OF THAILAND (THAILAND)

Austube Mills Pty Ltd (**Austube Mills**) provides the following submission to the Anti-Dumping Review Panel (**ADRP**) in support of the applications of Austube Mills and Orrcon Manufacturing Pty Ltd for the Review of the Minister's decision following the conclusion of *Continuation Inquiry No. 532 (CON 532)*.

Likelihood of Dumping recurring or continuing if the measures were to expire

References to the grounds in relation to which the review is to be conducted correspond with those set out in your public notice under s.269ZZI dated 11 September 2020.

- i. The Commissioner failed to provide the Minister with a sufficient and reasonable explanation of the reason why the degree of the negative dumping margin found during the inquiry period was likely to continue beyond the expiry of the measures.***

Austube Mills in its application to the ADRP at Appendix B, contended that the Anti-Dumping Commission (the **Commission**) has an obligation to "*actively investigate rather than simply report*" and noted WTO jurisprudence in support of this point:

*This language in Article 11.3 makes clear that it envisages a process combining both investigatory and adjudicatory aspects. In other words, Article 11.3 assigns an active rather than a passive decision-making role to the authorities. The words 'review' and 'determine' in Article 11.3 suggest that authorities conducting a sunset review must act with an appropriate degree of diligence and **arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination.**¹ (emphasis added)*

¹ Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 111. Also see Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 179.

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Austube Mills submits that the phrase “**arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination**” entails an active assessment of the information and evidence gathered and a weighing of that evidence for assessing whether dumping was likely to continue or recur.

As noted in Austube Mills’ application to the ADRP at Appendix B, it appears that the reliance on the degree of the negative dumping margins found in the inquiry period has significantly and disproportionately influenced the Commission’s findings on whether dumping and material injury will continue or recur.

Austube Mills submitted in its application that given Thailand has no global competitive advantage as a producer of HSS products, then the Commission has failed to investigate, (a) the factors that have led to the size of the negative dumping margin to determine if the result is an outlier, or (b) if it is sustainable and likely to continue beyond the expiry of the measures.

Austube Mills also noted that the size of the negative dumping margin of -13.1% effectively meant that exports to Australia were at least 13.1% more profitable than domestic sales. If the degree of the negative dumping margin was sustainable, rather than the outcome of a limited number of sales, an increase in sales to Australia would have been expected, given the Thai exporters large excess capacity and constraints to export to other export markets. Positive dumping margins of double digits on the other hand are not unusual as exporters may significantly reduce their prices to increase sales volumes and gain market share.

If the Commission was unable to determine if the degree of negative margin is likely to be sustainable beyond the investigation period, the Commission should have performed an analysis of Thai exporters past behaviour in different economic circumstances to determine if it was more probable than not that the exporters would likely recommence dumping and that their dumping would cause material injury.

The relevant information and evidence that the Commission does not appear to have proper regard to in considering whether it is likely that dumping will continue or recur comprises:

- Past behaviour of the Thai exporters in the Australian market;
- The export focus of the Thai exporters;
- The effect of the measures on export behaviour; and
- Expected commercial behaviour of exporters.

Austube Mills provided the following evidence of Thai exports to Australia in its submission of 15 May 2020², (years referred to are financial years 1 July to 30 June).

The past behaviour of Thai exporters in the Australian (and other) markets is relevant as to whether the Thai exports will continue or resume dumping.

² EPR CON 532/ 022

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In its application Austube Mills provided details of annual Thai exports to Australia since July 2010³. At the verification visit Austube Mills provided further details on the changing volumes of Thai exports in the Australian market⁴. The table from that presentation and further notes are below.

Confidential Table Thai Volumes and Market Share

Confidential Table removed [commercially sensitive]

There is a clear link between the threat and imposition of anti-dumping measures and the volume of Thai exports to Australia.

When INV 177 was terminated against Thailand in June 2012, exports from Thailand to Australia subsequently surged more than doubling, or by increasing by █% in absolute terms. [commercially sensitive]

Investigation 254 (**INV 254**) concerning exports of HSS from Thailand was initiated in July 2014 with anti-dumping measures effective from August 2015. Thai exports decreased in absolute terms by approximately 50% in the period following INV 254 compared to the period prior to imposition of the measures as Thai exporters were less competitive selling at non-dumped prices.

