

17 June 2015

Mr Bora Akdenis
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Anti-Dumping Commission
Level 35, 55 Collins Street
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For Public File

Dear Mr Akdenis

Investigation No. 254 – Statement of Essential Facts No. 254 - hollow structural sections exported from Thailand

Executive Summary

Austube Mills Pty Ltd (“ATM”) welcomes the publication of Statement of Essential Facts (“SEF”) No. 254 concerning exports of hollow structural sections (“HSS”) from Thailand.

Following ATM’s application for measures on 10 June 2014 asserting that exports of HSS from Thailand were at dumped prices that had caused and were threatening to cause, material injury to the Australian industry, on 21 July 2014 the Anti-Dumping Commission (The Commission”) initiated a formal inquiry.

SEF No. 254 summarises the Commission’s findings into HSS exported from Thailand during the period 1 July 2013 to 30 June 2014. The Commission has determined that HSS exports from Thailand were at dumped prices as follows:

Exporter	Dumping Margin
Saha Thai Steel Pipe Public Company Limited	5.7%
Pacific Pipe Public Company Limited	15.1%
Samchai Steel Industries Public Company Limited	19.8%
Uncooperative exporters	29.7%

The Commission has also determined that the Australian industry manufacturing HSS has suffered injury in the following forms:

- price suppression;
- reduced profits and profitability;
- reduced domestic revenues;
- reduced capital investment;
- reduced return on investment;
- write-down of goodwill associated with the HSS business;
- reduced research and development expenditure;
- reduced production and capacity utilisation; and
- reduced investment.

The Commission has established that HSS exported from Thailand undercut the selling prices of the Australian industry and has caused material injury to the local industry. This material injury will continue if anti-dumping measures are not imposed.

ATM does not consider that Saha’s claim for duty drawback can be accepted as it is based upon information submitted later, unverified and cannot be substantiated with a high degree of certainty.

It is noted that SEF No. 254 recommends the basis for a non-injurious price for the Australian industry. ATM is opposed to the use of the lesser duty rule as it is arbitrarily based and does not sufficiently remove the injury from dumping. Without detracting from this position, ATM disagrees with the proposed basis for a non-injurious based upon ATM's cost-to-make-and-sell ("CTM&S") during the investigation period uplifted by a level of profit determined from Australian Bureau of Statistics ("ABS") data for the primary metal and metal manufacturing sector in 2008/09. ATM does not consider this industry average can substitute actual profits achieved by the industry and accepted by the Minister in Report No.177.

It is also proposed that anti-dumping measures be based upon the ad valorem method. ATM is aware that *ad valorem* measures can be readily manipulated by the exporter and the measures therefore do not remove the injury that they are intended to prevent. For this reason ATM is recommending measures based upon the combination method.

ATM requests the Commissioner to recommend to the Parliamentary Secretary that anti-dumping measures be imposed to reduce the injurious effects of dumped HSS exported from Thailand.

Dumping investigation

The Commission received completed Exporter Questionnaire Responses ("EQRs") from:

- Saha Thai Steel Pipe Public Company Limited ("Saha");
- Pacific Pipe Public Co., Ltd ("Pacific"); and
- Samchai Steel Industries Public Company Limited ("Samchai").

The Commission conducted a verification visit at Saha and a "truncated" verification visit at Samchai. The Commission did not visit Pacific as it has previously visited Pacific on two occasions.

Saha

The Commission determined normal values for Saha based upon domestic sales of HSS that were made in the ordinary course of trade, with adjustments made for non-matching models. In respect of sales of like goods made by Saha for the Thai domestic market, the Saha Exporter Verification Report states¹:

"Saha Thai stated that HSS are manufactured to domestic standard certification TIS and international standards ASTM, JIS, DIN, BS, UL, AS/NZ and API. Saha Thai advised that goods made to Australian standards were made to the same tolerances whether intended for the export or domestic market. They further advised that they were required to obtain certification from the Thai Industrial Standards Institute – part of the Ministry of Industry, in order to produce AS1163. The company undergoes a yearly audit to maintain this accreditation. Saha claimed that AS1163 products command a domestic price premium".

It is further stated at Section 6.1 of the Saha Exporter Verification Report, that²:

"The company explained that the market does not recognise brands of HSS and that customers generally selected the goods based upon price. Saha Thai stated that the exception is AS standard which is highly regarded in Thailand, being the standard of choice for the construction industry, and which is produced specifically to satisfy automotive requirements and as such, AS1163 commands a domestic price premium."

