

**APPLICATION FOR REVIEW
OF A DECISION BY THE MINISTER
WHETHER TO PUBLISH
A DUMPING DUTY NOTICE OR
A COUNTERVAILING DUTY NOTICE**

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City
ACT 2601
P: +61 2 6276 1781
F: + 61 2 6213 6821
E: ADRP@industry.gov.au

**APPLICATION FOR REVIEW OF
DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY
NOTICE OR COUNTERVAILING DUTY NOTICE**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Anti-Dumping Commission **to publish a dumping duty notice** in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- - provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application
- - provides reasonable grounds for the decision not being the correct or preferable decision, and
- - is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.

Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.

Full description of the imported goods to which the application relates.

The tariff classification/statistical code of the imported goods.

A copy of the reviewable decision.

Date of notification of the reviewable decision and the method of the notification.

A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

Signature: 

Name: Roger Simpson

Position: Consultant

Applicant Company/Entity: Pacific Pipe Public Company Limited

Date: 14 / 9 / 15

Attachments:

- Attachment to the Application for Review of the Decision of the Minister to Publish a Dumping Duty Notice in respect of Certain Hollow Structural Sections Exported from Thailand
- Letter of Authorisation of Appointment of Consultant
- Copy of Reviewable Decision
- Detailed Statement of the Applicant's Reasons for Believing that the Reviewable Decision is not the Correct or Preferable Decision.

**ATTACHMENT TO THE APPLICATION FOR REVIEW OF THE
DECISION OF THE MINISTER TO PUBLISH A DUMPING DUTY
NOTICE IN RESPECT OF CERTAIN HOLLOW STRUCTURAL
SECTIONS EXPORTED FROM THAILAND**

**Attachment to the Application for Review of the Decision of the Minister to
Publish a Dumping Duty Notice in respect of Certain Hollow Structural
Sections Exported from Thailand**

Applicant

Pacific Pipe Public Company Limited ("Pacific Pipe")
298/2 Suksawad Rd
Prasamutjedee Samutprakarn 10290
Thailand

Form of business: Public company

Applicant's contact person.

Ms Sunisa Kwanbunbumphen
Business Relations Director
Tel: +66 2 679 9000
Fax: +66 2 679 9075
Email: sunisa@pacificpipe.co.th

Consultant representing the applicant.

Mr Roger Simpson
Roger D Simpson & Associates Pty Ltd
Level 1, 2 Mercantile Dock
Port Adelaide SA 5015
Tel: +61 8 8447 3699
Fax: +61 8 8447 2661
Email: roger@panpac.biz

Authorisation attached.

Imported goods to which the application relates.

Certain electric resistance welded pipe and tube made of steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, whether or not including alloys. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include pre-galvanised, hot-dipped galvanised (HDG), and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 21 mm up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 950.0 mm. CHS with other

than plain ends (such as threaded, swaged and shouldered) are also included within the goods coverage.

Excluded goods:

- conveyor tube made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1mm on outer surface and 0.25mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6mm in order to maintain vibration free rotation and minimum wind noise during operation);
- precision RHS with a nominal thickness of less than 1.6 mm (i.e. not used in structural applications); and
- stainless steel CHS and RHS sections.

Tariff classification of imported goods to which the application relates.

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37);
- 7306.50.00 (statistical code 45);
- 7306.61.00 (statistical codes 21, 22, 25 and 90); and
- 7306.69.00 (statistical code 10).

The reviewable decision.

A copy of the reviewable decision published in the *Commonwealth of Australia Gazette* of 19 August 2015 is attached.

Date and method of notification of the reviewable decision.

On 19 August 2015 per *The Australian* newspaper, the *Commonwealth of Australia Gazette* and Anti-Dumping Notice No. 2015/102.

Applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

A detailed statement of the applicant's reasons is attached.

What the applicant considers the correct or preferable decision should be.

