



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XV B*

**STATEMENT OF ESSENTIAL FACTS  
NO. 445**

**REVIEW OF ANTI-DUMPING MEASURES  
HOLLOW STRUCTURAL SECTIONS EXPORTED TO  
AUSTRALIA**

**FROM THE KINGDOM OF THAILAND**

12 April 2018

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**ABBREVIATIONS**

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the Assistant Minister	Assistant Minister for Science, Jobs and Innovation and Assistant Minister to the Minister for Jobs and Innovation
Atlantic	Atlantic Pipe Company Limited
ATM	Austube Mills Pty Ltd
CHS	Circular hollow sections
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 445	Consideration Report No. 445
CTMS	cost to make and sell
the Customs Amendment	<i>Customs Amendment (Anti-Dumping Measures) Act 2017</i>
the Direction	<i>Customs (Extension of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic Public Record
FOB	free on board
GAAP	generally accepted accounting principles
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
HRC	Hot-rolled coil
HSS	Hollow structural sections
IDD	interim dumping duty
The Manual	Dumping and Subsidies Manual
NIP	non-injurious price
OCOT	ordinary course of trade
Orrcon	Orrcon Steel Limited
Pacific Pipe	Pacific Pipe Public Company Limited
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REQ	Response to exporter questionnaire
REP 254	<i>Anti-Dumping Commission Report No. 254</i>
review period	1 October 2016 to 30 September 2017
RHS	Rectangular or square hollow sections
Saha Thai	Sahathai Steel Pipe Public Company Limited
SEF	Statement of Essential Facts
Thai Premium	Thai Premium Pipe Co Ltd
Thailand	the Kingdom of Thailand
USP	Unsuppressed selling price

## 1 SUMMARY

### 1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Science, Jobs and Innovation to the Minister for Jobs and Innovation (the Assistant Minister)<sup>1</sup> in relation to a review of the anti-dumping measures (in the form of a dumping duty notice) applying to certain hollow structural sections (HSS or the goods) exported to Australia from the Kingdom of Thailand (Thailand).

This review was initiated on 19 October 2017 after the Commissioner considered an application lodged by Pacific Pipe Public Company Limited (Pacific Pipe).

Pacific Pipe considered it appropriate to review the anti-dumping measures applying to HSS, as the measures affect them, on the basis that one or more of the variable factors relevant to the taking of the anti-dumping measures, in relation to the applicant, have changed. Pacific Pipe alleges that the variable factor that has changed is export price.

The Anti-Dumping Commission (the Commission) considers that the export price is likely to have changed for all exporters of the goods to Australia from Thailand and therefore recommended to the Assistant Minister that the review be extended to include all Thai exporters. The Assistant Minister agreed to this request.<sup>2</sup>

### 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act) sets out,<sup>3</sup> among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the anti-dumping measures.<sup>4</sup>

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Assistant Minister allows, place on the public record a SEF on which the Commissioner proposes to base his recommendations to the Assistant Minister in relation to the review of anti-dumping measures.<sup>5</sup>

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<sup>1</sup> On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation. For the purposes of this decision the Minister is the Assistant Minister.

<sup>2</sup> Subsection 269ZC(4) provides that if the Commissioner decides not to reject an application for review of anti-dumping measures, the Commissioner may, if he considers that the review applied for should be extended to include any additional matter, recommend to the Assistant Minister that the review be extended accordingly.

<sup>3</sup> All references to legislation in this report are to the *Customs Act 1901*, unless otherwise specified.

<sup>4</sup> Subsection 269ZC(5).

<sup>5</sup> Subsection 269ZD(1).

### 1.3 Preliminary findings

The Commissioner finds, in relation to exports of HSS to Australia from Thailand by the applicant, and other exporters, during the period 1 October 2016 to 30 September 2017 (the review period), that all of the variable factors have changed.

### 1.4 Proposed recommendation

The Commissioner proposes to recommend to the Assistant Minister that the notice in respect of the goods have effect as if different variable factors had been ascertained.

### 1.5 Final report

The Commissioner's final report and recommendations must be provided to the Assistant Minister within 155 days after the publication of a notice under subsections 269ZC(4), (5) or (6), or such longer period as the Assistant Minister allows.

On 24 January 2018, the Commissioner<sup>6</sup> approved an extension of time, until 27 April 2018, with respect to the final report, in conjunction with the extension of time to the publishing of the SEF (Anti-Dumping Notice (ADN) 2018/16 refers). On 5 March 2018, the Commissioner approved a further extension so that the final report and recommendations must now be provided to the Assistant Minister on or before **28 May 2018**,<sup>7</sup> or within such longer period as may be allowed (ADN 2018/31 refers).

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<sup>6</sup> Subsection 269ZDA(1). It is noted that, on 19 January 2017, the former Assistant Minister delegated certain powers and functions of the Minister under section 269ZH1 to the Commissioner. Refer to Anti-Dumping Notice (ADN) No. 2017/10 for further information.

<sup>7</sup> Pursuant to section 36 of the *Acts Interpretation Act 1901*, if an act requires a thing to be done on a Saturday, Sunday or Public Holiday, this thing may be done on the following business day. As 27 May 2018 falls on a Sunday, the Commissioner may have until 28 May 2018 to provide the report to the Assistant Minister.