The level of Thai exports in 2018/19 was approximately 50% below the height of Thai export volumes in 2012/13 in absolute terms when there were no anti-dumping measures in place or investigations underway.

The evidence shows on past behaviour that Thai exporters have the ability to quickly increase volumes by substantial amounts (for example, █% as occurred following INV 177). [commercially sensitive]

In contrast, in assessing the likely behaviour of Thai exporters in the Australian market if measures were not to be continued the Commission in Report 532 (**REP 532**) appears to have relied on the market share of Thai exporters during the period when measures were in place and a single unsupported statement by the main Thai exporter, Saha Thai Steel Pipe Public Company Limited (**Saha Thai**) as noted below.

*Figure 12 also shows that, apart from an increase in the YE September 2013 and 2014 that followed the imposition of measures as a result of REP 177, **the volume of exports of HSS to Australia from Thailand have remained essentially flat**. Exports of HSS to Australia from Thailand has **made up less than 5 per cent of the Australian HSS market during the inquiry period**.⁵ (emphasis added)*

*...imports of HSS from Thailand have **remained a small portion of the Australian market**. These volumes have **remained stable** since the time of the decision in REP 254,⁶ (emphasis added)*

*the **volume and market share** of HSS from Thailand has remained **essentially flat** over the same period of time⁷ (emphasis added)*

³ Confidential Attachment 3 - Australian Market, to the Application.

⁴ Verification Market Material Injury, p.19

⁵ REP 532, p.47

⁶ REP 532, p.61

⁷ REP 532, p.61

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*even if dumping was to recur, the evidence suggests that the undumped price advantage enjoyed by Thai exporters and **the low volume of exports has a negligible connection** with the economic performance of the Australian industry and hence is unlikely to result in material injury.⁸ (emphasis added)*

*Saha Thai claimed that it has exclusively supplied one Australian customer, with **no evidence of a strategy to expand its export volumes to Australia**. The Commission considers Saha Thai's claim to be **supported by the available evidence**.⁹ (emphasis added)*

The evidence before the Commission indicates that the current measures applying to HSS exported from Thailand have little, if any, influence on export price strategies, and therefore the expiry of the measures is unlikely to result in any significant change in those same strategies in the future.¹⁰

The Commission's focus on the Thai exporters small portion of the market, low volumes and flat and stable shares and volumes appears to be in contradiction to the *MINISTERIAL DIRECTION ON MATERIAL INJURY 2012* which states that:

*I note that in cases where the dumped or subsidised imports **hold a small share of the Australian market**, it may be difficult to demonstrate material injury. I direct that **no minimum standard should be used to determine whether dumped or subsidised imports have a sufficient share of the Australian market to cause material injury**. (Emphasis added)*

It appears that the Commission has relied on the "low volume", "small share", "small portion" and "market share of less than 5 per cent" of Thai exporters to determine that material injury will not continue or recur.

In addition, the Commission's use of the terms of "essentially flat" and "stable" is contradicted by the evidence which shows significant changes in absolute terms with changes in Thai export volumes since the imposition of the measures in August 2015 showing a ■% decrease from 2015/16 to 2016/17, a ■% increase from 2015/16 to 2017/18 and a ■% increase from 2015/16 to 2018/19. [commercially sensitive]

Further it is not clear what evidence the Commission is referring to when it noted that Saha Thai's claim of "no strategy to expand export volumes" was supported by the available evidence. Saha Thai did not provide any evidence to support its claim. Indeed, Saha Thai noted in its submission that there was **no evidence** of a strategy to expand its export volumes. It thus appears that the available evidence the Commission is referring to is that there was no evidence of such a strategy.

However, whilst there was no evidence of such a strategy to expand export volumes to Australia there was available evidence to show that it was likely that Saha Thai would expand its export volumes to Australia if the measures were not to be continued.

That Saha Thai has only one Australian customer is not a significant factor or evidence of no strategy to expand export volumes. Austube Mills noted at Appendix B that the sole importer of Saha Thai goods, ■ has alternative

⁸ REP 532, p.61

⁹ REP 532, p.47.

