



**Australian Government**  
**Anti-Dumping Review Panel**

# **ADRP DECISION No. 43**

Certain Hollow Structural Sections  
Exported from India and the United Arab  
Emirates

28 January 2017

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## Introduction

1. Austube Mills Pty Ltd (ATM) is an Australian manufacturer of Certain Hollow Structural Sections (HSS). On 24 August 2016 ATM applied for the review of the decision by the Commissioner of the Anti-Dumping Commission (ADC) to terminate the investigation relating to HSS exported from India and the United Arab Emirates (UAE)<sup>1</sup>. The decision of the ADC is a termination decision as defined by s.269ZZN(b) of the *Customs Act 1901* (the Act).
2. The application for review was received by the Anti-Dumping Review Panel (Review Panel) on 24 August 2016. The Senior Member of the Review Panel directed in writing, pursuant to s.269ZYA of the Act, that the Review Panel for the purpose of this review be constituted by me.
3. The application for review was accepted as being in accordance with s.269ZZP and s.269ZZQ and was not rejected pursuant to s.269ZZQA or s.269ZZR of the Act.

## Background to the application

4. On 12 November 2015, ATM lodged an application under s.269TB(1) of the Act requesting that the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) publish a dumping duty notice in respect of HSS (the goods) exported to Australia from India and UAE.
5. After receiving further information on 30 November 2015 from ATM, the Commissioner of the ADC (the Commissioner) decided not to reject the application and notice of the initiation of the investigation was published on 22 December 2015.<sup>2</sup> The investigation period for the investigation was from 1 October 2014 to

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<sup>1</sup> ADN No. 2016/71.

<sup>2</sup> ADN No. 2015/154.

30 September 2015, for the purpose of assessing dumping. The injury analysis period was from 1 July 2011.

6. On 22 February 2016 the Commissioner made a Preliminary Affirmative Determination (PAD) in relation to HSS exported from India and UAE.<sup>3</sup> Securities were taken against all exporters from India and UAE. The Statement of Essential Facts (SEF 320) was published on 9 June 2016.<sup>4</sup> It was stated in SEF 320 that based on the findings in SEF 320, and subject to any submissions received in response to SEF 320, the Commissioner proposed to terminate the investigation.
7. On 25 July 2016 the Commissioner published a dumping duty notice terminating the investigation.<sup>5</sup> It was stated in the notice that as a result of the ADC's investigation, the Commissioner was satisfied that:
  - a. In relation to Garg Tubes Limited (Garg) and Universal Tubes and Plastic Industries Limited (Jebel Ali branch) (UTP JA), there has been no dumping by those exporters of any of those goods the subject of the application and, therefore, had terminated the investigation in accordance with subsection 269TDA(1)(b)(i) of the Act so far as it relates to these exporters;
  - b. In relation to Surya Global Steel Tubes Ltd (Surya), Utkarsh Tubes and Pipes Ltd (Utkarsh) and Universal Tube and Pipe Industries LLC (UTP DIP), the goods exported by those exporters have been dumped, but the dumping margin is less than two per cent and, therefore, had terminated the investigation in accordance with s.269TDA(1)(b)(ii) of the Act, so far as it relates to these exporters; and
  - c. There has been, or may be, dumping of some or all of the goods, but the injury, if any, to the Australian industry, that has been, or may be, caused by that dumping is negligible and, therefore, had terminated the investigation,

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<sup>3</sup> ADN No. 2016/18.

<sup>4</sup> The SEF was originally due to be placed on the public record by 10 April 2016. However, the Commissioner was granted a 60 day extension by the Parliamentary Secretary. Further details are in ADN 2016/37.

<sup>5</sup> ADN No. 2016/71.

so far as it relates to India and the UAE, in accordance with subsection 269TDA(13) of the Act.

8. The detailed reasons for the decision are set out in Termination Report 320 (TER 320).

## The Review

9. In accordance with s.269ZZT of the Act, if an application for the review of a termination decision is not rejected under s.269ZZQA or s.269ZZR, the Review Panel must either affirm the decision under review or revoke it.
10. In making a decision under s.269ZZT, the Review Panel must have regard only to information that was before the Commissioner when the Commissioner made the reviewable decision.<sup>6</sup>
11. The Review Panel may also have regard to further information obtained at a conference held under section 269ZZRA or further information provided by the Commissioner upon request of the Review Panel pursuant to s.269ZZRB of the Act.
12. A conference was held under section 269ZZRA of the Act, with the ADC on 18 January 2017 (the Conference) to obtain further information and clarification from the ADC in relation to the grounds raised by ATM and relating to information before the ADC in Investigation No. 320. Further information was also requested from the Commissioner, pursuant to s.269ZZRB. The ADC subsequently provided the Review Panel with further information and clarification arising from the Conference (the Further Information and Clarifications).
13. Unless otherwise indicated, in conducting this review, I have had regard to the application (including documents submitted with the application or referenced in the application). I have also had regard to TER 320, and information relevant to

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<sup>6</sup> Section 269ZZT(4) of the Act.

the review which was referenced in TER 320, including SEF 320 and documents referenced in SEF 320. I have also had regard to the information and clarification obtained during the Conference and in the Further Information and Clarifications.

14. An applicant is required to set out reasons for believing that the reviewable decision is not the correct or preferable decision, and failure to do so may result in rejection of the application. However, as stated in ADRP Report No.15,<sup>7</sup> because an application is not rejected, it does not follow that all grounds advanced in the application are to be viewed, or have been accepted as reasonable grounds for the reviewable decision not being the correct or preferable decision. It is also pointed out in ADRP Report No.15 that the obligation on an applicant to set out the reasons is linked to the task the Review Panel has in determining whether the ultimate decision (the reviewable decision) was the correct or preferable one.
15. On 21 September 2016, a request was made to the ADC to provide copies of confidential documents which were referenced in TER 320 and SEF 320 or were created during the investigation. This correspondence with the ADC was made publicly available. Copies of the documents provided by the ADC were not made publicly available as they dealt with confidential information. Following review of these documents a further request was made to the ADC on 13 January 2017 to provide copies of confidential documents which fell within the scope of the 21 September 2016 request, but were not provided in the initial document transfer. Copies of the further documents provided by the ADC were not made publicly available as they dealt with confidential information.
16. Subsection 269ZZT(5) of the Act requires the Review Panel to make its decision within 60 days after the publication of the notice under subsection 269ZZRC(3), or such longer period allowed by the Minister in writing because of special circumstances. On 10 November 2016 the Assistant Minister for Industry, Innovation and Science, pursuant to subsection 269ZZT(5) of the Act, allowed for a longer period for the Review Panel to make its decision, with the due date for

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<sup>7</sup> ADRP Report No. 15 concerning Wind Towers exported from the People's Republic of China and the Republic of Korea, paragraph 16.

the decision of the Review Panel extended to 28 January 2017. Notice of this extension of time was made publically available on 11 November 2016.

