STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

NON CONFIDENTIAL
Anti-Dumping Commission Case No 254:
SahaThai Steel Pipe Application for Review by the ADRP

11th November 2015.

Mr Scott Ellis,
Member,
Anti-Dumping Review Panel.

By email: ADRP@industry.gov.au

Dear Mr Ellis,

We write on behalf of the Thailand exporter SahaThai Steel Pipe Public Company Limited. (Sahathai) and in response to the Anti-Dumping Commissions published reply of the 10th November 2015 to your invitation dated the 21st October 2015.

Introduction:

Sahathai's understanding is that as a member of the World Trade Organisation (WTO), Australia is bound by the WTO Uruguay Round Ant-Dumping Agreement (the WTO Agreement) and the export price to Australia of its domestic like product is considered to be the price paid before any costs in respect of the goods after exportation are included.

Sahathai also understands that for anti-dumping purposes the normal value is generally defined as the comparable price at which a like good would be sold in its domestic market and in the event that its export price to Australia was found to have been less than its determined normal value, anti-dumping duties should only be applied to 'level the playing field' where factual and evidential dumping gave Sahathai product an unfair advantage in the Australian market place. Sahathai strongly rejects the Anti-Dumping Commissions (The Commissioner) treatment of both its export price and normal value that has resulted in the Parliamentary Secretary's ('Ministerial') decision to impose a 5.7% dumping duty margin on its exports to Australia.

As the ADRP's published notice of the 12th October 2015 advised ,Sahathai made an application requesting a review of that decision on the following grounds:-

(a) The decision failed to take into account , when determining the normal value of the goods, the availability to Sahathai of a duty drawback in respect of materials used by Sahathai in manufacturing like goods to those exported to Australia;

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

(b) The Parliamentary Secretary was precluded from publishing a retrospective dumping duty notice under s269TG(1) by reason of the non-cancellation of securities required to be provided on and after 16th March 2015; and

(c) The decision wrongly failed to treat the place of containerisation as the place of export in respect of full container loads exported to Australia.

This response:

We would like to respond to the Anti-Dumping Commissions reply to the ADRP in the following order:-

- Cancellation of s42 Securities
- Place of Export for full container loads
- Non allowance of an adjustment for duty drawback.

Cancellation of Securities:

1. We note the Commission's statement in its response that it advised NTIS (Customs-ABF) on the 16th September 2015 which securities are to be cancelled due to the legislated four-month period. We submit this should have occurred on the 16th July 2015.

2. At the time we submitted the application for review neither the Australian importer or its Customs Broker had any knowledge of the Commissioner's advice to the NTIS.(Customs-ABF). The importers Customs Broker in question has today (11th Nov 2015) advised this writer that it his understanding the NTIS 'has not yet received information from the Dumping Commission to be able to convert the securities into Actual Dumping Duty at this stage'.

3. In Sahathai's opinion however, the critical consideration is the Commissioner's acknowledgement of the four-month legislated requirement in terms of s45 of the Customs Act to cancel securities required vide s42 of the Customs Act.

4. It needs to be stated that on the 16th March 2015 the Commissioner publicly notified under subsection 269TD(4) of the Act, of his decision to make a preliminary affirmative determination (PAD). In the making of that preliminary affirmative determination, PAD report No 254 sets out the Commissioner's grounds for being satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in respect of the Sahathai goods exported to Australia from Thailand.

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

5. The Commissioner's public notification also revealed that under subsection 269TD(4)(b) of the Act, that he was satisfied that it was necessary to require and take securities in order to prevent material injury occurring to the Australian industry while the investigation continued. The notice explains that the 'then' AC& BPS (Customs) will require and take securities under section 42 of the Act in respect of interim dumping duty that may become payable in respect of the goods exported from Thailand for home consumption on or after 16th March 2015.

6. On the 28th May 2015,the Commissioner published its preliminary findings in Statement of Essential Facts Report No 254 (SEF 254). Following revisions to preliminary dumping margins outlined in SEF 254, the Commissioner advised by public notice that:

- He remained satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice:
- He remained satisfied that it was necessary to require and take securities in respect of interim dumping duty that may become payable; and
- 'Customs' require and take securities at revised rates specified in the notice.

7. On the 12th August 2015, following the Commission's investigation, the Parliamentary Secretary to the Minister for Industry (and Science) issued a notice which made the following decisions:

   (a) Pursuant to subsection 269TG(1) of the Customs Act 1901(the Act), to impose interim dumping duties in accordance with Section 8 of the Customs Tariff(Anti-Dumping) Act 1975 on like goods that were exported to Australia after the Commissioner made a preliminary determination under section 269TD, but before the publication of the notice; and

   (b) Pursuant to subsection 269TG(2) of the Act, to impose interim dumping duties in accordance with Section 8 of the Customs Tariff (Anti-Dumping) Act 1975 on like goods that are exported to Australia after the date of publication of the notice.

