



ADRP Conference Summary

Review No. 126 – Hollow Structural Sections exported from the Kingdom of Thailand

Panel Member	Leora Blumberg
Review type	Review of Minister's decision
Date	6 November 2020
Participants	Rhys Piper (ADC) Kathryn Marnell (ADC)
Time opened	10:00 am AEDT
Time closed	13:35 pm AEDT

Purpose

The purpose of this conference was to obtain further information in relation to the review before the Anti-Dumping Review Panel (“Review Panel”) in relation to Hollow Structural Sections (“HSS”) exported from the Kingdom of Thailand (“Thailand”). The review relates to a decision of the Minister for Industry, Science and Technology not to continue measures against Thai exporters under s.269ZHG(1) of the *Customs Act 1901* (the Act).

The conference was held pursuant to section 269ZZHA of the Act.

In the course of the conference, I was able to ask parties to clarify any argument, claim or specific detail contained in their application or submission. The conference was not a formal hearing of the review, and was not an opportunity for parties to argue their case before me.

I have only had regard to information provided at this conference to the extent that it relates to relevant information within the meaning of section 269ZZK of the Act. Any conclusions reached at this conference are based on that relevant information. Information that relates to some new argument not previously put in an application or submission is not something that the Review Panel may have regard to and, therefore, is not reflected in this conference summary.

At the time of the conference, I advised the participants:

- That the conference was being recorded and transcribed by Express Virtual Meetings Pty Ltd, and that the recording would capture everything said during the conference.



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- That the conference was being recorded for the Review Panel to have regard to when preparing a conference summary. The conference summary would then be published on the Review Panel's website.
- Any confidential information discussed during the conference would be redacted from the conference summary prior to publication.

Prior to the conference, participants were provided with a copy of the Review Panel's Privacy Statement. The Privacy Statement outlines who the conference recording and transcript may be disclosed to. The Privacy Statement is available on the Review Panel's website [here](#). The participants indicated that they understood the Privacy Statement and consented to:

- The recording of the conference; and
- The recording being dealt with as set out in the Privacy Statement.

Discussion

The specific information that the Review Panel sought from the ADC in this conference was:

1. Discussion Item 1: *Clarification of the ADC's position with regard to the contention of Austube Mills Pty Ltd ("ATM") of not taking into account the higher cost of hot rolled coil ("HRC") used for domestic sales in determining normal value, in the light of s.43(2) of Customs (International Obligations) Regulation 2015 ("CIO Regulation") and in light of the definition of cost of production and itemised cost items relating to s.43 in the Dumping and Subsidy Manual November 2018 ("the Manual") (ATM Ground 5).*

The ADC Representative ("AR") pointed out that this issue related mainly to Saha Thai Steel Pipe Public Company Limited ("Saha Thai") and was debated in the original INV 254. AR referred to Saha Thai's Verification Work Programme which showed that all the HRC costs were properly reconciled and accounted for.¹ The Reviewing Member ("RM") pointed out that ATM's claim was not that the import costs were not accounted for, but rather that there was no proper allocation of those costs between domestic and export sales of HSS.

AR reiterated that the records of the Thai exporters were kept in accordance with generally accepted accounting principles relevant to Thailand. It was pointed out that

¹ Reference was made to the section, 'Reconciliation of the Goods Under Consideration' of Saha Thai's Verification Work Programme.



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while the relevant accounting system did not track the source of HRC used in production, with no differentiation made between the costs of domestic and exported HSS, the ADC did not consider it to be a reasonable basis on which to ascertain that those records did not represent competitive market costs, for the purpose of s.43(2) *CIO Regulation*. AR stated that, in the ADC's opinion, a single cost for HRC in the circumstances seemed reasonable.

[REDACTED]

[REDACTED] RM pointed out that there were references in REP 254 and REP 532 that related to claims for adjustment for these rebates / drawbacks, [REDACTED] AR stated that the issue of adjustments for rebates / drawbacks of duty was raised by the ADC in the course of verification in INV 254 [REDACTED] AR further pointed out that the claims were not granted as the ADC could not determine an acceptable methodology for the calculation.² RM pointed out that if the cost allocations between the domestic and exported HSS were not actually made in the accounts, it seemed appropriate that the adjustment claims would fail.

AR further pointed out that the [REDACTED] of HRC was imported, with a [REDACTED] sourced domestically, and that it was not possible to trace HRC from source in the accounts. AR noted that it was also not possible to determine the actual country of origin of the HRC and whether duties were paid thereon. RM expressed puzzlement as to why there would be no customs documentation relating to these sales that would indicate the country of origin and duties paid. AR surmised that because of the [REDACTED]

[REDACTED]

AR stated that the portion of exported HSS was [REDACTED] compared to domestic sales.