## Grounds for Review

17. The grounds of review relied upon by ATM are set out in its application for review:
- a. Understated normal values ascertained under s.269TAC of the Act as a result of the unlawful allowance of certain downward adjustments and the failure to apply certain upward adjustments (including Indian duty 'drawback' adjustment, UAE customs duty adjustment, specification adjustment and weight tolerance adjustment);
  - b. Incorrectly calculated normal values in respect of two exporters from India and two exporters from the UAE formed the basis for the incorrect decision to terminate the investigation in relation to those exporters;
  - c. Incorrectly calculated normal values resulted in an underestimation of the volume of exports with dumping margins of 2% or more which formed the basis for the incorrect decision to terminate the investigation in relation to all other exporters from both countries on the grounds that any injury caused by their exports was negligible; and
  - d. Error in concluding that dumped imports did not cause any material injury, based on, amongst other things: understated normal values, understated dumped volumes, understated lost volumes of galvanised HSS produced by the Australian industry, incorrectly attributed price undercutting to non-dumped goods, incorrectly attributed price suppression and depression to non-dumped goods, failure to consider the inability for ATM to maintain / regain lost galvanised CHS volume and closure of the Somerton facility.

## Consideration of Grounds

18. I will now deal with the various grounds of review put forward by ATM in its application for review.

*Understated normal values ascertained under s.269TAC of the Act as a result of the unlawful allowance of certain downward adjustments and the failure to apply certain upward adjustments*

19. I will discuss this ground of review using the same sub-headings as ATM in its application for review for the various adjustments that are challenged.

*Indian duty 'drawback' adjustment*

20. ATM claims that the ADC has erred in allowing the Indian drawback adjustment as there has not been a demonstrated impact on price comparability sufficient to justify an adjustment under s.269TAC(9) of the Act. ATM contends that the ADC has failed to provide any evidence of such a 'demonstration', analysis or persuasive examination and relies merely on the uncorroborated assertion by one of a number of Indian exporters.
21. ATM states in its application for review that the central issue is whether prices for HSS exported from India to Australia were in fact reduced by the amount of the rebate payment and contends that no evidence of any such reductions or evidence of relevant inquiries by the ADC can be found in SEF 320. ATM contends that the claim of a 'demonstration', is not supported by any reference to the event by the ADC in the Exporter Verification Report (EVR) for Surya, SEF 320 or TER 320 and it is not mentioned in any of Surya's earlier submissions to the ADC. ATM also contends further that no such demonstrations by other Indian exporters are claimed or identified in any of the material contained in the EVRs.
22. ATM also claims in relation to the constructed normal value applied to a proportion of the models exported to Australia, that an error has been made in the calculation of the cost to make by deducting the amount of the duty drawback. ATM claims



that no downward adjustments to normal values should be made in respect of Indian duty 'drawback' for all HSS models irrespective of whether normal values are based on selling prices or constructed values.

23. I noted that this issue of the Indian duty drawback was extensively dealt with in TER 320, with reference to submissions in response to SEF 320 by ATM, Surya and Utkarsh, relating to this issue.<sup>8</sup> All the current claims of ATM relating to the Indian duty drawback were raised by ATM in its submissions on SEF 320.
24. In TER 320, the ADC referred to the Dumping and Subsidies Manual (November 2015) (the Manual) which particularly states that adjustment may be allowed for remission or drawback of import duties on inputs consumed in the production of the exported goods if the claimant produces evidence. The Manual further states that 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.<sup>9</sup>
25. The ADC noted in TER 320 that Indian exporters provided evidence to link the amount of drawback received and the statutory operation of the scheme during verification, with such evidence including: customs excise invoices which identified the amount of duty drawback; ledgers of accounts where the receipt of duty drawback was entered into financial records; and a demonstration to ADC staff which involved logging onto the Indian customs declaration system and searching for the shipping bills relating to goods exported to Australia which attracted the duty drawback, noting that such shipping bills contained information in which the ADC could trace back to export sales source documents.<sup>10</sup>
26. The ADC pointed out in TER 320 that, as per the Manual, the evidentiary requirements for duty drawback claims does not have to be exhaustive, but evidence must demonstrate a sufficient link between duties imposed and duties

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<sup>8</sup> TER 320, pages 42 – 46.

<sup>9</sup> The Manual, page 63.

<sup>10</sup> TER 320, page 45 – 46.

refunded. In this instance, the ADC was satisfied that the evidence provided was sufficient. The ADC collected evidence of the quantum and payment of the duty drawback and was able to trace this payment through the exporters' records. Further, given that the drawback is only available for export sales and not domestic sales, consistent with s.269TAC(8) or s.269TAC(9), the ADC considered that sales have been modified by taxes which have affected comparability of the export price and normal values. On the basis of the above, the ADC was satisfied that this adjustment is warranted.<sup>11</sup>

27. I reviewed all the relevant documents and submissions relating to this adjustment in Investigation No. 320. During the Conference I took the opportunity to request comments from the ADC with regard to ATM's claim that there was insufficient evidence of a 'demonstration' that price comparability was affected.
28. The ADC advised that it was well informed on the mechanics of the Indian drawback from the Indian legislation. It is usually observable in the exporters' accounts and directly affects cost and price structures, and relatively easy to quantify. The ADC clarified that the duty drawback was calculated with reference to the FOB level value of the exports, which was verified at exporter verification visits during an examination of the relevant documents and financial records kept by each exporter. Accordingly, the ADC applied a downward adjustment to the normal value at the FOB level determined under both s.269TAC(1) and s.269TAC(2)(c), pursuant to s.269TAC(8) and s.269TAC(9), respectively. In both cases, the exporter had incurred import duty (cost) to make its products. The Indian Government affords the exporter of the goods, which has used these imported materials, a refund of the import duty equivalent to 1.9% of the FOB value of the goods being exported (irrespective of the amount of duty actually incurred on the imported goods used to make a particular product). No such refund or drawback is provided for goods sold by the exporter on the Indian domestic market, even though import duty costs could have been incurred. The difference

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<sup>11</sup> TER 320, page 46.

in cost base is therefore considered to affect the price of the goods and warrant the adjustment.

29. I am satisfied with the approach of the ADC and consider that the decision to grant the Indian duty adjustment is reasonable and in accordance with the legislation and the ADC's practice, as set out in the Manual. Therefore, ATM's claim that no downward adjustments to normal values should be made in respect of the Indian duty 'drawback' for all HSS models, both in respect of normal values based on selling prices and normal values based on constructed values, fails.

#### *UAE customs duty adjustment*

30. UTP JA is located in the Jebel Ali Free Zone (JAFZ) which provides for the exemption of customs import and export duties. However, goods produced by UTP JA which are then sold to domestic customers located outside of the JAFZ, are subject to a 5% customs duty, payable on the domestic invoice value.<sup>12</sup> UTP JA claimed and was granted a downwards adjustment to normal value since exported goods are exempt from this customs duty.
31. ATM claims that there was an error in allowing this customs duty adjustment. It claims that the requirement to demonstrate the effect on price comparability is also the central issue concerning the eligibility for a downward normal value adjustment of an exemption from customs duty for export sales of HSS. ATM in its application for review referred to various points put forward by Minter Ellison in ATM's response to SEF 320 in relation to the issue of the UAE customs duty adjustment. Minter Ellison, inter alia, challenged:
- a. the ADC's analysis of UTP JA's domestic prices and its lack of reference to an examination of pricing factors and market forces in the UAE domestic market;

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<sup>12</sup> This does not apply to domestic sales made to manufacturing customers as they are generally exempt from customs duties in the UAE.