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

NON CONFIDENTIAL
Anti-Dumping Commission Case No 254:
SahaThai Steel Pipe Application for Review by the ADRP

Reasons for Believing that the Reviewable Decision is NOT the Correct or Preferable Decision:

8. Sahathai submits that the Parliamentary Secretary's decision to impose interim dumping duties on like goods under subsection 269TG(1) of the ACT is not correct or preferable as subsection269TN(2) of the ACT prevents the publication of retrospective notices in circumstances where securities have been cancelled or would have been cancelled under the ACT.

9. The power of the Parliamentary Secretary to publish a dumping duty notice under subsection 269TG(1) of the ACT is subject to section 269TN of the Act. Section 269TN deals with retrospective notices and subsection269TN(2) of the Act empowers:

    - The publication of a notice under subsection 269TG(1) , 269H(1) , 269TJ(1) or 269TK(1) in respect of goods that have been entered for home consumption in relation to which security has been taken under section 42 in respect of any interim duty that might become payable under section 8, 9, 10 or 11 of the Dumping Duty Act, as the case may be (not being security that has been cancelled) , by reason of the publication of such a notice or in relation to which the Customs had the right to require and take such security (not being security that would have been cancelled under this Act if it had been taken) {underline emphasis added}

10. Section 42 of the Act specifies the rights of the Commonwealth to require and take securities, including interim dumping duties that may become payable under the Customs Tariff (Anti-Dumping) Act 1975.

11. Section 45 of the Act deals with the cancellation of securities .In particular, section 45(2) of the Act requires that:

    - A security taken in respect of any interim duty that may become payable on goods under section 8, 9, 10, 11 of the Customs Tariff (Anti-Dumping) Act 1975 (Dumping Duty Act) being a security taken before the publication under Part XVB of this Act of a notice declaring that section to apply to those goods shall be cancelled before the expiration of the prescribed period after the date the security is taken.

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

12. Section 45(3) of the Act defines 'prescribed period' to mean:

- (a) in relation to a security in respect of any interim duty that may be payable on goods under section 8 or 9 of the Customs Tariff (Anti-Dumping) Act 1975- a period described in subsection (3A) of this section; or
- (b) in any other case –a period of four months.

13. Section 45(3A) of the Act makes clear that:

- For the purposes of paragraph (3)(a), the period is:
- (a) unless paragraph (b) of this subsection applies:
- (i) a period of 4 months; or
- (ii) if an exporter of goods of the kind referred to in paragraph (3)(a) requests a longer period-a period(not exceeding 6 months) that the Commissioner determines to be appropriate; or
- (b) if the security was taken in connection with the an investigation under Part XVB and the non-injurious price of goods the subject of the investigation as ascertained, or last ascertained, for the purposes of the investigation is less than the normal value of such goods as so ascertained , or last so ascertained:
- (i) a period of 6 months ;
- or (ii) if an exporter of goods of the kind referred to in paragraph (3)(a) requests a longer period –a period (not exceeding 9 months) that the Commissioner (within the meaning of Part XVB) determines to be appropriate.

Conclusions:

14. Sahathai submits that it is clear then that securities must be cancelled within four months of the decision to take securities, namely from the 16TH March 2015, and can only be extended beyond this period if one of two exceptions applies. The first exception allows a two month extension for a total period of six months, if an exporter requests an extension. The second exception also allows an additional two month extension for a total period of six months if the Commission imposes a lesser

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

duty rule as a result of the ascertainment of the non-injurious price, or a maximum nine months if an exporter requests a longer period.

15. In this Case No 254, there is no information on the public record which suggests that any exporter of the goods from Thailand requested a longer period to the taking of securities.

16. Furthermore, the final Report No 254 confirms that the non-injurious price is higher than the corresponding normal value for every exporter from Thailand which means that the normal value is the operative measure and the interim dumping duties will be set in accordance with the full margins of dumping.

17. Given that neither of the two exceptions outlined in section 45 of the Act were applicable in this Case No 254, the securities, in our opinion, were required to be cancelled within four months of the decision to take securities, being no later than 16 July 2015.

18. Article 7.4 of the WTO (Anti-Dumping Agreement) provides further support for the limitation on the period of imposition of provisional measures. It states:

    - 'The application of provisional measures shall be limited to as a short a period as possible ,not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation , examine whether a duty lower than the margin of dumping would be sufficient to remove injury, those periods may be six and nine months, respectively.

