

# **COMMERCIAL METALS PTY LTD**

APPLICATION for REVIEW  
of  
Ministerial Decision  
to  
PUBLISH a DUMPING DUTY NOTICE  
on  
CASE No 254  
by  
COMMERCIAL METALS PTY LTD

**INDEX:** **Page No:**

|  |       |
|--|-------|
| Signed Application                     | 9     |
| Applicant Contact Details              | 10    |
| Letter of Authority                    | 11    |
| Goods Description Imported Goods       | 12    |
| Copy of Reviewable Decision.- Gazette  | 13    |
| Notification of Decision-ADN #2015/102 | 14    |
| Date and Method of Notification        | 17    |
| Grounds for Appeal and Reasons         | 17/18 |
| Introduction – Identification          | 21    |

**Attachment ‘A’**

ADN Notice No. 2015/36

ADN Notice No. 2015/66

**APPLICATION FOR REVIEW  
OF A DECISION BY THE MINISTER  
WHETHER TO PUBLISH  
A DUMPING DUTY NOTICE OR  
A COUNTERVAILING DUTY NOTICE**

**Anti-Dumping Review Panel** c/o  
Legal Services Branch Department of  
Industry and Science  
10 Binara Street  
Canberra City  
ACT 2601  
P: +61 2 6276 1781  
F: + 61 2 6213 6821  
E: [ADRP@industry.gov.au](mailto:ADRP@industry.gov.au)

## INFORMATION FOR APPLICANTS

### WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Department of Industry and Science, or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures
- to terminate an investigation into an application for dumping or countervailing measures
- to reject or terminate examination of an application for duty assessment, and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

#### *Investigations:*

- to publish a dumping duty notice
- to publish a countervailing duty notice
- not to publish a dumping duty notice
- not to publish a countervailing duty notice

#### *Review inquiries, including decisions*

- to alter or revoke a dumping duty notice following a review inquiry
- to alter or revoke a countervailing duty notice following a review inquiry
- not to alter a dumping duty notice following a review inquiry
- not to alter a countervailing duty notice following a review inquiry
- that the terms of an undertaking are to remain unaltered
- that the terms of an undertaking are to be varied
- that an investigation is to be resumed
- that a person is to be released from the terms of an undertaking

#### *Continuation inquiries:*

- to secure the continuation of dumping measures following a continuation inquiry
- to secure the continuation of countervailing measures following a continuation inquiry
- not to secure the continuation of dumping measures following a continuation inquiry
- not to secure the continuation of countervailing measures following a

continuation inquiry.

*Anti-circumvention inquiries:*

- to alter a dumping duty notice following an anti-circumvention inquiry;
- to alter a countervailing duty notice following an anti-circumvention inquiry;
- not to alter a dumping duty notice following an anti-circumvention inquiry; and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations to** the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

## **WHICH APPLICATION FORM SHOULD BE USED?**

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or an application that was lodged late.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at [www.adreviewpanel.gov.au](http://www.adreviewpanel.gov.au)).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for ADRP review of a decision of the Minister whether to publish a dumping duty notice or countervailing duty notice (or both). It is approved by the Commissioner pursuant to s 269ZY of the Act.

## **WHO MAY APPLY FOR REVIEW OF A MINISTERIAL DECISION?**

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An “interested party” may be:

- if an application was made which led to the reviewable decision, the applicant
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision
- a person directly concerned with the importation or exportation to Australia of the goods
- a person directly concerned with the production or manufacture of the goods
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia, or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of “interested party” in s 269ZX of the Act to establish whether they are eligible to apply.

## **WHEN MUST AN APPLICATION BE LODGED?**

An application for a review must be received within 30 days after a public notice of the reviewable decision was first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under ‘Where and how should the application be made?’ (below).

## **WHAT INFORMATION MUST AN APPLICATION CONTAIN?**

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister’s decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application should include a statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant’s reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and **must** take account only of information which was before the Minister when the Minister made the reviewable decision (s269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

## **HOW LONG WILL THE REVIEW TAKE?**

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

*If reinvestigation is not required*

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- - at least 30 days after the public notification of the review;
- - but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).



