



Australian Government
Anti-Dumping Review Panel

Application for review of a Commissioner's decision

Customs Act 1901 s 269ZZQ

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Commissioner of the Anti - Dumping Commission.

Section 269ZZO *Customs Act 1901* sets out who may make an application for review to the ADRP of a review of a decision of the Commissioner.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after the applicant was notified of the reviewable decision.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel begins to conduct a review (by public notice in the case of termination decisions and by notice to the applicant and the Commissioner in the case of negative prima facie decisions, negative preliminary decisions and rejection decision). Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after the Panel begins to conduct a review. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

¹ By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

NON-CONFIDENTIAL

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 0 of this application form (s269ZZQA(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application, refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Austube Mills Pty Ltd (hereafter referred to as "ATM").

Address: 146 Ingram Road, Acacia Ridge, Queensland 4110

Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: Brett Willcox

Position: Manager Trade Measures

Email address: brett.willcox@austubemills.com

Telephone number: (07) 3909 6130

3. Set out the basis on which the applicant considers it is entitled to apply for review to the ADRP under section 269ZZO

Austube Mills Pty Ltd "ATM" ("the Applicant") was the applicant for anti-dumping measures under s.269TB of *the Customs Act 1901* ("the Act") that preceded the decision of the Commissioner to terminate the investigation (i.e. the reviewable decision). The applicant is a member of the Australian industry producing the goods the subject of the application for measures.

4. Is the applicant represented?

~~Yes~~ No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

Not applicable

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

NON-CONFIDENTIAL

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under

- Subsection 269TC(1) or (2) – a negative *prima facie* decision
- Subsection 269TDA(1), (2), (3), (7), (13), or (14) – a termination decision
- Subsection 269X(6)(b) or (c) – a negative preliminary decision
- Subsection 269YA(2), (3), or (4) – a rejection decision
- Subsection 269ZDBEA(1) or (2) – an anti-circumvention inquiry termination decision

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods the subject of this application (the goods) are:

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.

The following categories of HSS are excluded from the application:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm 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 an actual thickness of 1.44mm.
- Stainless steel CHS and RHS sections.

The goods covered by this application include all electric resistance welded pipe and tube, whether or not including alloys, meeting the above description of the goods (and exclusions), regardless of whether or not the pipe or tube meets a specific structural standard or is used in structural applications.

Anti-dumping measures currently apply to HSS exported from P R China, Korea, Malaysia, Taiwan and Thailand. Countervailing measures apply to HSS exports from China.

7. Provide the tariff classifications/statistical codes of the imported goods

The goods are typically classified under the following tariff classifications and statistical codes:

- 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).

in Schedule 3 of the *Customs Tariff Act 1995*. ATM also understands that some HSS may be classified to 7306.19.00 on the basis that it may be dual-specified HSS. ATM would also like to highlight that it understands certain volumes of RHS product exported from the UAE have been incorrectly classified to 7306.90.00.

The goods exported from India and the UAE attracts a 4 per cent rate of duty.

8. If applicable, provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

Anti-dumping Notice (ADN) No. 2016/71 refers.

9. Provide the date the applicant received notice of the reviewable decision

The Applicant received notification from the Anti-Dumping Commission on 25 July 2016.

****Attach a copy of the notice of the reviewable decision to the application****

A copy of the notice of the reviewable decision is attached as Attachment 1 to this application.

PART C: GROUNDS FOR YOUR APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision

Grounds for review

Austube Mills Pty Ltd [Administrators Appointed] [ATM] is an interested party, being the applicant in relation to the application that led to the making of the Commissioner's decision.

