

**PUBLIC RECORD****Australian Government****Australian Customs and  
Border Protection Service****INVESTIGATION****INTO THE ALLEGED DUMPING OF CERTAIN HOLLOW  
STRUCTURAL SECTIONS EXPORTED FROM THE  
PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF  
KOREA, MALAYSIA, TAIWAN AND THE KINGDOM OF  
THAILAND****AND****ALLEGED SUBSIDISATION OF HSS EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA****ASSESSMENT OF****PARTICULAR MARKET SITUATION AND THE  
REASONABLENESS OF EXPORTERS' COSTS****THAILAND****16 APRIL 2012**

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**PUBLIC RECORD****1 EXECUTIVE SUMMARY**

The Australian Customs and Border Protection Service (Customs and Border Protection) is continuing its investigation into whether dumping and/or subsidisation of hollow structural sections (HSS) exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia, Taiwan and the Kingdom of Thailand (Thailand) have caused material injury to the Australian industry producing like goods.

This investigation involves an assessment as to whether there was a situation in the Thai domestic market for HSS during the investigation period<sup>1</sup> such that selling prices of HSS in the Thai market are not suitable for use in determining normal value under s.269TAC(1) of the *Customs Act 1901*<sup>2</sup> (the Act) (i.e. a 'market situation' or 'particular market situation' existed in the market).

Due to the nature of the allegations of a 'particular market situation' in Thailand, this investigation also involves an assessment of whether the costs of production recorded in the records of exporters were reasonable for use in working out the cost of production in line with Regulation 180(2) of the *Customs Regulations 1926* (the Regulations).

After having regard to all relevant information, Customs and Border Protection has preliminarily determined that:

- no such market situation existed in the Thai HSS market during the investigation period; and
- the costs of production recorded by Thai HSS manufacturers are reasonable for working out such costs in accordance with Regulation 180(2).

This paper outlines Customs and Border Protection's assessment of these matters.

<sup>1</sup> The investigation period in this case is 1 July 2010 to 30 June 2011.

<sup>2</sup> All references to sections, divisions or parts of legislation contained in this document are references to the Customs Act 1901, unless otherwise specified.

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## 2 INTRODUCTION

### 2.1 Background to the investigation

On 12 August 2011, OneSteel Australian Tube Mills Pty Ltd (ATM) lodged an application under s.269TB of the Act for the publication of a dumping duty notice in respect of certain HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand, and a countervailing duty notice in respect of HSS exported to Australia from China.

The application alleged that HSS has been exported to Australia from China, Korea, Malaysia, Taiwan and Thailand at prices lower than its normal value, that HSS exported to Australia from China has received countervailable subsidies, and that this dumping and subsidisation has caused material injury to the Australian industry producing HSS.

Additional information was received from ATM on 26 August 2011 in support of its application.

Following consideration of the application and additional information, Customs and Border Protection initiated an investigation (this investigation) into these matters, and public notification of initiation of the investigation was made in *The Australian* newspaper on 19 September 2011.

Australian Customs Dumping Notice (ACDN) No. 2011/43 provides further details of this investigation and is available at [www.customs.gov.au](http://www.customs.gov.au).

### 2.2 Allegations of a market situation

Within its application, ATM claimed that the Government of Thailand (GOT) has set and enforced a maximum (or 'ceiling') price for domestic hot rolled coil (HRC) in Thailand, the major raw material used to manufacture HSS.

In alleging the existence of this price ceiling, ATM submitted a market survey report commissioned in early 2011 that examined the Thai HRC and HSS market. ATM submitted that this research indicated that:

*...the Thai Government sets a ceiling for the maximum price for raw material hot rolled coil ("HRC") used in the manufacture of HSS.<sup>3</sup>*

The application further submitted that this 'ceiling' was set at 24.50 Baht/Kg since March 2009.<sup>4</sup>

ATM further submitted that the World Trade Organisation (WTO) 2003 Trade Policy Review on Thailand (WT/TPR/S/123) listed the status of HRC in

<sup>3</sup> ATM Application for Publication of a Dumping Duty Notice and a Countervailing Duty Notice, August 2011, page 45.