*If reinvestigation is required*

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

**WHAT WILL BE THE OUTCOME OF THE REVIEW?**

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- - Minister affirm the reviewable decision (s 269ZZK(1)(a)), or
- - Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- - affirm his/her original decision; or
- - revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

**WHERE AND HOW SHOULD THE APPLICATION BE MADE?**

Applications must be EITHER:

- - lodged with, or mailed by prepaid post to:

**Anti-Dumping Review Panel c/o  
Legal Services Branch Department  
of Industry and Science  
10 Binara Street  
Canberra City ACT 2601  
AUSTRALIA**

- - OR emailed to:

**[ADRP@industry.gov.au](mailto:ADRP@industry.gov.au)**

- - OR sent by facsimile to:

**Anti-Dumping Review Panel  
c/o Legal Services Branch  
+61 2 6213 6821**

## WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website ([www.adreviewpanel.gov.au](http://www.adreviewpanel.gov.au)) or from:

Anti-Dumping Review Panel c/o  
Legal Services Branch Department  
of Industry and Science  
10 Binara Street  
Canberra City ACT 2601  
AUSTRALIA

Telephone: +61 2 6276 1781  
Facsimile: +61 2 6213 6821

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission  
Department of Industry and Science  
Ground Floor Customs House  
1010 Latrobe Street  
MELBOURNE 3008

Telephone: 1300 884 159  
Facsimile: 1300 882 506  
Email: [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au)

## FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular.

(Penalty: 20 penalty units – this equates to \$3400).

## PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision to publish a dumping duty notice or countervailing duty notice.

**APPLICATION FOR REVIEW OF  
DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY  
NOTICE OR COUNTERVAILING DUTY NOTICE**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

to publish :            a dumping duty notice(s), and/or  
                                   a countervailing duty notice(s)

OR

**not** to publish :        a dumping duty notice(s), and/or  
                                   a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- - provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application
- - provides reasonable grounds for the decision not being the correct or preferable decision, and
- - is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

- Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- Full description of the imported goods to which the application relates.
- The tariff classification/statistical code of the imported goods.
- A copy of the reviewable decision.
- Date of notification of the reviewable decision and the method of the notification.
- A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.
- A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

[If the application contains material that is confidential or commercially sensitive] an additional non- confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:.....  
*Howard*

Name:.....  
*M. J. Howard.*

Position:.....  
*Advisor.*

Applicant Company/Entity:  
*Commercial Metals Pty Ltd*

Date: *17 / 9 / 2015.*



**APPLICATION for REVIEW of :**

**Decision of the Minister (Parliamentary Secretary) to Publish a DUMPING DUTY notice.**

**ADC Case No 254.**

**Hollow Structural Sections Exported from Thailand.**

**APPLICANT DETAILS:**

|                         |                                  |                                    |
|-------------------------|----------------------------------|------------------------------------|
| <b>NAME</b>             | <b>Commercial Metals Pty Ltd</b> |                                    |
| <b>STREET ADDRESS</b>   | <b>Level 3, 430 Forest Road</b>  | <b>Hurstville NSW<br/>2220</b>     |
| <b>POSTAL ADDRESS</b>   | <b>PO Box 113</b>                | <b>Hurstville BC, NSW<br/>1481</b> |
| <b>FORM of BUSINESS</b> | <b>COMPANY</b>                   |                                    |
| <b>CONTACT PERSON</b>   | <b>Andrew Loughnan</b>           |                                    |
| <b>POSITION/TITLE</b>   | <b>National Sales Manager</b>    |                                    |
| <b>TELEPHONE</b>        | <b>61 2 95856200</b>             |                                    |
| <b>FASCIMILE</b>        | <b>61 2 95808680</b>             |                                    |
| <b>Email</b>            | <b>Andrew.Loughnan@cmc.com</b>   |                                    |
| <b>ADVISOR</b>          | <b>M J Howard</b>                | <b>jack@itada.com.au</b>           |
| <b>AUTHORISATION</b>    | <b>Letter attached</b>           |                                    |



17<sup>th</sup> September 2015

Anti-Dumping Review Panel  
C/O LEGAL SERVICES BRANCH  
DEPARTMENT of INDUSTRY and SCIENCE  
10 BINARRA STREET,  
CANBERRA CITY  
ACT 2601

To whom it may concern,

This letter is to advise that M J Howard is the Company's authorised advisor in relation to the application for an appeal against the Minister's decision on Case No 254.