The Commissioner's decision to terminate Investigation 320 was incorrect because:

- in relation to all exporters from India and the UAE, normal values ascertained under s.269TAC of *the Act* were understated as a result of the unlawful allowance of certain downward adjustments and the failure to apply certain upward adjustments;
- the incorrectly calculated normal values in respect of two exporters from India and two exporters from the UAE formed the basis for the Commissioner's incorrect decision to terminate the investigation in relation to those exporters;
- the incorrectly calculated normal values resulted in an underestimation by the Commissioner of the volume of exports with dumping margins of 2% or more and that underestimation formed the basis for the Commissioner's 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;
- a number of the Commissioner's further findings on material injury and its causes, used to justify the incorrect decision that dumped prices did not enable importers of HSS to have a distinct competitive advantage on price compared to ATM, were based on dumping margin calculations using understated normal values.

NON-CONFIDENTIAL

The Commissioner's errors in ascertaining normal values involve the treatment of adjustments concerning the following subjects:

- Indian duty 'drawback' adjustment;
- UAE Customs Duty adjustment;
- Specification tolerance adjustment; and
- Weight tolerance adjustment.

The Commissioner's error in concluding that dumped imports did not cause any material injury involves consideration of the following matters:

- understated normal values;
- understated dumped volumes;
- understated lost volumes of galvanised HSS produced by the Australian industry;
- incorrectly attributing price under cutting to non-dumped goods;
- incorrectly attributing price suppression and depression to non-dumped goods; and
- failure to consider the inability for ATM to maintain / regain lost galvanised CHS volume and closure of Somerton facility.

Background

On the 12 November 2015, ATM lodged an application under subsection 269TB(1) requesting that the Parliamentary Secretary publish a dumping duty notice in respect of HSS exported to Australia from India and the UAE. In the Application ATM alleged that it suffered material injury caused by HSS exported to Australia from India and the UAE at dumped prices.

In the application ATM provided evidence² to the Commission of price undercutting by exporters from UAE and India which caused material injury. ATM also provided evidence of a substantial decline in sales of galvanised CHS since July 2009³ culminating in significantly reduced sales in the investigation period.

Having considered the application, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of HSS from India and the UAE on 22 December

² ATM Application submission confidential attachment A-9.1.1

³ ATM Application submission Financial Appendix A3

NON-CONFIDENTIAL

2015. On the 22 December 2015 the Commissioner published a Public Notification of an Initiation of an Investigation.

The Commissioner, after having regard to the application, submissions and other relevant information, was satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of HSS exported to Australia from India and the UAE. As a result, the Commissioner made a Preliminary Affirmative Determination on 22 February 2016 as detailed in ADN 2016/18 in which the Commissioner found that HSS from India and UAE was dumped at margins and in volumes that were not negligible.

On the 9 June 2016 the Commissioner published a Statement of Essential Facts (SEF). Within this SEF the Commissioner made the following findings:

- *The Commissioner's preliminary finding is that during the investigation period, while certain exports of HSS from India and the UAE were dumped, these exports did not cause material injury to the Australian industry.⁴*
- *In conclusion, the investigation has found that:*
 - *the size of the dumping margins observed in relation to exports of HSS from India and the UAE are unlikely to have enabled importers of HSS to have a distinct competitive advantage on price compared to ATM;*
 - *the predominant volume of imports which undercut ATM's prices were not dumped or were at prices where the dumping margin was negligible;*
 - *the level of price undercutting for ATM's galvanised products is likely amplified due the price of higher grade product sold by ATM which attracts a price premium over the cheaper grade of imported CHS;*
 - *injury analysis for ATM's galvanised products (which accounts for 85 per cent of the imports from India and the UAE) shows ATM suffered price and profit injury to a lesser extent than its overall HSS sales.*

The Commission also finds that injury from other factors may have contributed to ATM's injury. These other factors include:

⁴ EPR Folio 320/39 SEF p. 46

NON-CONFIDENTIAL

- *market preference for HDG HSS sourced from India and the UAE in fit for purpose applications;*
- *reductions in HRC costs (which represent a substantial proportion of total CTMS);*
- *increased volumes from India at prices which are not dumped or are dumped at negligible margins; and,*
- *the continued presence of imports of HSS from China in significant volumes.*

