# STAUGHTONS

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15th November 2015

Mr Scott Ellis
Member
Anti-Dumping Review Panel

Via email: ADRP@industry.gov.au

Dear Mr Ellis,

**RE: Anti-Dumping Commission Case No 254:**
**Commercial Metals Pty. Ltd.**
**Application for Review by the ADRP**

We write on behalf of the Australian importer Commercial Metals Pty. Ltd. (CMC) and in response to the Anti-Dumping Commission's (ADC) published reply of the 10th November 2015 to your invitation of 21st October 2015. More particularly we need to refer to the ADC's comments on other causes of injury and its construction of the HSS market and market shares being sections 8.6, 4.2 and 5.3.1 of Report No 254.

**Introduction:**

With respect to anti-dumping investigations initiated by the local producer ATM of like goods imported by CMC on behalf of its Australian customers, CMC relies on the Anti-Dumping Commission (ADC) to fully observe the domestic legislative framework and the WTO principles and practices on which the Australian legislation is based.

CMC reasonably expects that all ADC officers charged with undertaking and determining findings on such investigations need to ensure that they not only take any relevant consideration into account when exercising their power under the relevant Act, but more specifically, when determining issues such as 'injury and causation', they need to act in accordance with the requirement of the legislation such as subsection 269TAE (2)(A) which states, inter alia,-

> that 'the 'Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:
>
> (a) the volume and prices of imported like goods that are not dumped; or

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(b) the volume and prices of importations of like goods that are not subsidised; or

(c) contractions in demand or changes in patterns of consumption; or

(d) restrictive trade practices of, and competition between foreign and Australian producers of like goods; or……..

and any such injury or hindrance must not be attributed to the exportation of those goods.'

(underlined emphasis added)

The ADC has stated that, as required by the legislation, it did take other 'factors' into consideration on 'injury and causation' but in CMC's opinion, this observance of s269TAE (2)(A) was merely a 'tick a box exercise' and as such, the ADC failed to properly or fully take into account other known and relevant considerations on the issue of injury causation.

Fundamental to this current 'Ministerial' decision on CMC's imports of HSS goods from the Thai producer and exporter, Saha Thai Steel Pipe Public Company Limited, (Sahathai) is the previous investigation on these HSS goods, namely Report No 177. In CMC's application for Review, Ground No 3 for review was that the ADC's final report to the 'Minister' (Parliamentary Secretary) failed to follow a WTO and Legislative dictate by not attributing injury causation to other known factors relevant to its consideration in terms of subsection 269TAE (2)(A) parts (a), (b), (c), (d).

Whilst CMC rejects the ADC's basis for determining a 5.7% dumping margin for Sahathai exports, being the ADC's failure to allow a duty drawback adjustment, the imposition of anti-dumping duties are only intended to 'level the playing field'.

In report No 177 Sahathai exports were found to have been 'non-dumped' and its investigation was terminated but the resultant measures imposed by Report No 177 from the 3rd July 2012 were intended to level the playing field on exports of like goods (HSS) from China, Malaysia and Korea'.

However, as the ADC has since determined in SEF 291 of 5/11/2015, a circumvention activity has occurred on those exports pursuant to subsection 48(2) of the Regulations which means the measures imposed on HSS exported from China, Malaysia and Korea have not been applied. Whilst SEF 291 is dated 5/11/2015, the relevant considerations on timing, and matters known, or should have been known, to the ADC in the context of their being relevant to Sahathai's exports include:-

- Case No 177 Investigation period was from 1/7/2010 to 30/6/2011.
- Measures from Case No 177 were imposed from 3/7/2012.(Sahathai investigation was terminated)

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- Provisional measures in Case No 177 were imposed from 10/1/2012
- Case No 254 was initiated on 21st July 2014 (This Case involving Sahathai)
- The Investigation period for Case No 254 was from 1/7/2013 to 30/6/2014.
- Provisional measures on Case No 254 commenced from 16/3/2015.
- ATM, the applicant in Cases No 177 & 254 applied for the Circumvention Inquiry on 7/4/2015.
- ADC commenced the Circumvention Inquiry on 27/4/2015-Case No 291.
- The period of Inquiry for the Circumvention Case No 291 was from 1/7/2010 to 31/3/2015, being the period from Case No 177 through to Case No 254 and beyond.

