



Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

Use this form¹ to apply for review of a reviewable decision of the Minister (or his or her Parliamentary Secretary) made on or after 2 November 2015.

Any interested party² may lodge an application for review to the ADRP of a review of a ministerial decision.

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

Fees

Your application must be accompanied by the application fee. Please provide a copy of your proof of payment with the application. Information about fees and refunds is on the ADRP website.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given seven (7) business days' notice of the conference date and time. See the ADRP website for more information.

¹ Form approved by the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

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 12 of this application form (s269ZZG(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.

In certain circumstances some or all of your application fee may be refunded if you withdraw your application. See the ADRP website for more information.

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:	Atpac Group Pty Ltd ACN 146 575 724
Address:	c/o 'Seed Outsourcing Pty Ltd' Suite 6, Level 7 122 Arthur Street North Sydney NSW 2060
Type of entity (trade union, corporation, government etc.):	Corporation

2. Contact person for applicant

Full name:	Jim Robinson
Position:	Managing Director of Australia-Asia
Email address:	jrobinson@at-pac.com
Telephone number:	+61 8 9443 8292

3. Set out the basis on which the applicant considers it is an interested party

Atpac Group Pty Ltd ("Atpac") is an importer of certain alloy hollow structural sections (the goods) classified to tariff subheading 7306.50.00 (statistical code 45) exported from China by Roswell S A R L Limited. The Assistant Minister for Science by decision dated 17 March 2016 altered notices published under sections 269TG(2) and 269TJ(2) of the *Customs Act 1901* (Cth) ("the Act") so as to impose anti-dumping and countervailing measures upon the goods exported from China by Roswell S A R L limited to Atpac. Accordingly, Atpac is directly concerned with the importation of the goods subject to the reviewable decision, and is therefore an "interested party" under section 269ZX(c)(i) of the Act.

4. Is the applicant represented?

Yes

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.

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.

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 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

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

The goods subject to this application are:

Certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes

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

The goods subject to this application fall within the following statistical code:

7306.50.00 (statistical code 45) – OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL – Other, welded, of circular cross-section, of other alloy steel

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

The relevant anti-dumping notice as it relates to the reviewable decision is Anti-Dumping Notice No. 2016/24

9. Provide the date the notice of the reviewable decision was published

The reviewable decision was published on 17 March 2016. A copy of the notice is annexed as "Annexure A".

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

PART C: GROUNDS FOR THE 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.

Please refer to "Annexure B" at paragraphs [30] – [81].

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.

Please refer to "Annexure B" at paragraphs [84] – [85].

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

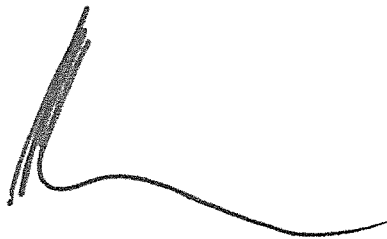
Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Please refer to "Annexure B" at paragraph [86].

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* it gives public notice of its intention 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: Andrew Hudson

Position: Partner

Organisation: Gadens Lawyers

Date: 18/04/2016

PART E: AUTHORISED REPRESENTATIVE

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

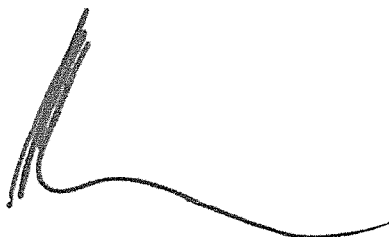
Provide details of the applicant's authorised representative

Full name of representative:	Mr Andrew Hudson
Address:	Level 25, Bourke Place 600 Bourke Street Melbourne VIC 3000
Email address:	Andrew.Hudson@gadens.com
Telephone number:	(03) 9252 7765

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: Andrew Hudson

Position: Partner

Organisation: Gadens Lawyers

Date: 18/04/16

'Annexure A'



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

Anti-Dumping Notice No. 2016/24

Customs Act 1901 – Part XVB

**Findings in relation to an anti-circumvention inquiry into the
slight modification of goods exported to Australia**

**Hollow Structural Sections containing other alloys
Exported from the People's Republic of China, Republic of
Korea and Malaysia**

Public Notice under subsection 269ZDB(1) of the Customs Act 1901

Following applications for anti-circumvention inquiries, the Commissioner of the Anti-Dumping Commission (Commissioner) initiated Inquiry 291 into the slight modification of certain hollow structural sections (the goods) exported to Australia from the People's Republic of China, the Republic of Korea (Korea) and Malaysia.

The goods exported from those countries are subject to a dumping duty notice published under subsection 269TG(2) of the *Customs Act 1901* (the Act) on 3 July 2012, and to a countervailing duty notice published under subsection 269TJ(2) of the Act on 3 July 2013 (collectively, the original notices).

The full description of the goods in the original notices is:

certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.

The Commissioner has completed his anti-circumvention inquiry and has provided me with the final report that sets out his findings Final Report 291 (REP 291). Recommendations resulting from the inquiry, reasons for the recommendations and material findings of fact and law in relation to the inquiry are contained in REP 291.

I, Karen Lesley Andrews, the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science have considered REP 291 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 291.

