



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	1 October 2021
Participants	Rhys Piper (ADC) Kathryn Marnell (ADC)
Time opened	11:00 am AEDT
Time closed	13:10 pm AEDT

Purpose

The purpose of this conference was to obtain further information in relation to the reinvestigation by the Anti-Dumping Commissioner (“ADC”) of the allocation of hot rolled coil (“HRC”) import duties in relation to Hollow Structural Sections (“HSS”) exported from the Kingdom of Thailand (“Thailand”). The review that is before the Anti-Dumping Review Panel (“the Review Panel”) relates to a decision of the then Minister for Industry, Science and Technology (“the Minister”) 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 the representatives of the ADC (“AR”) to clarify any argument, claim, calculation or specific detail contained in the Reinvestigation into Certain Findings in Report No. 532 (“the Reinvestigation Report”). 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.
- 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:

Saha Thai Steel Pipe Public Company Limited (“Saha Thai”)

1. Discussion Item 1: *I requested clarification of the ADC's finding that the information that Saha Thai provided in its questionnaire response regarding the amount of duties it paid on its imported HRC purchases in the inquiry period, was not sufficient for the purposes of allocating actual HRC costs incurred for domestic and export production of HSS.*¹

The ADC representatives (“AR”) stated that certain information was provided by Saha Thai relating to aggregate payment of duties on imported HRC for domestic production of all products, but that Saha Thai's accounting system did not track the source of HRC used in the production of specific products. AR pointed out that because Saha Thai has the bonded warehouse arrangement, it does not have any duty liability when imported HRC is used as an input for products destined for export, and that therefore there is no customs refund documentation or evidentiary chain. AR reiterated that there was only documentation relating to duty liability when the imported HRC was bound for domestic production, but on an aggregate basis, not specific to particular products. Therefore,

¹ See Section 4.1 of the Reinvestigation report, page 22.



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according to AR, it was not possible to use the information provided by Saha Thai for the purposes of allocating actual HRC costs incurred for domestic and export HSS production. AR pointed out that the Maximum Cost Model overcame the problem of this lack of information.

2. Discussion Item 2: *I requested clarification of the dumping margin calculation and how the Maximum Cost Model impacted the negative dumping margin for Saha Thai, increasing the negative margin from negative 13.1 per cent to negative 26.8 per cent.*

The AR took me through the calculation using the Maximum Cost Model with reference to Confidential Attachment 5 to the Reinvestigation Report. AR stated that using the Maximum Cost Model “artificially” increased the cost of domestic production and its application resulted in less domestic sales volume being in the ordinary course of trade (“OCOT”). AR pointed out that while there was sufficient domestic sales volume of comparable models (using the ADC’s model control code (MCC) structure), made in the OCOT for the MCCs exported to Australia, the Maximum Cost Model caused all identical models to fall out of the OCOT resulting in the necessity for adjustments for specification differences in CTM between the export models and surrogate domestic models. AR further stated that since the Maximum Cost Model “artificially” increased the normal value and introduced a difference in taxation between the domestic sales and export sales, the adjustment for the duty drawback was considered to be a logical consequence of this artificial change to the CTM.

I pointed out that the result was a more than doubling of the negative dumping margin. I requested clarification as to why the adjustment for this difference in taxation did not have a “neutral” effect on the dumping margin as was stated by the ADC, during the conference held on 5 November 2020, to be the likely effect if the cost of HRC could have been separated for exported and domestic HSS and adjustments for duty drawback subsequently claimed and allowed.² AR stated that with the Maximum Cost Model the CTM of domestic production increased. AR stated further that once the additional cost flowed through into the OCOT test, some proportion of domestic sales dropped out of OCOT and that would increase the normal value and result in the dumping margin moving in a positive direction. AR pointed out that an adjustment would then need to be made on those OCOT sales to reflect circumstances of export sales where there was no tax payment, which would decrease the normal value. AR pointed out that ADC did not

² See Discussion Item 1 of the conference held on 5 November 2020.



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have a view on what the margin should be, having proposed a methodology based on the assumptions described in the Reinvestigation Report, and that the outcome was just a result of the calculation.

I asked if the significantly increased negative margin was somehow impacted by the specification adjustment, which might cause distortions to the normal value calculation. AR stated that there had been no change to the usual ADC practice of calculating a dumping margin and that the mechanics of the specification adjustment are no different to any other case. AR stated that the only difference in this case was the increase of domestic CTM costs with the application of the Maximum Cost Model. AR also pointed out that in some quarters there were no exports of some models so there was no increase in cost allocation for those domestic sales. It was pointed out that these domestic models were, however, not included in the dumping margin calculation as there were no comparable export models.

3. Discussion Item 3: *I requested clarification of the ‘evidence’ produced by Saha Thai to justify the adjustments for duty drawbacks and how it was demonstrated that price comparability was affected due to this difference in ‘taxation’, with particular reference to the following passage from the Dumping and Subsidy Manual (“the Manual”) relating to adjustments for duty drawbacks, quoted in Section 2.3.3 of the Reinvestigation Report (page 19):*

“Adjustment may be allowed for remission or drawback of import duties on inputs consumed in the production of the exported goods (i.e. inputs physically incorporated, as well as energy, fuels, oil and catalysts used) if the claimant produces evidence.