² Reference was made by AR to the Saha Thai Exporter Visit Report in INV 254 (Section 5.3.1.1 on page 24). RM pointed out that there was reference in this section to [REDACTED]

[REDACTED]



RM questioned whether the proportion of exports could be considered to be [REDACTED], being about [REDACTED] per cent.

AR stated that if the cost of HRC could have been separated for exported and domestic HSS, adjustments could subsequently have been claimed in order to ensure a fair comparison, and therefore the effect on the dumping margin would have been neutral. RM pointed out that this did not address ATM's claim relating to determining the CTM for the purpose of the OCOT test and that the Manual makes it clear that the full cost of import duties should have been included in the purchase cost of imported coil used to produce HSS for the domestic market.

RM requested clarification as to whether separating the costs of import duties could have affected whether any MCC's were considered to be in the OCOT, for the purpose of determining normal value and possibly affecting the dumping margin. AR stated that it was possible to conduct a "sensitivity analysis" to determine if an increase in costs could affect the OCOT for any particular model, which might then lead to an increase in the normal value.³ AR pointed out that a substantial increase in the allocation of costs (for domestic sales) would be required in order to generate a positive dumping margin for Saha Thai, which the ADC considered to be unlikely. RM pointed out a smaller negative dumping margin would still be relevant to the ADC's analysis in REP 532, since the extent of Saha Thai's negative dumping margin had been considered relevant. AR pointed out that while the ADC could conduct the sensitivity analysis on all the relevant models, the data to make the actual calculation relating to cost of import duties was not available in the records of Saha Thai.

2. Discussion Item 2: *With particular reference to Confidential Attachment 5 to REP 532, clarification of ADC's response to contentions of Orrcon and ATM that the explanation of the ADC that weighted-average selling prices for Thailand exports are below those of the Australian industry (and other exporters in China, Korea and Taiwan) is a misrepresentation due to the mix of exports (i.e. predominant exports of low-value black HSS by Thai exporters), in particular in relation to:*

- *ATM's submission that information on the public record shows that the two cooperating exporters from Taiwan only exported galvanised HSS;*
- *ATM's submission that the calculation of prices of HSS from Thailand appeared to rely on unverified data;*

³ Reference was made to sufficiency and profitability tests in Confidential Appendix 3 and Confidential Appendix 5.



- *ATM's submission that the ADC's analysis has had insufficient regard to ATM's price premium achieved.*

(Orrcon Ground 1, ATM Ground 3 and ADC's s.269ZZJ response to ATM Ground 3)

AR was able to show, with reference to Confidential Attachment 5 to REP 532, that the undercutting comparisons with what was referred to as "INV 529 countries" excluded P-G-N-R-350 exports. AR clarified that while Taiwan was one of the countries in INV 529, the term "INV 529 countries" was used by the ADC for convenience and that Taiwanese exports were actually excluded from the comparison as all galvanised models were excluded.

AR confirmed that while it received an incomplete importer response from one importer, the ADC was still able to verify the information submitted (in respect of post importation expenses). AR clarified that where information was missing the ADC had regard to information previously submitted as well to the information of the other importer.⁴ AR reiterated that the information used in the analysis was reliable.

AR also showed (with reference to Confidential Attachment 5) that the degree of undercutting exceeded the [REDACTED] price premium claimed by ATM to exist. AR stated that this comparison was done for the purpose of the ADC's s.269ZZJ submission and the percentage value of the undercutting (and ATM's claimed price premium [REDACTED] [REDACTED]) was not actually placed before the Commissioner for the purposes of REP 532 because the scale of those specific premium values was only included in ATM's application to the ADRP. AR pointed out that it should also be borne in mind that there was [REDACTED] [REDACTED]

3. Discussion Item 3: *Clarification of whether, in the ADC's consideration, less emphasis was placed on negative dumping margins of Pacific Pipe Public Company Limited ("Pacific Pipe") and "uncooperative and other exporters" as the calculations were based on export prices of the other Thai exporters, and not on actual export prices.* (Orrcon Ground 1 and ATM Ground 2)

AR stated that the ADC was required to determine margins for all exporters and pointed out that it could not be said that any particular emphasis was placed on the aforementioned negative margins, as they were not based on actual export prices. AR stated

⁴ Reference was made to Confidential Attachment 5 (Tab: price undercutting).



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that the ADC had greater regard to the negative margins of Thai Premium Pipe Co., Ltd (“TPP”) and Saha Thai, as they were actually exporting.

