

PUBLIC RECORD



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 345

**CONSIDERATION OF AN APPLICATION FOR
A REVIEW OF ANTI-DUMPING MEASURES**

**HOT ROLLED STRUCTURAL STEEL SECTIONS EXPORTED TO
AUSTRALIA FROM TAIWAN BY**

TUNG HO STEEL ENTERPRISE CORPORATION

APRIL 2016



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ABBREVIATIONS

Abbreviation	Full title
ABF	Australian Border Force
ADN	Anti-dumping Notice
ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
the applicant	Tung Ho Steel Enterprise Corporation or THS
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to manufacture
CTMS	Cost to make and sell
DIBP	Department of Immigration and Border Protection
EPR	Electronic Public Record
Explanatory Memorandum	Explanatory memorandum to the <i>Customs Legislation (Anti-Dumping Amendments) Bill 1998</i>
HRS	Hot rolled structural steel sections
the goods	the goods to which the anti-dumping measures apply
the Parliamentary Secretary	the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
the then Parliamentary Secretary	the then Parliamentary Secretary to the Minister for Industry
REP 223	Anti-Dumping Commission Report No. 223



1 SUMMARY AND RECOMMENDATION

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Tung Ho Steel Enterprise Corporation (Tung Ho) for a review of the dumping duty notice as it relates to that company's exports of HRS¹ to Australia from Taiwan.

The application is based on an alleged change in the variable factors; being the normal value and export price (a variable factors review).

1.1 Recommendation

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) not reject the application for the reasons outlined in Section 1.3 of this report.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for a review of 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 measures covered by the application.

1.3 Findings and conclusions

Based on the findings outlined in this report the Commission is satisfied:

- the application complies with subsections 269ZB(1) and (2) of the Act; and
- that there appear to be reasonable grounds for asserting the variable factors relevant to the taking of anti-dumping measures have changed.

As the Commission is satisfied that there are reasonable grounds to establish that there has been a change in the variable factors referred to in subsection 269ZC(2), it recommends that the Commissioner not reject the application pursuant to subsection 269ZC(1), and inform the applicant, by notice in writing, accordingly.

¹ Refer to the full description of the goods in Section 2.3 of this report.

² A reference to a division, section, subsection or paragraph in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.



2 BACKGROUND

2.1 Existing measures

On 24 October 2013, the Commissioner initiated a dumping investigation into HRS exported to Australia from Japan, the Republic of Korea (Korea), Taiwan and the Kingdom of Thailand (Thailand) following an application lodged by OneSteel Manufacturing Pty Ltd (OneSteel), a manufacturer of HRS in Australia.

In that investigation, and as outlined in Report No. 223 (REP 223),³ it was found that:

- the goods exported to Australia from Japan, Korea, Taiwan and Thailand were dumped, with margins ranging from 2.20% to 19.48%;
- 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.

Particulars of the dumping margins established for each of the exporters, and the effective rates of duty, are set out in the following table:

Country	Manufacturer/ exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	JFE Bars and Shapes Corporation	12.15%	Ad valorem	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s.269TACB(2)(a) of the <i>Customs Act 1901</i> .
	Uncooperative Exporters	12.23%	Ad valorem	
Korea	Hyundai Steel Company	2.52%	Ad valorem	
	Uncooperative Exporters	3.24%	Ad valorem	
Taiwan	TS Steel Co Ltd	4.68%	Ad valorem	
	Tung Ho Steel Enterprise Corporation	2.20%	Ad valorem	
	Uncooperative Exporters	7.89%	Ad valorem	
Thailand	Siam Yamato Steel Co Ltd	18.00% ⁴	Ad valorem	
	Uncooperative Exporters	19.48%	Ad valorem	

Figure 1 – dumping margins

³ Electronic Public Record (EPR) 2213/098 refers.

⁴ As varied by the then Parliamentary Secretary to the Minister for Industry and Science on 7 August 2015, following the recommendation of the Anti-Dumping Review Panel. See <http://www.adreviewpanel.gov.au/CurrentReviews/Documents/HRSSS%20Parliamentary%20Secretary%27s%20Decision.pdf>



The findings and recommendations in REP 223 were provided to the then Parliamentary Secretary to the Minister for Industry (the then Parliamentary Secretary), recommending the publication of a dumping duty notice in respect of the goods. Notice of the then Parliamentary Secretary's decision to accept the recommendations in REP 223 was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette*. Interested parties were also advised of this outcome in Anti-Dumping Notice No. 2014/127 on 20 November 2014.