## **2 BACKGROUND**

### **2.1 Initiation**

On 19 October 2017, following consideration of an application lodged by Pacific Pipe, the Commissioner initiated a review of the anti-dumping measures applying to the goods exported to Australia from Thailand.

Notification of the initiation of the review was made in ADN No. 2017/136, which was published on the Commission website<sup>8</sup> on 19 October 2017.

Consideration Report No. 445 (CON 445) was also published on the Commission's website, detailing the Commissioner's reasons for not rejecting the application.

The review examined exports to Australia during the review period (1 October 2016 to 30 September 2017).

### **2.2 Existing anti-dumping measures**

#### **2.2.1 Original Investigation**

The anti-dumping measures, the subject of the review application, were initially imposed by public notice on 19 August 2015, by the then Assistant Minister to the Minister for Industry and Science, following consideration of the Anti-Dumping Commission Report No. 254 (REP 254).<sup>9</sup> The measures have not been the subject of a review since they were imposed in August 2015.

As a result of an accelerated review application (Anti-Dumping Commission Report No. 382), lodged by the exporter, Thai Premium Pipe Co Ltd (Thai Premium), Thai Premium received specific measures with effect from 19 October 2016.

Particulars of the dumping margins established for each of the exporters, and the effective rates of duty determined as a result of the initial investigation, or accelerated review, are set out in the following table:

Exporter / Manufacturer	Effective Rate of Duty	Duty Method
Sahathai Steel Pipe Public Company Limited	5.7%	<i>Ad valorem</i>
Pacific Pipe	15.1%	<i>Ad valorem</i>
Samchai Steel Industries Public Company Limited	19.8%	<i>Ad valorem</i>
Thai Premium	0%	Floor price
Uncooperative and all other exporters	29.7%	<i>Ad valorem</i>

<sup>8</sup> [www.adcommission.gov.au](http://www.adcommission.gov.au)

<sup>9</sup> Refer to *Anti-Dumping Commission Report No. 254* on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au) for further details.

## **2.3 Review process**

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to seek a review of those anti-dumping measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,<sup>10</sup> or the Assistant Minister may request, that the Commissioner conduct<sup>11</sup> a review of those anti-dumping measures if one or more of the variable factors has changed.

The Assistant Minister may initiate a review at any time. However, a review application from an affected party must not be lodged earlier than 12 months after publication of the notice imposing the original anti-dumping measures or the notice declaring the outcome of the last review.<sup>12</sup>

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Assistant Minister may allow, to conduct a review and report to the Assistant Minister on the review of the anti-dumping measures.<sup>13</sup>

During the course of a review, the Commissioner will examine whether the variable factors have changed.

Variable factors in this particular review are a reference to:<sup>14</sup>

- the ascertained export price;
- the ascertained normal value; and
- the non-injurious price (NIP).

Within 110 days of the initiation of a review, or such longer time as allowed,<sup>15</sup> the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Assistant Minister concerning the review of the anti-dumping measures.<sup>16</sup>

For this review, in making recommendations in his final report to the Assistant Minister, the Commissioner must have regard to:<sup>17</sup>

- the application for review of the anti-dumping measures;
- any submission relating generally to the review to which the Commissioner has had regard for the purpose of formulating the SEF in relation to this review;
- this SEF; and

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<sup>10</sup> Subsection 269ZA(1).

<sup>11</sup> Subsection 269ZA(3).

<sup>12</sup> Subsection 269ZA(2)(a).

<sup>13</sup> Subsection 269ZDA(1).

<sup>14</sup> Subsection 269T(4E).

<sup>15</sup> On 19 January 2017, the former Assistant Minister delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to ADN No. 2017/10 for further information.

<sup>16</sup> Subsection 269ZD(1).

<sup>17</sup> Paragraph 269ZDA(3)(a).

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- any submission made in response to this SEF that is received by the Commissioner within 20 days after the placing of the SEF on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.<sup>18</sup>

At the conclusion of the review, the Commissioner must provide a final report to the Assistant Minister. In his final report, the Commissioner must make a recommendation to the Assistant Minister that the dumping duty notice:<sup>19</sup>

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

The Assistant Minister must make a declaration within 30 days of receiving the report or, if the Assistant Minister considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Assistant Minister considers appropriate.<sup>20</sup>

## **2.4 Submissions received in response to the initiation of the review**

### **2.4.1 Submissions: Austube Mills Pty Ltd and Orrcon Steel Limited**

Following the initiation of the review, the Commission received submissions from Austube Mills Pty Ltd (ATM) and Orrcon Steel Limited (Orrcon), dated 22 and 23 November 2017 respectively. These submissions are published on the Electronic Public Record (EPR) at items 4 and 5 respectively.

In its submission, ATM asserts that applications for accelerated reviews and duty assessments by a number of exporters, since the imposition of duties in August 2015, demonstrates the need for continued measures. Further, ATM suggests the Commission consider the newly enacted provisions under subsection 269TAB(2A) of the Act when considering alternate methodologies to determine an export price for low volume Thai exporters.