19. We can quote two WTO Dispute Panel decisions supporting the WTO Agreement:

    - Panel Report Mexico-AD investigation of High Fructose Corn Syrup from the USA-WT/DS 132 R, para 7.182, page 225- '{t}he language of Article 7.4 is clear and explicit on the question of allowable duration of a provisional measure'. And the Panel added ' {t}he AD Agreement contains specific rules for the implementation of Article V1 of GATT 1994 with respect, inter alia, to the period of application of provisional measures. Those rules are binding on all Members…'

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

- A more recent WTO Dispute Panel in China –High Performance Stainless Steel Seamless Tubes from Japan and the EU concurred with the views expressed by the previous panel-WT/DS 454R and WT/DS450R para 7.334.

20. Sahathai therefore contends that the relevant period for the continued imposition of provisional measures on exports of HSS from Thailand lapsed on the 16TH July 2015, and as such, securities applying to importations that occurred in that four month period ought to have been cancelled prior to the 16TH September 2015.

21. On that basis, Sahathai submits that the Commissioner erred by not requesting and advising NTIS (Customs) to cancel the relevant securities after the valid period for taking of securities had lapsed. Had the Commissioner not erred, securities would have been cancelled and the Parliamentary Secretary would have been prevented by subsection 269TN(2) of the Act from publishing a retrospective notice under subsection 269TG(1) of the Act.

22. Notwithstanding the Commissioner's apparent failure to request securities be cancelled, the expiry of the relevant four month period for the taking of securities removes the right of 'Customs' (ABF) to require and take securities on importations of HSS from Thailand. As such all relevant securities would have been cancelled if they had been taken and accordingly, the Parliamentary Secretary is further prevented from publishing a retrospective notice under subsection 269TG(1) of the Act.

23. The Commission's final report No 254 recommends that the Parliamentary Secretary declare in accordance with subsection 269TG(1) that section 8 of the Dumping Duty Act applies to:

    - The goods exported by all exporters from Thailand <u>to the extent permitted by section 269TN; and</u>

    - Like goods that were exported to Australia by all exporters from Thailand , after the Commissioner made a PAD under section 269TD(1) on the 16th March 2015 but before publication of the notice, to the extent permitted by section 269TN. (Attachment *3 refers)

    (underlined emphasis added)

24. There appears to be no discussion or reasoning in final Report No 254 which explains whether the Commissioner considered that the recommended declaration was permitted by section 269TN of the Act. If the Commissioner considered that the

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

declaration was permitted by section 269TN, there is no explanation or interpretation of the applicable prescribed period in this case, and how the cancellation of securities under section 45 of the Act was not required.

25. *Attachment 3 referred to in para 23 would appear to be relating to 'ATM's operational capabilities table' and not of any relevance to section 269TN of the Act.

SUMMARY STATEMENT –What Sahathai considers the Correct or Preferable Decision should be on these grounds submitted in the application:

26. Sahathai submits that the Parliamentary Secretary was prevented from publishing a dumping duty notice under subsection 269TG(1) of the Act, due to the expiration of the relevant prescribed period set out in section 45 of the Act. In that circumstance, section 45(2) of the Act required 'Customs' (ABF) to cancel securities relating to importations of HSS from Thailand during the four month period following the decision to require and take securities. Further, the lapsing of the prescribed period also prevented 'Customs' (ABF) from requiring and taking securities on importations of HSS from Thailand entered for home consumption after 16th July 2015, being the date of expiry of the period of validity of provisional measures.

27. Therefore, Sahathai holds the view that in those circumstances , the correct and preferable decision was for the Commissioner to recommend and the Parliamentary Secretary to accept, that section269TN of the Act prevented publication of a dumping duty notice under subsection 269TG(1) of the Act, due to the lapsing of the valid period for taking of securities.

PLACE of EXPORT- Section 154 of the Customs Act.

28. Section 4 of the Customs Act states that ' Customs Acts mean this Act and any instruments (including rules, regulations or by-laws) made under this Act and any other Act, and any instruments (including rules, regulations or by-laws) made under any other Act , relating to customs in force within the Commonwealth or any part of the Commonwealth'.

29. It defines **Customs Tariff** –'means an Act imposing duties of customs , and includes such an Act that has not come into operation'.

30. Section 42 of the Customs Act is obviously utilised by the Anti-Dumping Commission and this, in our opinion, the Commission should also observe the application of section 154 of the Act in 'dumping' investigations.

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

31. For purposes of Customs duty valuation, Section 154 of the Act provides for the place of export for fully containerised cargo to be at the ex-works level. The Anti-Dumping Commission can, and has, determined normal values:

- at the ex-works level;
- at the FAS level
- at the FOB level

32. Recent Commission cases involving Ex-Works normal value determinations are:

-Case No 234 on Q& T Plate ex Japan
-Case No 240 Rod In Coil ex certain countries.