- b. the inability to demonstrate that the customs duty has affected price comparability since domestic producers outside JAFZ have lower cost structures, paying customs duty of 5% only on the value of imported HRC used in the production process, while UTP JA pays 5% customs duty on the invoice value of domestic sales;
- c. the ADC's ability to compare UTP JA's duty paid prices with the variable trade level specific prices of other domestic producers;
- d. the evidence supporting the conclusion that the domestic price of HSS produced in the JAFZ was 5% higher than it would otherwise have been, after factoring in price variances attributable to trade levels or other market factors.<sup>13</sup>

32. ATM states that while in TER 320 the ADC confirmed the adjustment for customs duties on sales by UTP JA to the UAE domestic market, its response to the above points is essentially limited to the claim that unit net invoice values for sales by UTP JA were at least 5 per cent higher than UTP DIP and KHK Scaffolding and Formwork LLC (UTP KHK) which did not operate in the JAFZ. It claims that no information is provided as to which of the several levels of trade in the UAE the unit net invoice value premium applied, whether the comparison was made by comparing equivalent models and whether price comparisons were undertaken with sales to UAE manufacturers who enjoy a duty exemption. ATM further contends that no explanation is given for the “*obvious conflict*” between the ADC's claim that UTP JA achieves a substantial price premium on the domestic market and the imperatives of commercial reality, that is, if two products are identical and are sold at the same level of trade by two or more domestic producers, it is simply impossible for one of those producers to sustain a very substantial price premium.

33. Further ATM noted that a constructed value has been used to determine normal value for a proportion of UTP JA's exports to Australia and that an error has been made in the calculation of the cost to make, by deducting the amount of the customs duty paid on domestic sales. According to ATM the trigger for payment of

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<sup>13</sup> Minter Ellison submission, Document #45 of EPR 320.

the duty is the exportation of the goods from the JAFZ to the UAE, not their production, and the amount of the duty is calculated by reference to the sales price to the UAE domestic customer. Consequently ATM contends there are no grounds on which it can be deducted from the cost to make the export goods, and in relation to the constructed normal value models, therefore, the key issue remains whether there has been a demonstrated impact on price comparability sufficient to justify an adjustment under s.269TAC(9).

34. ATM submits that in light of the substantial gaps in the ADC's treatment of issues raised in responses to SEF 320 and the absence of a convincing explanation to support the claim that price comparability has been affected, the decision to adjust downwards the normal value of UTP JA is not the correct or preferable decision.
35. I noted that this issue was specifically addressed in TER 320, with reference to the submission by ATM and the above points made by Minter Ellison.<sup>14</sup> The ADC in TER 320 refers to the Manual which provides for the ADC to make adjustments under s.269TAC(8) of the Act for sales which have been modified in different ways by taxes.<sup>15</sup> The ADC states that in the case of companies operating within the JAFZ, if goods produced in the JAFZ are sold into the UAE domestic market, exporters incur a 5 per cent customs duty payable by the exporter at the point of exit out of the zone. As a result, the ADC finds it reasonable to conclude that the additional cost burden imposed on the exporter affects selling price comparability. In response to ATM's submission and the points raised by Minter Ellison, the ADC provided the following clarifications:
- a. all goods sold by UTP JA into the domestic UAE market (other than to manufacturers) during the investigation period were subject to customs duty and the customs duty was applicable to all levels of trade;
  - b. verified source documents show the customs duty payable by UTP JA and the ADC confirmed it as a direct selling expense which was paid by UTP JA;

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<sup>14</sup> TER 320, pages 26 – 27.

<sup>15</sup> See the Manual, page 62.

- c. unit net invoice values for sales by UTP JA were at least 5 per cent higher than UTP DIP and UTP KHK which did not operate in the JAFZ; and
  - d. on the basis of the above, the ADC was satisfied that the additional cost of selling HSS for UTP JA into the UAE domestic market is included in the price paid by the purchaser of the goods and that the customs duty affected price comparability.
36. The ADC therefore remained satisfied that the customs duty adjustment was warranted.
37. I reviewed all the relevant documents and submissions relating to this adjustment in Investigation No. 320. During the Conference I requested clarification from the ADC on the ADC's statement in TER 320 that the unit net invoice values for sales by UTP JA were at least 5 per cent higher than UTP DIP and UTP KHK. In particular, I requested clarification on the calculation, and whether comparisons were made by comparing equivalent models and taking into account the various levels of trade.
38. During the Conference, the ADC pointed out that reference to this higher percentage was a general observation, after the ADC found that the adjustment was warranted based on the evidence, and that it was in fact not necessary for the ADC to do the comparison, being complementary to the documentary evidence of the adjustment. The ADC agreed to provide details of its calculation and analysis, which was subsequently provided to the Review Panel in the Further Information and Clarifications.
39. The Further Information and Clarifications, firstly showed that UTP JA domestic net invoice price for all products was on a weighted average [REDACTED] % higher than the weighted average net invoice price generally for all three UTP entities. However, UTP mostly sold [REDACTED] into the UAE domestic market, so an analysis was done on [REDACTED], which indicated that UTP JA domestic net invoice price for [REDACTED] was on a weighted average [REDACTED] % higher than the weighted average net invoice price for [REDACTED] for all three entities. Further, since UTP JA mostly sold [REDACTED] into the UAE domestic market to the

██████████ level of trade, the ADC did an analysis on this basis. UTP JA's prices were respectively █████ % and █████ % higher than UTP KHK's prices. UTP DIP did not report sales in a similar category. UTP JA's prices for sales of ██████████ to all levels of trade were █████ % higher than UTP DIP and UTP KHK.

40. After reviewing the Further Information and Clarifications on this issue, I am satisfied that the ADC's analysis show that UTP JA's prices were at least 5% higher than UTP DIP and KHK and that the comparisons have taken into account the different types of HSS and the various levels of trade. However, I agree with the ADC that this pricing analysis was not necessary to determine if the adjustment was warranted, and that rather, it is the documentary evidence and verified source documents, showing the customs duty payable by UTP JA for its domestic sales and confirmation of it as an additional cost burden affecting selling price comparability, that is relevant. I therefore consider that the ADC's subsequent pricing analysis to 'complement' its finding was unnecessary and somewhat of a 'red herring'. I consider that there is no basis for ATM's challenge of the adjustment, on this basis.
41. I am satisfied that the approach adopted by the ADC with regard to this adjustment and with the evidence it relied upon, as set out in TER 320<sup>16</sup> and discussed above.<sup>17</sup> I consider that the decision to grant the downwards adjustment to UTP JA's normal value for customs duty paid on sales to the domestic market, is reasonable and in accordance with the legislation and the ADC's practice, as set out in the Manual.
42. There is also no basis for ATM's claim relating to UTP JA's export sales which used a constructed normal value, that an error was made in the calculation of the cost to make by deducting the amount of the customs duty paid on domestic sales. The ADC methodology with regard to adjustments to constructed normal values

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<sup>16</sup> TER 320, page 27.