ATM contends that exporters from Thailand have continued to maintain distribution links to Australia, allowing an opportunity to increase sales volumes were measures to be revoked or set at ineffective levels.

In its submission, Orrcon sought to draw the Commission's attention to the increase in costs of the raw material, hot rolled coil (HRC), used in the manufacture of HSS and which accounts for 80 per cent of production costs. Orrcon claims that HRC prices have increased in the domestic markets of countries such as Japan, Korea and Taiwan, and have similarly increased in Thailand.

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<sup>18</sup> Paragraph 269ZDA(3)(b).

<sup>19</sup> Paragraph 269ZDA(1)(a).

<sup>20</sup> Subsection 269ZDB(1A).

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In addition, Orrcon states that it does not anticipate the Commission would change its approach to a number of issues in the original investigation that were challenged and reaffirmed by the Anti-Dumping Review Panel (ADRP) in *Report No. 28*.<sup>21</sup> These issues included, in relation to Pacific Pipe, the treatment of domestic sales of the HSS grade AS/NZS1163-C350 and, in relation to Sahathai Steel Pipe Public Company Limited (Saha Thai), the approach to duty drawbacks and place of export.

### 2.4.2 The Commission's Assessment

The Commission agrees that the newly enacted provisions in the legislation provides alternate methodologies be considered, in accordance with subsection 269TAB(2A) of the Act, in determining an ascertained export price with respect to low volume exporters exporting goods to Australia from Thailand.

The Commission has considered whether each exporter cooperating with this review is a low volume exporter or has an absence of exports in the review period according to subsection 269TAB(2A) of the Act, and whether it is appropriate to determine their export price under subsection 269TAB(2B) of the Act.

Additionally, the Commission does not consider that there is sufficient reason to depart from methodologies used in *Report No. 28*, as affirmed by the ADRP.

## 2.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Assistant Minister. The SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the dumping duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

Interested parties are invited to make submissions to the Commissioner in response to the SEF no later than the close of business on **2 May 2018**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Assistant Minister.<sup>22</sup>

The Commissioner must report to the Assistant Minister on or before **28 May 2017**.

Submissions should preferably be emailed to [investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au).

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<sup>21</sup>

[http://www.adreviewpanel.gov.au/CurrentReviews/Documents/HSS%20FINAL%20ADRP%20Report%2028\\_PUBLIC.pdf](http://www.adreviewpanel.gov.au/CurrentReviews/Documents/HSS%20FINAL%20ADRP%20Report%2028_PUBLIC.pdf)

<sup>22</sup> Subsection 269ZDA(4).

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Alternatively, submissions may be sent to fax number +61 2 6102 9939, or posted to:

Director Investigations 4  
Anti-Dumping Commission  
GPO 2013  
Canberra ACT 2601  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's verification reports and other publicly available documents on the Commission's website.

Documents on the public record should be read in conjunction with the SEF.

## 3 THE GOODS AND LIKE GOODS

### 3.1 The goods subject to the anti-dumping measures

The goods the subject of the anti-dumping measures (the goods), and therefore this review 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 coverage.*

The following goods are excluded from the anti-dumping measures:

- *Conveyor tube made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of rounds standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation);*
- *Precision RHS with a nominal thickness of less than 1.6 mm (i.e. not used in structural applications); and*
- *Stainless steel CHS and RHS sections.*

### 3.2 Tariff classification

The goods are currently classified to the following tariff subheadings and statistical codes in Schedule 3 to 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);
- 7306.69.00 (statistical code 10); and
- 7306.90.00 (statistical code 12).

These tariff classifications and statistical codes may include goods that are both subject and not subject to the review. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description. Please refer to the goods description for details of the goods the subject of this review.

### **3.3 Like goods**

Subsection 269T(1) defines like goods as:

*“...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.*

The definition of like goods is relevant in the context of this review in determining the normal value of goods exported to Australia, the NIP and the goods subject to the dumping duty notice. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the Commission’s *Dumping and Subsidies Manual* (the Manual).<sup>23</sup>

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<sup>23</sup> Available on the Commission’s website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

## 4 EXPORT PRICE AND NORMAL VALUE

### 4.1 Finding

The Commissioner finds that the variable factors relevant to the determination of dumping duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have changed.

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice have effect as if different variable factors had been ascertained. The revised variable factors have resulted in different dumping margins relevant to the taking of interim dumping duties (IDD).

### 4.2 Exporter questionnaires and verification

In addition to the applicant, Pacific Pipe, the Commission identified two additional exporters of the goods to Australia from Thailand.

They are:

- Saha Thai; and
- Thai Premium.

Another Thai HSS manufacturer, Atlantic Pipe Company Limited (Atlantic), submitted an application for an accelerated review of the dumping notice with respect to the goods exported to Australia from Thailand. The Commissioner initiated the accelerated review on 9 November 2017. On receipt of a letter from Atlantic, dated 19 November 2017, withdrawing its application for an accelerated review and seeking participation in this review, the Commission ceased the accelerated review of the anti-dumping measures applicable to Atlantic.