As a result of the above, the Commissioner concludes that the Australian industry has not suffered material injury caused by dumped exports of the goods from India and the UAE.⁵

On the 25 July 2016 the Commissioner published a Termination Notice (i.e. ADN 2016-71) and Termination Report No. 320 (**Report**). This Report contained the following findings:

- *The Commissioner considers that locally produced HSS are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods, which comprises three Australian producers, ATM, Orrcon Steel Pty Ltd (Orrcon) and Australia Pipe and Tube Pty Ltd (APT).⁶*
- *The Commissioner finds that the Australian market for HSS is supplied by the Australian industry and imports from a number of countries, including India and the UAE, with the largest being China. The Commission estimates that the size of the Australian market during the investigation period was approximately 456,000 tonnes.⁷*
- *The Commissioner has found that:*
 - *with the exception of Garg, and UTP JA, HSS exported to Australia from India and the UAE during the investigation period were dumped;*
 - *the dumping margins for Surya, Utkarsh and UTP DIP were negligible;*
 - *the volume of dumped goods from India and UAE were not negligible.⁸*

⁵ EPR Folio 320/39 SEF p. 52

⁶ EPR Folio 320/53 Termination Report p.10

⁷ EPR Folio 320/53 Termination Report p.15

⁸ EPR Folio 320/53 Termination Report p.18

NON-CONFIDENTIAL

- *Based on an analysis of the information contained in the application and obtained and verified during the verification visit, the Commission considers that ATM has experienced injury in relation to total sales of HSS in the form of:*
 - *price depression;*
 - *price suppression;*
 - *reduced profits;*
 - *reduced profitability;*
 - *reduced revenue;*
 - *return on investment;*
 - *reduced employment numbers; and*
 - *reduced capacity.*

However, in relation to sales of galvanised HSS specifically, the injury suffered was of a lesser magnitude during the investigation period. Further analysis of galvanised CHS indicates that injury in the form of profit and profitability was not as noticeable during the investigation period.⁹

- *The Commissioner is satisfied that the injury, if any, to the Australian industry caused by goods exported at dumped prices was negligible.¹⁰*
- *As a result of the Anti-Dumping Commission's (the Commission) investigation, the Commissioner is satisfied that during the investigation period, in relation to:*
 - *HSS exported by Garg Tubes Limited (Garg) from India and Universal Tubes and Plastic Industries Limited (UTP JA) from the UAE, no evidence was found that dumping had occurred and therefore the investigation must be terminated in accordance with subsection 269TDA(1)(b) of the Customs Act 1901 (the Act) in so far as it relates to these exporters;*
 - *HSS exported by 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, the dumping margins were found to be negligible (less than 2 per cent), and therefore the investigation must be terminated in*

⁹ EPR Folio 320/53 Termination Report p.58

¹⁰ EPR Folio 320/53 Termination Report p.59

NON-CONFIDENTIAL

accordance with subsection 269TDA(1)(b) in so far as it relates to these exporters; and

- *all other exporters of HSS from India and the UAE, the injury to the Australian industry caused by the dumped goods the subject of the application exported to Australia from each of India and the UAE is negligible and therefore the investigation must be terminated in accordance with subsection 269TDA(13).¹¹*

10.1 The Commissioner has erred in allowing the Indian duty drawback adjustment

In defending its preliminary decision to make a downward adjustment to the normal values of cooperating Indian exporters for a 'drawback' payment, the Commission concentrated at some length on exploring the factual differences between REP 254 and the present matter. However, these differences are irrelevant to the central issue of whether prices for HSS exported from India to Australia were in fact reduced by the amount of the rebate payment. No evidence of any such reductions or evidence of relevant inquiries by the Commission can be found in the SEF and the only 'evidence' provided in the Termination Report, in a purported rebuttal of ATM's submissions on the issue, was that ...*Surya reaffirm that the export price was modified to take into account availability of duty drawback ...and a reference to a submission by Surya at item 52 in EPR 320. Despite the fact that the tenor and terms of the Commission's observation are incompatible with the occurrence of any earlier demonstration and assessment of price modification, reference to the Surya submission reveals the following statement:*

Surya were able to demonstrate to the ADC verification team that export price was modified to take into account of availability of duty drawback that is not available on domestic sales, through price calculation and comparison. In addition, of 54 of 112 models, normal value was calculated by constructed method where duty drawback was deducted from cost to make.