¹⁰ REP 532, p. 58

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supply options, importing HSS from ■ exporters, who, importantly, will most likely continue to be subject to anti-dumping measures after REV 529 is finalised. Should the measures not be continued for Saha Thai, there would be an incentive for ■ to move import volumes from the other exporters, that will continue to be subject to measures, to Saha Thai. [*commercially sensitive*]

As noted above, the increase in volumes when there were no measures, compared to the imposition of measures or the initiation or termination of an investigation, were up to ■%. [*commercially sensitive*]

Austube Mills submitted during the investigation evidence that supported a likely increase in Thai export volumes if the measures were not to be continued. The submission¹¹ noted that Thai manufacturers of HSS, including Saha Thai:

- *are exported (sic) orientated;*¹²
- *have spare export capacity;*¹³
- *have continued to invest in export capability;*¹⁴ and
- *have reduced access to their biggest export market, the United States of America.*

The effect of anti-dumping measures on Thai export volumes was also noted in the submission including that:

Since measures were first imposed with the making of a PAD in September 2014, the findings in SEF 532 demonstrate that there has been a significant reduction in:

- *The number of Thai HSS producers exporting to Australia.*¹⁵
- *The tonnes of HSS exported from Thailand to Australia.*¹⁶
- *The market share of Thai HSS exported to Australia.*¹⁷

The Australian market for HSS is a price sensitive market as found in the original investigation, INV 254¹⁸. Continuation Inquiry No. 379 (**CON 379**), also found that:

*Previous investigations and reviews of measures by the Commission indicate that the HSS market is a commodity market and that price is the major factor in customers' purchasing decisions.*¹⁹

¹¹ EPR CON 532/029,p.2

¹² Confidential Att 4 to Application, pps,14-17

¹³ EPR CON 532/027 p 8

¹⁴ https://sahathaiterminal.com/wp-content/uploads/2019/09/ENG-PORT_IFA-report-.pdf , p.2

¹⁵ EPR 532 -027 p 2

¹⁶ Ibid p2

¹⁷ Ibid p3

¹⁸ REP 254, p.58

¹⁹ REP 379, p.63

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Austube Mills provided evidence in its application to the Commission for the continuation of the measures and at verification that the Australian market for HSS continues to be a price sensitive market with price being the major factor in customers' purchasing decision.

The expected commercial behaviour of Thai exporters if the measures were not to be continued would be to increase export volumes to Australia. Given the price sensitivity of the Australian market the available evidence supports the view that Thai exporters would reduce export prices to gain increased export volumes to Australia if the measures were not to be continued.

Austube Mills submits that, regardless of the margins found in CON 532, it is likely that those exports would be at dumped prices. This view is supported by the evidence and past behaviour of Thai exporters in export markets including that:

- Thai export volumes to Australia significantly increased between INV 177 when there were no measures to INV 254 when dumping was found;
- Thai export volumes to Australia significantly decreased following the imposition of measures in INV 254;
- The Canadian expiry review into Thai exports of pipe, that includes products that are similar to HSS, found that "*Thai exporters continued to export to Canada at dumped prices*" and noted "*The limited amount of imports may be attributed to exporters' inability to compete in the Canadian market at non-dumped prices.*²⁰"; and
- The two most recently completed US Administrative Reviews on Thai exports of pipe that includes products that are similar to HSS found margins ranging from **28.00%** in 2016/17 and **5.32%** in 2017/18²¹.

The measures, actions and findings by the US and Canada are relevant. The pipe products exported to the US and Canada by Thailand are made on the same mills by the same manufacturers using the same raw materials (HRC of varying grades) and using the same production process as the HSS exported to Australia.

Austube Mills notes that the reduction in Thai margins in the US Administrative Reviews occurred during a period of reducing volumes to the US market. The latest US Administrative Review has found preliminary margins of 0.00% (as noted in REP 532), however of note is that this preliminary reduction in margins has also occurred with a further significant reduction in export volumes to the US.