Under subsection 269ZDBH(1) of the Act, I DECLARE that for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*:

the original notice under subsection 269TG(2) of the Act be altered by amending the goods description to:

certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.

and

certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- *China by Dalian Steelforce Hi-Tech Co.;*
- *China by Tianjin Friend Steel Pipe Co., Ltd;*
- *China by Tianjin Ruitong Iron and Steel Co., Ltd;*
- *China by Roswell S A R L Limited;*
- *Malaysia by Alpine Pipe Manufacturing SDN BHD.*

- the original notice under subsection 269TJ(2) of the Act be altered by amending the goods description to:

certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.

and

certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- *China by Dalian Steelforce Hi-Tech Co.;*
- *China by Tianjin Friend Steel Pipe Co., Ltd;*
- *China by Tianjin Ruitong Iron and Steel Co., Ltd;*
- *China by Roswell S A R L Limited.*

I also DECLARE that the alterations specified in this declaration are taken to have been made to the original notices for HSS exported from China and Malaysia, with effect on and after 11 May 2015.

REP 291 has been placed on the public record, which may be examined at the Anti-Dumping Commission's office during business hours by contacting the case manager using the contact details provided below. Alternatively, the public record is available at www.adcommission.gov.au

Enquiries about this notice may be directed to the case manager on telephone number 03 8539 2440, or +61 3 8539 2440 (outside Australia), fax number +61 3 8539 2499 or email at operations1@adcommission.gov.au.

Dated this 17th day of March 2016



Karen Lesley Andrews
Assistant Minister for Science
Parliamentary Secretary to the Minister for Industry, Innovation and Science

'Annexure B'

NON-CONFIDENTIAL – FOR PUBLIC RECORD

gadens

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ABN 29 991 935 627

18 April 2016

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Dear Dear/Sir Madam

Atpac Group Pty Ltd Statement setting out grounds in relation to a decision made by the Assistant Minister for Science dated 17 March 2016 pursuant to section 269ZDBH(1) of the Customs Act 1901 (Cth)(the Act) to alter original notices under sections 269TG(2) and 269TJ(2) of the Act as they relate to hollow structural sections exported from China by Roswell S A R L Limited

We act for Atpac Group Pty Ltd (**Atpac**) which imports certain alloy hollow structural sections classified to tariff subheading 7306.50.00 (statistical code 45) and have been instructed to provide the below Statement in support of Atpac's application for review by the ADRP. Our letter of authority to act is attached to this Statement as "**Attachment A**".

Section A: Background details to the Inquiry

1. On 7 April 2015, Austube Mills Pty Ltd (**ATM**) a member of the Australian industry producing "hollow structural sections" (**HSS**), lodged an application with the Anti-Dumping Commission (**Commission**) under subsection 269ZDBC(1) of the *Customs Act 1901* (Cth) (**the Act**) requesting that an anti-circumvention inquiry in relation to HSS exported from China, Korea, Malaysia and Taiwan be commenced (**Application**).
2. The Commissioner of the Anti-Dumping Commission (**Commissioner**) decided not to reject the Application, and notice of the initiation of an anti-circumvention inquiry (**Inquiry**) into HSS exported from China, Korea and Malaysia was published in *The Australian* newspaper on 11 May 2015 (Anti-Dumping Notice No. 2015/58).
3. The Inquiry specifically related to dumping duty notices and a countervailing duty notice, published by the Minister of Home Affairs on 3 July 2012 under subsections 269TG(1), 269TG(2) and 269TJ(2) of the Act respectively (**the Notices**).
4. The goods which are the subject of the Notices are:

"certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes (non-alloyed HSS)."

Gadens - Notice

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5. Further, the below additional descriptive information also applies to the goods which were the subject of the Notices:

"The goods are normally referred to as either CHS (circular hollow sections) or THS (rectangular or square hollow sections). The goods are collectively referred to as HSS. Finish types for the goods include inline galvanised (ILG), 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 165.1mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3 mm. Categories of HSS excluded from the goods are conveyor tube; précising RHS with a nominal thickness of less than 1.6 mm and air heater tubes to Australian Standard (AS) 2556."

6. The goods which were the subject of the Inquiry, for the purposes of subsection 48(2)(a) of the *Customs (International Obligations) Regulation 2015 (Cth) (the Regulation)*, were described as:

"Certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes (alloyed HSS)."

7. At the conclusion of the Inquiry, the Commissioner published Final Report No. 291 - Anti-Circumvention Inquiry – Hollow Structural Sections Exported from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan (**Final Report**).
8. In the Final Report, the Commissioner made a number of adverse findings in relation to Roswell. Those findings also impact directly upon Atpac as an importer of the Goods. Those findings are set out below.

Imports made by Atpac from Roswell

9. Between 11 May 2015 and 17 March 2016, Atpac imported alloyed steel scaffold tubes without fittings (the **Goods**) from its supplier, Roswell S A R L Limited (**Roswell**). Roswell exported the Goods from the People's Republic of China (**China**). For the purpose of the Inquiry, the Goods were considered to be alloyed HSS.
10. Acting on a Tariff Advice provided to it on 10 October 2013 by the Australian Customs and Border Protection Service (as it then was) and a subsequent confirmation it obtained on 19 October 2013, Atpac's licensed customs broker classified the Goods to tariff Subheading 7306.50.00 (statistical code 45) in Schedule 3 of the *Customs Tariff Act 1995 (Cth)*. The tariff description to that Subheading is as follows:

"OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL – Other, welded, of circular cross-section, of other alloy steel."