Each exporter in this review, including Atlantic, was invited to complete an exporter questionnaire. All four exporters provided a detailed response to the exporter questionnaire (REQ). Non-confidential versions of the REQs are available on the EPR.

The Commission selected two exporters, Saha Thai and Pacific Pipe, for onsite verification of their information. Verification reports setting out the Commission's findings are available on the EPR. Saha Thai and Pacific Pipe represent more than 95 per cent of the volume of the goods exported to Australia from Thailand during the review period.

The Commission elected not to undertake onsite visits for Atlantic and Thai Premium. The Commission was able to benchmark the information provided in the REQ by these exporters with the information verified onsite for Saha Thai and Pacific Pipe.

#### 4.2.1 Uncooperative exporters

Pursuant to subsection 269T(1) of the Act, an exporter is an "uncooperative exporter" where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the review, within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the review.

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Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period. After having regard to the Direction, the Commissioner determined that all exporters which did not provide a REQ or a response to the information request, or which did not request a longer period to provide a response within the legislated period, are uncooperative exporters for the purposes of this review.

As provided for in subsection 269TACAB(1) of the Act, for uncooperative exporters, export price and normal value were worked out in accordance with subsections 269TAB(3) and 269TAC(6) of the Act, respectively, by having regard to all relevant information.

### 4.3 Export price

#### 4.3.1 Applicable legislation

Export price is determined in accordance with section 269TAB of the Act, taking into account whether the purchase or sale of goods was an arms length transaction as set out under section 269TAA. The *Customs Amendment (Anti-Dumping Measures) Act 2017* (the Customs Amendment) amended section 269TAB of the Act, with effect from 31 October 2017. The relevant amendments provide three methods to determine an export price where there is insufficient or unreliable information to ascertain an export price for an exporter due to an absence or low volume of exports to Australia.

#### 4.3.2 Pacific Pipe

Pacific Pipe exported a small volume of HSS to Australia in the review period when compared to the volume it exported to Australia in the original investigation period (2013-14 FY).<sup>24</sup> The Commission has considered whether the requirements of subsection 269TAB(2A) of the Act have been met, and therefore, whether Pacific Pipe's export price is to be determined under subsection 269TAB(2B) of the Act.

Subsection 269TAB(2A) specifies that the export price of the goods exported to Australia may be determined by the Minister in accordance with subsection 269TAB(2B) if:

- (a) the price is being ascertained in relation to an exporter of those goods (whether the review is of the measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally); and
- (b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia by that exporter having regard to the following:
  - (i) previous volumes of exports of those goods to Australia by that exporter;
  - (ii) patterns of trade for like goods;
  - (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

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<sup>24</sup> Financial Year

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The Commission has considered these elements as set out above in regards to Pacific Pipe as follows:

### Previous volumes of exports by Pacific Pipe – subsection 269TAB(2A)(b)(i)

Pacific Pipe has previously exported the goods prior to the review period, during the original investigation period (1 July 2013 to 30 June 2014) and in subsequent quarters.

The Commission has compared previous export volumes to those volumes in the current review period and finds that Pacific Pipe is exporting HSS to Australia in lower volumes than previously.

### Patterns of trade for like goods – subsection 269TAB(2A)(b)(ii)

The Commission has examined exports of HSS to Australia from all sources. This examination indicates that, despite a decline in imports of HSS from Pacific Pipe, demand for HSS persists in the Australian domestic market generally, and there does not appear to have been a marked decline in overall volume of HSS exports to Australia.

In addition, other exporters exporting HSS to from Thailand, experienced an increase in volumes of goods sold to Australia. The Commission therefore considers that Pacific Pipe's low volume of exports to Australia during the review period, does not pertain to an absence of exports, or low volume of exports, to Australia generally.

### Factors affecting patterns of trade – subsection 269TAB(2A)(b)(iii)

The Commission notes that the explanatory memorandum<sup>25</sup> for the Customs Amendment identifies factors that may affect patterns of trade for like goods that are not within the control of the exporter. Such factors may include supply disruptions or natural events (such as flood, drought or fire) that affect production levels.

The Commission found that Pacific Pipe manufactured and sold like goods on the domestic market and to third countries during the review period (see exporter verification report on the public record). The Commission considers that this indicates that there do not appear to be any factors (such as natural events) that are not within the control of Pacific Pipe that are affecting trade for like goods.

### Submission: Pacific Pipe

Pacific Pipe, in a submission dated 14 March 2018,<sup>26</sup> claims that the imposition of dumping duties on Pacific Pipe's exports have directly impacted on its export sales, and that competition from alternate suppliers is outside the control of the exporter.

It is the Commission's view that Pacific Pipe has not been able to provide sufficient evidence to demonstrate that factors outside its control affected Pacific Pipe's trade volumes during the review period. The Commission considers that anti-dumping measures in place in relation to the Pacific Pipe's exports of HSS to Australia are not a result of factors outside their control. In fact the measures directly resulted from the behaviour of Pacific Pipe during the original

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<sup>25</sup> Refer page 31 of the explanatory memorandum to the *Customs Amendment (Anti-Dumping Measures) Act 2017*.