<sup>17</sup> See Paragraph 35 above.



under s.269TAC(2)(c), pursuant to s.269TAC(9), was discussed in the Conference with regard to the Indian drawback adjustment and referred to above.<sup>18</sup> In any event, it was stated in TER 320 that as the customs duty was excluded from UTP JA's cost to make and sell (CTMS) for the purposes of constructing normal values, the ADC only applied the downward adjustment to normal values determined under subsection 269TAC(1) and where the customs duty was applicable.<sup>19</sup> ATM's claim with regard to the UAE customs adjustment, both in respect of normal values based on selling prices and normal values based on constructed values, therefore fails.

### *Specification adjustment*

43. ATM states that in the EVR for Universal Tubes and Plastic Industries Limited, KHK Scaffolding and Formwork LLC and Universal Tube and Pipe Industries LLC (UTP) and in SEF 320, the ADC found that a specification adjustment was required for surrogate models. An appropriate upwards adjustment was made by the ADC including the amount for specification adjustment in the normal value of surrogate models for the collapsed UTP entity<sup>20</sup> in SEF 320:

*"In accordance with subsection 269TAC(8), the verification team has applied a specification adjustment to the normal values of those products exported to Australia that were not exact model matches (surrogate models) as discussed at section 5.7. Adjustments were made for physical differences in ends, lengths and finish, calculated using pricing lists applicable to the investigation period".<sup>21</sup>*

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<sup>18</sup> See Paragraph 28 above.

<sup>19</sup> TER 320, page 27.

<sup>20</sup> It should be noted that in calculating a dumping margin for UTP in SEF 320, the ADC considered it appropriate to collapse the three entities into a single entity, referred to as "UTP" in this report. In SEF 320 the ADC consolidated the sales and cost information of UTP JA, UTP DIP and UTP KHK and calculated a weighted average export price, normal value and dumping margin for the collapsed entity, UTP. In TER 320 the ADC reconsidered its decision to collapse UTP JA, UTP DIP and UTP KHK into a single entity and calculated individual dumping margins for each of the three entities. See ADC's discussion in Section 5.7 of TER 320, pages 22 – 24.

<sup>21</sup> Section 6.7 of EVR for UTP (Document #29 of EPR 320), pages 14 – 15.



44. ATM claims, that in TER 320, however, this specification adjustment for surrogate models was not applied to the uncollapsed individual UTP entities (UTP JA, UTP DIP and UTP KHK) resulting in an understated normal value and lower dumping margin. ATM claims further that TER 320 contains no reference or discussion as to the removal or otherwise of the adjustments, which were simply removed from the table of adjustments for each of the un-collapsed entities in TER 320, resulting in a lower normal value and dumping margin for the individual UTP entities.
45. I reviewed the relevant documentation and noted that ATM is correct in this observation, with the specification adjustment apparently removed in TER 320 from the uncollapsed entities, without explanation. I also reviewed Confidential Attachment 2 to TER 320 with regard to the UTP entities and was unable to see a specification adjustment for any of the three entities on the relevant spreadsheets. I therefore requested clarification from the ADC during the Conference as to why in the EVR for UTP and in SEF 320, the ADC made an upwards specification adjustment to the normal value, while in TER 320, this specification adjustment for surrogate models was not applied to the uncollapsed individual UTP entities (UTP JA, UTP DIP and UTP KHK).
46. During the Conference the ADC confirmed that the specifications adjustment was not made in respect of any of the separated UTP entities in TER 320. It stated that this was not directly related to the fact that the UTP entities were ‘uncollapsed’ and treated separately, but rather because of the change in the ADC’s model matching methodology from SEF 320, and applied to all exporters in TER 320, as a result of various submissions made to the ADC. When the ADC applied the new model matching methodology to the separated UTP entities, for the purpose of TER 320, it found that, in respect of many models, there were insufficient sales in the ordinary course of trade (OCOT) for a comparison, so the ADC used the cost of manufacture methodology (s.TAC269(2)(c) of the Act), with the result that there was no necessity for specification adjustments. The ADC conceded that the reason for it not applying this adjustment was not properly explained in TER 320.<sup>22</sup>

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<sup>22</sup> See Conference Summary.

47. I noted that the ADC discussed its changes in model matching methodology, generally in TER 320 <sup>23</sup> (although not specifically with regard the specification adjustment). I sought further clarification from the ADC on this adjustment after the Conference, which was provided in the Further Information and Clarifications. The reason for the change in the adjustment from SEF 320 to TER 320 was stated to be a change in model matching methodology resulting in insufficient sales in the OCOT for many models and the ADC using the cost of manufacture methodology to determine normal value, for a large proportion of models. I requested clarification from the ADC as to what the actual proportion of normal values that were constructed under s.269TAC(2)(c) were, in respect of each UTP entity, and why there was no requirement for a specification adjustment with regard to the smaller proportion of normal values calculated under s.269TAC(1). The ADC provided the proportions of s.269TAC(1) normal values to s.269TAC(2)(c) normal values in respect of all three entities. The s.269TAC(1) normal values constituted the smaller proportion in respect of each entity. The ADC responded to my query that for all the models based on s.269TAC(1) normal values for UTP JA, UTP DIP and UTP KHK respectively, there was no necessity to apply the specification adjustment in TER 320 since there were no differences between the exported goods and the domestic goods, being exact matches.

48. I accept the ADC's explanation and clarifications as to the effect of the change in model matching methodology on the product comparisons when UTP was 'uncollapsed' into separate entities, and consider it to be reasonable. I therefore reject ATM's claim with regard to the specification adjustment. However, the ADC should have provided a detailed explanation in TER 320 on the impact of the change in model matching methodology on the specification adjustment that had been provided for in UTP's VER and in SEF 320, but not in TER 320.

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<sup>23</sup> See Section 5.5 of TER 320, pages 20 – 21.

### *Weight tolerance adjustment*

49. ATM states that in the EVR for UTP and in SEF 320,<sup>24</sup> the ADC correctly found that a weight tolerance adjustment to the normal value was required, and an appropriate upwards adjustment was made for weight difference to export product based on the total differences in the standards.<sup>25</sup> ATM referred to the EVR for UTP where it was stated:

*“UTP sold different standards of HSS on the domestic and export market. The verification team considered that an adjustment was warranted in accordance with the variations in weight tolerances that are allowable under different standards. As the company was unable to quantify the actual weight differences, the verification team applied an adjustment based on the total differences in the standards. An upwards adjustment was applied to normal values on a transaction basis using standard information supplied in the sales data”.*<sup>26</sup>

50. ATM claims that in TER 320, however, this weight tolerance adjustment was not applied to the normal values of the separated individual UTP entities (UTP JA, UTP DIP and UTP KHK) resulting in understated normal values and lower dumping margins for one or more of the three exporters. ATM claims further that TER 320 contains no reference or discussion as to the removal or otherwise of the adjustments which were simply removed from the table of adjustments for each of the three entities. ATM contends that when this error in calculation is corrected, the result will be both an increase in the normal value and an increase in the dumping margins for UTP DIP and possibly also UTP JA and UTP KHK.

51. I reviewed the relevant documentation and noted that ATM is correct in this observation, with the weight tolerance adjustment apparently removed in TER 320 from the separated entities, without explanation. I also reviewed Confidential

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<sup>24</sup> SEF 320, page 26.