Final Report No. 291 – Findings in relation to Roswell

(a) Legislation

11. Division 5A of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting anti-circumvention inquiries in relation to goods covered by an application for the purpose of making a report to the Parliamentary Secretary. The current Parliamentary Secretary is the Assistant Minister for Science.

12. Specifically, subsection 269ZDBB(6) of the Act defines "circumvention activity" as follows:

"Circumvention activity, in relation to the notice, occurs in the circumstances prescribed by the regulations for the purposes of this subsection."

13. Subregulation 48(2) of the Regulation provides that a "slight modification of goods exported to Australia" is a prescribed "circumvention activity" for the purpose of subsection 269ZDBB(6) of the Act. It then sets out the criteria which need to be satisfied in order for a finding to be reached that there has been a "slight modification of goods exported to Australia":

- (a) *goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the notice applies;*
- (b) *before that export, the circumvention goods are slightly modified;*
- (c) *the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;*
- (d) *had the circumvention goods not been so slightly modified, they would have been the subject of the notice;*
- (e) *section 8 or 10 of the Customs Tariff (Anti-Dumping) Act 1975 (Cth), as the case requires, does not apply to the export of the circumvention goods.*

14. Subregulation 48(3) of the Regulation provides that for the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention goods to the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors:

- (a) *each good's general physical characteristics;*
- (b) *each good's end use;*
- (c) *the interchangeability of each good;*
- (d) *differences in the processes used to produce each good;*
- (e) *differences in the cost to produce each good;*
- (f) *the cost of modification;*
- (g) *customer preferences and expectations;*
- (h) *the way in which each good is marketed;*
- (i) *channels of trade and distribution for each good;*
- (j) *patterns of trade for each good;*
- (k) *changes in the pricing of each good;*
- (l) *changes in the export volumes for each good; and*
- (m) *tariff classifications and statistical codes for each good.*

(b) Importer and exporter questionnaires

15. Once the Inquiry was initiated, the Commission circulated importer and exporter questionnaires to all parties potentially involved in the circumvention activity.
16. At part 2.3.4 of the Final Report, the Commissioner identified those exporters which had responded to the exporter questionnaires and those which had not.
17. In regards to Roswell, the Commissioner provided the following details:

Exporter	Country of supply	Response provided?	Details/additional information
Roswell S A R L Limited	China	No	Attempts to contact were unsuccessful

18. At parts 6.7 and 6.7.1 of the Final Report, the Commissioner made the following comments and findings in relation to Roswell:

No exporter questionnaire response was received from Roswell S A R L Limited (Roswell)

"As outlined above, Roswell was not contacted by the Commission to complete an exporter questionnaire due to no contact details being available. No information was provided by any other interested party. No information was provided by any other interested party in relation to the goods supplied by Roswell.

In the absence of relevant information, the Commission has relied on all available information to make determinations in relation to goods supplied by Roswell during the inquiry period. The Commission's primary source of reliable information relating to goods supplied by Roswell is data contained in the DIBP import records."

19. The Commissioner then went on to make a number of determinations in relation to whether or not the alloyed HSS exported by Roswell from China were "slightly modified" for the purpose of regulation 48 of the Regulation.
20. At part 6.7.2.2 of the Final Report, the Commissioner prefaced his findings with the following statement:

"In respect of exporters for which no exporter questionnaire response has been received, the Commission has relied on all available information, such as that provided by ATM, information provided by other interested parties and information obtained from previous investigations. Where available, any additional information has been referred to; otherwise, the assessment of the relevant factors regarding goods exported by Roswell is the same as that relied on for Dalian Steelforce...the Commission considers that the balance of evidence supports a finding that alloyed HSS exported by Roswell during the inquiry period has been slightly modified through a minor change to the manufacturing process."

21. Set out below are the aspects of the Commissioner's decision that the alloyed HSS were "slightly modified" which Atpac now seeks to impugn.

(c) Patterns of trade and export volumes

22. At part 6.7.2.2 of the Final Report, the Commissioner made the following finding in relation to Roswell:

"Information contained in DIBP's import records shows that Roswell:

- supplied a small volume of non-alloyed HSS to one importer in Australia in the fourth quarter of the 2013 calendar year and at no other time supplied non-alloyed HSS during the inquiry period;*
- supplied alloyed HSS to the same importer in Australia from the second quarter of the 2014 calendar year; and*
- supplied alloyed HSS to a different importer in Australia from the first quarter in the 2013 calendar year*

The Commission notes that the publication of the original notice on 2 July 2012 occurred not long before Roswell commenced supplying alloyed HSS to Australia. As there was no strong history of supply for non-alloyed to alloyed HSS in the inquiry period, there is no clear switch in supply for non-alloyed to alloyed HSS in the inquiry period.

However, in the absence of information from interested parties, the Commission cannot be satisfied that Roswell did not make a small exportation of non-alloyed HSS before immediately switching to supply of alloyed HSS with the same physical characteristics, end use and other characteristics to non-alloyed HSS, as detailed in this section"

(d) Is the use or purpose of the circumvention goods the same before and after the slight modification?