The correct decision should be no publication of a dumping duty notice in relation to hollow structural sections ("HSS") exported from Thailand by Pacific Pipe. This correct decision should result from grounds raised in the attached statement that –

- (a) the Anti-Dumping Commission used prices of ineligible/unsuitable

domestic sales in its assessment of normal value for Pacific Pipe's exports of AS1163-C350/C350LO standard-grade pipe. Had the Commission used prices of suitable domestic sales of like goods, for normal value assessment, the dumping margin would have been negligible;

- (b) the Anti-Dumping Commission did not make a negative adjustment to domestic prices used in its normal value assessments for commissions paid by Pacific Pipe in different amounts for export and domestic sales in accordance with s269TAC(8) of the Customs Act; and
- (c) the Anti-Dumping Commission did not make a negative adjustment to domestic prices used in its normal value assessments for drawback of import duty paid on imported hot rolled coil used in the production of HSS exported to Australia in accordance with s269TAC(8) of the Customs Act.

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Non-confidential

**LETTER OF AUTHORISATION OF APPOINTMENT
OF CONSULTANT**



บริษัท แปซิฟิคไพพ์ จำกัด (มหาชน)
Pacific Pipe Public Company Limited



ทะเบียนเลขที่ 0107547000206

298, 298/2 ถนนสุขุมวิท อำเภอพระสมุทรเจดีย์ จังหวัดสมุทรปราการ 10290
298, 298/2 Suksawad Rd., Prasamutjede Samutprakarn 10290 Thailand.
Tel : +66 (0) 2816-2211(Auto), (0) 2816-2199(Auto) Fax : +66 (0) 2463-9277
Website : www.pacificpipe.co.th E-mail : info.pac@pacificpipe.co.th



September 09, 2015

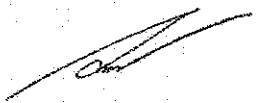
Anti-Dumping Review Panel
C/- Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
Australia

Dear Sir/Madam,

**Application for Review of the Decision of the Minister to Publish a Dumping Duty
Notice in relation to Certain Hollow Structural Sections Exported from Thailand**

This letter is to advise that we have engaged Roger D Simpson & Associates Pty Ltd of Port Adelaide, South Australia to represent us in making the captioned review application.

Yours sincerely,
Pacific Pipe Public Company Limited


Sunisa Kwanbunbumphen
Business Relations Director

COPY OF THE REVIEWABLE DECISION



Commonwealth
of Australia

Gazette

GOVERNMENT NOTICES

Published by the Commonwealth of Australia

Customs Tariff (Anti-Dumping) Act 1975

**Certain Hollow Structural Sections
Exported from the Kingdom of Thailand**

Notice pursuant to subsection 8(5) of the Customs Tariff (Anti-Dumping) Act 1975

I, KAREN ANDREWS, Parliamentary Secretary to the Minister for Industry and Science, having decided to issue a notice pursuant to subsections 269TG(1) and 269TG(2) of the *Customs Act 1901* in respect of hollow structural sections described in that notice (the goods), **DETERMINE**, pursuant to subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), that interim dumping duty payable on those goods be determined:

- in accordance with the ad valorem duty method as specified in subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

Pursuant to subsection 8(5B) of the Dumping Duty Act, I have had regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (i) the export price of goods of that kind as so ascertained, or last so ascertained, and
- (ii) the interim dumping duty payable on the goods

does not exceed that non-injurious price of goods of that kind as ascertained.

This notice applies to the goods and like goods entered for home consumption on and after 16 March 2015.

Dated this 12th day of August 2015

KAREN ANDREWS
Parliamentary Secretary to the Minister for Industry and Science

**DETAILED STATEMENT OF THE APPLICANT'S REASONS FOR
BELIEVING THAT THE REVIEWABLE DECISION IS NOT
THE CORRECT OR PREFERABLE DECISION**

Detailed Statement of the Applicant's Reasons for Believing that the Reviewable Decision is not the Correct or Preferable Decision.

