



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

**CONSIDERATION REPORT
NO. 417**

**APPLICATION FOR AN ACCELERATED REVIEW OF A
DUMPING DUTY NOTICE APPLYING TO**

**CERTAIN HOLLOW STRUCTURAL SECTIONS EXPORTED
FROM MALAYSIA**

BY MELEWAR STEEL TUBE SDN BHD

6 JUNE 2017

Consideration Report 417 – Hollow Structural Sections - Malaysia

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ABBREVIATIONS

\$	Australian dollars
the Act	<i>the Customs Act 1901</i>
ADN	Anti-Dumping Notice
The applicant	Melewar Steel Tube Sdn Bhd
Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science

1 SUMMARY AND RECOMMENDATION

This report provides the results of the Commissioner of the Anti-Dumping Commission's (the Commissioner) consideration of an application by Melewar Steel Tube Sdn Bhd (Melewar) for an accelerated review of the dumping duty notice applying to certain hollow structural sections¹ from Malaysia.

1.1 Recommendation

The Anti-Dumping Commission (the Commission) recommends that the Commissioner not reject the application.

1.2 Application of law to facts

Division 6 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 an accelerated review of a dumping duty notice and countervailing duty notice by certain exporters of goods covered by the respective notices.

1.3 Findings and conclusions

The Commission has examined the application and is satisfied that:

- the application satisfies the requirements of subsection 269ZF(1);
- the conditions for rejection under subsection 269ZE(2) were not met; and
- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied.

Accordingly, the Commission concludes that the applicant is eligible to apply for, and has lodged a valid application for an accelerated review, and recommends that the Commissioner not reject the application.

¹ Refer to the full description of the goods in Section 2.2 of this report.

² Unless stated otherwise, all legislative references in this report are to the *Customs Act 1901*.

2 BACKGROUND

2.1 Existing measures

On 19 September 2011, an investigation into the alleged dumping and subsidisation of certain hollow structural sections exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia, the Kingdom of Thailand (Thailand) and Taiwan was initiated following an application lodged by Australian Tube Mills Pty Ltd (ATM). In that investigation, as outlined in the *Anti-Dumping Commission Report No. 177 (REP 177)*, it was found that:

- Hollow structural sections imported from China, Korea, Malaysia and Taiwan were dumped at various margins; and
- Hollow structural sections imported from China were in receipt of countervailable subsidies.

Accordingly, it was recommended that the then Minister for Home Affairs (Minister), impose anti-dumping measures (in the form of interim dumping duty (IDD) on the goods exported from China, Korea, Malaysia and Taiwan and interim countervailing duty (ICD) on the goods exported from China (excluding two exporters). The Minister accepted these recommendations and, on 3 July 2012, published a dumping duty notice and countervailing duty notice.

Upon application by Dalian Steelforce, this decision was reviewed by the then Trade Measures Review Officer and reinvestigated by the then Australian Customs and Border Protection Service (ACBPS).

The reinvestigation resulted in the ACBPS recommending to the Minister, in Report 203, that the dumping duty notice and countervailing duty notice remain in place, however, with an alteration of the amount of interim dumping duty (IDD) applicable to the exports of Dalian Steelforce (amended to zero).

The Minister accepted these recommendations, and on 13 May 2013 declared as such via a public notice published under section 269ZZM of the Act.

Following an appeal to the Federal Court of Australia, the Countervailing Notice was revoked as it relates to Dalian Steelforce.

2.2 The goods the subject of the application

2.2.1 Description

The goods the subject of the application (the goods) are:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections. Normally referred to as either CHS (circular or oval hollow sections) or RHS (rectangular or square hollow sections) collectively referred to as hollow structural sections (HSS).

2.2.2 Tariff classification

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

- 7306.30.00
- 7306.61.00
- 7306.69.00

2.3 Consideration of the application for accelerated review

On 17 May 2017, Melewar lodged an application for an accelerated review of the dumping duty notice that applies to hollow structural sections exported to Australia from Malaysia in so far as the notice affects the applicant.

If the Commissioner does not reject the application or terminate the accelerated review, pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Parliamentary Secretary to the Minister for Industry, Innovation and Science and the Assistant Minister for Industry, Innovation and Science (Parliamentary Secretary)³ with a report recommending:

- a) that the dumping duty notice the subject of the application remain unaltered; or
- b) that the dumping duty notice the subject of the application be altered so as to apply to the applicant as if different variable factors had been fixed;

and set out the Commissioner's reasons for so recommending.