<sup>4</sup> ATM Application for Publication of a Dumping Duty Notice and a Countervailing Duty Notice, August 2011, page 45.

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Thailand as a 'controlled good', for which prices are 'maintained'.<sup>5</sup>

ATM further submitted in its application that this price ceiling has had an effect on the domestic selling prices of HSS in Thailand as:

- a 'significant proportion' of the cost to make and sell HSS is represented by HRC, and
- the cost of HRC is maintained at artificially low levels due to the price ceiling

and the price of HSS in Thailand is therefore artificially low as a result.

Consequently, ATM submitted that domestic prices for HSS in Thailand were not suitable for calculating 'definitive' normal values (i.e. a particular market situation exists that renders domestic sales unsuitable for determining normal values under s.269TAC(1)).

In International Trade Remedies Branch Consideration Report No. 177 (CON177), it was accepted that ATM provided evidence to establish reasonable grounds to initiate inquiries into the alleged market situation in Thailand as part of the investigation.

**2.3 Australian legislation, policy and practice**

**2.3.1 Thailand as a market economy**

Australia treats Thailand as a market economy for anti-dumping purposes and Customs and Border Protection conducts its investigation in the same manner for Thailand as it does for other market economy members of the WTO.

Irrespective of the country subject of the investigation, the Australian anti-dumping framework allows for rejection of domestic selling prices in market economies as the basis for normal value where there is a 'market situation' making the sales unsuitable, as outlined below.

**2.3.2 Legislation, policy and practice**

**Market situation**

S.269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold domestically in the ordinary course of trade in arm's length transactions. However, s.269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the relevant Minister<sup>6</sup> is satisfied that:

<sup>5</sup> Ibid.

<sup>6</sup> The Minister for Home Affairs.

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*'...because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)'.*

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction<sup>7</sup> or third country sales.<sup>8</sup> Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

In relation to market situation, the Customs and Border Protection's Dumping and Subsidy Manual<sup>9</sup> states:

*'Sales that would otherwise be relevant for determination of normal value may be unsuitable because the price does not reflect a fair price in normal market conditions. The legislation does not define market situations that would render domestic sales as unsuitable. The investigation and analysis of each case must fully set out the reasons for the unsuitability of sales before determining normal value under succeeding provisions of section 269TAC of the Act.'*

*In considering whether sales are not suitable for use in determining a normal value under s. 269TAC(1) of the Act because of the situation in the market of the country of export, Customs and Border Protection may have regard to factors such as:*

- *whether the prices are artificially low; or*
- *whether there is significant barter trade; or*
- *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s. 269TAC(1) of the Act.*

*Government influence on prices or costs could be one cause of 'artificially low pricing'. Government influence means influence from any level of government.*

*In investigating whether a market situation exists due to government influence, Customs and Border Protection will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.<sup>10</sup>*

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<sup>7</sup> S.9TAC(2)(c)

<sup>8</sup> S.9TAC(2)(d)

<sup>9</sup> Available online at <http://www.customs.gov.au/site/page5719.asp>

<sup>10</sup> Customs and Border Protection Dumping and Subsidy manual June 2009, pp 26-27

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Further, the manual states:

*Prices may also be artificially low or lower than they would otherwise be in a competitive market due to government influence and distortion of the costs of inputs. Again the mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. Rather, Customs and Border Protection looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. It should be noted government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices.*

However, where it is not shown that this government has had any significant impact or caused distortion of the cost of these inputs, no particular market situation will be considered to exist.

Consequently, this paper focusses on the assessment of whether GOT influence on the price of HRC in Thailand, if any, is considered to have impacted, or distorted this price (and hence the cost incurred by HSS manufacturers), before considering whether this influence has created a market situation in the Thai HSS market.

### Determination of costs

Distortion of costs of inputs is also considered a relevant consideration when Customs and Border Protection seeks to:

- calculate the cost of like goods for conducting ordinary course of trade tests under s.269TAAAD; and
- in constructing normal value under s.269TAC(2)(c).

In each case, the Act requires<sup>11</sup> that these costs be worked out in accordance with the Regulations.