Preliminary comment

The Anti-Dumping Commission ("the Commission") determined a dumping margin for Pacific Pipe's exports of the subject merchandise which is almost 10 per cent higher than the dumping margin it determined for another Thai exporter, Sahathai Steel Pipe Public Company Limited's ("Sahathai") exports in the following circumstances:

1. Sahathai's exports of the subject merchandise to Australia during the investigation period ("IP") were at lower prices than those of Pacific Pipe;
2. Due to its lower export prices, Sahathai's export volume of the subject merchandise to Australia during the IP by far exceeded that of Pacific Pipe – Sahathai's export volume was 26,000 mt (83% of Thai exports) whereas Pacific Pipe's volume was [REDACTED] mt ([REDACTED]% of Thai exports); and
3. Thai domestic selling prices of like goods to the subject merchandise exports of Sahathai and Pacific Pipe during the IP would have been similar, with the like products of each being competitive in a commodity market and the major input material, hot rolled coil ("HRC"), of each being at the same international price level.

Reasons are provided hereunder for the dumping margin determined by the Commission for Pacific Pipe's exports being highly inflated and resulting in the publication of a dumping duty notice in relation to these exports which is not the correct or preferable decision.

Use of ineligible and unsuitable domestic sales for normal value ("NV") purpose.

In its determination of NVs of the vast majority of Pacific Pipe's exports of the subject merchandise to Australia in accordance with s269TAC(1) of the Customs Act ("the Act"), the Commission used domestic sales which are ineligible and unsuitable for s269TAC(1) NV purpose.

The exports concerned are square and rectangular pipes of standard AS1163, and grades C350 and C350LO ("AS1163-C350/C350LO"), which constitute [REDACTED]% of Pacific Pipe's exports of the subject merchandise to Australia during the IP. The quantity of these exports during the IP was [REDACTED] mt.

It is clear from its dumping margin ("DM") calculation details that the Commission considers the following standards and grades of square and rectangular pipes sold in the Thai domestic market during the IP to be like goods to Pacific Pipe's exports of AS1163-C350/C350LO square and rectangular pipes:

Standard	Grade
AS1163	C350
██████████	██████████
██████████	██████████
██████████	██████████

Pacific Pipe's total domestic sales quantity of the abovementioned like goods during the IP was ██████ mt.

Of this total quantity of ██████ mt of domestic sales of like goods, just ██████ mt were of AS1163–C350 standard-grade. And of this ██████ mt total, ██████ were sold by Pacific Pipe to an “exporter” customer, who it understands exported them to Australia without fabrication such as to change the essential character of the pipe, leaving just ██████ mt of AS1163–C350 sales going into consumption in Thailand.

Besides them being of such a low proportion of total domestic sales of like goods, the domestic sales of AS1163–C350 were at abnormally high prices compared with prices of other like goods because of the very small purchase quantities and the “exporter” customer who purchased ██████ mt of the ██████ mt had bought no other goods from Pacific Pipe, i.e. it was a one-off purchase. It was evidenced to the Commission that the abnormally high price of AS1163–C350 compared to prices of other like goods was not because of its standard-grade.

Furthermore, with the exception of less than ██████ mt sold in ██████, all domestic sales of AS1163–C350 were sold in just ██████, whereas the IP was July 2013 – June 2014, the period used for the determination of export prices.

Notwithstanding the above facts that –

- the investigation found that there were domestic sales of ██████ mt of like goods throughout the IP;
- of this total of ██████ mt sales of like goods, just ██████ mt were of AS1163–C350 standard-grade;
- of this total sales volume of just ██████ mt of AS1163–C350, ██████ mt appear to have been exported;
- the very small volume of domestic sales of AS1163–C350 were at abnormally high prices because of factors other than standard-grade; and
- the very small volume of domestic sales of AS1163–C350 were made during a limited period of the IP;

the Commission used the abnormally high prices of domestic sales of AS1163–C350 to calculate the NV of ██████% of Pacific Pipe's exports of AS1163–C350/C350LO which resulted in a highly inflated dumping margin.

It was unreasonable, illogical and irrational for the Commission to use domestic prices of AS1163–C350 for the calculation of NVs for Pacific Pipe's exports of the subject merchandise when they were ineligible/unsuitable for such use. Reasons for them being ineligible/unsuitable follow.