Kind Regards,

A handwritten signature in blue ink, appearing to read "A Loughnan", is positioned above the printed name.

Andrew Loughnan  
National Sales Manager

COMMERCIAL METALS Pty Ltd  
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P O Box 113, Hurstville BC, NSW 1481  
Level 3, 430 Forest Road, Hurstville, NSW 2220  
Phone: +61 2 95856200 Fax: +61 2 9580 8680  
[www.cmcaustralia.com.au](http://www.cmcaustralia.com.au)

**COMMITMENT**  
YOU CAN COUNT ON

## Full GOODS DESCRIPTION of the Imported Goods:

The goods the subject of the Dumping Duty Notice and this application for review, as described in Report No 254, are:-

“Certain electric resistance welded pipe and tube made of steel, comprising circular and non-circular hollow sections in galvanised, and non-galvanised finishes, whether or not including alloys. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). Finish types for the goods include pre-galvanised, hot-dipped galvanised (HDG), and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 950.0 mm. CHS with other than plain ends (such as threaded, swaged and shouldered ) are also included within the goods coverage.”

### \* TARIFF CLASSIFICATIONS/STATISTICAL CODE OF THE IMPORTED GOODS:

- 7306 30 00 stat codes 31,32,33,34,35,36,and 37.
- 7306 50 00 stat code 45.
- 7306 61 00 stat codes 21, 22, 25, and 90
- 7306 69 00 stat code 10.

\*As per Schedule 3 to the Customs Tariff Act 1995

**Customs Tariff (Anti-Dumping) Act 1975****Certain Hollow Structural Sections  
Exported from the Kingdom of Thailand*****Notice pursuant to subsection 8(5) of the Customs Tariff (Anti-Dumping) Act 1975***

I, KAREN ANDREWS, Parliamentary Secretary to the Minister for Industry and Science, having decided to issue a notice pursuant to subsections 269TG(1) and 269TG(2) of the *Customs Act 1901* in respect of hollow structural sections described in that notice (the goods), DETERMINE, pursuant to subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), that interim dumping duty payable on those goods be determined:

- in accordance with the ad valorem duty method as specified in subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

Pursuant to subsection 8(5B) of the Dumping Duty Act, I have had regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (i) the export price of goods of that kind as so ascertained, or last so ascertained; and
- (ii) the interim dumping duty payable on the goods

does not exceed that non-injurious price of goods of that kind as ascertained.

This notice applies to the goods and like goods entered for home consumption on and after 16 March 2015.

Dated this 12<sup>th</sup> day of August 2015

KAREN ANDREWS  
Parliamentary Secretary to the Minister for Industry and Science





## **ANTI-DUMPING NOTICE NO. 2015/102**

### **Certain Hollow Structural Sections Exported from the Kingdom of Thailand**

#### **Findings in Relation to a Dumping Investigation**

##### ***Customs Act 1901 – Part XVB***

On 21 July 2014 I, Dale Seymour, the Commissioner of the Anti-Dumping Commission published a notice announcing the initiation of an investigation into the alleged dumping of certain hollow structural sections (HSS) exported to Australia from the Kingdom of Thailand.

The goods are classified to the following tariff subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37);
- 7306.50.00 (statistical code 45);
- 7306.61.00 (statistical codes 21, 22, 25 and 90); and
- 7306.69.00 (statistical code 10).

A full description of the goods is available in Anti-Dumping Notice No. 2014/59, which is available on the internet at [www.adcommission.gov.au](http://www.adcommission.gov.au)

Findings and recommendations were reported to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in *Anti-Dumping Commission Report No. 254* (REP 254), in which it outlines the investigations carried out by the Commission and recommends the publication of a dumping duty notice in respect of the goods. The Parliamentary Secretary has considered REP 254 and has accepted the recommendations and reasons for the recommendations, including all material findings of fact or law on which the recommendations were based, and particulars of the evidence relied on to support the findings.