On 7 August 2015, following a review by the Anti-Dumping Review Panel of the decision to impose these dumping duties, the dumping duty notice was varied so that the effective rate of duty for HRS exported to Australia by Siam Yamato Steel Co. (SYS) was varied from 18.28% to 18.00% with effect from 20 November 2014.

2.2 Concurrent Reviews

On 23 March 2016, the Commission received an application for review of measures as they pertain to HRS exported from Thailand. A decision whether to reject the application is due to be made by the Commissioner on or before 12 April 2016.

2.3 The current review application

On 8 March 2016, an application was lodged by Tung Ho requesting a review of the anti-dumping measures as they apply to that company's exports of HRS to Australia from Taiwan. This application was withdrawn and a new application was received by the Commission on 21 March 2016. In its application, Tung Ho claims that certain variable factors relevant to the taking of the anti-dumping measures have changed. Evidence included to support this position was in the form of the duty assessment refund provided on imports of HRS during the period 20 July 2014 to 19 November 2014 (DA0047).

Further, the applicant states that the application for a duty assessment for the goods imported during the period 20 November 2014 and 19 May 2015 is evidence that the normal values and export prices have changed and therefore there is no longer dumping.

The applicant has nominated 1 January 2015 to 31 December 2015 as the review period.

The application is not precluded by subsection 269ZA(2), which provides that an application for review must not be lodged earlier than 12 months after the publication of a dumping duty notice, or a notice declaring the outcome of the last review of measures.

Pursuant to subsection 269ZC(1), the Commissioner must, within 20 days after receiving the application, examine the application and decide whether to reject the application.



The original application for review or revocation of measures was received by the Commission on 8 March 2016. However, the application was withdrawn and a new application in the correct form was received by the Commission on 21 March 2016. This is taken to be the date in which the application was lodged for the purpose of consideration.

As such, the decision whether to reject the application must be made no later than **10 April 2016**.

If the Commissioner is not satisfied, having regard to the application and to any other information that the Commissioner considers relevant, of one or more matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

2.4 The goods subject to the measures

The goods to which the current anti-dumping measures apply (the goods) are:

Hot rolled structural steel sections in the following shapes and sizes, whether or not containing alloys:

- *universal beams (I sections), of a height greater than 130mm and less than 650mm;*
- *universal columns and universal bearing piles (H sections), of a height greater than 130mm and less than 650mm;*
- *channels (U sections and C sections) of a height greater than 130mm and less than 400mm; and*
- *equal and unequal angles (L sections), with a combined leg length of greater than 200mm.*

Sections and/or shapes in the dimensions described above, that have minimal processing, such as cutting, drilling or painting do not exclude the goods from coverage of the investigation.

The measures do not apply to the following goods:

- *hot rolled 'T' shaped sections, sheet pile sections and hot rolled merchant bar shaped sections, such as rounds, squares, flats, hexagons, sleepers and rails; and*
- *sections manufactured from welded plate (e.g. welded beams and welded columns).*

2.4.1 Tariff classification of the goods

Goods identified as hot rolled non-alloy steel sections, as per the shapes and sizes described above, are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:



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- 7216.31.00 statistical code 30 (channels – U and C sections);
- 7216.32.00 statistical code 31 (universal beams – I sections);
- 7216.33.00 statistical code 32 (universal column and universal bearing piles – H sections); and
- 7216.40.00 statistical code 33 (equal and unequal angles – L sections).

2.5 Australian industry producing like goods

During the original investigation, the Commission found that:

- the HRS manufactured or produced by the Australian industry were like goods;
- the like goods were wholly manufactured in Australia; and
- there was an Australian industry producing like goods, being OneSteel.

A review of Orrcon Steel⁵ and Onesteel's⁶ product information on their respective websites confirms that HRS was offered for sale publicly by the Australian industry at the time of drafting this report. As such, the Commission remains satisfied that there is an Australian industry producing like goods.

⁵ Orrcon Steel, Steel Manufacturing, Steel Range, Hot Rolled Structural Steel, <http://www.orrconsteel.com.au/en/Services/Steel-Range>, download date 16 March 2016.

⁶ OneSteel, 7th edition hot rolled and structural steel products catalogue, <http://www.onesteel.com/productspecs.asp?specID=79>, download date 16 March 2016.



3 CONSIDERATION OF THE APPLICATION

3.1 Legislative background

Subsection 269ZB(1) requires that the application be in writing, be in a form approved by the Commissioner for the purposes of this section, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved by section 269SMS.