23. At part 6.7.2.3 of the Final Report, the Commissioner came to the following conclusion in relation to whether the use or purpose of the alloyed HSS was the same before and after the slight modification:

"Following analysis of all available information, noting that there has been no information provided by the supplier of the circumvention goods or their importer with the inquiry, the commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods."

24. Ultimately, the Commissioner concluded on the evidence before him that in relation to alloyed HSS supplied by Roswell, a circumvention activity had occurred pursuant to subsection 48(2) of the Regulation, namely that there had been a "slight modification" of goods exported to Australia.

Reviewable Decision

25. The Assistant Minister for Science, after considering the findings of the Commissioner set out in the Final Report, exercised her powers under subsection 269DZBH(1) of the Act by declaring that alterations be made to the Notices.
26. Those powers were exercised by the Assistant Minister for Science by a decision dated 17 March 2016 (**the Reviewable Decision**) directing that the Notices be altered in the following ways:

"That the original notice under subsection 269TG(2) of the Act be altered by amending the goods description:

certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36, and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1996.

and

certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- ***China by Dalian Steelforce Hi-Tech Co.;***
- ***China by Tianjin Friend Steel Pipe Co., Ltd;***
- ***China by Tianjin Ruitong Iron and Steel Co., Ltd;***
- ***China by Roswell S A R L Limited;***
- ***Malaysia by Alpine Pipe Manufacturing SDN BHD***

and that the original notice under subsection 269TJ(2) of the Act be altered by amending the goods description to:

certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36, and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs tariff Act 1996.

and

certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- ***China by Dalian Steelforce Hi-Tech Co.;***
- ***China by Tianjin Friend Steel Pipe Co., Ltd;***
- ***China by Tianjin Ruitong Iron and Steel Co., Ltd;***
- ***China by Roswell S A R L Limited;***
- ***Malaysia by Alpine Pipe Manufacturing SDN BHD"***

27. The Assistant Minister for Science further declared that the alterations set out in paragraph [26] of this Statement be taken to have been made to the original notices for HSS exported from China to Australia, with effect on and after 11 May 2015.
28. The Reviewable Decision was published on the ADC website on 18 March 2016. A copy of the Reviewable Decision is attached to this Statement as "**Attachment B**".
29. Atpac now invokes the jurisdiction of the ADRP pursuant to subsection 269ZZA(ca) of the Act to review the Reviewable Decision on the following grounds.

Section B: Grounds upon which Atpac believes the Reviewable Decision is not the correct or preferable decision

I. The Commissioner erred in a material way in relation to "findings" which formed the basis of the Final Report and which the Minister relied on in exercising her discretion to alter the Notices

30. The Reviewable Decision was based on "findings" made by the Commissioner in relation to the Goods and Roswell, which underpinned the conclusions reached in the Final Report.
31. Atpac submits that significant "findings" made by the Commissioner were incorrectly determined, as set out below, and that consequently those "findings" ought not to have been affirmed by the Assistant Minister for Science by making the Reviewable Decision.
32. For the purpose of the ADRP's statutory task of review, "finding" is defined in section 269ZX of the Act as follows:

"finding, in relation to a reviewable decision under Subdivision B, means a finding on a material question of fact or on a conclusion based on a fact."

33. In explaining the task of the Trade Measures Review Officer (the predecessor of the ADRP), Mortimer J said in *GM Holden Limited v Commissioner of the Anti-Dumping Commission* [2014] FCA 708 at [40] that:

"the review is not to be conducted in order necessarily to alter the Minister's decision. The function is more limited than that. As is apparent from the terms of s 269ZZE(2), the focus in the review is on the reasons why particular findings should be reinvestigated by the CEO. The findings which can be reinvestigated are ones which "formed the basis" of the reviewable decision: that is, the scheme requires the findings to have some material connection to the conclusion reached by the Minister.'

34. Atpac submits that it follows from the above statement of law that "findings" which formed the basis of the Reviewable Decision should be reinvestigated if it can be shown that factual errors or material factual omissions were made by the Commissioner in concluding them.
35. Importantly, the above submission is qualified by the statutory jurisdictional limit imposed on the ADRP's review task, namely that the ADRP must not have regard to any information other than "relevant information".¹
36. "Relevant information" is defined for the purpose of this review by the ADRP as "information the Commissioner **had regard to, or was, under paragraph 269ZDBG(2)(a) or (aa), required to have regard to, when making the findings set out in the report... to the Minister.**"²
37. The information the Commissioner was required to have regard to under the aforementioned paragraphs includes:
- (a) the application or request for the inquiry;³ and
 - (b) any submission concerning the inquiry to which the Commissioner has had regard for the purpose of formulating the statement of essential facts in relation to the inquiry;⁴ and

¹ *Customs Act 1901* (Cth) s 269ZZK(4)(a) ("the Act").

² *Ibid* s 269ZZK(ca)

³ *Ibid* s 269ZDBG(2)(a)(i).

⁴ *Ibid* s 269ZDBG(2)(a)(ii).

