



**Australian Government**

**Anti-Dumping Review Panel**

Anti-Dumping Review Panel  
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By EMAIL

Commissioner of the Anti-Dumping Commission  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

Dear Commissioner,

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

The Anti-Dumping Review Panel (Review Panel) is currently conducting a review of the decision of the Minister for Industry, Science and Technology (Minister) made on 27 July 2020 under section 269ZHG(1)(a) of the *Customs Act 1901* (the Act) in respect of Hollow Structural Sections (“HSS”) exported from the Kingdom of Thailand.

The Review Panel accepted applications for review from the following applicants:

1. Orrcon Manufacturing Pty Ltd (“Orrcon”); and
2. Austube Mills Pty Ltd (“ATM”).

As you are aware, I am conducting the review.

Pursuant to section 269ZZL of the Act, I require the following findings in Report 532, relating to Orrcon and ATM grounds of review, be reinvestigated:

**ATM Ground 5: Error with respect to normal values and dumping margins for all exporters from Thailand by failing to take into account the higher cost Hot Rolled Coil (“HRC”) used for domestic sales**

1. The findings of normal values and resulting dumping margins determined for Saha Thai Steel Pipe Public Company Limited (“Saha Thai”) and the other cooperating exporters, having regard to whether the domestic sales were in the ordinary course of trade (“OCOT”) pursuant to s.269TAA, with the cost of manufacture of the goods for purpose of determining OCOT, to be calculated in accordance with s.43(2) of Customs (International Obligations) Regulation 2015 (“CIO Regulation”) and the Dumping and Subsidy Manual November 2018 (“the Manual”), with the full cost of imported HRC used to produce HSS for the domestic market.

I provide below a summary of my reasons for making the request under s.269ZZL of the Act:

- a. ATM submits (and it is not disputed) that HRC is the major raw material input into HSS comprising 90 per cent of the cost to make (“CTM”) for Thai manufacturers of HSS. According to ATM the Thai authorities have imposed both anti-dumping and safeguard duties on imported HRC, with the anti-dumping duties ranging from 14 per cent and safeguard duties from 20 per cent of the value of the imported coil. The duties, however, do not apply to coil that is processed into the finished product (HSS) that is subsequently exported.
- b. In the original Investigation No. 254 (“INV 254”) and in the review of variable factors for Continuation Enquiry No. 532 (“INV 532”), the Thai exporters presented, and the ADC accepted, their HRC costs as a single cost of coil for the CTM of HSS regardless of whether the finished product (HSS) was destined for the domestic or export market. The ADC confirmed in REP 532 that the exporters’ costs were not unreasonable as being presented as a single cost to make (“CTM”) regardless of the destination market (export or domestic).
- c. ATM contends that allocating a single cost of coil to the CTM for exported and domestic HSS overstates the CTM for exported HSS (by including duties that are not incurred), and understates the CTM for the like domestic HSS (by not including the full costs of duties incurred by the coil to produce that HSS). ATM submits that the understatement of coil costs for the domestic CTM may affect OCOT tests with flow on effects to domestic sales suitable for normal value determination under s.269TAC(1) and for a constructed normal value where required.
- d. I consider that ATM’s contention that the ADC’s acceptance of a single cost for HRC, is contrary to the requirement in s.43(2) of the CIO Regulation that costs for OCOT tests should “reasonably reflect competitive market costs associated with the production or manufacture of like goods”, has validity. It would also appear to be contrary to the ADC’s practice as set out in the Manual, that cost items that fall within the CTM include, “Import duties and other taxes (other than those subsequently recoverable by the entity from the taxing authorities)”.

- e. It should be noted that it is not disputed that Saha Thai and other exporters' records are kept in accordance with GAAP in Thailand or that all the HRC costs are properly reconciled and accounted for.
- f. It is noted that in INV 254 and INV 532 claims for adjustments for duty rebates or drawbacks were disallowed since there was no separate allocations of costs for HSS destined for the export or domestic markets. It is recognised that in the event that the cost of HRC could have been separately allocated for exported and domestic HSS sales, adjustments could subsequently have been claimed (if appropriately proven) in order to ensure a fair comparison, with a probable neutral effect on the dumping margin. In this regard an argument could be made for accepting a single cost for HRC for sales of HSS on both export and domestic markets, as reasonable. However, this does not address ATM's claim relating to determining the correct CTM for the purpose of the OCOT tests relating to normal value, which would require the full cost of import duties to be included in the cost of imported coil used to produce HSS for the domestic market.
- g. During the conference held with the ADC on 6 November 2020 ("the Conference") I 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 therefore affecting the dumping margin. The ADC acknowledged that it was possible to perform "a sensitivity analysis" to determine if an increase in costs could affect the OCOT test for relevant models identified as being exported to Australia, which might lead to an increase in the normal value and subsequently affect the dumping margin.<sup>1</sup> As part of the reinvestigation of this issue, the ADC is requested to undertake such an analysis to determine if an increase in costs would impact relevant OCOT tests and therefore the normal value and dumping margins. If there is an indication that the normal values might be affected, the ADC should undertake appropriate calculations to determine the actual effect on dumping margins.
- h. In REP 532 and during the Conference it was stated that Saha Thai's records do not have sufficient detail to enable the ADC to allocate the import costs in the manner that ATM requests. ATM in its application for review submits that it must then be concluded that the exporters' records do not "reasonably reflect competitive market costs associated with the cost to make like goods", as required by s.43(2) of the CIO Regulation, and notes that s.43(8) of the CIO Regulation states in regard to the determination of the cost of production or manufacture that:

"For this section, the Minister may disregard any information that he or she considers to be unreliable."