33.The commission's response to the ADRP on this ground for appeal quotes the Commission's Manual which considers that goods are exported when they leave the country of export although an ex-works price may be used , 'for example , in a situation where charges are all inclusive of local and international charges and that it is impracticable to segregate them.'

34. This was not the case in respect to Case No 234 when the ex-works price was determined when, in our opinion, all relevant local and international charges were transparent and readily segregated.

35. It is the case that in respect to the fully containerised exports by Sahathai, the 'container charges' are segregated and readily identified but the overriding consideration has to be section 154 of the Customs Act which states the place of export is the exporters premises when the containers are stuffed/loaded at that site.

36. Sahathai rejects the Commission's view that an FOB level calculation provides a more accurate comparison of expenses incurred between domestic sales and export sales irrespective of whether the goods have been containerised which ignores the valuation provisions of section 154 of the Act.

37. The basic tenet for comparing domestic and export sales is that they be comparable sales and as the Commission verified, the domestic sales were delivered but they are not containerised.

SUNMMARY:

Sahathai considers the correct and preferable decision was to determine the normal value for containerised exports at the ex-works level being in harmony with section 154 of the Customs Act.

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

Duty Drawback Adjustment:

38. With respect to the duty drawback adjustment, the Commission's response to the ADRP states that -' Subsection 269 TAC (8)(c) of the Act provides that , such an adjustment to normal value **is only allowable** where it is established that the price for like goods upon which the normal value is based and the export price are modified in different ways by taxes or the terms or circumstances of the sales to which they relate.; **- emphasis added.**

39. As detailed in our application for review the grounds for review are that it was verified by the Commission's visit team and further substantiated by documentary evidence to the Commission that import duty was paid on imported Hot Rolled Coil (HRC) used in the production of domestically sold like goods and the imported Hot Rolled Coil (HRC) used to produce the Australian exports did not contain import duty - this fact is indisputable.

It is simply wrong for the Commission to assert that because Sahathai may import its HRC from various countries and since there are both import duties and anti-dumping duties in place in Thailand , Sahathai's claims towards a flat duty on imported HRC is not correct.

The import duty paid by Sahathai on its imported HRC was the flat import duty and no dumping duty was payable on any imported HRC used to produce the HSS sold domestically .Documentary evidence was provided to the Commission.

That statement from the Commission on flat duty is false.

40. It can only be concluded that the Commission has denied Sahathai a legitimate adjustment for import duty paid on HRC used for production of domestic sales for reasons that (1) Sahathai's Accounting system does not account for import duty PAID on HRC in a distinct, separate account BUT rather as is the universal experience and practice, it accounts for the fully absorbed INTO-STORE inventory cost which obviously includes the cost of the HRC and the relevant charges for receiving it into the works and (2), Sahathai is unable to track the consumption of specific HR Coils when used for the production of the HSS sold domestically.

41. Sahathai is a publicly listed company; has independent audited accounts and its accounting system and practices comply with Thailand's acceptable standards. What entitlement therefore has the Anti-Dumping Commission to demand Sahathai should have had an accounting standard to its satisfaction, which in this circumstance is a standard mandated by the Commission's Case Management team and not that of the verification team that undertook the visit to Sahthai. .

STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702
jack@itada.com.au

42. As explained in the application for review, and in submissions to the Commission, the Commission correctly observed in the SEF that the Exporters Questionnaire submitted by Sahathai had not raised the issue of duty drawback appropriately, but this was sufficiently rectified at the verification stage and subsequent to the verification stage. Sahathai insists that the verification visit provides that opportunity.

43. Sahathai also insists that it has demonstrated its entitlement to an adjustment for import duty paid on imported HRC with compelling evidence and in their opinion the Commission's failure to accept what has been evidenced and verified in accordance with WTO policy and practice is effectively in violation of Australia's obligation for ensuring its observance of WTO obligations and commitments

44. The most important documentation in any dumping investigation is the verified source documents that provide the basis for a company's accounting system that is independently audited and compliant with the country's generally accepted standards.

In closing, the Commission's treatment of this adjustment is simply wrong and the relevant Australian legislation and the WTO Articles on which that legislation is based has been provided in the application for review.

SUMMARY:

The WTO provision on which the Australian legislation is based only refers to differences affecting comparability and not conscious modifications by a producer and the Commission's treatment based on whether Sahathai actually accounts for the import duty in its local pricing considerations is arguably wrong.

The reviewable decision is not the correct or preferable decision for reasons including the Commissioner's failure to adjust Sahathai's normal value for import duty paid on imported HRC used in the production of locally sold like goods and the allowance to which Sahathai is legitimately entitled to would result in a lesser dumping duty margin.

Thank you for your consideration,

Regards,

M J Howard
On behalf of 'Sahathai. '

.