<sup>26</sup> Pacific Pipe's submission can be found on the EPR on the Commission's website [www.adcommission.gov.au](http://www.adcommission.gov.au)

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investigation period, in the sense that the goods were priced and sold by the exporter willingly at that time, and were found to have been dumping.

### Submission: Austube Mills Pty Ltd

The Commission notes the receipt of a submission from ATM on 6 April 2018, in response to Pacific Pipe's submission. There was insufficient time for the Commission to consider this submission before publication of this SEF and the submission will be considered in relation to the final report for this review.

### Commission's consideration – subsection 269TAB(2A)

Having regard to the above, the Commission considers that, for Pacific Pipe, there is insufficient or unreliable information to ascertain an export price due to a low volume of exports to Australia. Pacific Pipe previously exported the goods to Australia in higher volumes and, despite the reduction in exports from Pacific Pipe, imports of HSS overall have not similarly declined. In addition, Pacific Pipe has not demonstrated that there are factors affecting the patterns of trade that are beyond its control.

Therefore, the Commission considers it appropriate to ascertain export prices under subsection 269TAB(2B). Pursuant to this subsection, the Commission is able to determine an export price having regard to any of the following:

- a previous export price for the goods exported to Australia by Pacific Pipe, established in accordance with subsection 269TAB(1) of the Act, for a decision of a kind mentioned in subsection 269TAB(2D) of the Act;<sup>27</sup>
- the price paid or payable for like goods sold by Pacific Pipe in arms length transactions for exportation from Thailand to a third country determined by the Minister to be an appropriate third country;<sup>28</sup> or
- an export price for like goods exported to Australia from Thailand by another exporter or exporters established in accordance with subsection 269TAB(1) for a decision mentioned in subsection 269TAB(2D) of the Act.<sup>29</sup>

### Previous export price – subsection 269TAB(2B)(a)

An export price for Pacific Pipe was determined under subsection 269TAB(1) for the purposes of publishing the notice under subsections 269TG(1) and (2) of the Act<sup>30</sup> with respect to the original investigation. The decisions to publish notices under subsections 269TG(1) and (2) of the Act are decisions referred to in subsection 269TAB(2D) of the Act. Therefore subsection 269TAB(2B)(a) is available for determining the export price.

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<sup>27</sup> Subsection 269TAB(2B)(a) of the Act

<sup>28</sup> Subsection 269TAB(2B)(b) of the Act

<sup>29</sup> Subsection 269TAB(2B)(c) of the Act

<sup>30</sup> See REP 254

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### Third country export price – subsection 269TAB(2B)(b)

Pacific Pipe indicated in its REQ that it did export to third countries during the review period. The Commission confirmed third country exports by Pacific Pipe during an onsite verification visit.<sup>31</sup> The Commission did not find any evidence to suggest exports to third countries were not at arms length. Therefore subsection 269TAB(2B)(b) of the Act is available for determining the export price.

### Another exporter's export price – subsection 269TAB(2B)(c)

Saha Thai and Thai Premium both exported the goods to Australia and are also subject to this review. Subsection 269TAB(2E) of the Act provides that, for the purposes of subsection 269TAB(2B)(c) of the Act, a decision, as listed in subsection 269TAB(2D) of the Act, must be (a) made not more than 2 years before the day the Commissioner published a notice of the review, and (b) made by the day the notice of review is published under subsection 269ZDB of the Act. Both exporters will have their export price determined under subsection 269TAB(1) of the Act. Therefore subsection 269TAB(2B)(c) of the Act is available for determining Pacific Pipe's export price.

### Commission's consideration – subsection 269TAB(2B)

All three methodologies set out under subsection 269TAB(2B) are available for determining Pacific Pipe's export price.

The Commission has considered all the methodologies available and has determined that the current export prices of other exporters', exporting the goods to Australia in the review period, being established in accordance with subsection 269TAB(1) in this review, is the most appropriate method to use to determine Pacific Pipe's export price as these prices reflect current market conditions and market prices of the goods exported to Australia from Thailand.

The Commission established export prices for Pacific Pipe using the weighted average export prices of Saha Thai and Thai Premium during the review period.

The Commission has found that the resulting ascertained export price for Pacific Pipe in respect to HSS has changed since Investigation 254.

Pacific Pipe's export price calculations are at **Confidential Appendix 1**.

### **4.3.3 Saha Thai**

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Saha Thai;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

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<sup>31</sup> See Pacific Pipe's exporter visit report, document 14 on the electronic record (EPR 445) on the Commission's website [www.adcommission.gov.au](http://www.adcommission.gov.au)

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Saha Thai, despite the imposition of measures, exported larger volumes of HSS to Australia during the review period, than it has done previously and accounts for more than 90 per cent of HSS exports from Thailand to Australia during the review period.

The Commission is satisfied that, for Saha Thai's exports to Australian customers, Saha Thai is the exporter and the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

The export price was established under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, excluding any part of that prices that relates to post-exportation charges.

The Commission has found that the resulting ascertained export price for Saha Thai in respect to HSS has changed since Investigation 254.

Saha Thai's export price calculations are at **Confidential Appendix 2**.