**Report No 177:**

Report No 177 resulted in the following ad valorem duty measures being imposed:-

- China co-operating exporters had dumping and subsidy margins imposed of from 10.7% to 32% and non co-operating exporters had dumping and subsidy margins of from 43.9% to 100.8%.
- Korean exporters had dumping margins imposed of from 3.2% to 8.9%.
- Malaysian exporters had dumping margins imposed of from 3% to 20%.

Importantly however, in addition to the above ad valorem measures being applied, the exporters in question also had ascertained Export prices (AEP's) meaning that should they export below the designated AEP, the amount by which the export price was less than the their AEP was payable as duty in addition to the ad valorem rate.

Sahathai exports had no measures, no AEP and no substantive duty because of the FTA.

**Report No 254:**

Only applied to Thailand.

**Report No 291:**

Circumvention Inquiry applied to HSS exported from China, Korea, Malaysia.

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The applicant, ATM, had asserted that imports of 'modified' HSS had circumvented the imposed measures of Report No 177 and that the 'modified' or circumvention exports had increased 1000% after 3/7/2012.

The ADC observed from the ACBPS (Customs) database that from the end of year 2012 onwards, imports of the modified HSS (Alloy HSS) from China, Korea, Malaysia increased significantly.

The ADC further observed that in 2013 and 2014 imports of non-alloyed HSS – (being the goods on which the measures were imposed from Report 177 and the goods subject to the original notice) declined by amounts equal to or more than the volume of alloyed (modified) HSS imports.

**Conclusion:**

CMC considers that the volume of imports found to have circumvented the measures of Report No 177 must have been the major cause of any injury to the local producer applicant ATM and to the local industry as a whole given that any injury needs to have been experienced by the whole of the local industry comprising three producers as detailed in Report No 254.

For this reason alone CMC submits that the reviewable decision was not the correct or preferable decision.

**The Australian Market and Market Share:**

The ADC states that it estimated total Australian industry production figures using verified data from Investigation 177 which assumed APT- (then ITM) had production/sales of circa 2000 tonnes. Investigation 177 was for the period 1/7/2010 to 30/6/2011 whereas Investigation 254 was for the period 1/7/2013 to 30/6/2014 and it would be exceptional if APT was still a viable operation at around 2000 tonnes p.a.

The ADC however estimated that whilst the market size had contracted from the period of Report 177, ATM and Orrcon still accounted for the same production ratios and market shares of that previous period. The ADC simply ignored the continued presence of the third local producer APT despite it still being a market player from its entry back in 2010.

Additionally, the ADC comments state that its understanding of the HSS market share distributions did not change between publication of Statement of Essential Facts No 254 and final Report 254 and the ADC notes that 'it did not receive any submissions in response to SEF 254 from any of the interested parties, including APT (formerly ITM) and CMC, regarding its Australian market share distribution findings'.

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Whilst responses to SEF 254 were to have been forwarded by 17/6/2015, we wrote to the ADC on behalf of CMC on the 6th July 2015 detailing our understanding of the relevant market distribution for the period in question and on our understanding , APT had sales of circa 24,000 tonnes, not 2000 tonnes. Submission No 48 on the ADC website refers.

It can only be concluded that the ADC ignored that submission, and CMC submits that the ADC should have endeavoured to determine a more accurate assessment of the market distribution rather than rely on what was outdated information. It is not unreasonable to claim that if APT had sales of circa 24,000 tonnes, those sales could have been at the expense of ATM, and not Sahathai's exports.

For this reason also CMC submits that the reviewable decision is not the correct or preferable decision.

**Other Grounds of Appeal**

CMC fully supports the ground for appeal on the period of 'section 42 securities' as provided on behalf of Sahathai's earlier submissions in that section 45 of the Act clearly contemplates a four month period for such securities which given the circumstances of this case, meant the securities should have expired on the 16th July 2015.

Given that the securities in question were not cancelled on the 16th July 2015, the circumstances relating to this issue mean that in CMC's opinion, the correct and preferable decision was for the Commissioner of the ADC to recommend and the Parliamentary Secretary accept that section 269TN of the Act prevented publication of a dumping duty notice under subsection 269TG(1) of the Act due to the lapsing of the valid period for requiring securities.

Please contact the writer for any further information relating to this submission.

Thank you for your consideration.

Regards,

**M J Howard**