- (c) that statement of essential facts;⁵ and
- (d) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record.⁶

"Finding" in relation to Roswell that "attempts to contact were unsuccessful"

- 38. The Commissioner was required to have regard to the Statement of Essential Facts dated 11 November 2015 (SEF) in deciding on the recommendations in the Final Report.⁷
- 39. At part 3.3 of the (SEF), it states that the Commission was "unable to contact" Roswell.
- 40. This provisional finding leads to the final conclusion in part 6.7 of the Final Report, where the Commissioner states that:

"Roswell was not contacted by the Commission to complete an exporter questionnaire due to no contact details being available".

However, we submit that a misleading conclusion which does not follow from these statements is contained in the table found at part 2.3.4 of the Final Report. There it states:

Exporter	Country of supply	Response provided?	Details/additional information
Roswell S A R L Limited	China	No	Attempts to contact were unsuccessful

- 41. Atpac respectfully submits that insufficient evidence was available to the Commissioner at the time of preparing the Final Report for him conclude that an attempt had been made to contact Roswell at any stage during the Inquiry. As much can be inferred from the statements observed in part 3.3 of the SEF and at part 6.7 of the Final Report.
- 42. We are instructed that Roswell remained willing and able to provide information to the ADC in relation to the Inquiry at all times but was never contacted to do so.
- 43. It's address and contact details were easily locatable during the Inquiry period. Roswell's current registered office is located at:

*"Roswell SARL – CBT
Vertig Naos Building
5 Rue De Kiem, 4th Floor
L-1857 Luxembourg,
Luxembourg"*

⁵ Ibid s 269ZDBG(2)(a)(iii)

⁶ Ibid s 269ZDBG(2)(a)(iv).

⁷ Ibid s 269ZDBG(2)(a)(iii).

44. No reasonable attempts were made by the Commissioner in the exercise of his statutory powers to contact Roswell. It would seem to defeat the purpose of the powers of the ADC and the inquiry process that such a meagre attempt could be deemed sufficient when the outcome in this case has been to consign exporters to treatment as "uncooperative exporters". It deprives an exporter of a reasonable expectation that it will have its position properly considered by the Commissioner. Moreover, it remained available to the Commissioner to adopt alternative approaches to obtain Roswell's contact information, including the following:
- (a) Atpac remained willing and able to provide information in relation to the Goods. Its contact details were readily available to the Commissioner and were contained in the import data which the Commissioner obtained from the Department of Immigration and Border Protection (**DIBP**) and so heavily relied on to inform his "findings" in part 6.7 of the Final Report.
 - (b) Further again, the Commissioner could have used the import data to contact either of the licensed customs brokers of Atpac whose details were available to the Commissioner pursuant to that same import data.
45. It is Atpac's contention that the "finding" made by the Commissioner that "attempts to contact [Roswell] were unsuccessful" had an adverse consequence for Roswell insofar as the "finding" had a material impact on the conclusions reached by the Commissioner in the ultimate recommendations outlined in the Final Report. It also deprived Roswell of the opportunity to provide the ADC with information which could have rebutted the "findings" eventually made by the Commissioner in Part 6.7 of the Final Report. Atpac submits that the Commissioner's ability to rely on "best available information" does not serve to permit a defective investigatory process which deprives those under investigation of the opportunity to properly respond to allegations directed against them.
46. Further, the approach and "finding" by the Commissioner has resulted in adverse pecuniary consequences for both Roswell and Atpac which are yet to be fully realised. By virtue of the "finding", the Notices have been altered to include goods exported by Roswell from China, with the consequence that Roswell will now be classified as an "uncooperative exporter" for the purpose of those Notices.⁸ That classification imposes a significantly higher rate of duty on the Goods which the DIBP is now seeking to recover from Atpac.
47. Atpac submits that this "finding" should be reinvestigated by the Commissioner which will allow Roswell to submit new evidence which ultimately will show that the Goods are not "slightly modified" goods and that, as a consequence, Roswell is not an exporter of slightly modified goods as concluded in the Final Report.⁹

"Finding" in relation to whether the Goods were "slightly modified"

48. Part 6.7 of the Final Report indicates that the Commissioner had regard to import data obtained from the **DIBP** in reaching his recommendations.
49. The Commissioner relied on this data at part 6.7.7.2 of the Final Report to show that Roswell:
- *supplied a small volume of non-alloyed HSS to one importer in Australia in the fourth quarter of the 2013 calendar year and at no other time supplied non-alloyed HSS during the inquiry period;*

⁸ Ibid s 269T.

⁹ Australian Government Anti-Dumping Commission, Final Report No. 291, Anti-Circumvention Inquiry, Hollow structural sections exported from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan, part 6.1.

- *supplied alloyed HSS to the same importer in Australia from the second quarter of the 2014 calendar; and*
- *supplied alloyed HSS to a different importer in Australia from the first quarter in the 2013 calendar year.*

50. As set out in paragraph [22] of this Statement, the Commissioner then went on to conclude, based on the data, as follows:

"The Commission notes that the publication of the original notice on 2 July 2012 occurred not long before Roswell commenced supplying alloyed HSS to Australia. As there was no strong history of supply for non-alloyed to alloyed HSS in the inquiry period, there is no clear switch in supply for non-alloyed to alloyed HSS in the inquiry period.