### 4.3.4 Thai Premium

The Commission has considered the exports of HSS by Thai Premium to Australia with respect to subsection 269TAB(2A) of the Act in order to determine if the ascertained export price should be determined in accordance with subsection 269TAB(2B).

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Thai Premium;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia and does not consider Thai Premium to be a 'low volume' exporter. Refer to **Confidential Appendix 3**.

The Commission is satisfied that, for Thai Premium's exports to Australian customers, Thai Premium is the exporter and the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

The export price was established under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, excluding any part of that prices that relates to post-exportation charges.

Thai Premium made an application to the Commission on 19 October 2016 for an accelerated review with respect to HSS exports to Australia from Thailand.<sup>32</sup> Thai Premium did not export the goods to Australia during the review period of 1 October 2015 to 30 September 2016. As such, sufficient information was not available to enable the export price of the goods to be ascertained pursuant to subsection 269TAB(1) of the Act. As a result, the Commission determined the export price pursuant to subsection 269TAB(3), having regard to all relevant information. Consequently, the Commission determined the ascertained export price to be

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<sup>32</sup> Refer REP 382 on the commissions website [www.adcommission.gov.au](http://www.adcommission.gov.au)

same amount as that determined to be the ascertained normal value. This price was at FOB terms.

The Commission has found that the resulting ascertained export price for Thai Premium in respect to HSS has changed since Accelerated Review 382.

Thai Premium's price calculations are at **Confidential Appendix 4**.

#### **4.3.5 Atlantic**

It is the Commission's view that the application of subsection 269TAB(1) of the Act would require Atlantic to have exported the goods to Australia during the review period. Atlantic did not export the goods to Australia during the review period. As such, sufficient information is not available to enable the export price of the goods to be ascertained using:

- the price paid or payable by the importer, less transport or other charges arising after exportation of the goods;<sup>33</sup> or
- the price at which the goods were sold by the importer in Australia less prescribed deductions;<sup>34</sup> or
- the price having regard to all the circumstances of the exportation.<sup>35</sup>

As the Commission has found that Atlantic did not export the goods to Australia during the review period, the Commission has considered whether the requirements of subsection 269TAB(2A) of the Act have been met and therefore whether Atlantic's export price should be determined under subsection 269TAB(2B) of the Act.

The Commission notes that the explanatory memorandum to the Customs Amendment states:

*...where an Exporter has never exported the goods subject to measures to Australia. In a review of measures in relation to that Exporter, if there have still been no exports, it may be appropriate to determine that Exporter's export price under subsection 269TAB(3) despite the methods in new subsection 269TAB(2B).*

Noting this, and considering the elements of (i) previous volumes of exports, (ii) patterns of trade for like goods and (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter, in respect of Atlantic, the Commission considers Atlantic not to be a 'low volume' exporter as defined in subsection 269TAB(2A) of the Act.

Therefore, the Commission considers it appropriate that the export price, for the purposes of this review, be determined under subsection 269TAB(3) of the Act, having regard to all relevant information.

The Commission considers it appropriate to determine the ascertained export price to be the same amount as that determined to be the ascertained normal value for the purposes of this review. This is on the basis that Atlantic, having not yet exported HSS to Australia, has not been found to have dumped goods, therefore the ascertained normal value of like goods sold

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<sup>33</sup> Refer subsection 269TAB(1)(a) of the Act.

<sup>34</sup> Refer subsection 269TAB(1)(b) of the Act.

<sup>35</sup> Refer subsection 269TAB(1)(c) of the Act.

in the domestic market by Atlantic is the most relevant and reliable information available to determine Atlantic's ascertained export price.

#### **4.3.6 Uncooperative and all other exporters**

The Commission considers that, for uncooperative and all other exporters, sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under subsections 269TAB(1) or 269TAB(2B).

Therefore, in accordance with 269TACAB(1) of the Act, the export price for uncooperative and all other exporters has been calculated under subsection 269TAB(3) using the lowest weighted average export price calculated for cooperating exporters.

### **4.4 Normal Value**

#### **4.4.1 Applicable legislation**

Subsection 269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for the like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.

Additionally, subsection 269TAC(2) of the Act makes provision for the construction of the normal value of goods exported to Australia where there is an absence, or low volume, of sales of like goods in the market of the export country that would be relevant for the purpose of determining the normal value under subsection 269TAB(1) of the Act.

In order to ensure the normal value is properly comparable with the export price of the goods, the Commission applies adjustments in accordance with subsections 269TAC(8) or 269TAC(9) with respect to normal values determined under subsections 269TAC(1) or 269TAC(2)(c) respectively.

#### **4.4.2 Pacific Pipe**

The Commission found that, in the review period, Pacific Pipe had arms length sales on the domestic market at prices that were in the ordinary course of trade. The Commission is satisfied that the prices paid in domestic sales of HSS are suitable for assessing normal value under subsection 269TAC(1).

##### Model matching

The Commission matched HSS models sold on the domestic market by Pacific Pipe to those exported to Australia by other exporters, Saha Thai and Thai Premium, on the basis of profile, standards, pipe size (for CHS models), gauge, finish and end type.

##### Adjustments

To ensure the normal value is comparable to the export price of goods exported to Australia, the Commission considered various adjustments in accordance with subsection 269TAC(8) of the Act.