In working out these costs, the Regulations provide for an assessment of the reasonableness of exporters' costs recorded in their records in determining whether or not to use these costs in working out the cost to produce/manufacture and sell.

It is considered that government influence may have a distorting effect that renders these costs unreasonable (see Customs and Border Protection's *Report 148 - Investigation into Certain Aluminium Extrusions from China*).

## 2.4 Focus of this assessment

In light of the above requirements of the Act and Regulations, and the nature of the market situation allegations, the focus of this report is the extent of the

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<sup>11</sup> S 269TAAAD and s. 269TAC(5A) respectively.

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alleged GOT influence on the cost of HRC, if any, and what distorting influence this is considered to have had on the cost of HRC in Thailand, before considering whether this influence has:

- created a market situation in the Thai HSS market that renders sales of HSS in that market unsuitable for calculating normal value under s.269TAC(1); and/or
- has rendered the cost of HRC recorded in the records of Thai exporters unreasonable for use in working out the cost of HSS in accordance with the Regulations.

Throughout this report, this alleged price ceiling will be referred to as 'GOT price measures'.

### 2.5 Information submitted and relied upon

In addition to the information contained within ATM's application, ATM has lodged the following submissions that contain information relating to the assessment of HRC in Thailand:

Date	Submission title
6 January 2012	Verification visits to Thai exporters
19 January 2012	ATM Correspondence 2012/01 – Government of Thailand influence on steel prices
28 March 2012	ATM Correspondence 2012/06 – HRC and HSS in Thailand

In addition, ATM also made a presentation to Customs and Border Protection on 12 January 2012, which was accompanied by a 'Thai Price Ceiling – How It Works' document.

Customs and Border Protection has also received the following that contain information relevant to the assessment of GOT price measures:

- three responses to the Thai Exporter Questionnaire; and
- a response from the GOT to the Thai Government Questionnaire (GQ) and associated correspondence.

Customs and Border Protection has also undertaken verification visits to two Thai exporters of HSS, and discussed the allegations of a market situation, and their understanding of how GOT price measures work.

In addition, Customs and Border Protection conducted independent research into these matters.

#### 2.5.1 GOT questionnaire response

Customs and Border Protection received the GOT's response to the GQ on 6 December 2011. No non-confidential version of the response was submitted at that time.



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After this submission, Customs and Border Protection assessed the GQ response and determined that it was considerably limited, did not answer multiple questions (or answered them very briefly), and did not provide certain requested data.

Since this GOT submission, Customs and Border Protection has written to the GOT on two occasions.<sup>12</sup> Within this correspondence, Customs and Border Protection requested:

- a comprehensive, revised response to the Thai GQ;
- a non-confidential version of the response to the questionnaire (and any revisions the GOT might provide), or authorisation to place the response as originally submitted on the investigation's Public Record; and
- a non-confidential version of the correspondence between the GOT and Customs and Border Protection regarding the GQ, or authorisation to put the correspondence as received on the Public Record.

The GOT responded to Customs and Border Protection on 10 February 2012 and:

- advised that the GOT considered the information previously provided contained sufficient information to demonstrate that there was not a 'market situation' in the Thai HSS market; and
- submitted some limited further information.

The GOT did not provide the requested:

- non-confidential version of the Thai GQ response;
- non-confidential version of correspondence from the GOT; or
- authorisation to put these documents on the Public Record as submitted.

On 16 February 2012, Customs and Border Protection again wrote to the GOT to request that a non-confidential version of the questionnaire response, or correspondence received from the Thai government be provided for the Public Record.

Within this letter, Customs and Border Protection outlined the information requirements of the Act in terms of submitted information, and noted that a failure to provide non-confidential versions of the submitted documents may result in their contents being disregarded.

To date, the GOT has not provided a non-confidential version of its Thai GQ response, or its correspondence with Customs and Border Protection (or

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<sup>12</sup> 10 January 2012 and 25 January 2012.

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authorisation for these documents to be placed on the Public Record as submitted).

On 13 April 2012, Customs and Border Protection received a letter from the GOT in relation to this matter. However, the letter did not provide authorisation for that letter, previous correspondence or the GQ response to be placed on the public record either.