In relation to this application, this report must be made no later than **25 August 2017**.

2.4 Public record

There is no legislative requirement for the Commissioner to maintain a public file for accelerated reviews. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public file will be maintained.

This Consideration Report, along with a non-confidential version of the application and response to the exporter questionnaire, will be published on the Electronic Public Record, available at www.adcommission.gov.au.

³ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this decision accelerated review the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF OF THE ACT

3.1 Legislative Background

Subsection 269ZF requires that an application for an accelerated review must:

- be in writing and be lodged in a manner approved under section 269SMS⁴ (subsection 269ZF(1));
- contain a description of the goods to which the dumping duty notice or countervailing duty notice relates (subsection 269ZF(1)(a)); and
- contain a statement of the basis on which the exporter considers that the particular notice is inappropriate in so far as the exporter is concerned (subsection 269ZF(1)(b)).

3.2 Assessment of the application – compliance with section 269ZF

The application was in writing, lodged in a manner approved under subsection 269SMS (subsection 269ZF(1)), specifically it was sent via email to the nominated email address and by post to the Commission's postal address. The application contains a description of the goods to which the notices relate (subsection 269ZF(1)(a)).

In accordance with the requirements of subsection 269ZF(1)(b), the application also contains a statement from Melewar that outlines the reasons why the current dumping notice is inappropriate in so far as the notice affects it.

Melewar states that the reasons that the notice is inappropriate so far as the notice affects it are:

- During the original investigation Melewar did not export to Australia and had no intention of exporting to Australia;
- The steel industry has changed since the original investigation, including that the local HRC supplier has ceased production;
- The raw material market is now a "free market", affecting the costs associated with production; and
- Their selling price will be equal to their normal value plus export costs.

Noting the above information, the Commission is satisfied that the application complies with subsections 269ZF(1).

3.3 Lodgement date

On 17 May 2017, Melewar lodged an application for an accelerated review. A copy of their application is at **Attachment 1**. A non-confidential version of the application is

⁴ A copy of the Commissioner's instrument under section 269SMS can be found at <http://www.adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Lodging%20and%20withdrawing%20applications.pdf>.

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available on the public record. On receipt of the application, the Commission recorded the date on which the application was received as 17 May 2017 in accordance with subsection 269ZF(3).

4 CIRCUMSTANCES IN WHICH AN ACCELERATED REVIEW MAY BE SOUGHT – COMPLIANCE WITH SECTION 269ZE

4.1 Background

Section 269ZE sets out the circumstances in which an accelerated review may be sought.

The conclusions in this section are made on the basis of all currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that the requirements of subsection 269ZE(3) are met, the Commissioner may terminate the accelerated review.

4.2 Status as a new exporter

4.2.1 Background

Subsection 269ZE(1) sets out that only a “new exporter” may apply for an accelerated review. A new exporter is defined in subsection 269T(1) as, in relation to goods the subject of the application for a dumping duty notice or countervailing duty notice or like goods, an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

Subsection 269ZE(1) provides that a new exporter can apply for an accelerated review if a dumping duty or countervailing duty notice has been published in respect of goods exported from a particular country of export or in respect of goods exported by new exporters from a particular country of export, provided a declaration has not already been made in respect of that exporter under subsection 269ZG(3)(b).

Subsection 269T(1) also defines “application” in relation to a dumping duty notice or a countervailing duty notice as meaning an application for the publication of such a notice.

4.2.2 New exporter period

To fall within the definition of a new exporter in subsection 269T(1), the period within which the applicant must not have exported to Australia (the new exporter period) is from 1 July 2010 to 30 June 2011 (the investigation period for the original investigation in relation to the application for publication of the dumping duty notice in respect of the goods).

4.2.3 Evidence of exports during the new exporter period

A search of the Australian Border Force’s (ABF) import database did not reveal any exports of the goods by Melewar during the period 1 June 2010 to 30 June 2011.

Based on the available information, the Commissioner considers that Melewar should be considered as a new exporter for the purposes of the accelerated review.

4.2.4 Declaration under subsection 269ZG(3)(b)

Pursuant to subsection 269ZE(1)(b), a new exporter cannot apply for an accelerated review if they had previously applied for an accelerated review that resulted in a declaration being made in respect of that exporter under subsection 269ZG(3)(b).

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A declaration under subsection 269ZG(3)(b) has not been made in respect of the applicant.