<sup>25</sup> ATM stated that presumably this adjustment was primarily for product exported from UTP DIP exported to AS/NZS1163.

<sup>26</sup> Section 6.9 of EVR for UTP, page 15.

Attachment 2 to TER 320 with regard to the UTP entities and was unable to see a weight tolerance adjustment for any of the three entities on the relevant spreadsheets. I therefore requested clarification from the ADC during the Conference as to why the ADC made an upwards weight tolerance adjustment to the normal value in the Exporter Verification Report (EVR) for UTP and in SEF 320 while this weight tolerance adjustment for surrogate models was not applied to the individual UTP entities (UTP JA, UTP DIP and UTP KHK) in TER 320.

52. At the Conference the ADC confirmed that the weight tolerance adjustment was not applied to the normal values of any of the 'uncollapsed' UTP entities in TER 320. It stated that the verification team concluded that an adjustment to account for the differences in the allowable mass tolerance was warranted, based on differences between the standard to which products exported to Australia were manufactured to comply with, and the standard to which domestic products were manufactured to comply with. Subsequently, it was found that the mass tolerance assumption on goods exported to Australia was too high and incorrectly based on the mass tolerance for large bundles, rather than on a per piece basis or length of tube, leading to an exaggerated upwards adjustment. Also, the ADC stated that after SEF 320, due to the change in model matching methodology, the ADC found that in respect of many models there were insufficient sales in the ordinary course of trade (OCOT) for a comparison, so the ADC used the cost of manufacture methodology (s.269TAC(2)(c)) for a large proportion of normal values. The ADC stated that normal values determined under s. 269TAC(2)(c) were not subject to any weight adjustment. As noted above, the ADC discussed its changes in model matching methodology generally in TER 320. However, it was not discussed specifically with regard the weight tolerance adjustment and the ADC conceded in the Conference that the reasons for not applying the mass tolerance adjustment after SEF 320 were not properly explained in TER 320.
53. I sought further clarification from the ADC on this adjustment after the Conference, which was provided in the Further Information and Clarifications. The ADC clarified that the finding that the mass tolerance assumption on goods exported to Australia was too high and incorrectly based on the mass tolerance for large bundles, referred to in the paragraph above, was in fact made before SEF 320. Therefore,

the ADC confirmed that the sole reason for the change in the weight tolerance adjustment from SEF 320 to TER 320 related to the change in model matching methodology, resulting in insufficient sales in the OCOT for many models and the ADC using the cost of manufacture methodology to determine normal value, for a large proportion of models. The ADC explained that when normal value has been determined under s. 269TAC(2)(c) it is understood that the export related cost of production already accounts for the relevant weight specification to which the exported goods are manufactured, and therefore no adjustment is warranted.

54. I accepted the explanation as to why the ADC did not apply the weight adjustment to normal values determined under s.269TAC(2)(c) but sought further clarification from the ADC as to why a weight adjustment would not apply to those normal values determined under s.269TAC(1), even if this was a smaller proportion of normal value calculations. The ADC conceded that in the body of work which led to the three separate dumping margin calculations for the three UTP entities in TER 320, the weight tolerance calculations applied to goods manufactured to the [REDACTED] standard in SEF 320 were inadvertently omitted in TER 320. The ADC then provided the Review Panel with further calculations to show what the increase would be to the TER 320 dumping margin calculations, if the weight adjustment was included: UTP JA's dumping margin of negative 2.3 per cent increases by [REDACTED] per cent and UTP KHK's dumping margin of 2.7 per cent increases by [REDACTED] per cent. As UTP DIP did not have any goods manufactured to that particular standard, no adjustment was made in respect of UTP DIP, and there was no change to its dumping margin of 0.1 per cent.

55. I do not consider the change in UTP JA's dumping margin to be material, so as to warrant it being considered not to be the correct or preferable decision, since the increased dumping margin is still a negative value, and would still result in the dumping investigation against UTP JA being terminated in accordance with s.269TDA(1)(b) of the Act. While the increase in UTP KHK's dumping margin is not that large, however, bearing in mind the size of the dumping margin calculated in TER 320, I consider that the increase is not 'immaterial', and that the margin calculated for UTP KHK in TER 320 was not the correct or preferable decision.

*Incorrectly calculated normal values in respect of two exporters from India and two exporters from the UAE formed the basis for the incorrect decision to terminate the investigation in relation to those exporters*

56. ATM does not elaborate on this ground of review in its application, but it presumably follows from its first ground of review relating to what ATM considers to be understated normal values as a result of the ‘unlawful allowance’ of certain downward adjustments and the failure to apply certain upward adjustments, discussed above. ATM contends that on the re-assessment of normal values, in accordance with its contentions relating to what it considers to be ‘unlawful allowances’, the dumping margins for all exporters from India, excluding Garg, and all exporters from the UAE, are not negligible and that the dumped volumes are substantial.

57. ATM’s first ground of review relating to various adjustments was not successful, except in the case of the weight tolerance adjustment in respect of UTP KHK, and the calculated normal values of two exporters from India (Surya and Utkarsh) and two exporters from the UAE (UTP JA and UTP DIP), which formed the basis of the decision to terminate the investigation in relation to those exporters, are not considered to be incorrect. Therefore this ground of review of ATM also fails. The increase in the positive dumping margin calculated for UTP KHK, as a result of the weight tolerance adjustment, does not have an impact on this ground of review.

*Incorrectly calculated normal values resulted in an underestimation of the volume of exports with dumping margins of 2% or more which formed the basis for the incorrect decision to terminate the investigation in relation to all other exporters from both countries on the grounds that any injury caused by their exports was negligible*

58. Similarly, ATM does not elaborate on this ground of review, but it presumably follows from its first ground of review relating to what ATM considers to be understated normal values as a result of the ‘unlawful allowance’ of certain downward adjustments and the failure to apply certain upward adjustments, discussed above. ATM contends that a re-assessment of normal values will result

in a finding of dumping from India and the UAE, at margins greater than negligible and in substantial volumes, causing and threatening material injury to the Australian industry.

59. ATM's first ground of review relating to various adjustments was not successful, except for the weight tolerance adjustment in respect of UTP KHK, and the calculated normal values of two exporters from India (Surya and Utkarsh) and two exporters from the UAE (UTP JA and UTP DIP), are not considered to be incorrect. Therefore there was no underestimation of the volume of exports with dumping margins of 2% or more, which formed the basis for the incorrect decision to terminate the investigation in relation to all other exporters from both countries on the grounds that any injury caused by their exports was negligible. The slight increase in the positive dumping margin calculated for UTP KHK, as a result of the weight tolerance adjustment, does not have an impact on volume of exports with dumping margins of 2% or more, since the dumping margin of UTP KHK was calculated to be above 2% in TER 320. Therefore this ground of review of ATM also fails.

#### *Error in concluding that dumped imports did not cause any material injury*

60. ATM claims that there was an error in concluding that dumped imports did not cause any material injury, based on, amongst other things: understated normal values, understated dumped volumes, understated lost volumes of galvanised HSS produced by the Australian industry, incorrectly attributed price undercutting to non-dumped goods, incorrectly attributed price suppression and depression to non-dumped goods, failure to consider the inability for ATM to maintain / regain lost galvanised CHS volume and closure of the Somerton facility. Each factor referred to by ATM will be discussed below.