Customs and Border Protection notes that the GOT's failure to provide a sufficient non-confidential version of these documents (or authorising these documents to be placed on the Public Record) has denied interested parties the opportunity to review and respond to the information contained therein. Further, it is considered that the GOT has not complied with the information requirements of Customs and Border Protection's investigation.

Consequently, Customs and Border Protection has had limited regard to the information submitted by the GOT in its response to the Thai GQ and related correspondence in assessing the claims of a market situation in the Thai HSS market. Customs and Border Protection only had regard to the information supplied by the GOT where it was corroborated by evidence from another source.

In addition, as the GOT has not provided a non-confidential version of the GQ response, or authorisation for its disclosure on the public record, limited information contained within the GOT's response can be reproduced within this report.

Customs and Border Protection has therefore primarily had regard to its own research, responses to the Thai Exporter Questionnaire, and discussions with Thai HSS exporters (documented in each company's exporter visit report) in formulating the assessments within this paper.

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### 3 ASSESSMENT – GOT PRICE MEASURES

#### 3.1 Introduction

Customs and Border Protection has examined the available evidence (to the extent it is considered reliable) and arrived at an assessment as to the likely operation of GOT price measures on HRC in Thailand, and their impact on the cost of this HRC.

This assessment is outlined in this Chapter.

#### 3.2 Available evidence – GOT price measures

##### 3.2.1 Price of Goods and Services Act and CCP

The GOT's response to the GQ made reference to the Thai *Act on Price of Goods and Services 1999* (the Price of Goods and Services Act), and explained that the Department of Internal Trade (DIT) is the GOT entity responsible for the implementation of this act.

Customs and Border Protection has accessed the text of the Price of Goods and Services Act.<sup>13</sup> Chapter I of this act provides for the establishment of a Central Commission on Process of Goods and Services or CCP, which has the following powers and duties:

- (1) to issue a Notification prescribing any particular goods or services as controlled goods or services under section 24;
- (2) to prescribe measures to be implemented with respect to controlled goods or services under section 25;
- (3) to order a producer or a distributor of controlled goods or services to give statements of fact under section 26;
- (4) to give approval to the Notification issued under section 27;
- (5) to prescribe rules, procedures and conditions for the display of prices of goods or services under section 28;
- (6) to prescribe rules and procedures for the determination of the acts which are considered as amounting to the unreasonable lowering or raising of prices or resulting in the fluctuation of prices of goods or services under section 29 paragraph two;
- (7) to prescribe regulations on payment of rewards and awards under section 33;

<sup>13</sup> Available on the AsianLII website at [http://www.asianlii.org/th/legis/consol\\_act/aopogas1999258/](http://www.asianlii.org/th/legis/consol_act/aopogas1999258/).

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- (8) to supervise and give directions to the extent that is necessary in order to ensure that the distribution of controlled goods or services is sufficient for public demand. In this regard, the CCP may entrust the Provincial Commission on Prices of Goods and Services, the Secretary-General or a competent official to act on its behalf;
- (9) to consider a complaint that a grievance or injury is suffered in consequence of an act which has an adverse effect on prices;
- (10) to invite any particular person to give a statement of fact, explanation, advice or opinion;
- (11) to perform any other act as provided by law to be the powers and duties of the CCP.

Further, Section 25 of the Price of Goods and Services Act provides:

Upon the issue of a Notification prescribing controlled goods or services under section 24, the Commission shall have the following powers:

- (1) to determine the purchase prices or distribution prices of controlled goods or services pursuant to which the purchaser shall not purchase at a price lower than the determined price or the distributor shall not distribute at a price higher than the determined price or to fix the price at a particular level;
- (2) to determine the maximum rate of profit per unit of controlled goods or services or determine the proportional difference between the purchase price and sale price of controlled goods or services in each trading period;
- (3) to prescribe rules, measures and conditions for practices with respect to the production, import into the Kingdom, export from the Kingdom, sale, distribution or storage of controlled goods or services;
- (4) to prescribe areas or periods in which a Notification of the Commission comes into force;
- (5) to require a declaration of the amount, place of storage, capital costs, expenses, production plan, plan of import into the Kingdom, plan of export from the Kingdom, purchase plan, distribution plan and methods for distribution of controlled goods or services to the competent authority;
- (6) to require the storage or an increase in reserve storage of controlled goods and to prescribe the area and place for storing reserve controlled goods;