4. Discussion Item 4: *Clarification of ADC’s response to ATM’s submission that despite the reported higher profitability of exports sales of HSS to Australia (based on a double digit negative dumping margin finding) and significant excess capacity, Thai exporters’ market share fell by nearly 50 per cent compared to the (original investigation) period in which they were found to be dumping (i.e. when export sales to Australia were less profitable). (ATM’s explanation, supported by evidence, was that the Thai exporters’ behaviour was influenced by the effectiveness of the measures and that there was a clear link between the threat and imposition of anti-dumping measures and the volume of Thai exports to Australia.)* (ATM Ground 1)

AR stated that the reduction in market share of the Thai exports was not as straight forward as ATM seemed to indicate, that is, based only on price elasticity. It was pointed out that before INV 177 (involving exports from China, Korea, Taiwan and Malaysia) Thai exports amounted to about █ per cent and after duties were imposed in respect of that investigation, there was a shift in market share to Thai exports, increasing market share to about █ per cent. After INV 254, Thai exports dropped back to pre-INV 177 levels. AR stated that at that time, in 2012, it seemed that customers were seeking the lowest cost outcome, however, thereafter, once Thailand was in the same position as other exporters (with duties imposed), Thai volumes and market share remained flat, even though Thai exports were not subject to the highest duties and had a price advantage, which suggested that price was not the determining factor.

AR pointed out that if price was the only determining factor then Saha Thai and TPP would have expanded their market, however there were other relevant factors for the customers, such as existing relationships and preference for the local product. AR also pointed out that there was a wide range of MCCs and that not all MCCs were competing with the Australian industry. AR stated that it seemed that there was no increased appetite for the Thai products, notwithstanding the price advantage in the market (with the measures imposed). AR concluded that there was therefore no reason to say that if the measures were removed, the Thai exports’ market share would increase. AR also pointed out that there were other non-subject imports that had a larger (and increasing) share of the market, than Thai exports.⁵ AR reiterated that this indicated that there was no basis to say that the measures were “holding back the tide” of Thai exports and

⁵ Reference was made to market shares of imports in Confidential Attachment 1 to REP 532.



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pointed out that while the Australian market share reduced it was mostly at the expense of an increase in non-subject imports and INV 529 country imports.

5. Discussion Item 5: *Clarification of emphasised portion of the ADC statement in REP 532 that Saha Thai's statement that it, "exclusively supplied one Australian customer, with no evidence of a strategy to expand its export volumes to Australia", was "supported by the available evidence". [emphasis added] (ATM Ground 1)*

AR referred to Confidential Attachment 5 to REP 532⁶ which showed the Thai importers and suppliers for the last six years and which indicated that Saha Thai's export volumes were not expanding even after other exporters exited the market and even though there was a price advantage in the market. AR pointed out that there was nothing to stop the importer, [REDACTED], from increasing Thai exports during the inquiry period and interpreted it as being that the market did not have the demand for more Thai products. AR pointed out that it was difficult to see why the measures made a difference since the Thai exports had a price advantage in the market (even with the measures imposed) and there had been no volume increase.

6. Discussion Item 6: *Clarification of ADC's submission that there are few, if any, incentives for Thai exporters to alter their behaviour such that they would reduce their prices and commence dumping (ADC s.269ZZJ submission in response to ATM Ground 1) as well as clarification of the emphasised portion of the ADC statement that it was, "not satisfied that the evidence before it shows that conditions in the domestic market in Thailand provide an incentive to producers to export HSS unless it would be profitable to do so." [emphasis added] (Orrcon Ground 1)*

AR clarified that the underlined portion of the statement was the ADC trying to emphasise that the Thai exports were already price competitive in the Australian market (and profitable) and therefore there was no incentive to reduce prices if expansion was a consideration as a result of the conditions in the Thai domestic market (resulting from COVID, excess capacity, reduced export markets etc.). AR reiterated that there needed to be a demand for Thai products in Australia for an intended expansion, which did not appear to be the case. AR pointed out that based on the substantial negative dumping margins that were established, prices could be reduced without dumping occurring, so there was no indication that dumping would occur as there would be no reason to seek to export unprofitably.

⁶ See Confidential Attachment 5 to REP 532 (Tab: Continuity of Thai Exporters).



AR indicated that the ADC could not comment on the fact that other countries had imposed dumping duties on Thai exports as the conditions of competition in those markets were different, as were the anti-dumping laws and practices. It was pointed out that the anti-dumping duties were relatively low in those jurisdictions. It was also pointed out that where safeguard duties were involved, dumping was not relevant and it was more about the economic and political conditions in the importing country. AR stated that while measures in other countries was one consideration it did not provide much guidance as to the likelihood of what was going to happen in Australia if the Australian measures were removed.

AR pointed out that measures imposed in other countries did not result in a flood of exports to Australia, even with a price advantage (without the necessity for dumping). AR stated that therefore it could not be said that if the Australian measures were removed, there was likely to be a flood of exports, since the favourable conditions already exist and the opportunity was not taken up by Thai exporters.