Notice of the Parliamentary Secretary's decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 19 August 2015.

In REP 254, it was found that:

- HSS exported from Thailand to Australia were dumped with margins ranging from 5.7% to 29.7%;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Accordingly, I recommended that a dumping duty notice in respect of HSS exported from Thailand be published in accordance with subsections 269TG(1) and 269TG(2) of the *Customs Act 1901* (the Act).

The method used to compare export prices and normal values to establish the dumping margin was to compare the weighted average export prices with corresponding normal values over the investigation period under subsection 269TACB(2)(a) of the Act. The normal value was established under subsections 269TAC(1) of the Act. The export price was established under subsections 269TAB(1)(a) of the Act.

Particulars of the dumping margins established for each of the exporters and the effective rates of duties are set out in the following table.

| Exporter / Manufacturer                         | Dumping Margins | Duty Method |
|---|-----------------|-------------|
| Sahathai Steel Pipe Public Company Limited      | 5.7%            | Ad valorem  |
| Pacific Pipe Public Company Limited             | 15.1%           | Ad valorem  |
| Samchai Steel Industries Public Company Limited | 19.8%           | Ad valorem  |
| Uncooperative and all other exporters           | 29.7%           | Ad valorem  |

The effective rate of duty that has been determined is an amount worked out in accordance with the ad valorem duty method, as detailed in the table above.

Measures apply to goods that are exported to Australia after publication of the Parliamentary Secretary's notice. Measures also apply to goods that were exported to Australia after the Commissioner made a preliminary affirmative determination to the day before the Parliamentary Secretary's decision was published.

Any dumping securities that have been taken on and from 16 March 2015 will be converted to interim dumping duty.<sup>1</sup> Pursuant to section 12 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), conversion of securities to interim duty will not exceed the level of security taken.

The actual duty liability may be higher than the effective rate of duty due to a number of factors. Affected parties should contact the Commission on 13 28 46 or at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au) for further information regarding the actual duty liability calculation in their particular circumstance.

To preserve confidentiality, the export price, normal value and non-injurious price applicable to the goods will not be published. Bona fide importers of the goods can obtain details of the rates from the Dumping Liaison Officer in their respective capital city.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Clarification about how measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

<sup>1</sup> Within the time limitations of section 45 of the Act.

REP 254 has been placed on the Commission's public record. The public record may be examined at the Commission's office by contacting the case manager on the details provided below. Alternatively, the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Enquiries about this notice may be directed to the Case Manager on telephone number +61 3 8539 2409, fax number +61 3 8539 2499 or email at [operations4@adcommission.gov.au](mailto:operations4@adcommission.gov.au).

Dale Seymour  
Commissioner  
Anti-Dumping Commission

20 August 2015

**DATE and METHOD of NOTIFICATION of REVIEWABLE DECISION:**

- Decision by the Parliamentary Secretary to the Minister for Industry and Science was published in the Australian Newspaper on the 19<sup>th</sup> August 2015 and in the Commonwealth Gazette No C2015G01334 of the 19<sup>th</sup> August 2015.
- Copy attached at page 13.
- The Anti-Dumping Commissioner also published the decision by the Parliamentary Secretary of the 19<sup>th</sup> August 2015 on the Commission's website by ANTI-DUMPING Notice No 2015/102 dated 20<sup>th</sup> August 2015.C
- Copy attached at pages 14-16

**Commercial Metals Pty Ltd (CMC) is making this application for review in accordance with s 269 ZZA and is an interested party as defined in s 269 ZX (c)(ii).**

**CMC considers the correct or preferable decision should be that as the Commissioner's treatment of 'Sahathai' exports was erroneous the Investigation should have been terminated.**

**Alternatively the decision to publish a Dumping Duty Notice on 'SAHATHAI' is flawed on the basis of the Commissioner not informing the ABF to cancel Section 42 Securities and the decision should be revoked.**