Without otherwise limiting the matters that can be required by the form to be included, subsection 269ZB(2) provides that the application must include:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the measures taken that have changed; and
 - the amount by which each such factor has changed; and
 - information that establishes that amount; and
- if the application is based on circumstances that in the applicant's view indicate that anti-dumping measures are no longer warranted, evidence (in accordance with the form) of the circumstances.

Subsection 269ZC(2) specifies the matters which must be considered in making a decision whether to reject the application. These matters are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed; or
 - that the anti-dumping measures are no longer warranted.

3.2 Assessment of the application – compliance with section 269ZB

When considering the requirements of subsections 269ZB(1) and (2), the Commission notes that the application submitted on 21 March 2016:

- is in writing;
- contains such information as the form requires (including evidence in support of the amount by which normal value and export prices have changed since anti-dumping measures were last imposed and information on the causes of



the change to normal values and export prices and whether these causes are likely to persist;

- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under subsection 269SMS(2));
- provides a description of the kind of goods to which the measures the subject of the application relate;
- provides a description of the measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the variable factors relevant to the taking of the measures taken to have changed; the amount by which each factor has changed; and the information that establishes that amount.

The Commission is satisfied that the applicant has met the requirements of subsections 269ZB(1) and (2).

3.3 Variable factors

Tung Ho claims that the normal value and export price of the goods in relation to its exports have changed.

If the application is based on a change in variable factors, paragraph 269ZB(2)(c) requires that the applicant provide a statement of its opinion regarding:

- the variable factors relevant to the taking of the measures that have changed;
- the amount by which each such factor has changed; and
- information that establishes that amount.

The application included the identification of changes to the normal value and export price, with evidence to support those changes in the form of duty assessment applications and a previous refund of dumping duty.

3.3.1 Applicant's claims

Tung Ho has claimed that the variable factors have changed, as evidenced by duty assessment (DA0047), which provided a full refund to the importer (Sanwa), and Sanwa's current application for a refund (DA0056), which included information provided by Tung Ho as the exporter to establish the variable factors in order to calculate the final duty payable.



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As required by the form *B602 – Application for a review of measures*, the applicant was also required to provide the following information:

- the amount by which that factor is likely to have changed since anti-dumping measures were last imposed, and evidence in support; and
- in the applicant’s opinion the cause of the change and whether these causes are likely to persist.”

The application refers to the duty assessments and related exporter verification activities as evidence of the changes to the variable factors. The application also states the amounts in which the variable factors are likely to have changed since the original investigation, based on their calculations for the purpose of the duty assessments.

The Commission undertook an analysis of the changes to the variable factors claimed by the applicant by comparing the variable factors in the original investigation (REP 223) with the findings of the previous duty assessment (DA0047) and the information provided for the current duty assessment (DA0056)⁷.

The information provided for DA0047 was verified by the Commission, and it was found that there was a negative dumping margin. This resulted in a full refund of duty paid. The applicant also relied on their application for a duty assessment (DA0056) as evidence of their opinion of variable factor changes over the period. This information is currently being verified for the purpose of the duty assessment, but is considered by the Commission to be satisfactory evidence to support the applicant’s claims.

The analysis presented in Figure 1 indicates that the variable factors have reduced over the period since the original investigation, with the normal value reducing at a faster rate than export price.

⁷ The variable factors for the purpose of the duty assessment have not yet been established. The variable factors calculated for the purpose of ascertaining reasonable grounds for this review are based on unverified information provided by the exporter as part of duty assessment DA0056 and have not been determined by the Commission to be final.