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsection 269TAC(8) of the Act, including a timing

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adjustment where there were no domestic sales of a particular model in a particular quarter. The Commission considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport	<b>Deduct</b> the cost of domestic inland transport
Domestic handling expenses	<b>Deduct</b> the cost of domestic handling expenses
Domestic credit terms	<b>Deduct</b> the cost of domestic credit terms
Domestic packaging	<b>Deduct</b> the cost of domestic packaging
Export handling and other	<b>Add</b> the cost of export handling and other
Export packaging	<b>Add</b> the cost of export packaging
Export inland transport	<b>Add</b> the cost of export inland transport
Specification adjustments	<b>Add/deduct</b> specification adjustments as appropriate
Timing adjustments	<b>Add/deduct</b> timing adjustments as appropriate

The Commission has found that the resulting ascertained normal value for Pacific Pipe in respect to HSS has changed since Investigation 254.

Details of the preliminary normal value calculations for Pacific Pipe are at **Confidential Appendix 1**

### 4.4.3 Saha Thai

The Commission found that, for two models of HSS exported to Australia in the review period, there were corresponding arms length sales on the domestic market at prices that were in the ordinary course of trade, with sufficient volume of sales in the domestic market. The Commission is satisfied that the prices paid in respect of those models of domestic sales of HSS are suitable for assessing normal value under subsection 269TAC(1).

All other models exported to Australia either did not have sufficient volumes of comparable domestic models or were not sold in the domestic market. The Commission therefore constructed normal values under subsection 269TAC(2)(c), using the cost of production for Australian export sales as determined according to subsection 43(2) of *Customs (International Obligations) Regulation 2015* (the Regulation). As required by subsection 269TAC(5A) of the Act, in ascertaining the normal value of the goods in accordance with subsection 269TAC(2)(c), the amount of profit included in the normal value has been determined having regard to subsection 45(2) of the Regulation.

#### Adjustments

To ensure the normal value is comparable to the export price of goods exported to Australia, the Commission considered various adjustments in accordance with subsections 269TAC(8) and (9) of the Act.

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsections 269TAC(8) and (9) of the Act, including a timing adjustment where there were no domestic sales of a particular model in a particular

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quarter. The Commission considers these adjustments are necessary to ensure a fair comparison of normal values and export prices

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport	<b>Downward</b> the cost of inland transport
Domestic credit costs	<b>Downward</b> the cost of credit
Export packing	<b>Upward</b> the cost of Packing
Export handling and other	<b>Upward</b> the cost of Handling and Other

The normal value for Saha Thai is determined using a weighted average of all models, both ascertained under subsection 269TAC(1) and subsection 269TAC(2)(c) of the Act. The Commission has found that the resulting ascertained normal value for Saha Thai in respect to HSS has changed since Investigation 254.

Details of the preliminary normal value calculations for Saha Thai are at **Confidential Appendix 2**

### 4.4.4 Thai Premium

The Commission found that, for all models of HSS exported to Australia in the review period, there were corresponding arms length sales on the domestic market at prices that were in the ordinary course of trade. The Commission is satisfied that the prices paid in respect of those models of domestic sales of HSS are suitable for assessing normal value under subsection 269TAC(1).

#### Adjustments

To ensure the normal value is comparable to the export price of goods exported to Australia, the Commission considered various adjustments in accordance with subsection 269TAC(8) of the Act.

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsection 269TAC(8) of the Act. The Commission considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport	<b>Deduct</b> the cost of domestic inland transport
Export handling and other	<b>Add</b> the cost of export handling and other
Export packaging	<b>Add</b> the cost of export packaging
Export inland transport	<b>Add</b> the cost of export inland transport.

The Commission found that the normal value for Thai Premium in respect to HSS has changed since last ascertained in Accelerated Review 382.

Details of the preliminary normal value calculations for Thai Premium are at **Confidential Appendix 4**

#### 4.4.5 Atlantic

The Commission found that, during the review period, Atlantic made arms length sales on the domestic market at prices that were in the ordinary course of trade. The Commission is satisfied that the prices paid in respect of those domestic sales of HSS are suitable for assessing normal value under subsection 269TAC(1).

##### Adjustments

To ensure the normal value is comparable to the export price of goods exported to Australia, the Commission considered various adjustments in accordance with subsection 269TAC(8) of the Act.

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsection 269TAC(8) of the Act. The Commission considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport	<b>Deduct</b> the cost of domestic inland transport
Export handling and other	<b>Add</b> the cost of export handling and other
Export packaging	<b>Add</b> the cost of export packaging
Export inland transport	<b>Add</b> the cost of export inland transport.

The Commission found that the normal value for Atlantic is different to the currently ascertained normal value for uncooperative and all other exporters, to which Atlantic is presently subject.

Details of the preliminary normal value calculations for Atlantic are at **Confidential Appendix 5**

#### 4.4.6 Uncooperative and all other exporters

The Commission considers that, for uncooperative and all other exporters, sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the subsections preceding subsection 269TAC(6), and therefore the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

Therefore, in accordance with 269TACAB(1) of the Act, the normal value for uncooperative and all other exporters has been calculated under subsection 269TAC(6) using the highest weighted average normal value calculated for cooperating exporters.