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<sup>1</sup> See summary of the Conference.

ATM contends that the costs of production as it relates to the cost of HRC (without the proper allocation) should be considered unreliable and the best available information used. ATM considers that the best available information would be to use the cost of the imported coil used to produce the domestic like goods plus the average import duties applicable. ATM in its application for review refers to information submitted to the ADC relating to current import duties and safeguard duties on HRC that could be used in the calculation of the CTM of the domestic products, that could be considered to be a fair and reasonable method in light of the unreliable production costs of the exporters and in the absence of other information.<sup>2</sup>

- i. In the reinvestigation of this issue, the ADC is requested to have regard to the submissions of ATM and other interested parties, to both the ADC and the Review Panel, as well as to other relevant documents and information. The ADC should also have regard to the Conference summary and the issues discussed in relation to the first clarification request.<sup>3</sup>
2. Should the finding in relation to the normal values and dumping margins of Saha Thai and the other exporters be changed as a result of the above reinvestigation request, consideration should be given as to whether this impacts the ADC's assessment of the likelihood of dumping and material injury continuing or recurring.

I provide below a summary of my reasons for making the request under s.269ZZL of the Act:

- a. ATM in its application for review refers to the ADC's assessment of the likelihood of dumping and material injury continuing or recurring, in REP 532, which found that all HSS exported from Thailand to Australia had been at undumped prices during the inquiry period and therefore the dumping found in REP 254 had not continued, and further stated:

"The Commission considers that, whilst the presence (or absence) of dumping during the inquiry period may be indicative of future behaviour, this factor alone is not determinative.

In this case, the Commission **considers that the degree of the negative dumping margins** of all the Thai exporters indicates that each could have reduced their export prices even further and **still not have dumped during the inquiry period.**"<sup>4</sup> [emphasis added by ATM]

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<sup>2</sup> Reference was made to Confidential Attachment 4 to ATM's application in INV 532, pages 68-69 and to Document #016 of EPR 532, page 2.

<sup>3</sup> See Conference summary,

<sup>4</sup> REP 532, page 62.

The above passage from REP 532 indicates that while this factor (of no dumping) was not alone determinative, in its assessment the ADC took into consideration not only the presence or absence of dumping but also the “degree of negative margins”. Therefore any change in the ADC’s findings of the dumping margins, whether it be a new positive dumping margin or simply a lesser negative margin, could have an impact on the ADC’s assessment of the likelihood of dumping and material injury continuing or recurring.

- b. The ADC is therefore requested to reinvestigate the impact of any changes resulting from the above request, on the ADC’s assessment of the likelihood of dumping and material injury continuing or recurring.

### **ATM Ground 3: The Commissioner’s analysis of price competition in the Australian market is flawed**

3. The finding relating to the Commissioner’s analysis of price competition in the Australian market particularly in regard to ATM’s submission that the comparison of prices makes no reference to any price premium that ATM and the Australian industry can achieve in the market.

I provide below a summary of my reasons for making the request under s.269ZZL of the Act:

- a. In its application for review ATM submitted details of the price premium that ATM and the Australian industry can achieve in the market, with reference to detailed submissions on this issue made to the ADC during the course of INV 532. ATM stated that it had also provided the ADC with copies of its price books at verification and had various discussions relating to prices and variations of pricing. ATM was concerned that the ADC’s analysis had insufficient regard to ATM’s price premium achieved and that the price comparisons could be unsound where the price premium of the Australian industry was not taken into account.
- b. In its s.269ZZJ submission the ADC refers to Confidential Attachment 5 and raises some issues with the price premium claimed to have been achieved by ATM and relating to the price premium of the Australian industry as a whole. Significantly, the ADC submits that in any event, the degree of undercutting in all quarters (shown in Figure 20 in REP 532) exceeds the price premium claimed by ATM to exist. During the Conference, in response to a clarification request, the ADC demonstrated (with reference to Confidential Attachment 5) that the degree of undercutting by the Thai exports exceeded the [REDACTED] price premium claimed by ATM to exist. However, it seems clear that this comparison was made for the purpose of the ADC’s s.269ZZJ submission and was not part of the analysis in REP 532.

- c. The ADC is therefore requested to reinvestigate the Commissioner's analysis of price competition in the Australian market, taking into consideration price premiums that ATM and Orrcon can achieve in the market and making the necessary comparisons with the Thai export prices as part of its analysis. In its reinvestigation the ADC should have regard to various interested parties' submissions on this issue both to the ADC and to the Review Panel, as well as other relevant documents and information.

If you have any issues in relation to the reinvestigation or if you consider that a conference under s.269ZZHA of the Act would assist in obtaining the further information the subject of the reinvestigation, please contact the Secretariat.

Please could you report the result of the reinvestigation within 80 days, that is, by **29 January 2021**.

If you require more time, including time to allow interested parties the opportunity to comment on an aspect of the reinvestigation, please contact the Secretariat.

Thank you for your assistance.

Yours Sincerely,



Leora Blumberg  
Panel Member  
Anti-Dumping Review Panel  
10 November 2020