Subsection 269TAC(8) refers to sales being modified in different ways by taxes. Import charges are a form of taxation and the adjustment for drawback of customs duty implements the requirement for an adjustment where price comparability is affected due to differences in taxation.” [emphasis added]

AR confirmed that there was no actual claim for duty drawback by Saha Thai and no evidence was produced. AR referred to Investigation 245 in which Saha Thai claimed that it should get a duty drawback adjustment, but was refused as the verification indicated that HRC was not costed differently for domestic and exported HSS. AR stated that the case team at that time tried to allocate the costs in order to work out how much duty drawback should occur but were unable to do that. Therefore, with the support of



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Austube Mills Pty Ltd (“ATM”), the relevant Australian industry member at the time, the ADC had decided not to reallocate the HRC costs and at the same time decided not to allow the duty drawback adjustment. AR stated that this was a comparable situation, and that since the Maximum Cost Model was a theoretical scenario that artificially increased the cost of domestic production, the duty drawback adjustment was a logical consequence.

I requested further clarification on the evidence the ADC would normally require from a party claiming an adjustment for a duty drawback/remission of duties, and how it would normally be demonstrated that price comparability was affected. AR stated that the Manual refers to adjustments being required because they affect the price comparability and stated that the evidentiary requirements would depend on the circumstances of the case. AR stated that as a general rule, the ADC wanted to see some link between the import duties payable on the raw material import and evidence of how a drawback claim was made, such as an application form or some sort of accounting evidence that the duty was refunded by the relevant authority.

4. Discussion Item 4: *I requested clarification of how the ADC took into consideration Section 1 of ATM’s submission dated 21 July 2021 on the Preliminary Reinvestigation Report, relating to, “Allocation of a single cost for Hot Rolled Coil and Adjustment for Duty drawback”, with regard to the calculation of Saha Thai’s dumping margin.*

AR pointed out that ATM’s submission in response to the Preliminary Reinvestigation Report, relating to the drawback adjustment, did not address the actual methodology of the Maximum Cost Model, only raising concerns with the duty drawback. AR pointed out that ATM simply submitted that there was no evidence and therefore the adjustment could not be made. AR stated that the approach the ADC took for the purpose of the Reinvestigation Report was to not tackle ATM directly on this issue as it appeared to “miss the point” that the model is a theoretical construct, which is why there was no evidence. AR stated that the ADC considered that it was self-evident that there would be no evidence in existence to support a duty drawback because the reallocation of the HRC costs was theoretical (in accordance with the Maximum Cost Model).

5. Discussion Item 5: *I requested clarification of what the recalculation of Saha Thai’s dumping margin would be if the claim for an adjustment for duty drawback had not been appropriately proven and was disregarded.*



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AR advised that the dumping margin for Saha Thai would be negative 10.9 per cent if the adjustment for duty drawback was not made. I requested that the ADC provide the Review Panel with the relevant spreadsheets showing the recalculations, which the ADC undertook to provide after the conference.³

Thai Premium Pipe Co., Ltd (“TPP”)

6. Discussion Item 6: *I requested clarification of the ADC’s finding that the information that TPP in its questionnaire response regarding the amount of duties it paid on its imported HRC purchases in the inquiry period, was not sufficient for the purposes of allocating actual HRC costs incurred for domestic and export production of HSS.*⁴

The ADC’s response to Discussion Item 1 is applicable to TPP.

7. Discussion Item 7: *I requested clarification of the dumping margin calculation and how the Maximum Cost Model impacted the negative dumping margin for TPP, increasing the negative margin from negative 3.4 per cent to negative 9.8 per cent (more than double).*

The ADC’s response to Discussion Item 2 is applicable to TPP.

8. Discussion Item 8: *I requested clarification of the ‘evidence’ produced by TPP to justify the adjustments for duty drawbacks and how it was demonstrated that price comparability was affected due to this difference in ‘taxation’, with particular reference to the passage from the Manual relating to adjustments for duty drawbacks, quoted in Section 2.3.3 of the Reinvestigation Report (page 19), and set out above in Discussion Item 3.*

The ADC’s response to Discussion Item 3 is applicable to TPP.

9. Discussion Item 9: *I requested clarification of how the ADC took into consideration Section 1 of ATM’s submission dated 21 July 2021 on the Preliminary Reinvestigation Report, relating to, “Allocation of a single cost for Hot Rolled Coil and Adjustment for Duty drawback”, with regard to the calculation of TPP’s dumping margin.*

The ADC’s response to Discussion Item 4 is applicable to TPP.

³ The conference was held open for this purpose and the ADC provided the relevant information.

⁴ See Section 5.1 of the Reinvestigation Report, page 26.



10. Discussion Item 10: *I requested clarification of what the recalculation of TPP's dumping margin would be if the claim for an adjustment for duty drawback had not been appropriately proven and was disregarded.*

AR advised that the dumping margin for TPP would be negative 2.3 per cent if the adjustment for duty drawback was not made. I requested that the ADC provide the Review Panel with the relevant spreadsheets showing the recalculations, which the ADC undertook to provide after the conference.⁵

General

11. Discussion Item 11: *I requested clarification as to whether the ADC's findings relating to the likelihood of dumping and injury, would have been affected if the duty drawback adjustments were not accepted, resulting in final dumping margins that were negative 10.9% (for Saha Thai) and negative 2.3% (for TPP).*

AR stated that it would not have affected the ADC's findings in this regard since the result would still be that the Thai exporters were not dumping in the inquiry period. AR also pointed out that the ADC always maintained that the margins are not the only factor that was considered. AR pointed out that there was other information that was covered in REP 532 that affected the ADC's decision, such as, likely pricing behaviours, past pricing behaviours, and the likelihood of injury resulting from exports from Thailand. AR stated that if the Maximum Cost Model is accepted and the Review Panel decides that the duty drawback adjustment is not warranted, the dumping margins barely shift (from REP 532) and would make no difference to the ADC's findings in REP 532.

Leora Blumberg
Member, Anti-Dumping Review Panel
12 October 2021

⁵ The conference was held open for this purpose and the ADC provided the relevant information.