## **4.5 Dumping margins**

The Commission has determined dumping margins according to subsection 269TACB(2)(a) of the Act for all exporters, including uncooperative exporters, by comparing the weighted average export price over the review period with the weighted average of corresponding normal values over that period.

As the Commission has determined the ascertained export price for Atlantic to be equal to the ascertained normal value, Atlantic's dumping margin is 0 per cent.

The resulting margins are detailed below.

<b>Pacific Pipe</b>	<b>Saha Thai</b>	<b>Thai Premium</b>	<b>Atlantic</b>	<b>Uncooperative and all other</b>
5.6 per cent	-2.4 per cent	0.7 per cent	0 per cent	8.7 per cent

## 5 NON-INJURIOUS PRICE

### 5.1 Introduction

#### 5.1.1 Non-injurious Price (NIP)

Dumping duties<sup>36</sup> may be imposed where the Assistant Minister is satisfied that dumped exports of the goods to Australia have caused or threatened to cause material injury to the Australian industry producing like goods. Under subsection 269TACA(a) of the Act, the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry by dumped goods.

#### 5.1.2 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act.<sup>37</sup>

The level of dumping duty imposed by the Assistant Minister cannot exceed the margin of dumping, however, where the NIP of the goods is less than the normal value of the goods, the Assistant Minister must also have regard to the desirability of fixing a lesser amount of duty.

#### 5.1.3 The Commission's preferred approach to establishing unsuppressed selling prices

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

The Commission's preferred approach to establishing the UPS is set out in chapter 23 of the Dumping and Subsidy Manual<sup>38</sup> and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the unsuppressed selling price, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

#### 5.1.4 The Commission's Assessment

During the original investigation, the Commission determined the USP utilising Australian industry's CTMS for the investigation period plus an amount for profit achieved by the Australian industry during the period of January to September 2008. The Commission chose

<sup>36</sup> In the form of a dumping duty notice under subsection 269TG(1) or (2) of the Act.

<sup>37</sup> Refer subsection 8(5B) of the Dumping Duty Act.

<sup>38</sup> Available at [www.adcommission.gov.au](http://www.adcommission.gov.au)

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January to September 2008 as the period to calculate profit because material injury, if any, to the Australian industry was negligible during that period. A separate USP was calculated by finish and the NIP for each finish was then calculated by deducting amounts for post exportation costs.

For the purpose of this review, a weighted average USP for each finish (black, painted, galvanised) has been determined based on a weighted average of all Australian industry CTMS data during the review period plus an amount of profit achieved by Australian industry in the period of January to September 2008. The Commission acknowledges that the profit figure is now ten years old. However, despite the Australian industry's improved profitability occurring during the review period, the Commission has confirmed that dumping is still occurring that is affecting the market.

The USP for each finish has been weighted by the volume of exports of each finish by each exporter to calculate an all product USP specific to each exporter.

The NIP has been calculated to FOB delivery terms by deducting the USP amounts for:

- importer profit;
- importer expenses;
- Australian customs duty, port charges, delivery commission, storage and handling; and
- overseas freight and insurance.

In the context of this review, the sum of the ascertained export price and the dumping margin for each of the exporters currently subject to the notice was lower than the NIP and hence the NIP is not the operative measure for any exporters.

Details of the USP and NIP calculations are at **Confidential Appendix 6**

## **6 FINDINGS AND PROPOSED RECOMMENDATION**

### **7.1 Findings**

The Commissioner has found that, in relation to exports of HSS to Australia from Thailand for all exporters generally, during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the ascertained NIP had changed.

### **7.2 Proposed recommendations**

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice applying to exports from Thailand have effect as if different variable factors had been ascertained.

Consistent with the current form of anti-dumping measures, the Commissioner recommends that duties be calculated in respect of any IDD that may become payable, using:

- the floor price method for exporters with a negative dumping margin,
- the floor price method for Atlantic, due to Atlantic not having exported HSS to Australia during, or prior to, the review period, and
- the ad valorem duty method for other exporters.<sup>39</sup>

The table below lists the amounts of IDD that will apply.

<b>Exporter / Manufacturer</b>	<b>Effective rate of duty</b>	<b>Duty method</b>
Pacific Pipe	5.6%	Ad valorem
Saha Thai	0%	Floor price
Thai Premium	0.7%	Ad valorem
Atlantic	0%	Floor price
Uncooperative and all other	18.4%	Ad valorem

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<sup>39</sup> Pursuant to subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

**7 APPENDICES AND ATTACHMENTS**

<b>Confidential Appendix 1</b>	Pacific Pipe calculations of export price and normal value
<b>Confidential Appendix 2</b>	Saha Thai calculations of export price and normal value
<b>Confidential Appendix 3</b>	Thai Premium consideration under ss269TAB(2A)
<b>Confidential Appendix 4</b>	Thai Premium calculations of export price and normal value
<b>Confidential Appendix 5</b>	Atlantic calculation of normal value
<b>Confidential Appendix 6</b>	NIP and USP calculations