However, in the absence of information from interested parties, the Commission cannot be satisfied that Roswell did not make a small exportation of non-alloyed HSS before immediately switching to supply of alloyed HSS with the same physical characteristics, end use and other characteristics to non-alloyed HSS, as detailed in this section"

51. Atpac submits that in the "absence of information" it was unreasonable for the Commissioner to reach the requisite state of satisfaction that the alloyed HSS exported by Roswell bore the same physical characteristics, end use and other characteristics to non-alloyed HSS, as alleged, as he concluded.
52. Atpac submits that it was not reasonably open to the Commissioner on the dearth of evidence available to him to conclude that a "slight modification" to the Goods had occurred and that such an approach undermined the legislative scheme by interposing hypothetical goods where what ought to have been undertaken was a property inquiry into the Goods actually exported by Roswell.
53. Atpac submits that this 'finding" should be reinvestigated by the Commissioner which will allow Roswell to submit further evidence to substantiate its view that the Goods were not "slightly modified" before export from China. As it turns out, that further evidence will also indicate that import data relied on by the Commissioner in the Final Report contained a factual error which materially influenced his recommendations, and consequently, influenced the Assistant Minister for Science in making the Reviewable Decision (see paragraphs [71] – [75] of this Statement).

II. The Goods were not "slightly modified" before export from China

54. In answer to the allegation that Roswell is an exporter of "slightly modified" circumvention goods, Atpac wishes to provide the ADRP with responses to the criteria specified in regulation 48(3) of the Regulation, evidence of which can readily be provided at the request of the ADRP or on reinvestigation by the Commissioner.
55. The Goods imported by Atpac from Roswell are used for scaffolding only. They are a galvanised circular tube with steel grade Q345 that have a 48.3mm diameter and a 3.2 mm wall thickness. The steel itself is shaped and welded and is then hot dipped so that it is galvanised on both the inside and outside.
56. The part codes, descriptions and weight of the Goods comply with industry scaffolding standards and are as follows:

	Description	Weight
03.01.030.00	Steel Tube w/OUT Fittings 300mm/ 1' (3.2mm)	1.12
03.01.060.00	Steel Tube w/OUT Fittings 600mm/ 2' (3.2mm)	2.24
03.01.090.00	Steel Tube w/OUT Fittings 900mm/ 3' (3.2mm)	3.36
03.01.120.00	Steel Tube w/OUT Fittings 1200mm/ 4' (3.2mm)	4.48
03.01.150.00	Steel Tube w/OUT Fittings 1500mm/ 5' (3.2mm)	5.60
03.01.180.00	Steel Tube w/OUT Fittings 1800mm/ 6' (3.2mm)	6.72
03.01.210.00	Steel Tube w/OUT Fittings 2100mm/ 7' (3.2mm)	7.84
03.01.240.00	Steel Tube w/OUT Fittings 2400mm/ 8' (3.2mm)	8.96
03.01.270.00	Steel Tube w/OUT Fittings 2700mm/ 9' (3.2mm)	10.08
03.01.300.00	Steel Tube w/OUT Fittings 3000mm/10' (3.2mm)	11.20
03.01.330.00	Steel Tube w/OUT Fittings 3300mm/11' (3.2mm)	12.32
03.01.360.00	Steel Tube w/OUT Fittings 3600mm/12' (3.2mm)	13.44
03.01.390.00	Steel Tube w/OUT Fittings 3900mm/13' (3.2mm)	14.56
03.01.420.00	Steel Tube w/OUT Fittings 4200mm/14' (3.2mm)	15.68
03.01.450.00	Steel Tube w/OUT Fittings 4500mm/15' (3.2mm)	16.80
03.01.480.00	Steel Tube w/OUT Fittings 4800mm/15' (3.2mm)	17.92
03.01.510.00	Steel Tube w/OUT Fittings 5100mm/17' (3.2mm)	19.04
03.01.540.00	Steel Tube w/OUT Fittings 5400mm/18' (3.2mm)	20.16
03.01.570.00	Steel Tube w/OUT Fittings 5700mm/19' (3.2mm)	21.28
03.01.600.00	Steel Tube w/OUT Fittings 6000mm/20' (3.2mm)	22.40

57. Furthermore, due to the chemical composition of the steel grade, the Goods utilise 7 different elementary components. The presence of 0.5% or more of nickel in fact increases the classification of the Goods to a "HIGH ALLOY STEEL" as per Additional Note 1 to Chapter 72 (iron and steel) in Schedule 3 of the *Customs Tariff Act 1995* (Cth). In this regard, the Goods are significantly different to the circumvention goods the subject of the Inquiry. The circumvention goods the subject of the Inquiry differed from the non-alloyed HSS only in the sense that there had been an addition of 0.0008% or more of boron. As described, the Goods are much more readily distinguishable from the non-alloyed HSS.
58. Atpac respectfully submits that the below reasoning clearly indicates that the Goods are in no view a "slight modification" of the non-alloy goods.