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- (7) *to prohibit or permit the export from or import into any area of any controlled goods;*
- (8) *to direct a business operator to improve the efficiency of production, import into the Kingdom, purchase, distribution or storage of controlled goods or services, including the suspension or reduction of determined expenses that exceed reasonable levels;*
- (9) *to arrange for the rationing of purchase and distribution of controlled goods or services, including to prescribe rules and procedures for such rationing or prescribe conditions for the purchase and distribution of controlled goods and services;*
- (10) *to order the distribution of controlled goods or services in accordance with the prescribed volume and price, as well as to order the distribution to government agencies or any person determined by the Commission;*
- (11) *to prohibit the distribution, grant, self-use, removal or conversion of controlled goods or services which exceeds the prescribed amount;*
- (12) *to prescribe measures to prevent the stockpiling of controlled goods or the possession of controlled goods which exceeds the prescribed amount.*

The GOT response to the GQ confirmed the above duties and responsibilities, noting the CCP has the authority to regulate measures and take control over prices to prevent behaviour that could take advantage of consumers and request manufacturers to reveal prices of goods and services.

From the above, it is clear that the GOT's CCP has broad powers to issue notifications and impose measures (including the determination of prices) under the Price of Goods and Services Act.

### 3.2.1 The GOT watch list

In its submission of 19 January 2012, ATM provided a document entitled *Products under Supervisory for 200 Items as of October 2006* (the Supervisory List) which prescribes steel sheet (hot-rolled<sup>14</sup>, cold-rolled coil and stainless) as a 'priority watch list' item – amongst numerous other items and a larger list of 'watch list' items (200 in total).

In its presentation and accompanying document of 12 January 2012, ATM submitted that this list identifies those items over which the CCP has 'explicit

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<sup>14</sup> Considered to be HRC

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price controls' (or has issued notifications under the Price of Goods and Services Act).

However, despite ATM submitting that the Supervisory List names those items over which the GOT has explicit controls, further evidence submitted by ATM indicates that inclusion on this listing does not mean that the CCP has imposed specific measures that set or limit the price of listed goods.

For example, ATM's submission on 12 January 2012 went on to state that:

'any producer of consumer products (on the list) is prohibited from raising prices (of those goods) without first notifying the Committee (CCP) of their intention to do so.'

[Emphasis added]

Further, this ATM submission states that 'explicit permission' is not required for manufacturers to raise prices, but they are asked to 'cooperate' with the DIT on this matter and that 'producers tend not to go forward with price increases without at least a verbal approval' due to concern they may later be instructed to reduce their prices or 'see their product added to the control list'.

In addition, ATM's submission of 19 January 2012 attached a 2009 Bank of Thailand (BOT) discussion paper *Monetary Policy and Underlying Inflation Pressures: The Essence of Monetary Policy Design*.<sup>15</sup> ATM submits that the BOT specifically excludes goods subject to price control from the Thai CCP, due to their distorting effect, and that this provides evidence of the likely impact of the alleged price ceiling on HRC in Thailand.

However, it is observed that this BOT paper identifies that the GOC has been 'closely monitoring the prices of over 2000 items' since 2005, but has a package of 'six measures' on certain utilities that 'entail free or reduced prices' for low-income households.<sup>16</sup> The BOT paper does not make reference to any price control on steel or steel products.

It is considered that this indicates that the Supervisory List in fact refers to items that are 'monitored' by the CCP.

Further, it is noted that the provided Supervisory List is dated October 2006, and that the Act on Price of Goods and Service provides for annual revisions of pricing measures by the CCP. It is therefore conceivable that steel sheet has been re-categorised within this list (e.g. potentially no longer a 'priority' item).

<sup>15</sup> DP/01/2009

<sup>16</sup> *Ibid.*, at pages 13 and 14.