Austube Mills draws attention to the size of the margins found in the US Administrative Reviews, the range of and change in the margins found over the review periods (from 28% to 5.32% within one year) and the evidential linkages between dumping and volumes found in the Australian, US and Canadian markets noted above.

- ii. *The Commissioner failed to provide the Minister with a sufficient and reasonable explanation of the reason why other exporters, not examined, are unlikely to recommence dumping if the measures are allowed to expire.***

²⁰ EPR CON 532/002, p.12

²¹ EPR CON 532/002, p.11

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Austube Mills noted in Appendix B to its application to the ADRP that the Commission's observations were made on the basis of only two active Thai exporters during the inquiry period, Saha Thai and Thai Premium Pipe Co Ltd (**TPP**).

Austube Mills also noted that the Commission has given no consideration to the prospective impact of Pacific Pipe Public Company Ltd (**Pacific Pipe**), Samchai Steel Industries Public Company Limited (**Samchai**) and other Thai exporters re-entering the market as indicated by their co-operation in the Continuation Inquiry.

Austube Mills further noted dumping margins found in INV 254 and REV 445 as follows:

INV 245: Pacific Pipe - 15.1%, Samchai – 19.8%, Uncooperative/all other exporters – 29.7%.

REV 445: Pacific Pipe – 5.6%, uncooperative (including Samchai) – 8.7%.

It is relevant that in REV 445 Pacific Pipe was found to be a low volume exporter. The Commission found in regard to Pacific Pipe's low volume of exports that:

*It is the Commission's view that Pacific Pipe has not been able to provide sufficient evidence to demonstrate that factors outside its control affected its trade volumes during the review period. The Commission considers that **anti-dumping measures in place in relation to the Pacific Pipe's exports of HSS to Australia are not a result of factors outside their control**. In fact the measures directly resulted from the behaviour of Pacific Pipe during the original investigation period, in the sense that the goods were priced and sold by the exporter willingly at that time, and were found to have been dumped.²² (**emphasis added**)*

It is also relevant that the Commission found in REP 532 that the number of Thai exporters has decreased since the imposition of the measures.

The reduction in Thai exporters appears to show a linkage to the anti-dumping measures and the ability of Thai exporters to compete in the Australian market at undumped prices.

The US Administrative Review in 2016/17 determined a dumping margin for Pacific Pipe of 30.61%. Subsequent Administrative Reviews in 2016/17 and 2017/18 did not determine an individual margin for Pacific Pipe due to the low volume of exports indicating a further linkage between dumping margins and export volumes.

In considering the impact of other Thai exporters re-entering the Australian market if measures were to expire the Commission has also not had regard to the spare capacity of those exporters. Austube Mills in its application to the Commission provided information on the spare capacity of Samchai of approximately ■ tonnes and Pacific Pipe of approximately ■ tonnes²³. [*commercially sensitive*]

Given the available capacity of other exporters, the restrictions of measures in other markets and the evidenced past linkages between dumping and export volumes it is likely that the other Thai exporters would export to Australia in significant volumes at dumped prices.

²² REP 445, p.16

²³ Confidential Att 4 to the Application, p.13 & 15.

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Austube Mills submits that the Commission has not had regard to the available evidence in considering whether it was likely that the other Thai exporters would resume dumping if the measures were to expire.

Material injury, or likelihood of material injury, by dumped exports continuing or recurring

References to the grounds in relation to which the review is to be conducted correspond with those set out in your public notice under s.269ZZI dated 11 September 2020.

The Austube Mills application to the ADRP noted at Appendix B, **Ground i.**, it appears that the reliance on the degree of the negative dumping margins found in the inquiry period has significantly and disproportionately influenced the Commission's findings on whether dumping and material injury will continue or recur.

The application also noted at **Ground iii.**, that the flawed price analysis leads to the Commissioner's recommendation to the Minister that she not be satisfied that it is likely that the expiry of the anti-dumping measures would lead, or would be likely to lead, to a continuation, or a recurrence of, the injury that the anti-dumping measure is intended to prevent.

Ground iii. further noted the evidence that had been provided to the Commission including that "*Austube Mills also drew to the Commission's attention the materiality of injury that would likely be caused by likely dumped exports from Thailand if the measures were not to be continued in the application and during the verification visit as noted, as well as in its submission of 15 May 2020*".