#### *Understated normal values*

61. This issue of understated normal values has been discussed above, with regard to dumping margins. ATM's first ground of review relating to various adjustments was not successful, except for UTP KHK with regard to the weight tolerance adjustment, and the calculated normal values of the two exporters from India



(Surya and Utkarsh) and two exporters from the UAE (UTP JA and UTP KA), are not considered to be understated or incorrect. I consider that the slight understatement of the normal value calculated for UTP KHK in TER 320, as a result of the weight tolerance adjustment, has a minimal impact on the ADC finding that the injury caused by the dumping was negligible. Therefore ATM's claim that there was an error in concluding that any injury caused by the dumped imports were negligible, based on understated normal values, also fails.

#### *Understated dumped volumes*

62. The issue of understated dumped volumes has been discussed above. ATM's first ground of review relating to various adjustments was not successful, except for the weight tolerance adjustment with regard to UTP KHK, and the calculated normal values of two exporters from India (Surya and Utkarsh) and two exporters from the UAE (UTP JA and UTP DIP), are not considered to be understated or incorrect. Therefore the dumped volumes are also not considered to be understated. The increase in the positive dumping margin calculated for UTP KHK, as a result of the weight tolerance adjustment, does not have an impact on volume of exports with dumping margins of 2% or more, since the dumping margin of UTP KHK was already calculated to be above 2% in TER 320.
63. Therefore ATM's claim that there was an error in concluding that dumped imports did not cause any material injury, based on understated dumped volumes, also fails.

#### *Incorrectly attributed price undercutting to non-dumped goods*

64. ATM does not elaborate on this ground of review in its application, but it also appears to follow from its first ground of review relating to what ATM considers to be understated normal values as a result of the 'unlawful allowance' of certain downward adjustments and the failure to apply certain upward adjustments, discussed above. ATM contends that on the re-assessment of normal values, the dumping margins for all exporters from India, excluding Garg, and all exporters from the UAE, will not be negligible and that the dumped volumes are substantial.



Therefore, presumably, the basis of ATM's claim is that it considers that the ADC's attribution of price undercutting to non-dumped goods in TER 320 is incorrect.

65. ATM's first ground of review relating to various adjustments was not successful, except in the case of the weight tolerance adjustment with regard to UTP KHK, and the dumping margins of two exporters from India (Surya and Ukarsh) and two exporters from the UAE (UTP JA and UTP DIP), are not considered to be understated or incorrect. Therefore the attribution of price undercutting to non-dumped goods is not incorrect. The increase in the positive dumping margin calculated for UTP KHK, as a result of the weight tolerance adjustment, does not have an impact on this ground of review. This claim of ATM therefore also fails.

*Incorrectly attributed price suppression and depression to non-dumped goods*

66. ATM does not elaborate on this ground of review in its application, but it also appears to follow from its first ground of review relating to what ATM considers to be understated normal values as a result of the 'unlawful allowance' of certain downward adjustments and the failure to apply certain upward adjustments, discussed above. ATM contends that on the re-assessment of normal values, the dumping margins for all exporters from India, excluding Garg, and all exporters from the UAE, will not be negligible and that the dumped volumes are substantial. Therefore, presumably, the basis of ATM's claim is that it considers that the ADC's attribution of price suppression and depression to non-dumped goods in TER 320 is incorrect.
67. ATM's first ground of review relating to various adjustments was not successful, except in the case of the weight tolerance adjustment with regard to UTP KHK, and the dumping margins of two exporters from India (Surya and Ukarsh) and two exporters from the UAE (UTP JA and UTP DIP), are not considered to be understated or incorrect. Therefore the attribution of price suppression and depression to non-dumped goods is not incorrect. The increase in the positive dumping margin calculated for UTP KHK, as a result of the weight tolerance adjustment, does not have an impact on this ground of review. This claim of ATM therefore also fails.

*Understated lost volumes of galvanised HSS produced by the Australian industry*

68. ATM contends that the ADC did not adequately address the decline in ATM sales volume of galvanised circular hollow sections (CHS) from July 2011 to 2015 and identify this as an indicator of injury. ATM claims that the available evidence supports both the decline in volume of galvanised CHS manufactured by ATM and the existence of price undercutting of galvanised CHS by UAE and India. ATM contends further that it is not logical for the ADC to conclude that the exported product somehow did not compete with Australian Industry manufactured product when it has displaced Australian made product in the Australian marketplace throughout the injury period to a point where sales of galvanised volume in the investigation period were an insignificant contributor to revenue and profit.
69. ATM claims that its decision to focus on higher strength galvanised C350 CHS sales in the investigation period does not detract from the fact that ATM's sales of lower grade C250 CHS declined (due to dumping) to insignificant volumes during the injury period.<sup>27</sup> Further, ATM contends that the proposition that more than 30,000 tonnes of imported galvanised CHS was manufactured specifically for "*fit for purpose applications*"<sup>28</sup> is a misleading statement that has resulted in the ADC reaching an incorrect conclusion that the Australian product is to a higher specification and therefore not preferred. According to ATM, price is the overwhelming determining factor in a customer's selection of galvanised CHS product and the undercutting of Australian manufacturers prices by exporters from UAE and India has led to the loss of volume.
70. ATM contends that once the ADC correctly identifies that ATM has lost volume of galvanised CHS to imports and this has occurred as a result of price undercutting by exporters from the UAE and India, the ADC will also find that the Australian

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<sup>27</sup> ATM points out in footnote 23 of its application for review that C is a designation used by AS/NZS1163 to identify Cold Formed HSS and that it is followed by a grade designation for minimum yield strength of 250 or 350 for CHS and 350 or 450 for RHS.

<sup>28</sup> SEF 320, page 52.

Industry has suffered material injury which contributed to the closure of the ATM Somerton manufacturing facility.

71. In regard to this issue, I reviewed ATM's application to the ADC, ATM's Visit Report, SEF 320, TER 320 as well as various parties' submissions to the ADC, including ATM's submission to the ADC dated 29 June 2016,<sup>29</sup> which commented on the findings of SEF 320.
72. I question the rationale of the ADC's finding that the volume of galvanised CHS sold by ATM represented "*an immaterial proportion*" of its total HSS sales during the investigation period and that it was therefore satisfied that injury caused by the price undercutting in relation to dumped imports of HDG CHS from India and the UAE "*was negligible in the context of ATM's total HSS sales*".<sup>30</sup> The ADC's reasoning appears to be circular as it does not address the issue that dumped imports may have actually caused the low volumes of galvanised CHS, that the ADC simply dismisses as "*immaterial*". Also, the ADC states that given over 85 per cent of imports from India and the UAE were HDG CHS, for the purpose of the injury analysis, it would focus on ATM's sales of pre-galvanised HSS and HDG HSS and ATM's sales of galvanised CHS.<sup>31</sup> It would appear to be somewhat contradictory to subsequently state that it considered that the injury was negligible in the context of ATM's "*total HSS sales*".
73. A weakness in the ADC's reasoning is identified by ATM in its submission to the ADC in response to SEF 320:

*"It is therefore incorrect to conclude that because Austube Mills has limited sales volume of 250 grade pregalvanised CHS that it has not been adversely impacted by the dumped imports of 250 grade galvanised CHS from India and the UAE. Austube Mills is a regular supplier of pre-galvanised and galvanised CHS grades to the Australian market. It is prevented from supplying increased*

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<sup>29</sup> Confidential version of Document # 041 of EPR 320.