7. Discussion Item 7: Clarification of ADC's response to ATM's submissions that:

- *the ADC's use of the terms of "essentially flat" and "stable" in respect of Thai exports' market share is contradicted by the evidence which ATM alleges shows significant changes in absolute terms with changes in Thai export volumes since the imposition of the measures in August 2015 (being a [REDACTED] % decrease from 2015/16 to 2016/17, a [REDACTED] % increase from 2015/16 to 2017/18 and a [REDACTED] % increase from 2015/16 to 2018/19.*
- *the ADC's focus on the Thai exporters' small portion of the market appears to be in contradiction to the Ministerial Direction on Material Injury 2012 ("Injury Direction") (ATM Ground 1)*

AR stated that the ADC did not dispute that there were changes in volume (that were not *de minimis*) when viewed in absolute terms, however, when viewed in the context of the total Australian market, and in comparison with exports from non-subject countries, the Thai imports were not that significant. AR pointed out that the absolute changes were not ignored and were still part of the ADC's consideration.⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷ Reference was made to Confidential Attachment 1 to REP 532 (Tab: Aus Market -2013 – 2019) showing volumes and market share of Thai imports as well as other imports (including from non-subject countries and INV 177 countries).



AR pointed out that the Commissioner also had to be satisfied of the likelihood of dumping, and that there had to be positive evidence in this regard. AR stated that there was just too much doubt to say that both dumping and injury was likely to occur in the absence of measures.

8. Discussion Item 8: *Clarification of the reasons why the ADC is uncertain as to whether the anti-dumping measures were effective in limiting the dumping from Thailand. (Orrcon Ground 1)*

AR pointed out that the purpose of the measures was to remove the injurious effect of dumping, and if the injurious effect of dumping was removed, presumably the Australian industry's economic performance would improve. AR stated that there were a range of factors other than price, that had nothing to do with the measures, that were at play in the Australian market limiting a flood of imports and dumping, such as: consumer / customer preferences, timing of supply, existing relationships, other sources of supply. AR pointed out that if solely based on price the Australian industry would be [REDACTED]. AR stated that it could be said that measures had an impact on the market, but that the impact was actually quite small. AR added that, based on the evidence before the ADC, the presence of the measures was not what was preventing a flood of Thai imports or dumping occurring.

9. Discussion Item 9: *Clarification of emphasised section of ADC statement referring to "periods in which HSS from Thailand was exported at prices which were not dumped (the inquiry period) or were mostly not dumped or at de minimis margins (the period examined in REP 445)" [emphasis added] (ADC s.269ZZJ submission in response to Orrcon Ground 1)*

AR stated that it was recognised that there were positive dumping margins resulting from REP 445 and confirmed that the emphasised section was a reference to volume, with Saha Thai being the major Thai exporter (with a zero dumping margin) and TPP being the other main player (with a *de minimis* margin).⁸

10. Discussion Item 10: *Clarification of the ADC's response to Orrcon and ATM's contentions that REP 532 indicated that the ADC had not taken adequate account of the*

⁸ AR referred to Confidential Attachment 5 to REP 532 and Table 3 on page 8 of REP 532 (which summarised the anti-dumping measures arising out of REP 445).



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price sensitive nature of the Australian HSS market, notwithstanding previous such findings in INV 254 and Continuation Inquiry 379. (Orrcon Ground 2 and ATM Ground 1)

AR stated that while there was no doubt that ATM was under pressure from price, and that there were aspects of price sensitivity, it was also clear that price was not the only consideration. AR noted that if price was the only consideration [REDACTED]. AR also noted that while ATM certainly had regard to the prices of Thai imports, they did not appear to be especially influential with respect to the import parity pricing model.

11. Discussion Item 11: *Clarification of the emphasised portion of the ADC statement that, “REP 532 clearly indicates that their impact on the likelihood that HSS would be exported from Thailand to Australia at dumped prices in the absence of the measures was not in my consideration.” [emphasis added] (ADC s.269ZZJ submission in response to ATM Ground 4)*

AR said that this was a reference to a paragraph in Section 7.4.4 of REP 532 that stated that the Commissioner was not in a position to comment on the likely effectiveness of the Government of Thailand's market interventions to counter the impact of COVID, nor its ability to fund stimulus measures, which were issues raised by ATM in response to SEF 532. AR pointed out that, at a higher level, the ADC did touch on what was happening with the Thai economy generally and did, for example, examine movements in GDP over time and volumes of imports and exports for similar products (of which HSS was a subset). AR pointed out that much of this analysis was in response to claims that ATM had made relating to the US measures as an incentive for Thai exporters to dump and flood the Australia market with products diverted from the US, which the ADC did not find to be the case. AR stated that the purpose of these considerations was to assess the likelihood of dumping, and not to assess the Thai domestic market in detail, particularly when it was difficult to assess the impact of COVID and the Thai Government interventions, particularly where there was a time limit relating to the continuation inquiry.