The Commission was provided with domestic and export sales by Saha for the investigation period. It is claimed that the models produced by Saha are identified by product code and that the sales listings identify the relevant standard to which the goods have been produced.

¹ Refer Saha Thai Exporter Verification Report, Section 3.4, P. 13.

² Ibid, P.28.

ATM is surprised by the Commission's findings in relation to sales of HSS by Saha on the Thai domestic market. Whereas Saha claims that it manufactures HSS to international standards and sells this domestically (i.e. to the construction industry), this was not ATM's understanding from the independent market survey. The survey confirmed that the construction industry in Thailand accounted for approximately two-thirds of total demand, with 60 per cent of those sales for structural applications. Some of the construction industry sales are not of standardised pipe, and commonly referred to as commercial grade. In the 2012 verification visit, the then Customs and Border Protection excluded "commercial" grade pipes as not alike to the exported goods. The current Saha exporter verification report makes no reference to "commercial" grade pipe. Only a small proportion of total HSS sales are sold to the automotive sector, with producers generally sourcing the raw material hot rolled coil ("HRC") from Japan.

Further, a search of the Thai Industrial Standards Institute website has no reference to certification of Saha Thai or any other Thai pipe producer to AS1163 for domestic supply. In fact, Saha Thai is not listed under the "List of Certified Organizations According to Product Certification to Foreign Standards for Export". It should also be noted that AS1163 "Cold-formed structural steel hollow sections" is not a recognised standard for automotive applications. ATM believes this places doubt over Saha Thai's claim regarding a "certified" equivalent AS1163 standard in Thailand and whether the domestically sold product does in fact comply with the mass tolerance requirement of AS1163.

ATM refers the Commission to [*exporter briefing details prior to Saha verification visit*] which demonstrated that domestically sourced Saha Thai HSS did not comply with AS1163 mass tolerance requirements. Unless Saha was able to demonstrate valid mass tolerance compliance with AS1163 on domestically sold product, ATM reaffirms the requirement for a mass tolerance upward adjustment to the domestic sell price.

The independent market survey does not support the claim in the Saha Exporter Verification Report (public file version) that HSS sold to the construction industry in Thailand is manufactured to AS 1163 and is the "standard of choice". The market survey refers to differing "quality" and "standard preference" between sectors.

It is concluded by ATM that the domestic sales of HSS by Saha that are to the AS1163 and AS1074 standards are not significant. This is supported by the findings in the independent market survey. However, the Commission appears to be satisfied that there is a sufficient volume of domestically-produced HSS to AS1163 and AS1074 standards.

ATM requests the Commission to re-examine the like goods sold on the Thai domestic market by Saha to ensure that the goods:

- do qualify as being to AS1074 and/or AS1163 standard for mass tolerance and grade;
- are not claimed to be of both TIS107 and an international standard equivalent (as these would not qualify as being of AS1074 or AS1163 standard);
- are in sufficient quantities to be considered for normal value purposes; and
- in the absence of actual mass data an upward adjustment is required to Saha's normal value.

SEF No. 254 indicates that the Commission is to consider late representations (provided immediately prior to the publication of SEF No. 254) made by Saha in respect of a claimed adjustment for duty drawback.

ATM rejects any basis for altering the findings determined in the Saha Exporter Verification Report that concluded no adjustment for duty drawback was warranted. This is consistent with the treatment of duty drawback for Pacific as the payment of import duty cannot be wholly and certainly attributed to domestic sales only.

The case management team's original decision to reject ambit claims for duty drawback based on incorrect formulas and assumptions remains the correct finding.

*After the visit, an in consultation with the case management team, concerns were raised regarding the formula and its assumptions. Accordingly, it was decided that Saha Thai's original calculation with no duty drawback adjustment would lead to a more accurate outcome.*³

It is clear from the discussions involving the visit team and the case management team that the most accurate outcome is reflected with no duty drawback adjustment.

Further the investigating team also reported

*"that although Saha Thai's CTMS is calculated down to the product code level, it does not differentiate between the costs of domestic and export HSS and that import duties paid is applied equally between domestic and export HSS."*⁴

It is reasonable to expect that if duties had been paid on HRC used to produce domestic HSS and were not paid (via a duty drawback mechanism) on HRC used to produce export HSS, these costs differences would be apparent in the CTMS of domestic HSS versus export HSS. They were not. Even if Saha Thai had recorded differences, the Commission's Dumping and Subsidy Manual states that

*"Recorded differences do not, of themselves, constitute grounds for an adjustment for drawback as in this situation it is known there are no differences in import duties."*⁵

The Commission should refrain from entertaining any further "methodologies" for including a downward adjustment for duty drawback as provided by Saha. The acceptance of any theoretical adjustment that is proffered on dubious allocations between domestic and export sales cannot be justified and, at the very least, be rejected as unverifiable.