(a) Each good's general physical characteristics

59. The general physical characteristics of the Goods are set out at paragraphs [55] – [57] of this Statement above. Additionally, it should be added that the Goods are zinc galvanised and must meet "AS1576 Scaffolding" and "AS4576 Guidelines for Scaffolding" or equivalent Australian industry standards. The Goods are connected to one another using "AS1576" and "AS4576" compliant scaffold couplers or scaffold fittings which are only able to be used on 48.3 mm diameter tube.
60. Conversely, the non-alloyed HSS the subject of the Inquiry are generally made of various diameters (tube) or widths and depths (square or rectangular) and with different wall or plate thickness. The thickness and shape of non-alloyed HSS vary to suit the engineered end use of the product. Neither is Atpac aware of any industry requirement that non-alloyed HSS must meet "AS1576 Scaffolding" and "AS4576 Guidelines for Scaffolding" or equivalent Australian industry standards.

(b) Each good's end use

61. The Goods are used for scaffolding only. They are either sold or hired by scaffold manufacturers and/or customers when being used for short term construction or maintenance jobs.
62. The non-alloyed HSS the subject of the Inquiry are not used for scaffolding and in fact are only used for permanent construction items.
63. The above points are also relevant to the determination of customer preferences and expectations relating to each goods as required by subregulation 48(3)(g) of the Regulation.

(c) The interchangeability of each good

64. The Goods are in no way interchangeable with the non-alloyed HSS.
65. The Goods are more durable than the non-alloyed HSS due to their structural properties. Those properties lead to a stronger, more malleable product, with a higher temperature tolerance. Moreover, the Goods are distributed in increments of 300 mm and are used many times over the usable life of the product in the construction of temporary access scaffolding.
66. The non-alloyed HSS are generally used in the construction of permanent structures or equipment, and are inappropriate for use in the same way as the Goods. This is due to the specific tube diameter and steel grade of the Goods along with the fact that the non-alloyed HSS are not zinc galvanised.

(d) Differences in the processes used to produce each good

67. Atpac submits that the production of the Goods is a more intensive and complicated process than that required to produce non-alloyed HSS. The 7 different elements discerned in the Goods are combined and added during the smelting process when the iron is still molten and the process involves greater skill and care.
68. As outlined in paragraph [65] of this Statement above, the Goods are cut to 300 mm increments. The tube ends are then de-burred to avoid cuts and abrasions when being used by scaffolders. Afterwards, those tubes are stamped with a Batch Number as an identifier which ensures compliance with the requisite scaffolding standards. Atpac then applies a sticker to the Goods to assist their identification as scaffolding products and the tube ends are painted various colours to assist with length identification. These steps evidence a divergence in processes between those required to produce non-alloyed HSS and those required to produce the Goods which Atpac ultimately provides to consumers.

(e) Differences in the cost to produce each good

69. Similarly, the cost both to produce the Goods and to modify non-alloyed HSS into the Goods (for the purpose of subregulation 48(3)(f) of the Regulation) is significant. It would be reasonable to estimate that such costs per kilogram equate to 156.5% of the non-alloyed HSS cost of production. Such costs can be substantiated by evidence which Atpac and Roswell each remains willing and able to provide upon reinvestigation by the Commissioner.

(f) Patterns of trade for each

70. Pursuant to subregulations 48(3)(j) and 48(3)(l) of the Regulation, the Commissioner may have regard to patterns of trade for each good and changes in the export volumes for each good.

Error in the import data

71. Atpac submits that the import data which informed the Commissioner's findings at part 6.7.2.2 of the Final Report contained a material factual and typographical error which was critical to the Commissioner's "finding" that the Goods had been "slightly modified" before being exported from China. As previously submitted, both Atpac and Roswell could have advised the Commissioner of this critical error had reasonable attempts to contact them been made during the Inquiry.
72. Atpac submits that one of its previous licensed customs brokers lodged a Full Import Declaration (FID) with the DIBP on its behalf on 2 October 2013, which incorrectly classified goods it had imported as non-alloyed HSS. Those goods were in fact alloyed HSS. Atpac submits that at no stage has it ever imported non-alloyed HSS into Australia. This significant error in the FID has been brought to the attention of the licensed customs broker who lodged it with the DIBP at the relevant time. Atpac has requested that the FID be amended to the correct classification so as to reflect the incontrovertible fact that Atpac has never imported anything other than alloyed goods into Australia.
73. This material error in the FID had an undeniable impact on the "findings" made by the Commissioner. The apparent supply of a "small volume of non-alloyed HSS to one importer in Australia in the fourth quarter of the 2013 calendar" was the basis of the Commissioner determining that the Goods had been "slightly modified". As much is evidenced by the Commissioner's following statement at part 6.7.2.2 of the Final Report:

"However, in the absence of information from interested parties, the Commission cannot be satisfied that Roswell did not make a small exportation of non-alloyed HSS before immediately switching to supply of alloyed HSS with the same physical characteristics, end use and other characteristics to non-alloyed HSS, as detailed in this section)."

74. If the import data available to the Commissioner had correctly reflected Atpac's patterns of importation, that "finding" would never have been made which would have left no basis for Assistant Minister for Science to make the Reviewable Decision. Atpac asks for this matter to be reinvestigated so that it can provide the ADC with the relevant information to substantiate these claims.
75. Atpac acknowledges that the Commissioner was entitled to rely on the import data which was made available to him and that the error betrayed by the above submissions could not have been identified by the Commissioner without extra information which has yet to be provided to him. That being so, Atpac further submits below that even on the basis of the evidence before the Commissioner during the Inquiry period, he was not justified in holding that the patterns of trade led to the conclusion that there had been a "slight modification" of the Goods prior to their export from China.