**The Commission's findings on Injury Causation were also erroneous and need to be re-investigated.**

## **GROUND FOR APPEAL and Detailed Statement of Reasons**

The grounds, and the detailed Statement for Reasons CMC believing that the reviewable decision is not the correct or preferable decision follow: -

### Ground No. 1:

1.1 CMC submits that securities taken in accordance with Section 42 of the Customs Act 1901 vide Anti-Dumping Notice No. 2015/36 of the 16<sup>th</sup> March 2015 should have been cancelled in accordance with Section 45 (2) of the Customs Act 1901 and the Commissioner's apparent failure to inform the Australian Border Force (ABF) to cancel the securities after their expiry date of 15<sup>th</sup> July 2015 is an error. (ADN No. 2015/36 refers, copy at Attachment 'A').

### Ground No. 2:

2.1 As there appears to be no request from any Thai exporter of the HSS goods subject to the taking of securities under Section 42 requesting an extension of time beyond the expiration period of 4 months as provided for in Section 45 (3)(9)(ii), and the Parliamentary Secretary's decision to publish a Dumping Duty Notice (as per the copy on page 13) fixed the lesser duty rule.

2.1 These circumstances therefore must question the Parliamentary Secretary's basis and authority to publish a Dumping Duty Notice under s 269 TG(I).

2.2 For these reasons CMC believes the Parliamentary Secretary's decision to publish the Dumping Duty Notice is not the correct or the preferred decision.

(Copy of Parliamentary Secretary's decision is at page 13)

Ground No. 3:

3.1 As stated in para 8.6 of the Final Report No. 254, the Minister must consider whether any injury to an industry is being caused, or threatened by a factor other than the exportation of the goods the subject of this Investigation, Case No. 254.

3.2 Those factors include:

- (1) The volume and prices of imported like goods that are not dumped, and
- (2) contractions in demand or changes in patterns of consumption.

3.3 CMC submits that the most notable factor from the Commission's consideration of 3.2.(1), is the very clear finding that other imports grew while the Thai imports shrank in year 2014, there were no findings of sales or volume injury as a result but a failure to adjust for causation by these other imports.

3.4 The Anti-Dumping Agreement requires that injury from other causes, not be attributed to any dumped goods.

3.5 Logically, given the Australian market is the 'one single' market, if non-dumped imports clearly took away sales from Australian Tube Mills, they would have to have been price favourable.

If they also took market share from Thailand, it is also a valid assumption that they were priced at least as well as the Sahathai product from Thailand and hence were price setters.

- 3.6 The Commission has access to import data that would allow the Commission to determine average pricing from the other countries such as the UAE, Malaysia and China, in which case this should have been done.
- 3.7 It would seem from Final Report No. 254 that the Commission is refusing to follow a WTO dictate.
- 3.8 The other factor that the Commission has obviously refused to determine is the volume of domestic sales by the third Australian producer, APT.
- 3.9 Formerly Independent Tube Mills, (ITM) this producer was mentioned in Report No. 177 which covered the 12 month period 1/7/2010 to 30/6/2011. ITM was described as being a new market entrant.
- 3.10 The relevant findings from Report No. 177 included (Para 5.3).
  - 3.10.1 ATM and Orrcon accounted for more than 98% of Australian production meaning 'ITM' must only have accounted for 2%.
  - 3.10.2 ATM accounts for an estimated 60% of Australian HSS production, with Orrcon accounting for the vast majority of the remainder.

- 3.11 The Commission's findings in Report No. 254 on 3.10.1 and 3.10.2 market shares and local production are identical.
- 3.12 That suggests that APT after a period of some 3 years is still accounting for 2% of local production which, if valid, challenges how they are still operating as a local producer.
- 3.13 These market factors, and obvious causes of claimed injury to ATM from factors other than the dumped imports from Sahathai/Thailand mean that the Commission's assessment is flawed and the attribution of injury needs to be re-assessed.

Accordingly, the Parliamentary Secretary's decision based on the findings and recommendations of Final Report No. 254 is not the correct or preferable decision.

#### **4. INTRODUCTION - IDENTIFICATION**

- 4.1 Commercial Metals Pty Ltd (CMC) is an interested and affected party as defined in s 269 ZZ(2)(c)(ii) being an importer of the subject goods of the Dumping Duty Notice at page. 13.
- 4.2 CMC cooperated with the Commission's Investigation which prepared a Report from a Verification of CMC's imports and sales of 'SAHA' HSS goods ex Thailand.