Pacific

ATM is prevented from commenting in detail on the Pacific normal values as a public file version of the basis for determining Pacific's normal values and dumping margins has not been made available.

It is noted by ATM in SEF No. 254 that the Commission has granted Pacific a downward level of trade adjustment for claimed selling cost differences. It is assumed by ATM that this relates to sales via distributors on the domestic market. Pacific has sought a similar adjustment in earlier investigations.

ATM requests the Commission to exercise care in accepting the claimed level of trade adjustment. It is ATM's expectation that the Commission has adequate supporting information (and documentation) demonstrating the existence of price differentials between the different levels of trade as sold on the Thai domestic market to substantiate the claimed adjustment.

ATM concurs with the Commission and does not consider that Pacific's claim for an adjustment for inter-company sales commissions to its related party Tamose Trading can be justified. The claimed adjustment between related party entities cannot be viewed as an actual cost incurred by Pacific, and should therefore be rejected.

³ Saha Thai Visit Report p 25

⁴ Saha Thai Visit Report p 25

⁵ Dumping and Subsidy Manual ,p63

Samchai

ATM has observed the comments in the Samchai Exporter Visit Report when asked to demonstrate how it calculated the actual weight of the goods sold in accordance with the particular standard and schedule, Samchai provided a “standard weights by product code for AS standard products” subsequent to the visit.

It is not clear from the report that the Commission was able to “test” the standard weights with actual weights as claimed in domestic sales by Samchai. ATM therefore challenges the claim that the domestic sales by Samchai as selected for normal value purposes are representative of sales of AS1074 grade HSS pipe that possesses the same tolerances as the goods exported to Australia during the investigation period.

Material injury

ATM agrees with the Commission’s assessment that it has experienced injury in the following forms throughout the investigation period:

- price suppression;
- reduced profits and profitability;
- reduced domestic revenues;
- reduced capital investment;
- reduced return on investment;
- write-down of goodwill associated with the HSS business;
- reduced research and development expenditure;
- reduced production and capacity utilisation; and
- reduced investment.

ATM submits that HSS exports from Thailand have been a major cause of the injury experienced by the Australian industry during the investigation period (refer further below).

Causation

The Commission considers that the exports of HSS from Thailand have caused material to the Australian industry. The Commission has arrived at this view due to the following factors:

- (i) the dumping margins are not insignificant and in the range 5.7 per cent to 19.8 per cent;
- (ii) the price undercutting for all importers across all grades of HSS was in the range 7.2 per cent to 21.0 per cent;
- (iii) a comparison of specific RHS AS1163-C350LO prices at the free-into-store point confirmed price undercutting of 3.7 per cent;
- (iv) The levels of price undercutting and size of the dumping margins prevented the Australian industry from raising prices to recover from material injury and therefore was a cause of price suppression to the Australian industry; and
- (v) The price impact of the dumped Thai exports contributed to reductions in profit and profitability of the Australian industry.

ATM welcomes the Commission’s assessment of causation and agrees with the findings contained in SEF No 254. The volume of HSS exported from Thailand in the investigation period was significant – at approximately 34,000 tonnes. The level of price undercutting identified by the Commission for Thai HSS exports to Australia from exports that account for the second largest source of supply (behind China, which is subject to an anti-circumvention inquiry for the goods) – confirms the damaging impact that the dumping has had on the Australian industry’s inability to raise selling prices. The price suppression experienced by the local industry was reflected in the industry’s profit and profitability.

ATM also concurs with the Commission's assessment that other possible causes of injury (i.e. a contracting market, the emergence of imports from source countries not the subject of measures) does not detract from the finding that the dumping has caused material injury to the Australian industry manufacturing HSS.

Will dumping and material injury continue

The Commission estimated that Thai exports of HSS to Australia accounted for between 8 and 9 per cent of the Australian HSS market in the investigation period. The Thai volumes therefore account for a significant portion of total sales of HSS in Australia. It has also been established that the dumping margins for the Thai HSS exported to Australia were in the range 5.7 to 19.8 per cent, with price undercutting in the range 7.2 to 21 per cent.

The price impact of the dumped Thai exports to Australia is therefore substantial. The Commission also determined that forward orders exist for Thai HSS, and that export prices post the investigation period are, in some instances, lower than during the investigation period.