<sup>30</sup> TER 320, page 62 (top of page).

<sup>31</sup> TER 320, page 50.

*volumes due to the price undercutting from imported galvanised CHS, predominantly of 250 grade*.<sup>32</sup>

74. Since the ADC stated that its injury and causation analysis has focussed on imports of galvanised CHS, in the Conference I requested the ADC to provide a volume analysis for ATM's galvanised CHS, over the injury analysis period and the proportion of volume of galvanised CHS sold by ATM to its HSS sales during the investigation period, and indicate how this proportion changed over the injury analysis period. I also requested information on the undercutting margin of the imported 250 grade HDG CHS compared with ATM's 250 grade galvanised CHS, since the ADC had stated that its undercutting analysis revealed that the grade of HDG CHS imported into Australia was predominately a 250 grade product whereas the grade of galvanised CHS sold by ATM during the investigation period was predominately of a higher grade, and therefore the price cutting was "*not unexpected*".

75. The ADC was only able to provide a volume analysis for ATM's galvanised CHS during the investigation period, and advised that a similar analysis at the specific product level for the whole injury period was not possible since the data provided by the Australian industry in its application did not summarise to the necessary detail. It appears from the information on record and from the Further Information and Clarification provided by the ADC, that there was price undercutting of ATM's galvanised CHS by the dumped imports from UAE and India. It is therefore difficult to accept the ADC's dismissal of the injury caused by price undercutting to be negligible because of the low volume of galvanised CHS sold by ATM (in the investigation period) without an analysis of the volumes of galvanised CHS sold by ATM over the injury analysis period. I note that ATM in its submission to the ADC of 29 June 2016 stated:

*"The decline in sales of both 250 and 350 grade CHS over the injury period by more than [REDACTED] per cent from circa [REDACTED] tonnes [footnote omitted] per*

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<sup>32</sup> 7<sup>th</sup> page of Document # 041 of EPR 320 (unpaginated).

quarter in 2009/10, to █████ tonnes per quarter in the investigation period, is a further clear demonstration of volume injury suffered by Austube Mills.”<sup>33</sup>

While the injury analysis period starts only from 11 July 2011 (and consideration should not be given to data prior to this period), and while it is not clear if the reference to 250 and 350 grade CHS in the above-quoted paragraph relates to “galvanised” CHS, this does seem to indicate that there was a substantial reduction in volumes over the injury analysis period, resulting in the galvanised CHS sold by ATM during the investigation period representing what the ADC referred to as “*an immaterial proportion of its total HSS sales*”. It seems that a more detailed analysis of the volumes of galvanised CHS over the whole injury analysis period is required in order for the ADC to be “satisfied” that injury to the Australian industry is negligible, bearing in mind that a decision under s.269TDA(13) of the Act requires an positive state of satisfaction that the injury being caused by dumping is negligible.<sup>34</sup> If the ADC is unable to be positively satisfied that the injury is negligible, termination under s.269TDA(13) is not an option.

76. I also note that the ADC states in TER 320, after coming to the conclusion that ATM has experienced injury in relation to “*total sales of HSS*”, that in relation to sales of galvanised HSS specifically, the injury suffered was of a lesser magnitude during the investigation period, and that further analysis of galvanised CHS indicated that injury in the form of profit and profitability was not as noticeable during the investigation period.<sup>35</sup> This is a reference to the ADC’s analysis of profit and profitability in TER 320<sup>36</sup>, but again I find it difficult to accept the ADC’s conclusion, based only on data of galvanised CHS for the investigation period and not for the entire injury analysis period. Similarly, the ADC found that while in relation to its total HSS sales, it was satisfied that ATM had suffered injury in the form of price depression and price suppression, the price effects in relation to

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<sup>33</sup> 7<sup>th</sup> page of Confidential version of Document # 041 of EPR 320 (unpaginated).

<sup>34</sup> *Inglewood Olive Processors Ltd v CEO of Customs* [2005] FCAFC 101.

<sup>35</sup> TER 320, page 58.

<sup>36</sup> Section 6.5 of TER 320, pages 55 – 56.

galvanised CHS (the product predominately imported from India and the UAE), was less noticeable and are unlikely to have caused the price depression and price suppression to ATM's total HSS sales.<sup>37</sup> However, once again this conclusion is based only on data of galvanised CHS during the investigation period, and not for the entire injury analysis period, which I consider detracts from its probative value.

77. ATM also takes issue with the ADC's conclusion that the exported product did not compete with Australian Industry manufactured product, since the grade of HDG CHS imported into Australia was a predominately 250 grade product whereas the grade of galvanised CHS sold by ATM during the investigation period was predominately of a higher specification and therefore not preferred. The ADC observes that the steel grade is a price determinant and higher steel grades generally attract higher prices, resulting in the ADC dismissing the level of undercutting as "*not entirely unexpected*".<sup>38</sup> According to ATM, price is the overwhelming determining factor in a customer's selection of galvanised CHS product and the undercutting of Australian manufacturers prices by exporters from UAE and India has led to the loss of volume. In its submission of 29 June 2016<sup>39</sup> ATM contends that all grades, diameters and thicknesses of Galvanised CHS compete for like applications and that the presence of dumped goods has caused price suppression and depression, preventing ATM from re-establishing any substantial sales volume in this product group, resulting in material injury. ATM also points out the lack of sales volume in this product group contributed to the decision to close the Somerton Victoria production facility resulting in the loss of 100 jobs. The ADC itself stated elsewhere in TER 320 that, "*ATM's pre-galvanised products are interchangeable in a range of applications and compete with HDG HSS imports*".<sup>40</sup> On the material available, it is difficult to understand how the ADC seemed to rule out the possibility that the exported product competed with ATM's sales of galvanised CHS, thereby dismissing the price undercutting by the Indian and UAE exports. In my view a detailed analysis is required of the conditions of

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<sup>37</sup> TER 320, page 62. See also TER 320, pages 51 – 54.

<sup>38</sup> TER 320, page 62.

<sup>39</sup> Confidential version of Document # 041 of EPR 320 (unpaginated).

<sup>40</sup> TER 320, page 66.

competition between the dumped product imported from India and galvanised CHS sold by ATM on the domestic market, before ATM is able to make a conclusion in this regard.