- 4.3 For the reasons and grounds outlined in this Application CMC believes the decision by the Parliamentary Secretary is not the correct or preferable decision.
- 4.4 CMC supports the claims and reasons provided by Sahathai Steel Pipe Public Company Ltd, (SAHA) and in the event of any Measures being justified on HSS exported by SAHA, CMC, for reasons of the various finishes and price points of the product group, strongly supports the Commission's reasoning on its recommendation of an ad valorem rate of I.D.D.
- 4.5 As CMC and SAHA claim, however, SAHA's exports are considered not to have been 'dumped' or injurious to the Australian producers.

**Contact details for the Advisor are:**

**Phone : 61 459 21 2702**

**Email: [jack@itada.com.au](mailto:jack@itada.com.au)**

**ATTACHMENT 'A'**  
**ADN Notices**  
**SECTION 42 SECURITIES**  
**ADN No 2015/36**  
**AND No 2015/66**



## **ANTI-DUMPING NOTICE NO. 2015/36**

### **Certain Hollow Structural Sections Exported from the Kingdom of Thailand**

### **Preliminary Affirmative Determination and Imposition of Securities**

#### **Customs Act 1901 – Part XVB**

On 21 July 2014 I, Dale Seymour, Commissioner of the Anti-Dumping Commission initiated an investigation into the alleged dumping of certain hollow structural sections ('the goods') exported to Australia from the Kingdom of Thailand (Thailand), following an application lodged by Austube Mill Pty Ltd.

The goods the subject of this application are certain electric resistance welded pipe and tube made of steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, whether or not including alloys. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include 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 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 950.0 mm. CHS with other than plain ends (such as threaded, swaged and shouldered) are also included within the goods.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2014/59. This ADN is available on the public record at [www.adcommission.gov.au](http://www.adcommission.gov.au).

A notice under subsection 269TD(4) of the Customs Act 1901 (the Act) advising that I had made a preliminary affirmative determination was published in The Australian newspaper on 16 March 2015. In the making of that preliminary affirmative determination I was satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from Thailand.

In reaching this preliminary decision, I have had regard to the requirements of section 269TAE of the Act and am satisfied that dumped goods appear to have caused material injury to the Australian industry producing like goods.

The preliminary analysis of dumping margins is tabulated below. These margins were calculated under the Act by establishing export prices under subsection 269TAB(1)(a), establishing normal values ascertained under subsection 269TAC(1) and comparing these results in accordance with subsection 269TACB(2)(a).

| Exporter  | Dumping margin |
|---|----------------|
| Sahathai Steel Pipe Public Company Limited      | 12.4%          |
| Pacific Pipe Public Company Limited             | 15.6 %         |
| Samchai Steel Industries Public Company Limited | 18.4%          |
| Uncooperative exporters                         | 30.6%          |

Preliminary Affirmative Determination Report No 254 sets out the reasons for making this preliminary determination, and has been placed on the public record. Alternatively it may be examined at the Anti-Dumping Commission's (the Commission's) office by contacting the case manager on the details provided below.

Under subsection 269TD(4)(b), I am satisfied that it is necessary to require and take securities in order to prevent material injury occurring to the Australian industry while the investigation continues.

The Australian Customs and Border Protection Service will require and take securities under section 42 of the Act in respect of interim dumping duty that may become payable in respect of the goods exported from Thailand entered for home consumption on or after 16 March 2015.

The security that has been determined is an amount worked out in accordance with ad valorem duty method.

These securities will be imposed at the rate specified in the above table of preliminary dumping margin assessments.

Affected parties should contact the Commission by phone 13 28 46 or +61 2 6213 6000 (outside Australia) or at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au) for further information regarding the actual security liability calculation in their particular circumstance.

I must report to the Parliamentary Secretary to the Minister for Industry and Science (the Parliamentary Secretary) with final recommendations in relation to this investigation on or before 13 July 2015. The Parliamentary Secretary will then decide whether to publish a dumping duty notice and, if relevant, the level of measures to be imposed.

