

PUBLIC RECORD

Submission on behalf of Austube Mills Pty Ltd (ATM) to the Anti-Dumping Review Panel concerning applications by Commercial Metals Pty Ltd for a Review of a Ministerial Decision to publish a Dumping Duty Notice applying to Certain Hollow Structural Sections (HSS) exported from the Kingdom Of Thailand.

Introduction

1. We act for ATM which, as the applicant in relation to the application that led to the making of the above reviewable decision, is an interested party as defined in s269ZX of the *Customs Act 1901 (Cth)* (**Act**). We make this submission pursuant to section 269ZZJ of the Act.
2. The application to the Panel in this matter from Commercial Metals Pty Ltd (**CMC**) claims that the reviewable decision is not the correct or preferable decision because:
 - the Commissioner failed to cancel securities in respect of any interim dumping duty within four months of the date on which the securities were taken.
 - the Parliamentary Secretary was not authorised to publish a retrospective dumping duty notice under s269TG(1) of the Act;
 - the Parliamentary Secretary failed to take sufficient account of certain allegedly injurious factors other than exportations of the dumped goods in finding that such exportations caused material injury to the Australian industry.
3. Some of those claims have already been the subject of submissions to the Anti-Dumping Commission (**Commission**) by our client and can be found in files 046, 043, 042, 041 and 037 of EPR 254. We request that the Panel has regard to those representations as well as this current submission. We also note the Response of 9 November 2015 by the Commission to the Review Panel's Invitation to Comment and express our agreement with the comments in that document related to the issues of security and material injury.

Section 269TG(1) Notice

4. The application for review by CMC claims that the Parliamentary Secretary's decision to publish a dumping duty notice under s269TG(1) was incorrect. It appears that the ground for this claim is that the publication of the notice dated 19 August 2015 was more than four months after the publication by the Commissioner of a Preliminary Affirmative Determination (**PAD**) on 16 March 2015. That is not a sufficient ground on which to base a finding that the Parliamentary Secretary's decision was incorrect.

5. Section 269TG(1) authorises the Minister to publish a notice applying dumping duties to goods already exported to Australia but the subsection is expressed to be subject to s.269TN of the Act. Subject to certain exceptions specified in subsections (2) and (3) that section prohibits the publication of a notice in respect of goods that have already been entered for home consumption. The relevant exception in this matter is as follows:
 - (2) Subsection (1) does not prevent the publication of a notice under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1) in respect of goods that have been entered for home consumption in relation to which security has been taken under section 42 in respect of any interim duty that might become payable under section 8, 9, 10 or 11 of the Dumping Duty Act, as the case may be (not being security that has been cancelled), by reason of the publication of such a notice or in relation to which the Commonwealth had the right to require and take such security (not being security that would have been cancelled under this Act if it had been taken).
6. The Commonwealth's right to require and take security in respect of any interim dumping duty is set out in s.42(1B) of the Act. Collectively s.45(2),(3) and (3A) provide that in the circumstances of the present matter a security shall be cancelled within a period of 4 months from the date on which it was taken. There is no evidence on the public record concerning the detail of any securities that have been taken or whether they have been, or should have been cancelled or whether cancellation is a self executing process and consequently we are unable to comment on whether there are grounds for the return of any interim dumping duty that may have been paid as a result of the enforcement of the terms of any security that had lapsed.
7. However, such issues are matters to be taken up with the Comptroller- General of Customs. They are not part of the reviewable decision by the Parliamentary Secretary to publish a notice under s.269TG(1) and do not form part of the Review Panel's jurisdiction. The only question that can be before the Panel on this issue is whether the decision of the Parliamentary Secretary to publish a dumping duty notice under s269TG(1) was the correct or preferable decision.
8. The only argument advanced by Sahathai that attacks that decision is that because, in its view, securities should have been cancelled within four months of the PAD of 16 March 2015, there were no goods to which the published notice could apply. However, there is no evidence that 16 March 2016 is the only relevant date by which the continuing application of any securities taken in this matter should be measured. The period of operation of an individual security commences from the date that security was taken and, in view of the fact that there were a number of importers involved, there may be a number of dates on which security was taken and consequently the operation of one or more of those securities may not have exceeded four months when the dumping duty

notice was published on 13 August 2015. There is also no evidence that there were no goods entered for home consumption in the period of four months ending on the date of publication in relation to which the Commonwealth had the right to require and take a security but failed to do so.

9. In the light of these evidentiary deficiencies there are no grounds to sustain a claim that the terms of s.269TN prevented the Parliamentary Secretary from publishing a notice under s.269TG(1) and the issue of cancellation of securities is not a reviewable decision under s.269ZZA of the Act and consequently not amenable to review by the Review Panel..

Injury Factors

10. A comprehensive analysis of all relevant injury factors is set out in section 8.6 of REP 254. That analysis acknowledges that a range of factors may have caused injury to the Australian industry but concluded that exports at dumped prices, in and of themselves, still caused material injury to that industry. No evidence that casts doubt over that conclusion has been presented by the applicant.

Conclusion

11. In relation to each of the above grounds for review we consider that the applicants have failed to establish that the Parliamentary Secretary's decision was not the correct or preferable decision. Consequently we submit that the report by the Review Panel should recommend that the Parliamentary Secretary affirm the reviewable decision.



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