Ineligible

As outlined above, [REDACTED] mt of the negligible [REDACTED] mt of AS1163-C350 sold in the domestic market were sold to an "exporter" customer who, in Pacific Pipe's understanding, exported them to Australia without fabrication that changed their essential character, i.e. they were not consumed in Thailand.

It was explained to the Commission that Pacific Pipe does not produce AS1163-C350 for the Thai domestic market. Its domestic sales of this standard-grade are small volumes from export over-runs and generally for export by domestic customers.

Section 269TAC(1) of the Customs Act ("the Act") provides that –

*Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade **for home consumption in the country of export** in sales that are arms-length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods. (emphasis added).*

It follows that the [REDACTED] mt sold by Pacific Pipe to an "exporter" customer appears to have not been consumed in Thailand and is therefore not eligible for s269TAC(1) NV purpose.

The Commission has no real evidence to refute the applicant's understanding that the said [REDACTED] mt was exported to Australia without fabrication to change its essential character and did not specify any particular evidence that it required from the applicant in respect of its export understanding. The Commission merely assumed from available information that the AS1163-C350 pipe sold to the "exporter" customer was fabricated sufficiently to change its character before exportation and was therefore consumed in Thailand.

The essential point here is whether the pipe sold to the "exporter" customer was fabricated sufficiently to change its essential character before exportation. It is the applicant's understanding that this was not the case and the Commission has no real evidence to refute this understanding. Consequently it is reasonable to conclude that the applicant's understanding is correct.

Unsuitable

Putting aside this NV ineligibility of [REDACTED] mt of the [REDACTED] mt of AS1163-C350 sold in the domestic market for NV purpose because it was not sold for home consumption in Thailand, it is unreasonable, illogical and irrational for the Commission to use this negligible domestic sales volume of AS1163-C350 pipe for NV purpose, as prices in these sales clearly do not provide for a fair and proper comparison with export prices to Australia.

As outlined above, Pacific Pipe made domestic sales of [REDACTED] mt of various grades of pipe which it considered were "like goods" to the AS1163-C350/C350LO square

and rectangular pipe exported to Australia in accordance with s269T of the Act which is as follows:

like goods, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

It is paramount that to be "like goods" for the purpose of the Act, goods do not need to be "identical" to the goods under consideration, they may have "characteristics closely resembling" the goods under consideration. Hence the Commission considered domestically sold square ("SHS") and rectangular ("RHS") pipe of standards-grades AS1163-C350, [REDACTED] and [REDACTED] to be like goods to the SHS and RHS AS1163-C350/C350LO pipe exported to Australia.

Like goods of standard-grade AS1163-C350 sold in the domestic market are not suitable for NV purpose for several reasons, primarily because they are of "low volume" as defined in s269TAC(14) of the Act, i.e. the volume of domestic sales is less than 5% of the export volume, and therefore cannot be used for s269TAC(1) NV purpose according to s269TAC(2)(a) of the Act. The export sales volume of AS1163-C350/C350LO, SHS and RHS pipe was [REDACTED] mt over the IP whereas the domestic sales volume of AS1163-C350 was just [REDACTED] mt, i.e. just 1.6% of the export volume.

It is of important note that in its original NV assessment (for the purpose of its PAD), the Commission found that AS1163-C350 sales did not meet the volume sufficiency requirement of s269TAC(14) for the reason outlined above, i.e. the volume of SHS and RHS, AS1163-C350 domestic sales was less than 5% of the volume of export sales of SHS and RHS, AS1163-C350/C350LO. Notwithstanding this, they used domestic prices of AS1163-C350 pipe for NV purpose and arrived at a 15% dumping margin. When Pacific Pipe challenged the Commission's use of domestic sales of AS1163-C350 pipe for NV purpose because their volume did not meet the s269TAC(14) sufficiency requirement, for what appears to be for preservation of its high dumping margin (15%), the Commission changed its approach to the "low volume" test and replaced the volume of "like goods" sold in the domestic market per the s269TAC(14) definition with what it describes as "matching goods" in its Final Report, section 6.5.1.2. "Matching goods" refers to domestically sold AS1163-C350 pipe of the same shape (SHS or RHS) and thickness as exported AS1163-C350/C350LO pipe. That is, to enable the use of the low volume (63.7 mt) of abnormally high priced domestic sales of AS1163-C350 pipe for s269TAC(1) NV purpose, the Commission disregarded the s269TAC(14) definition of "low volume" and used an artificially narrower definition. We can see no reason for the Commission changing its approach to correctly determining a "low volume" of domestic sales of AS1163-C350 pipe in accordance with s269TAC(14) for its PAD to an approach that is not in accordance with s269TAC(14), other than to enable its use of the abnormally high domestic prices of AS1163-C350 for NVs to preserve its inflated PAD dumping margin of 15%.