Ground iv. also addressed the likelihood of material injury continuing or recurring, and concluded that "*Austube Mills provided evidence in the application, at verification and in submissions that addressed the relevant factors of volume, price effects and the impact on the domestic industry of dumped imports, taking into account the conditions of competition, of the material injury that would likely be caused by the dumped exports from Thailand if the measures were to expire.*"

Austube Mills drew the Commission's attention to evidence and information contained in the application at pages 16 to 26 regarding material injury caused by dumped exports and the information in Confidential Attachments to the application:

- Confidential Attachment 3 (Australian HSS Market);
- Confidential Attachment 5 (Injury); and
- Confidential Attachment 6 (IPP).

Austube Mills further drew the Commission's attention to updated evidence and information provided at the verification visit in this regard:

- Verification Market Material Injury Presentation;
- Confidential Attachment Import Offers TH;
- Confidential Attachment injury Calculations Sep 19;
- Confidential Attachment IPP to Sep 19; and
- Confidential Attachment Australian Market to Sep 19

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As submitted in the application, discussed with the Commission at the verification visit and indicated in INV 254, Austube Mills continued to negotiate its prices monthly with customers relative to the market movements of import offers, which included Thai offers. Therefore, dumped prices from Thailand directly contribute to price suppression and/or depression, lost revenues, volumes and profitability.

The materiality of the injury caused by the dumped exports was detailed in the *Verification Market Material Injury Presentation* (at page 29). The causal link between the dumped exports and the material injury was detailed in pages 23 to 28 with supporting evidence and information provided in the Confidential Attachments noted above.

The workbook, *Confidential Attachment Injury Calculations Sep 19*, a copy of which is provided with this submission, provided the calculations used for the demonstration of the likelihood of the material injury continuing or recurring if the measures were not to be continued.

Clear links were drawn between the likelihood of increased dumping margins and a lower Import Parity Price and the resultant injury factors including changes in Revenue, Profits and Profitability, Market Share, Sales Volumes and Capacity Utilisation.

The submissions drew attention to the effect that the exportation of HSS to Australia from Thailand in circumstances where the measures had expired were likely to have on the price paid for HSS produced or manufactured in the Australian industry and sold in Australia.

The Commission's Dumping Manual notes:

Under a 'but for' analytical method it may be possible to compare the current state of the industry to the state the industry would likely have been in if there had been no dumping. Such analysis also inquires about the likely effects of the dumping or subsidisation alone. Parties submitting information to demonstrate injury based on 'but for' grounds must provide, and explain, the evidence on which this claim rests.²⁴

The information provided to demonstrate material injury was based on 'but for' grounds, in terms of if the measures were to expire then this is the material injury that is likely to be caused by the dumped exports. The effects of the dumping were supported by suitable accounting methods and counterfactual analysis and the evidence for the claims was explained.

Austube Mills calculated the following injury factors that would likely be caused by increased dumping if the measures were to expire:

- A ■ reduction in Revenue from reduced prices with similar reductions in profits and profitability;
- A ■ reduction lost sales volumes;
- A ■ reduction in market share;
- A further XX reduction in Revenue from the lost sales volumes;
- A ■ reduction in capacity utilisation from lost sales volumes; and

²⁴ The Manual, p.131

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- A ■ increase in costs from reduced capacity utilisation that would increase the effects of lost profits and profitability. [*commercially sensitive*]

The injury factors and effects are material and were, as noted, supported by suitable accounting methods and counterfactual analysis with the evidence for the claims explained.

Conclusion

Austube Mills submits that the available evidence supports grounds for the Commissioner being satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

Austube Mills further submits that the correct of preferable decision would be for the Minister:

- in accordance with paragraph 269ZHG(1)(b) to declare that she has decided to secure the continuation of the anti-dumping measures relating to HSS exported to Australia from Thailand by all exporters; and
- in accordance with sub-paragraph 269ZHG(4)(a)(i) to determine that the dumping duty notice continues in force after the specified expiry date of 19 August 2020 and as such continues to apply to all exporters from Thailand.

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