78. The ADC also stated in TER 320:

*“Given the findings in section 5.18, which concluded that most imports from India and the UAE were either not dumped or dumped at negligible levels, it is likely that the injury suffered by ATM in relation to its sales of galvanised CHS and, in turn, total HSS sales, were not caused by dumping”.*<sup>41</sup>

79. Bearing in mind that the findings in Section 5.18 of TER 320 conclude that dumping was occurring from both India and UAE at margins above de minimus levels of 2% (ranging from 5.1% to 5.5% for Indian exporters and from 2.7% to 15.9% for UAE exporters), it difficult to accept this sweeping statement that, *“it is likely that the injury suffered by ATM in relation to its sales of galvanised CHS and, in turn, total HSS sales, were not caused by dumping”*. I do not consider that the finding in Section 5.18, in itself can lead directly to the required affirmative state of satisfaction that the injury caused by dumping is negligible, in accordance with s.269TDA(13). In addition, the words, *“it is likely”* does not instil sufficient confidence in the reader of TER 320, that the ADC was sufficiently satisfied that the injury caused by dumping is negligible, in accordance with s.269TDA(13).

80. For the reasons referred to above, and particularly since the ADC specifically narrowed the injury analysis to ATM’s sales of galvanised CHS, I consider that a more in depth analysis is required by the ADC, including in respect of the conditions of competition with the imported product, undercutting, volume and profit and profitability of ATM’s sales of galvanised CHS, in respect of the entire injury analysis period, in order to be able to be satisfied that the injury suffered by ATM with regard to galvanised CHS was negligible, in accordance with s.269TDA(13) of the Act.

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<sup>41</sup> TER 320, page 66.



81. In coming to this conclusion, it should be noted that I am not making a finding that the Australian industry has suffered material injury caused by the dumping or that the injury caused by dumping is not negligible. That issue will be a matter for the ADC to decide in making its report to the Minister.

*Failure to consider the inability for ATM to maintain / regain lost galvanised CHS volume and closure of the Somerton facility*

82. ATM contends that the ADC made a factual error in finding that, “*the closure of the Somerton plant was announced as early as June 2015, which was prior to the investigation period,*” and that therefore, it was unable to attribute ATM’s decision to close the Somerton plant to the effects of dumping from India and the UAE.<sup>42</sup>

83. ATM points out that the investigation period for the purpose of assessing dumping was 1 October 2014 to 30 September 2015<sup>43</sup> and the announcement month for the Somerton closure of June 2015 falls within that Investigation Period. ATM claims that this finding should be reversed and ATM’s decision to close the Somerton plant should be attributed to the loss of volume from dumped imported HSS from the UAE and India.

84. I reviewed TER 320 and ATM appears to be correct in identifying this discrepancy. I therefore requested the ADC to clarify this issue at the Conference. The ADC confirmed that there was a factual error in TER 320, and confirmed that the announcement of the closure of the Somerton facility was in fact within the investigation period, and not before the investigation period as stated in TER 320. The ADC’s resulting finding that it was “*therefore*” unable to attribute ATM’s decision to close the Somerton plant to the effects of dumping from India and the UAE, cannot therefore be supported.

85. During the Conference I requested information on the particular products of HSS that the Somerton plant manufactured and the ADC provided the information in

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<sup>42</sup> Section 7.11.2 of TER 320, pages 69 – 70.

<sup>43</sup> TER 320, page 9.



the Further Information and Clarification. While the Somerton plant output represented █% of total sales during the investigation period, it contributed █% of total sales of █. The ADC indicated that Somerton █ products and █ product. However, the data available related only to the investigation period, and the ADC indicated that relevant data was not available for the whole injury analysis period.

86. As part of its analysis of the sales volume of galvanised CHS over the injury analysis period, the ADC should therefore also do an analysis of the output of the Somerton plant during the injury analysis period and properly consider whether its closure was an indicator of injury. In the Further Information and Clarification, the ADC submitted comments and opinion as to why it considered that the Somerton plant closed. Although the ADC stated that all the data upon which it had relied to make the comments, was available during the investigation, I decided not to take the ADC's comments and opinion into consideration relating to this issue, since I considered it to be in the form of a submission, and not information that the Review Panel can have regard to.

#### *Other Issues relating to causal link*

87. There are a few other issues relating to the causal link that were not specifically raised by ATM, but which I consider worth mentioning. In its analysis of the size of the dumping margins for the purpose of determining causal link, under s.269TAE(1)(aa) of the Act, the ADC stated that the weighted average dumping margin is negative 1.9 per cent for all exports from India and negative 2.1 per cent for all exports from the UAE. Further, the ADC stated that the volume of goods where the dumping margin was not negligible, i.e. above 2 per cent, represented around 2 per cent of the overall Australian market for HSS in the investigation period, and that the Commissioner was not satisfied that these dumping margins, in and of themselves, enabled importers of HSS to have a distinct competitive advantage on price compared to the Australian industry.<sup>44</sup>

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<sup>44</sup> TER 320, page 60.

- a. Firstly, the ADC appears to have misconstrued s.269TAE(1)(aa) by including in the calculation of the weighted average dumping margin, the negative and negligible margins. The relevant section states that in determining causal link the Minister may have regard to, “*the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped*” (underlining added). The sizes of the dumping margins that the ADC should therefore have considered range from 5.1% (Good Luck Steel Tubes Limited) to 5.7% (Uncooperative and All Other Exporters) for India; and range from 2.7% (Ajmal) to 15.9% (Uncooperative and All Other Exporters) for UAE, which are all above the 2% negligible level;
- b. Secondly, the reference to the volume of dumped goods representing around 2 per cent of the overall Australian market for HSS is somewhat misleading, since volume of dumped goods is usually considered with reference to total Australian import volume, (not with reference to the Australian domestic market), and is taken to be a negligible volume when less than 3% of the total Australian import volume.<sup>45</sup> The ADC already found that it was “*satisfied*” that when expressed as a percentage of the total import volume of the goods, “*the volume of dumped goods from India and the UAE separately are greater than 3 per cent of the total import volume and are therefore not negligible*”.<sup>46</sup> This leads me to question the resulting finding that the Commissioner was, “*not satisfied that these dumping margins, in and of themselves, enabled importers of HSS to have a distinct competitive advantage on price compared to the Australian industry*”.

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<sup>45</sup> s.269TDA(3) and (4).

<sup>46</sup> TER 320, page 48.

## Decision

88. For the reasons set out above:

- a. the decision to terminate the dumping investigation is affirmed:
  - i. in so far as it relates to Garg Tubes Limited (Garg) from India and Universal Tubes and Plastic Industries Limited (UTP JA) from the UAE, in accordance with subsection 269TDA(1)(b)(i); and
  - ii. in so far as it relates to Surya Global Steel Tubes Ltd (Surya) and Utkarsh Tubes & Pipes Ltd (Utkarsh) from India and Universal Tube and Pipe Industries LLC (UTP DIP) from the UAE, in accordance with subsection 269TDA(1)(b)(ii).
  
- b. The decision to terminate the dumping investigation is not considered to be the correct or preferable decision and is revoked:
  - i. in so far as it relates to the amount of the dumping margin of KHK Scaffolding and Formwork LLC (UTP KHK), and any resulting effect of UTP KHK's dumping margin on the reviewable decision; and
  - ii. based on negligible injury caused by the dumped goods, in accordance with s.269TDA(13), in relation to all other exports of HSS from India and the UAE.

89. In coming to this conclusion I am not making a finding that the Australian industry has suffered material injury caused by the dumping or that the injury caused by dumping is not negligible. That issue will be a matter for the ADC to decide in making its report to the Minister.



Leora Blumberg  
Anti-Dumping Review Panel Member  
28 January 2017