That domestic sales of SHS and RHS pipe of AS1163–C350 are of “low volume” as defined by s269TAC(14) of the Act, is of itself sufficient to cause prices of these sales to be unsuitable for s269TAC(1) NV purpose – s269TAC(2)(a) of the Act refers. Furthermore, there are other reasons for domestic prices of these goods being unsuitable for NV purpose. They are as follows:

1. Domestic prices of AS1163–C350 pipe during the IP were abnormally high because of factors other than standard-grade.

The grade of the subject merchandise is determined by the grade of hot rolled steel (HRS) used in its production. Evidence was provided to the Commission demonstrating that the amounts by which prices of C350 grade pipe (AS1163–C350) were higher than prices of other like goods of different grades, [REDACTED] and [REDACTED], were significantly higher than the HRC cost differences between the respective grades. The table below refers:

Month of sale	C350 v [REDACTED]		C350 v [REDACTED]	
	Selling price (THB/kg)	HRC cost (THB/kg)	Selling price (THB/kg)	HRC cost (THB/kg)
July '13	+	+	+	+
August '13	+	+	+	+
September '13	+	+	+	+

In its Final Report, section 6.5.1.2, the Commission states that *Pacific Pipe's claim about the price differences being due to reasons other than standard and grade is not supported by the evidence available*, which indicates that the Commission has chosen to ignore the evidence referred to above demonstrating that it is factors other than grade which has caused Pacific Pipe's domestic prices of AS1163–C350 to be abnormally high.

The Commission's explanation in its Final Report for its non-acceptance of Pacific Pipe's claim in this regard is theoretical and does not address the practical situation as it relates to Pacific Pipe in this regard.

Despite the evidence outlined above, the Commission has decided that grade is the sole cause of prices of domestic sales of AS1163–C350 pipe being abnormally high. It has completely disregarded, without reason, facts that –

- domestic sales of AS1163–C350 pipe are in very low volume compared with the sales volume of other like goods; and
 - almost all of the domestic sales volume of AS1163–C350 pipe was a one-off sale to a customer who had made no other purchases;
- each of which would cause higher than normal selling prices.

We would also like to bring to your attention that the previous dumping investigation into Pacific Pipe's HSS exports (investigation no. 177) found that **the standard and grade to which pipe is made do not influence Pacific Pipe's domestic selling prices and that price differences are for other reasons** – Exporter Visit Report of January 2012, section 9.2.5 refers. And because of this finding, NVs in that investigation were determined on the basis of the weighted average domestic invoice

price of like goods of various standards-grades per model and the dumping margin established in accordance with s269TACB(2)(a) of the Act by comparing the weighted average of these NVs over the IP with the weighted average of EPs over the IP – Termination Report No. 177, section 5.3.3 refers.

In addition, in affirming Customs' NV and dumping margin methodology outlined above, in his report of 31 August 2012, the Trade Measures Review Officer ("TMRO") stated that –

- *Customs informed me that the Thai standard for HSS is lower than most and that HSS with a yield strength of 250MPa predominates in the Thai market. **However, HSS of higher standards is often sold in the Thai domestic market without a clear price differential distinguishing between the yield strength differences.** Although at times there are clear price differences 250 and 350 MPa sold in the Thai domestic market, it also found frequent instances where these products are sold at the same price (emphasis added); and*
- *According to Customs, irrespective of the marginal cost differences between products produced to the Australian Standard and those produced for the Thai domestic market, products made to Australian standards **do not command a higher price in the Thai domestic market.** (emphasis added).*