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### 3.2.2 Evidence of ceiling price in the past

Customs and Border Protection has encountered evidence that suggests that the HRC price in Thailand was indeed once subject to a ceiling price.

The WTO 2003 Thai Trade Policy Review report notes that 'structural steel' (which ATM has advised includes HRC) was on the list of GOT-controlled goods at that time, and that the GOT could introduce minimum and maximum selling prices of these listed goods.<sup>17</sup>

However, in 2007 it was reported by *Credit News* in its company profile *Sahaviriya Steel Industries Public Company Limited* (Sahaviriya) that this ceiling price was removed in 2004 (see below quote).<sup>18</sup> Sahaviriya is understood to be the largest HRC producer in Thailand.

Despite this report, Customs and Border Protection has observed references to a 'ceiling' price on HRC in Thailand as late as 2008, (see Platts *Ceiling Prices for Rebar and HRC Raised in Thailand*)<sup>19</sup>, though this same source observes that prevailing prices were below this 'ceiling' price in any case.

Regardless, no definitive reference to a maximum or 'ceiling' price for HRC has been observed from independent sources after 2008.

### 3.2.3 Recent GOT price measures - 'recommended' price

Customs and Border Protection has observed multiple references to current GOT price measures being in place on HRC in Thailand which lead to an understanding that these measures are in fact a 'suggested' or 'recommended' price on HRC, rather than an enforceable 'ceiling'.

The evidence that suggests this is outlined below.

#### Credit News Sahaviriya Profile

In the abovementioned *Credit News*' 2007 company profile, it is observed that:

*The price of steel in Thailand has also risen, but to a lesser extent, as the price is controlled by the Ministry of Commerce (MOC). Though the MOC abolished the ceiling price for steel sheets in March 2004, any steel trading company which wants to raise the steel price must submit the proposed price to the Department of Internal Trade (DIT) not less than seven days before it becomes effective.*

...

<sup>17</sup> WT/TPRS/123 at pages 70 and 71.

<sup>18</sup> Announcement No 510, 13 December 2007. Available at <http://ssl.listedcompany.com/misc/SSI510-e8.pdf> (accessed 6/4/2)

<sup>19</sup> 15 May 2008 (available at [www.steelbb.com/?PageID=:57&article\\_id:47740](http://www.steelbb.com/?PageID=:57&article_id:47740) - accessed 19/3/2012).

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*The DIT monitors daily the price and market situation for controlled products. In addition, every month since November 2004, the DIT has announced the recommended price for steel sheets. Steel prices will reflect not only changes in the price of major raw materials, i.e. hot-rolled and cold-rolled steel sheets, but also changes in the costs of scrap and slab. The recommended price in October 2007 for hot-rolled coil and hot-rolled plate were Bt25-Bt25.5 per kg. and Bt26-Bt27 per kg., respectively.*

[Emphasis added]

### Exporter questionnaire responses

In its response to the Exporter Questionnaire, Pacific Pipe Public Co Ltd (Pacific Pipe) provided Customs and Border Protection a translated copy of a notification in relation to HRC from the DIT's website. This notification, entitled 'Suggested HRC Price' states that the suggested HRC price as of March 2009 is 24.00 -24.50 Baht/kg ex-factory (excluding VAT).

It is noted that ATM's application submitted that the GOT price for HRC in the investigation period was similar to this amount (though ATM contends this was an enforceable price ceiling rather than a recommended price during the investigation period).

Further, in its response to the Exporter Questionnaire, Pacific Pipe submitted that suppliers are able to sell above this GOT price without 'permission' from the GOT, but that they must inform the GOT of sales above the suggested price seven days in advance of doing so.

Similarly, Saha Thai Steel Pipe (Saha), in its response to the exporter questionnaire, has submitted a similar understanding of the GOT price measures.

### GOT response to the GQ

The understandings of Thai HSS exporters were confirmed by the GOT's response to the GQ.

Further, the GQ further advised that, on 2 February 2011, the CCP announced measures in relation to the monitoring of hot rolled steel. Customs and Border Protection has not received evidence of this exact notification from the GOT.