This claim of a 'demonstration', however, is not supported by any reference to the event by the Commission in the Exporter Verification Report "EVR" for Surya, the SEF or the Termination Report and it is not mentioned in any of Surya's earlier submissions to the Commission. Significantly, no such demonstrations by other Indian exporters are claimed or identified in any of the material contained in the EVR.

¹¹ EPR Folio 320/53 Termination Report p.6

NON-CONFIDENTIAL

In relation to the constructed normal value applied to a proportion of the models exported to Australia, we note that an error has been made in the calculation of the cost to make by deducting the amount of the duty drawback. The trigger for payment of the drawback is the exportation of the goods, not their production, and the amount of the payment is determined by reference to the export price of the goods. Consequently, there are no grounds on which the duty can be deducted from the cost to make the export goods.

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). As the Commission 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, we submit that the preferred and correct decision is 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.

10.2 The Commissioner has erred in allowing the UAE customs duty adjustment

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.

The facts relevant to this adjustment, available from the Electronic Public Record (**EPR**), are as follows:

- There are three related suppliers of HSS to Australia that are referenced as UTP JA, KHK and UTP DIP;
- UTP JA's production facility is located in the Jebel Ali Free Zone (JAFZ) and the other two producers operate within the UAE;
- Imported inputs to production within the JAFZ are exempt from customs duties;
- Sales of HSS by UTP JA to domestic customers, other than manufacturers, in the UAE are subject to 5% customs duty being paid on the domestic invoice value while sales to export customers are exempt from this levy.

SEF 320 contains the following preliminary finding:

NON-CONFIDENTIAL

The Commission is satisfied that the Customs Duty adjustment is warranted. The domestic selling prices of UTP JA have been examined and the Commission is satisfied that the Customs Duty affected price comparability.

In our response to the SEF we attached legal advice obtained from Minter Ellison that included the following points in relation to the issue of the UAE Customs Duty adjustment:

On this issue [identification and quantification of price differences] the only observation by the Commission is that ... *the visit team verified source documents which showed that (sic) the Customs Duty payable by UTP JA and confirmed it as a direct selling expense which was paid*¹². There is no indication of what goods and what period this duty payment related to and the SEF is also silent on how the amount was allocated to the particular domestic sales at the one of five levels of trade that formed the basis of normal value calculations.

On the issue of price comparability or modification the Commission has proceeded by way of the assertion that ...*domestic selling prices of UTP JA have been examined and the Commission is satisfied that the Customs Duty affected price comparability.*¹³ The nature and scope of any examination or analysis of UTP JA's domestic prices is unexplained, there is no reference to any examination of the domestic prices of other producers and the report contains no relevant examination of pricing factors and market forces in the UAE domestic market. Absent any cogent and comprehensive analysis of such issues it appears that contra-indications to a claimed effect on price comparability have also been ignored by the Commission.

One contra-indication arises out of the factual finding that UTP JA pays customs duty on the invoice value of domestic sales. This would mean that unlike other domestic producers, including its related entities, it pays additional duty on the value added in the manufacturing process undertaken in the JAFZ and on the profit realised on the sale to the domestic customer. By contrast all other domestic producers of HSS pay customs duty of 5% only on the value of imported HRC used in the production process. Thus, faced with this uncompetitive cost structure, it is unrealistic to presume that UTP JA could and does raise its prices to a level sufficient to recoup the whole of the customs duty impost. The clear consequence of this situation is that the other domestic producers with the lower cost structures are the price setters in the market and the only option for UTP JA is to match those prices by reducing margins. Forced into this response to remain competitive, it cannot be demonstrated that the difference in domestic and export sales has affected price comparability.