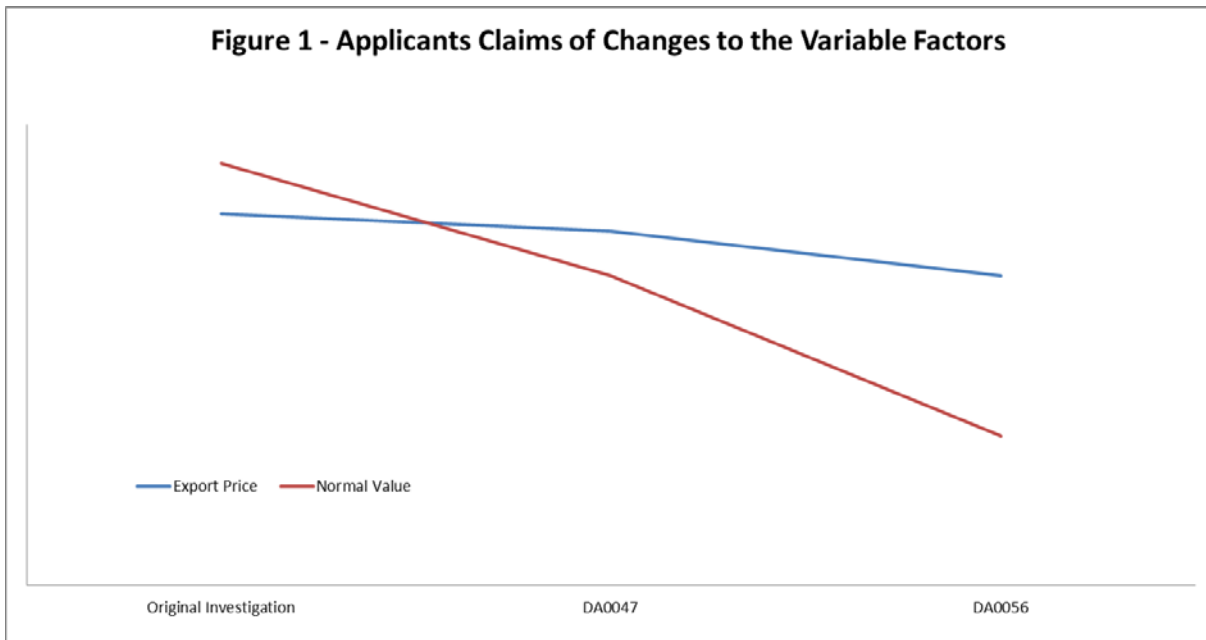


Figure 1– Analysis of the variable factor changes from the original investigation (REP223), the previous duty assessment (DA0047) and the current duty assessment (DA0056).⁸

The applicant has stated that the cause of the changes is due to the international steel markets and international market influences (including increased competition). The applicant has stated that the strong competition in both domestic and import markets in Taiwan has been a contributing factor. No evidence has been provided to establish the cause of the decreasing variable factors, however sufficient evidence has been provided to establish that the variable factors have in fact changed since the original investigation.

The Commission considers that the applicant has provided sufficient evidence to establish the amount of the change to the variable factors as required by subparagraph 269ZB(2)(c)(iii) of the Act.

Therefore, the Commission is satisfied that, in respect of the variable factors, the application complies with section 269ZB.

3.3.2 Dumping margin

The applicant asserts that the information provided pursuant to a previous duty assessment (DA0047) and current duty assessment (DA0056) is evidence that it has not been involved in dumping over the period 20 May 2014 to 19 May 2015.

⁸ Ibid



The duty assessment (DA0047) resulted in a full refund of interim dumping duty paid to the importer (Sanwa). The current duty assessment application (DA0056) has not ascertained a dumping margin and no recommendation has been made to the Parliamentary Secretary with regards to preliminary findings. However, the application for a duty assessment contends that the amount of duty payable is less than the amount of duty paid, and a full refund of duty should be provided.

3.3.3 Non-injurious price

The ascertained non-injurious price in the original investigation was determined to be the same as the ascertained normal value. The application did not claim a change in this variable factor.

3.4 Assessment of application– compliance with section 269ZC

In determining whether to reject an application under section 269ZC, a further matter that is required to be considered by the Commissioner is whether there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed.

The Explanatory Memorandum to the *Customs Legislation (Anti-Dumping Amendments) Bill 1998* (the Explanatory Memorandum) that introduced section 269ZC, states that:

‘[f]or a review to commence, there must be “reasonable grounds” for the relevant anti-dumping measure to be amended or revoked. That is, there are sufficient grounds to allow the [Commissioner] to determine that, if on the basis of information available to him or her, the [Commissioner] would be induced to recommend to the Minister a change in the relevant factors...’.

The Commission considers that on the basis of information available to him the Commissioner has sufficient grounds to determine whether or not he would be induced to recommend to the Parliamentary Secretary a change in the relevant variable factors.

Accordingly, there appear to be reasonable grounds for asserting under subparagraph 269ZC(2)(b)(i) that the variable factors relevant to the taking of anti-dumping measures have changed.

Based on this assessment, the Commission considers that the Commissioner must not reject the application pursuant to subsection 269ZC(1) of the Act as it is satisfied of the matters referred to in subsection 269ZC(2).

3.5 Conclusions and Recommendations

The Commission is satisfied that:



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- the application complies with section 269ZB of the Act; and
- there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of the measures have changed.

The Commission recommends that the Commissioner:

- not reject the application and initiate a review into the current anti-dumping measures;
- the review period be set as 1 January 2015 to 31 December 2015.