If dumped or subsidised goods give rise to retrospective notices being imposed on the goods under section 269TN of the Act, the dumping duty notice will also include the duties to be imposed retrospectively.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 9244 8267, fax number 1300 882 506 or email at [operations4@adcommission.gov.au](mailto:operations4@adcommission.gov.au).

Dale Seymour  
Commissioner  
Anti-Dumping Commission

16 March 2015



## **ANTI-DUMPING NOTICE NO. 2015/66**

### **Certain Hollow Structural Sections**

### **Exported from the Kingdom of Thailand**

### **Amendment of Securities**

#### ***Customs Act 1901 – Part XVB***

I, Dale Seymour, Commissioner of the Anti-Dumping Commission initiated an investigation on 21 July 2014, into the alleged dumping of certain hollow structural sections ('the goods') exported to Australia from the Kingdom of Thailand (Thailand), following an application lodged by Austube Mills Pty Ltd (the application).

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2014/59. This ADN is available on the internet at [www.adcommission.gov.au](http://www.adcommission.gov.au).

In accordance with subsection 269TD(4)(a) of the *Customs Act 1901* (the Act), on 16 March 2015, I gave public notice that a preliminary affirmative determination had been made that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from Thailand. That public notice, along with ADN No. 2015/36, also advised that I was satisfied that, in accordance with subsection 269TD(4)(b) of the Act, it was necessary to require and take securities in respect of interim dumping duty that may become payable in respect of the goods from Thailand in order to prevent material injury occurring to the Australian industry while the investigation continues, under section 42 of the Act.

Today the Anti-Dumping Commission (the Commission) released Statement of Essential Facts No. 254 (SEF 254). SEF 254 sets out the facts on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary to the Minister for Industry and Science (the Parliamentary Secretary) in relation to the application. This ADN should be read in conjunction with SEF 254, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

In preparing the SEF I have had regard to additional information including the verification visit reports and submissions received from the interested parties. As a result, the Commission preliminarily determined dumping margins and effective rates of securities which are revised from those previously published

on 16 March 2015. As a result of these findings, in accordance with section 269TD of the Act, I advise that:

- I remain satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from Thailand;
- I remain satisfied that it is necessary to require and take securities in respect of interim dumping duty that may become payable in respect of the goods from Thailand in order to prevent material injury occurring to the Australian industry while the investigation continues; and
- Australian Customs and Border Protection Service require and take securities at revised rates, as specified in the table below.

| Exporter / Manufacturer                         | Effective Rate of Securities (preliminary dumping margin) | Duty Method |
|---|---|-------------|
| Sahathai Steel Pipe Public Company Limited      | 5.7%  | Ad valorem  |
| Pacific Pipe Public Company Limited             | 15.1%   | Ad valorem  |
| Samchai Steel Industries Public Company Limited | 19.8%   | Ad valorem  |
| Uncooperative and all other exporters           | 29.7%   | Ad valorem  |

These margins were calculated under the Act by establishing export prices under subsection 269TAB(1)(a) and establishing normal values ascertained under subsection 269TAC(1) and comparing these results in accordance with subsection 269TACB(2)(a).

Affected parties should contact the Commission by phone 13 28 46 or +61 2 6213 6000 (outside Australia) or at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au) for further information regarding the actual security liability calculation in their particular circumstance.

The new level of securities will be taken in respect of any interim dumping duty that may become payable in respect of the goods entered for home consumption on or after **1 June 2015**.

I must report to the Parliamentary Secretary with final recommendations in relation to this investigation on or before 13 July 2015. The Parliamentary Secretary will then decide whether to publish a dumping duty notice and, if relevant, the level of measures to be imposed.

If dumped goods give rise to retrospective notices being imposed on the goods under section 269TN of the Act, the dumping duty notice will also include the duties to be imposed retrospectively.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2409, fax number +61 3 8539 2499 or email at [operations4@adcommission.gov.au](mailto:operations4@adcommission.gov.au).

Dale Seymour  
Commissioner  
Anti-Dumping Commission

28 May 2015