¹² SEF 320: p.27

¹³ id.

NON-CONFIDENTIAL

Furthermore, the Commission's finding at page 28 of the SEF that *...UTP's sales were conducted at several distinct levels of trade...* implies a significant level of price variability in the UAE domestic market. To provide any support for its preliminary finding, the Commission would need to reveal if and how it was able to compare UTP JA's duty paid prices with the variable trade level specific prices of other domestic producers and what evidence was found to support its 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.

There is also no evidence of a comparability analysis at specific trade levels. For example the Commission is satisfied that manufacturers of HSS based products constitute one trade level in the UAE domestic market and UTP JA has stated that its sales to that level of trade are exempt from customs duty. It appears that no analysis of these sales has been undertaken to establish whether lower prices to this market segment existed and if so whether any other factors influenced the pricing differentials.

While in the Termination Report the Commission has confirmed the payment of customs duties on sales by UTP JA to the UAE domestic market its response to the above points in the Report 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 who did not operate in the Jebel Ali Free Zone.* 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 taking into account factors such as the UTP-JA predominantly producing galvanised CHS and whether price comparisons were undertaken with sales to UAE manufacturers who enjoy a duty exemption. Most importantly, however, no explanation is given for the obvious conflict between the Commission's claim that UTP JA achieves a substantial price premium on the domestic market and the imperatives of commercial reality. 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.

We note that a constructed value has been used to determine normal value for a proportion of UTP JA's exports to Australia and we also note 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. The trigger for payment of 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 there are no grounds on which it can be deducted from the cost to make the export goods. 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).

We submit that in light of the substantial gaps in the Commission's treatment of issues raised in responses to the SEF and the absence of a convincing explanation to support the claim that price comparability has been affected, the decision of the Commissioner to adjust downwards the normal value of UTP JA is not the correct or preferable decision.

10.3 The Commission has erred in not applying a specification adjustment in the final determination

In the EVR for UTP¹⁴ and in the subsequent SEF¹⁵ the Commission correctly found that a specification adjustment was required for surrogate models. An appropriate upwards adjustment was made by the Commission including the amount for specification adjustment in the normal value of surrogate models for the collapsed UTP entity.

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.¹⁶

In the Report, however, this specification adjustment for surrogate models was not applied to the un-collapsed individual UTP entities (UTP JA, UTP DIP and KHK) resulting in an understated normal value and lower dumping margin. The Report 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.

When the Commission corrects this error in calculation the result will be both an increase in the normal value and an increase in the dumping margin for the individual UTP entities.

¹⁴ ERP Folio 320/29 Verification Visit Report p. 14-15

¹⁵ EPR Folio 320/39 SEF p. 26

¹⁶ ERP Folio 320/29 Verification Visit Report p. 14-15

10.4 The Commission has erred in not applying a weight tolerance adjustment in the final determination

In the EVR for UTP¹⁷ and in the subsequent SEF¹⁸ the Commission correctly found that a weight tolerance adjustment to the normal value was required. An appropriate upwards adjustment was made for weight difference to export product based on the total differences in the standards. Presumably this adjustment was primarily for product exported from UTP DIP exported to AS/NZS1163.

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.¹⁹

In the Termination Report however this weight tolerance adjustment was not applied to the normal value of the un-collapsed individual UTP DIP entity (or UTP JA and KHK) resulting in an understated normal value and lower dumping margin for one or more of the three exporters. The report contained 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.

When the Commission corrects this error in calculation the result will be both an increase in the normal value and an increase in the dumping margin for the individual UTP DIP entity and possibly other UTP entities of UTP JA and KHK.