2. *Domestic sales of AS1163–C350 pipe were made in a limited period within the IP.*

With the exception of just [REDACTED] mt sold in [REDACTED], all domestic sales of AS1163–C350 pipe were made in [REDACTED]. Notwithstanding this very low volume of domestic sales ([REDACTED] mt) being sold in just [REDACTED] months, the Commission used the prices in these domestic sales as the basis for weighted average NVs over the IP to be compared with weighted average export prices ("EPs") over the IP vide s269TACB(2)(a) of the Act. Normal values based on prices in just [REDACTED] months of domestic sales do not provide for a fair comparison with weighted average export prices over the IP.

It is of note that large volume domestic sales of other "like goods" were made consistently throughout the IP.

Rather than take a reasonable, logical and rational approach and use other like goods sold consistently throughout the IP for NV purpose, the Commission made adjustments to the negligible volumes of AS1163–C350 domestic sales in the limited period in amounts being monthly differences in HRC input prices – Final Report, section 6.5.1.2 refers. Such approach does not take into account that prices of the negligible volume sold during the limited period were impacted on by other than HRC input price (as evidenced above) and it is not just input material and production costs that impact on market prices per se.

Conclusion

For reasons outlined above, domestic sales of SHS and RHS of AS1163–C350 standard-grade should not have been used by the Commission for the purpose of determining NVs for exports of SHS and RHS of AS1163–C350/C350LO standard-grade because such domestic sales were ineligible and unsuitable for s269TAC(1) NV purpose and did not provide a fair and proper comparison with export prices. To use these domestic sales for NV purpose in the circumstances outlined above is not in accordance with relevant legislation and is unreasonable, illogical and irrational. It created a highly inflated dumping margin for Pacific Pipe's exports of the subject merchandise, which resulted in the publication of a dumping duty notice in relation to these exports.

A legal, reasonable, logical and rational approach would have been to determine s269TAC(1) NVs for Pacific Pipe's exports of SHS and RHS of AS1163–C350/C350LO standard-grade on the basis of weighted average selling prices of those domestic sales found to be like goods, taking into account matching shapes (SHS/RHS) and thicknesses which impact on prices. This was the approach taken by Customs and affirmed by the TMRO in the previous investigation (no. 177) concerning HSS exported by Pacific Pipe.

Had the Commission taken the legal, reasonable, logical and rational approach outlined above in determining NVs for AS1163–C350/C350LO standard-grade pipe, the dumping margin would have been negligible and therefore no dumping duty notice would have been published in relation to Pacific Pipe's HSS exports – the correct decision.

Sales commission adjustment

As reported in Pacific Pipe's Exporter Questionnaire Response (sec A-3.12), Pacific Pipe pays commissions to [REDACTED] as follows:

- [REDACTED]% of net export invoice amounts for assistance in export document processing; and
- [REDACTED]% of net domestic invoice amounts for sales services in relation to "standard" pipe sales in the domestic market.

Pacific Pipe's payment of these commissions was verified in the 2011/12 investigation (Visit Report, secs 9.1.3 and 9.2.4). In addition, the Commission's desktop verification has confirmed inclusion of these commissions in Pacific Pipe's selling expenses.

The payment of a [REDACTED]% commission to [REDACTED] in respect of export sales causes Pacific Pipe to take into account an additional [REDACTED]% selling expense in its determination of export prices, whereas the payment of a [REDACTED]% commission to [REDACTED] in respect of domestic sales causes Pacific Pipe to take into account an additional [REDACTED]% selling expense in its determination of domestic prices of like goods.

It logically follows that export prices to Australia and prices of like goods sold in the domestic market are modified in different ways by the difference in direct selling expenses incurred in sales into each market. Consequently the price payable for like goods is to be negatively adjusted in accordance with s269TAC(8) of the Act so that the differences in commissions payable do not affect its comparison with export price.

Contrary to the Commission's position per Final Report, section 6.5.1.2, [REDACTED] being a related company to Pacific Pipe does not affect the fact that Pacific Pipe incurs different selling expense amounts in making export and domestic sales because of the different commission amounts and this difference affects comparison of export and domestic prices, meaning that a s269TAC(8) adjustment must be made. It is of important note that, while related, [REDACTED] and Pacific Pipe are separate corporate entities and payment of the commissions are not internal payments.