It is noted that the GQ refers to this price (which the GQ refers to as a 'recommended price') being notified in 2011, however it is considered that the wording of the GOT response is ambiguous, indicating that this measure may have been in place for a longer period.



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It is further observed that the Price of Goods and Services Act requires the CCP to revise its notifications on an annual basis, and this 2011 notification may be a re-issue of an earlier notification. This annual revision is referred to in the GQ response.

Further, the GQ response confirms that these GOT price measures require manufacturers to inform the GOT of their cost of production, cost of imports, cost of goods sold and selling prices, and report any changes in price to the GOT seven days in advance of making them.

The GQ also provides information as to the GOT price measure as of 2 February 2011, which is similar to that reported in the *Suggested HRC* Price document and ATM's application.

### ATM submission

As discussed in Section 3.2.1, ATM has itself submitted evidence that indicates that HRC producers are able to sell above the GOT price measures recommended price, providing notification is made to the DIT beforehand. For example, ATM's submission on 12 January 2012 indicates that price rises can be made after notifying the DIT.

Further, in its submission of March 28, 2012, ATM attached a confidential pricing analysis that compared, among other things, quarterly HRC selling prices of Sahaviriya<sup>20</sup> to the GOT price measures (at 24.50 Baht/Kg, as is ATM's understanding of the price level).

This analysis displayed that, on at least one occasion, Sahaviriya's selling price exceeded the GOT price measures (and on multiple occasions if the GOT price measures are reduced to 24.00 Baht/Kg, which Customs and Border Protection consider may have in fact been the GOT price measures level (see Section 3.3.2).

### Conclusion – understanding of current GOT price measures

It is considered that the available evidence indicates the GOT price measures in place (from 2009 at the latest, after which no references to a 'maximum' or 'ceiling' price are noted) operate as a 'recommended' or 'suggested' price.

Furthermore, the available evidence indicates that Thai HRC producers are able to sell above this recommended price, but are required to notify the DIT in advance of doing so. It is understood from the above that notification of a selling price above the GOT price measures is required not less than seven days before the price rise becomes effective.

Customs and Border Protection considers the available evidence indicates that the GOT role in HRC pricing is limited to imposing price reporting

<sup>20</sup> Sourced from the 'SSI Investor Report'.

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obligations for sellers of HRC, monitoring of HRC prices, and publication of recommended HRC prices.

Evidence to support this finding includes the translated DIT *Suggested HRC Prices* notification (see Section 3.2.3), but also comments made by ATM itself in its 12 January 2012 submission, which refers to producers being able to sell above the GOT price after notifying the GOT (see Section 3.2.1).

The impact of these measures are considered in the next section.

### 3.3 Impact of GOT price measures

#### 3.3.1 Non-compliance provisions

Customs and Border Protection notes that under the *Act on Price of Goods and Services*, penalties for non-compliance with measures are outlined including fines and imprisonment for a term not exceeding one year, for failure to make a declaration as required by the terms of the Notification of the CCP.<sup>21</sup>

ATM's submission of 6 January 2012 made note of these penalties, submitting that observed prices may be lower than the GOT price to avoid penalties associated with breaching the price (see Section 3.2.3), which it is considered would only involve a breach of a suggested price having regard to the above.

It is considered these penalties may apply to this HRC measure, though this remains unclear.

#### 3.3.2 Observed prices and market behaviour

Customs and Border Protection considers that GOT price measures in relation to HRC were at a suggested price of approximately 24.00 – 24.50 Baht/kg during the investigation period (having regard to all references to the suggested price observed in the available evidence).

#### Domestic prices

Customs and Border Protection has examined domestically-purchased HRC price information submitted by Saha and Pacific Pipe in their Exporter Questionnaire responses.

This HRC purchase price data was verified with each exporter (as discussed in each entity's exporter visit report).

Over the investigation period, Customs and Border Protection observed instances of HRC purchases made above the recommended price (this

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<sup>21</sup> *Act on Price of Goods and Services 1999*, Section 38

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analysis forms Confidential Attachment 1). However, overall Customs and Border Protection observed that purchase prices of domestic HRC were below the understood GOT price.