4.3 Cooperation in regards to the application for a dumping duty notice

Subsection 269ZE(2)(a) provides that, if the Commissioner is satisfied that, because the exporter refused to cooperate in relation to the application for publication of a dumping duty notice or a countervailing duty notice, the exportations from that exporter were not investigated (in the original investigation), the Commissioner may reject the application.

During the original investigation, Melewar was identified as an exporter, as it had several entries listed in the ABF import data base relating to imports of hollow structural sections during the period 1 July 2010 to 30 June 2011. Melewar was also listed as a supplier in a Mill List submitted by an importer as part of the importer verification process.

During the course of the original investigation it was determined that this information was incorrect due to a misclassification of the goods, and it was determined that Melewar was not an exporter of the goods during the investigation period.

Noting the above finding in section 4.2 of this report that there is no evidence of exports of hollow structural sections by Melewar during the investigation period for the original investigation, the Commissioner considers that there are no grounds for rejection in terms of subsection 269ZE(2)(a).

4.4 Relationships with selected exporters

Subsection 269ZE(2)(b) of the Act provides that, if the Commissioner is satisfied that the exporter (i.e. the applicant for an accelerated review) is related to an exporter that had its exports examined in relation to the application for the publication of a dumping duty notice or countervailing duty notice, the Commissioner may reject the application.

The Commission obtained the ABF import data for the period 1 July 2010 to 30 June 2011. During this period, 11 exporters were identified as having exported hollow structural sections from Malaysia to Australia.

Melewar's website indicates that it is has been known by the following names and/or is related to the following entities:

- *Aurora Steel Tube Manufacturing Sdn Bhd;*
- *Maruichi Malaysia Steel Tube Sdn Bhd;*
- *Melewar Industrial Group Berhad;*
- *Melewar Steel Services Sdn Bhd;*
- *Mycron Steel Berhad (acquired Melewar in March 2015)*

Mycron Steel Berhad's website indicates that it has been known as or is related to the following companies:

- Mycron Steel CRC Sdn Bhd

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A comparison of these names with the ABF import database did not identify any relationships or associations⁵ between Melewar and any exporter that has already been examined pursuant to paragraph 269ZE(2)(b).

Given the information available, the Commissioner considers there are no grounds for rejection under subsection 269ZE(2)(b).

4.5 Summary of findings

In accordance with section 269ZE, on review of the application and all information currently available, the following findings have been made about whether the circumstances exist in which accelerated reviews may be sought:

- the applicant did not export hollow structural sections during the period for which new exporters cannot have exported and is not an exporter in respect of whom a declaration has been made under subsection 269ZG(3)(b). Consequently, the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review under subsection 269ZE(1);
- the applicant did not refuse to cooperate in relation to the application for the publication of a dumping duty notice in relation to hollow structural sections, and the application should not be rejected under subsection 269ZE(2)(a); and
- the applicant does not appear to be related to, or associated with,⁶ any exporter that had its exports examined in the original investigation and therefore the application should not be rejected under subsection 269ZE(2)(b).

⁵ Subsection 269TAA(4) of the *Customs Act 1901* provides the criteria required to determine whether persons shall be deemed to be associates of each other.

⁶ *Ibid.*

5 CONCLUSION

The Commission has considered the application made by Melewar to determine if it satisfied the requirements of sections 269ZE and 269ZF.

The Commission concludes, on the basis of currently available information, that:

- the application satisfies the requirements of subsection 269ZF(1);
- the conditions for rejection under subsection 269ZE(2) are not met; and
- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied.

Accordingly, the Commission is satisfied that Melewar is eligible to apply for, and has lodged a valid application for, an accelerated review.

The Commission recommends that the Commissioner:

- not reject the application for an accelerated review of the dumping duty notice applying to hollow structural sections exported to Australia from Malaysia in so far as the notice affects the applicant and continue with the accelerated review; and
- set the review period as 1 April 2016 to 31 March 2017.

6 Securities

When an application for an accelerated review of a dumping duty and/or countervailing duty notice is lodged, subsection 269ZH(a) provides that no interim duty can be collected in respect of consignments of goods, to which the application relates, entered for home consumption after the application is lodged and until the completion of the accelerated review.

However, pursuant to subsection 269ZH(b), the Commonwealth may, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim dumping duty and interim countervailing duty that may be payable.

A table outlining the variable factors relevant to calculating the amount of securities is provided at **Confidential Attachment 2**.

7 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Melewar - Application
Confidential Attachment 1	Section 269ZH Securities Instrument
Confidential Attachment 2	Section 269ZH Securities Table
Confidential Attachment 2	ADN 2017/83
Attachment 1	Consideration Instrument