The Commission's claim per Final Report, section 6.5.1.2, that if [REDACTED] sold like goods to those exported to Australia by Pacific Pipe into the domestic market [REDACTED] and Pacific Pipe would be considered a single entity, is irrelevant. [REDACTED] is a separate corporate entity which does not sell like goods to those exported to Australia by Pacific Pipe ([REDACTED]). The commissions paid by Pacific Pipe to [REDACTED] are expenses incurred by Pacific Pipe for payments to a separate corporate entity for sales assistance activities.

As a reason for not making the necessary s269TAC(8) adjustment for commissions, the Commission states in Final Report, section 6.5.1.2, that –

- these commissions are charged in fixed rates;
- have been arbitrarily determined by the two companies; and
- do not reflect actual selling costs incurred for sales transactions.

Concerning the above statements –

- it is normal commercial practice for sales commissions to be at fixed rates;
- in accordance with normal practice, the amounts of the commissions payable were mutually agreed between Pacific Pipe and [REDACTED] some time ago; and
- Customs (2011/2012) and the Commission have been provided with evidence proving that the said commissions reflect actual selling expenses incurred for export and domestic sales transactions.

There are no sustainable grounds for the Commission to not make this negative commission adjustment to s269TAC(1) NVs when –

- Customs verified the amounts and nature of these commissions in its investigation no. 177;
- The Commission has been provided with evidence of payment of these commissions and their inclusion in Pacific Pipe's selling expenses; and
- [REDACTED] is a separate corporate entity to Pacific Pipe and commission payments made by Pacific Pipe to [REDACTED] by Pacific Pipe are selling expenses incurred by Pacific Pipe which impact differently on its export and domestic selling prices.

Import duty drawback adjustment

A negative NV adjustment should have been made for the import duty drawback reported in section E-2.2 of Pacific Pipe's Exporter Questionnaire Response because its domestic prices and prices paid for exports are modified in different ways by the import duty (tax) paid on imports of the HRC used in the production of HSS and adjustment is necessary to enable comparison of these prices.

Pacific Pipe's domestic prices of HSS are modified by import duty payable on HRC used in the production of HSS, as import duty is directly payable on imports of HRC and domestically sourced HRC are at import parity prices, i.e. they include a component for the import duty payable on imports.

Pacific Pipe's export prices are not so modified as Pacific Pipe receives a drawback of the import duty paid on its HRC imports.

Customs' verification team in Investigation No. 177 verified Pacific Pipe's drawback of import duty in respect of its exports to Australia, and this investigation has been provided with evidence of the amount of the drawback credited to its general ledger during the IP.

The Customs' verification team in Investigation No. 177 also sighted a report by the US Department of Commerce to the effect that it made adjustment for the duty drawback received by Pacific Pipe.

In its Final Report, section 6.5.1.6, the Commission acknowledges that Pacific Pipe's accounting records show receipt of duty drawback (THB █████/kg) in relation to the HRC used in the production of exported HSS.

The reason provided by the Commission for not making the claimed NV adjustment for import duty drawback is that Pacific Pipe did not pay import duties on the HRC used for production of its HSS sold in the domestic market.

What the Commission did not take into account is the fact that, while the majority of HRC used in Pacific Pipe's production of HSS sold in the domestic market of Thailand is domestically purchased, the price of this domestically purchased HRC is essentially at parity with imported **duty paid** HRC. That is, Pacific Pipe's domestic prices of HSS are modified by the import duty paid on imported HRC, even though produced from domestically sourced HRC.

Because domestic prices of HSS are modified by import duty payable on HRC used in its production for reasons outlined above and export prices of HSS are not so modified because of the drawback of import duty paid on the HRC used in its production, a negative adjustment of THB █████/kg is to be made to Pacific Pipe's domestic selling price of HSS in accordance with s269TAC(8) of the Act to enable a fair comparison between domestic and export HSS prices.