Error in the interpretation of import data available to the Commissioner

76. Atpac submits that the import data which informed the Commissioner's findings at part 6.7.2.2 of the Final Report was insufficient to evidence a material change in the export volumes of the goods exported from Roswell from non-alloyed HSS to alloyed HSS.

77. As the Commissioner acknowledged, Roswell supplied a small volume of non-alloyed HSS to a single importer in Australia in the fourth quarter of the 2013 period. Roswell also supplied alloyed HSS to a different importer in the first quarter of the 2013 period.
78. This fact, Atpac submits, should have led the Commissioner to conclude that a "slight modification" of the non-alloyed HSS had not taken place, despite there being some later exports of alloyed HSS in the 2014 calendar year. If the modification was a circumvention attempt, one could expect there to be a marked difference in the volume of non-alloyed HSS and alloyed HSS exports before and after the publication of the Notices.
79. Not only did the evidence before the Commissioner indicate that prior to the publication of the Notices there was no strong history of supply of non-alloyed HSS from Roswell and that there was no clear switch in supply from non-alloyed to alloyed HSS during the period of inquiry, but Roswell continued to export non-alloyed HSS to Australia notwithstanding the financial imposition caused by the Notices, albeit in small volumes.
80. Atpac submits that the Commissioner could not have reasonably concluded, on the evidence before him, that the change in export volumes and patterns of trade for each good indicate that a "slight modification" of the non-alloyed goods had taken place. If anything, the facts available pointed against any "slight modification" having taken place at all.

(g) Conclusion

81. The totality of the circumstances set out in paragraphs [54] – [80] of this Statement above points to the conclusion that the Goods are not "slightly modified" for the purpose of subregulation 48(2)(b) of the Regulation. Atpac submits that had the Commissioner made reasonable enquiries to contact either Atpac or Roswell, he would have reached the same conclusion.

III. The use or purpose of the Goods is not the same before, and after, they are so slightly modified

82. Even if the Commissioner is of the view that despite the foregoing arguments, the Goods are "slightly modified" before export after taking into consideration all of the factors listed in subregulation 48(3) of the Regulation, Atpac submits that subregulation 48(2)(c) of the Regulation remains unsatisfied.
83. Subregulation 48(2)(c) requires the Commissioner to contemplate whether the use or purpose of the circumvention goods is the same before, and after, they are "slightly modified". Atpac submits that once the test is solely confined to the "use or purpose" of the Goods before and after modification, the only available conclusion is that the Goods are materially different from the non-alloyed HSS. Those reasons are clearly set out at paragraphs [61] – [66] of this Statement above.

Section C: The decision which Atpac considers the Minister should have made (the Proposed Decision)

84. For the reasons outlined in this Statement, Atpac submits that the Assistant Minister for Science ought not to have declared, as she did on 17 March 2016, that alterations be made to the Notices so as to include the Goods exported by Roswell from China, classified to tariff Subheading 7306.50.00 .
85. Rather, Atpac respectfully submits that due to the absence of evidence available to the Commissioner in relation to Roswell, and after taking into account the significant financial hardship that a decision to alter the Notices would impose on importers of Roswell's export goods, the

Assistant Minister for Science should have declared that the Notices remained unaltered to the extent that the Final Report implicated Roswell as an exporter of "slightly modified" goods exported from China to Australia (the **Proposed Decision**).

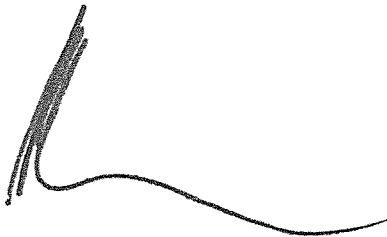
Section D: How the Proposed Decision is materially different from the Reviewable Decision

86. The Proposed Decision is materially different from the Reviewable Decision. The Proposed Decision would relieve Roswell from the imposition of anti-dumping and countervailing duties on the Goods that it has exported and may continue to export from China to Australia. The Reviewable Decision instead imposes anti-dumping and countervailing duties on those exports on the basis that they are "slightly modified" circumvention goods, and does so at a significantly higher rate than applied to other exporters due to the end result of the Reviewable Decision that Roswell is an "uncooperative exporter" for the purposes of the Act.

Section E: Conclusion

87. Ultimately, Atpac submits that this Statement has shown that the Reviewable Decision ought not to have been made by the Assistant Minister for Science. It was based on "findings" made by the Commissioner which were in error in a number of material respects, and which, importantly, deprived Roswell and Atpac of the opportunity to furnish the Commissioner with material which would have rebutted the recommendations and conclusions of the Final Report.
88. Atpac respectfully requests the ADRP to direct the Commissioner to reinvestigate these "findings" pursuant to section 269ZZL of the Act, so that Atpac may provide him with material which should ultimately lead to the Assistant Minister for Science being directed to revoke the Reviewable Decision to the extent that it applies to Roswell.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Andrew Hudson', written over a horizontal line.

Andrew Hudson
Partner