In its submission of 6 January 2012, ATM claimed that actual Thai HRC prices are likely to be below the alleged ceiling price due to the penalties imposed by the Thai Ministry of Commerce if the ceiling is exceeded.<sup>22</sup>

However, Customs and Border Protection has considered actual HRC purchase prices by Saha and Pacific Pipe in relation to the suggested price, and considers there is no pattern that indicates an effective ceiling price has been in operation.

### Imports

Data submitted in the application indicates that HRC imports represent a significant proportion of the HRC market in Thailand.

Further, in its submission of 6 January 2012, ATM observed 'in 2010, demand for HRC was approximately 5.5 million tonnes, 3.5 millions tonnes were produced locally while a further 2.2 million tonnes was imported'.

Customs and Border Protection notes that a significant proportion of imported HRC was used by HSS manufacturers examined during the investigation (which was considered to be the case by ATM in its submission of 6 January 2012).

This indicates that imported HRC remained an important supply alternative for HRC users, and must logically have remained at competitive prices in comparison with domestic HRC supply throughout the investigation period.

ATM has submitted that the GOT currently has anti-dumping measures in place on HRC exporters from 16 countries.<sup>23</sup> However, ATM has submitted that that imported HRC that is subsequently further-worked and re-exported is exempted from dumping duties that would otherwise apply, and hence creates an incentive to purchase imports for later export. Customs and Border Protection has not been able to verify this claim.

#### 4.3.1 Observed impact of GOT pricing measures

From its analysis of the available evidence, Customs and Border Protection considers that the GOT 'suggested' price for HRC has had limited, if any, impact on the cost of HRC in Thailand.

<sup>22</sup> Ibid ATM's submission pg. 3

<sup>23</sup> Supported by WTO document G/ADP/IV/223/THA, Thailand, Definitive Anti-Dumping Measures in Force as of 31 December 2011

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As outlined in Section 3.3.2, Customs and Border Protection has observed specific examples of purchases above the GOT price measure (as Customs and Border Protection understand it to be).

Further, the majority of HRC purchase prices during the investigation period were below the 'recommended' price.

This indicates 2 things:

- 1) the recommended (or suggested) HRC price does not serve to constrain HRC sellers in the Thai market from seeking and achieving higher prices (though additional information requirements may be imposed in order to do this); and
- 2) the GOT price measure was, for much of the investigation period, somewhat higher than the prevailing market prices of HRC in Thailand, rather than a price limiter (it is considered that, if the GOT price was in fact a measure that was suppressing prices, the observed prices paid for HRC would be much closer to the GOT price measures).

Therefore, Customs and Border Protection considers that the GOT role in HRC pricing did not significantly suppress or otherwise distort HRC prices in Thailand during the investigation period.

In addition, it is noted that, despite the existence of anti-dumping measures on certain HRC imported to Thailand, imports remained an important supply alternative for HRC users, and logically remained at competitive prices in comparison with domestic HRC supply throughout the investigation period. It seems the competition with imported HRC is an important market factor contributing to the prevailing levels of HRC prices on Thailand.

### 3.4 Conclusion

In light of the above, Customs and Border Protection considers that, on the balance of evidence:

- the GOT has issued and maintains 'notification' of a 'suggested' price for domestic HRC;
- HRC producers are able to supply HRC above this 'recommended' price, but notification is to be made to the DIT at least seven days before this is done and it does not require 'permission' from the DIT;
- in any case, this 'suggested' price has had little if any effect on the cost of HRC in Thailand during the investigation period.

It is therefore considered that the GOC measures on HRC in Thailand have not had a distorting effect on the price of HRC, or in turn on the price of HSS in Thailand.

Consequently, Customs and Border Protection considers that no 'market situation' existed in the Thai HSS market during the investigation period that

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rendered domestic sales of HSS unsuitable for determining normal value under s.269TAC(1).

Furthermore, for the same reasons, it is considered that the cost of HRC incurred by Thai manufacturers of HSS was reasonable during the investigation period, for the purposes of working out costs in accordance with the Regulations.

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