ATM therefore agrees with the Commission's assessment that dumped exports of HSS from Thailand are likely to continue and will likely cause material injury to the Australian industry in the absence of anti-dumping measures.

Non-injurious price

The Commission is proposing to recommend to the Parliamentary Secretary a non-injurious price determined from an unsuppressed selling price based upon ATM's cost-to-make-and-sell ("CTM&S") during the investigation period plus an amount for profit sourced from the "ABS' published rate for primary metal and metal product manufacturing industry for 2008-09". The profit rate for the primary metal and metal product manufacturing industry in this period was 5.3 per cent.

ATM rejects the Commission's proposed basis for the level of profit to be applied to its CTM&S for the 2013/14 investigation period. ATM reminds the Commission that past policy has involved the use of actual industry performance data in preference to a secondary alternative that is diluted by the impacts of small, less capital intensive performers in the nominated industry.

ATM's profit in the first three quarters of 2008 cannot simply be rejected because it was above the level of profit achieved for players in a much broader industry category. The selection of the level of profit from 2008 was considered acceptable by the Minister in Report No. 177 (which supersedes Report No. 144) and was based upon **actual** performance achieved by ATM.

ATM requests the Commission to revert to the level of profit accepted by the Minister in Report No. 177 for inclusion in the industry's USP for determining a non-injurious price for exports of Thai HSS to Australia in 2013/14.

Form of measures

ATM notes that the Commission is proposing to recommend that the form of anti-dumping measures to be applied to HSS exported from Thailand will be *ad valorem* based.

ATM strongly opposes anti-dumping measures based upon the *ad valorem* method. It is noted in the recent House of Representatives Inquiry into Australia's Anti-Circumvention Framework in relation to Anti-Dumping Measures, in order to reduce circumvention of measures it was recommended that the combination method form of measures should be the default form of measure to be applied in every inquiry.

ATM understands that the Commission prefers *ad valorem* based measures as this reduces the likelihood of frequent reviews of measures, is the main form of measures applied in other jurisdictions, and is more acceptable for exporters (than measures based upon the combination method).

The Commission's preference for ad valorem measures does not adequately address the injury that the measures are intended to prevent. As export prices fall, the *ad valorem* measure (as a percentage of the export price) also diminishes and as such does not address the full margin of injury experienced by the industry. The full impact of the *ad valorem* measure can also be evaded by the exporter purposefully reducing export prices to reduce the level of interim duty payable.

Additionally, for measures that are ad valorem based – any shortfall in interim duty paid as detected via an administrative review inquiry will never be collected. This is a serious shortcoming with the ad valorem measure methodology.

In the current circumstances ad valorem measures are not suited to the aim of removing the injurious effects of dumping as exporters do have the ability to reduce export prices to reduce the interim duty amount payable, thereby continuing to cause injury to the Australian industry.

ATM respectfully requests the Commission to reconsider the appropriate form of measure to recommend to the Parliamentary Secretary and substitute ad valorem based measures for measures based upon the combination method that will detract from any reductions in export prices to injurious levels.

Conclusions

ATM welcomes the Commission's findings contained in SEF No. 254 that exports of HSS from Thailand to Australia were at dumped margins of between 5.7 per cent and 19.8 per cent. ATM also agrees with the Commission's findings that the Australian industry has suffered material injury from the dumped exports of HSS from Thailand and that in the absence of anti-dumping measures further dumping from Thailand and material injury will continue.

ATM does not consider that a drawback of duty adjustment can be afforded to benefit Saha's determined normal value as it cannot be adequately demonstrated that a cost impact is evident. Additionally, the information provided by Saha cannot be relied upon as it is unverified and has been supplied in a delayed manner following the verification visit at Saha's premises.

The proposed level of profit for inclusion in the Australian industry's unsuppressed selling price (from which the non-injurious price is derived) based upon a broad industry average cannot be accepted in preference to the actual profit achieved by ATM in the first nine months of 2008 and accepted by the Minister in Report No. 177 (that supersedes Report No. 144).

In terms of the proposed form of measure to apply to HSS exports from Thailand, ATM strongly opposes measures based upon the *ad valorem* method as these are easily manipulated by exporters through further reductions in export prices. ATM recommends that the Commission propose measures based upon the combination method for all future exports of HSS from Thailand so that further material injury to the Australian industry is not threatened and does not occur.

If you have any questions concerning this submission please do not hesitate to contact ATM's representative Mr John O'Connor on (07) 3342 1921 or Mr Matt Condon on (02) 8424 9880.

Yours sincerely



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