¹⁷ ERP Folio 320/29 Verification Visit Report p. 14-15

¹⁸ EPR Folio 320/39 SEF p. 26

¹⁹ ERP Folio 320/29 Verification Visit Report p. 15

10.5 The Commissioner has erred by not adequately considering volume injury from dumped imports of galvanised CHS from India and the UAE.

The Commission did not adequately address the decline in ATM sales volume of galvanised CHS from July 2011 to 2015 and identify this as an indicator of injury.²⁰ This is because the Commission did not ask the right questions to identify whether price undercutting of ATM's selling price of galvanised CHS contributed to a decline in volume in addition to price suppression / depression. The available evidence supports both the decline in volume of galvanised CHS manufactured by ATM²¹ and the existence of price undercutting of galvanised CHS by UAE and India²².

It is not logical for the Commission 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. ATM's decision to focus on higher strength galvanised C350²³ 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.

The proposition that more than 30,000 tonnes of imported galvanised CHS was manufactured specifically for "fit for purpose applications"²⁴ ([redacted]) [Confidential source] is a misleading statement that has resulted in the Commission reaching an incorrect conclusion that the Australian product is to a higher specification and therefore not preferred. 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.

²⁰ EPR Folio 320/41 p. 5 Section II b

²¹ ATM Application submission Financial Appendix A3

²² Verification visit supporting documentation file: [redacted] [Confidential file name]

²³ C is a designation used by AS/NZS1163 to identify Cold Formed HSS. It is followed by a grade designation for minimum yield strength of 250 or 350 for CHS and 350 or 450 for RHS.

²⁴ ERP Folio 320/39 SEF p. 52 "market preference for HDG HSS sourced from India and the UAE in fit for purpose applications"

NON-CONFIDENTIAL

Once the Commission correctly identifies that ATM has lost volume of galvanised CHS to imports^{25 26}, and this has occurred as a result of price undercutting by exporters from the UAE and India²⁷, the Commission will also find that the Australian Industry has suffered material injury which contributed to the closure of the ATM Somerton manufacturing facility.

Further when the Commission reverses the Indian duty draw back adjustment, the UAE customs duty adjustment as well as correctly applying the specification and weight tolerance adjustments, then the Commission will find that HSS from all exporters from the UAE were dumped at non-negligible margins and all exports from India, with the exception of those by Garg, were dumped at non-negligible margins.

10.6 The Commissioner 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 ...sic.... Therefore the Commission is unable to attribute ATM’s decision to close the Somerton plant to the effects of dumping from India and the UAE”*²⁸

As stated on page 9 of the Termination Report No.320²⁹ *“the investigation period for the purpose of assessing dumping is 1 October 2014 to 30 September 2015”*. The announcement month for the Somerton closure of June 2015 falls within the Investigation Period. The Commission must reverse its finding and attribute ATM’s decision to close the Somerton plant to the loss of volume from dumped imported HSS from the UAE and India.

10.7 Conclusion

When the Commission reverses the Indian duty draw back adjustment, the UAE customs duty adjustment as well as correctly applying the specification and weight tolerance adjustments, then the Commission will find that HSS from all exporters from the UAE was dumped at non-negligible margins and all exports from India, with the exception of those from the exporter Garg, were dumped at non-negligible margins. ATM estimates that 70% of product from India and 100% of product from the UAE

²⁵ ATM Application submission Financial Appendix A3

²⁶ EPR Folio 320/41 p. 5 Section II b

²⁷ Verification visit supporting documentation file: [REDACTED] [Confidential file name]

²⁸ ERP Folio 320/53 Termination Report p. 69-70

²⁹ ERP Folio 320/53 Termination Report p.9

NON-CONFIDENTIAL

will be found to be exported at non negligible dumped prices and this is estimated to represent a material 11% of the Australian Market.

This material volume of dumped exports which undercut Australian Industry prices resulting in price suppression and depression, as well as lost volume of galvanised CHS, resulted in material injury to the Australian industry and contributed to the decision during the investigation period to close the Somerton Manufacturing facility.

11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10

The correct and preferable decision, following the revocation of the reviewable decision by the Panel, is that the Commissioner publishes as soon as practicable an SEF which:

1. re-ascertains normal values by eliminating downward adjustments to normal values for exporters from India and UTP JA from the UAE on account of duty drawback and customs duty respectively and by restoring upward adjustments to normal values for appropriate exporters from the UAE on account of specification and weight tolerance differences;
2. finds, after the re-ascertainment of normal values, that 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;
3. finds that the dumping of HSS from India and the UAE , at margins greater than negligible and in substantial volumes, has caused and is threatening material injury to the Australian industry;
4. includes a preliminary assessment that the Minister, under s.269TG(1) and (2), should publish a dumping duty notice declaring that:
 - exports of HSS from India, excluding exports by Garg Tubes Limited, and exports of HSS from the UAE have been dumped and exports of like goods from those countries may be dumped in the future;

NON-CONFIDENTIAL

- the dumping of the goods has caused, and the likelihood of future dumping is threatening, material injury to the Australian injury producing like goods;
- Section 8 of the Dumping Duty Act applies to future exports of like goods.

12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision

Only answer question 12 if this application is in relation to a reviewable decision made under subsection 269X(6)(b) or (c) of the Customs Act.

Not Applicable

NON-CONFIDENTIAL

PART D: DECLARATION

The applicant/~~the applicant's authorised representative~~ [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* beginning to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name:

Brett Willcox

Position:

Trade Measures Manager

Organisation:

Austube Mills Pty Ltd

Date:

24/08/2016

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative:

Organisation:

Address:

Email address:

Telephone number:

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:.....

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /



Customs Act 1901 – Part XVB

ANTI-DUMPING NOTICE NO. 2016/71

Certain Hollow Structural Sections

Exported from India and the United Arab Emirates

Termination of Investigation

Public notice under subsection 269TDA(15) of the Customs Act 1901

On 22 December 2015, I, Dale Seymour, the Commissioner of the Anti-Dumping Commission, initiated an investigation into the alleged dumping of certain hollow structural sections (the goods) exported to Australia from India and the United Arab Emirates (UAE), following an application lodged by Austube Mills Pty Ltd under subsection 269TB(1) of the *Customs Act 1901* (the Act).

Public notice of my decision not to reject the application and to initiate the investigation was published on the Anti-Dumping Commission's (the Commission) website on 22 December 2015 (Anti-Dumping Notice (ADN) 2015/154 refers). The ADN is available at www.adcommission.gov.au.

As a result of the Commission's investigation, I am satisfied that:

- in relation to Garg Tubes Limited and Universal Tubes and Plastic Industries Limited, there has been no dumping by those exporters of any of those goods the subject of the application and, therefore, I have terminated the investigation in accordance with subsection 269TDA(1)(b)(i) of the Act so far as it relates to these exporters;
- in relation to Surya Global Steel Tubes Ltd, Utkarsh Tubes and Pipes Ltd and Universal Tube and Pipe Industries LLC, the goods exported by those exporters have been dumped, but the dumping margin is less than two per cent and, therefore, I have terminated the investigation in accordance with subsection 269TDA(1)(b)(ii) of the Act so far as it relates to these exporters; and
- 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, have terminated the investigation, so far as it relates to

India and the United Arab Emirates, in accordance with subsection 269TDA(13) of the Act.

In making the decisions to terminate, I have had regard to the application, submissions from interested parties, *Statement of Essential Facts* (SEF) No.320, submissions in response to that SEF, and other relevant information.

Termination Report No. 320, which sets out reasons for the termination decisions, including the material findings of fact or law upon which the decisions are based, has been placed on the Commission's public record at www.adcommission.gov.au.

The applicant may request a review of this decision to terminate the investigation by lodging an application with the Anti-Dumping Review Panel in the approved form and manner within 30 days of the publication of this public notice.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2418 or email at operations3@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

25 July 2016