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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XV B*

# **CONSIDERATION REPORT NO. 452**

**APPLICATION FOR AN ANTI-CIRCUMVENTION INQUIRY INTO  
THE AVOIDANCE OF THE INTENDED EFFECT OF DUTY**

**STEEL REINFORCING BAR EXPORTED TO AUSTRALIA  
FROM THE REPUBLIC OF KOREA**

**NOVEMBER 2017**

**Consideration Report No. 452 – Steel Reinforcing Bar – Korea**

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### ABBREVIATIONS

\$ or AUD	Australian dollars
the Act	<i>Customs Act 1901</i>
ABF	Australian Border Force
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the applicant or OneSteel	OneSteel Manufacturing Pty Ltd (trading as Liberty OneSteel)
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Daehan	Daehan Steel Co Ltd
FIS	free into store
FOB	free on board
KRW	Korean Won
Korea	Republic of Korea
original investigation period	1 July 2013 to 30 June 2014
original notice	Anti-Dumping Notice No. 2015/133
the then Parliamentary Secretary	the then Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
rebar or the goods	steel reinforcing bar
REP 264	<i>Anti-Dumping Commission Report No. 264</i>
Stemcor	Stemcor Australia Pty Ltd

## 1. SUMMARY AND RECOMMENDATION

### 1.1 Summary

This report provides the results of the consideration by the Commissioner of the Anti-Dumping Commission (the Commissioner) of an application from OneSteel Manufacturing Pty Ltd, trading as Liberty OneSteel (OneSteel) requesting the conduct of an anti-circumvention inquiry in relation to a dumping duty notice published under subsections 269TG(1) and (2) of the *Customs Act 1901* (the Act), the original notice,<sup>1</sup> applying to steel reinforcing bar (rebar or the goods) exported to Australia from the Republic of Korea (Korea) by Daehan Steel Co., Ltd (Daehan).

OneSteel alleges that the importer of the goods, whether directly or through an associate or associates, sold the goods in Australia without increasing the price commensurate with the total amount of duty payable under the *Customs Tariff (Anti-Dumping Measures) Act 1975* (Dumping Duty Act) within the meaning of subsection 269ZDBB(5A) of the Act.

### 1.2 Application of law to facts

Division 5A of Part XVB of the Act sets out procedures for considering an application for an anti-circumvention inquiry.

### 1.3 Findings and conclusions

The Commissioner has examined the application in accordance with the requirements of the Act and is satisfied that:

- the application complies with the requirements of section 269ZDBD of the Act (as set out in Chapter 3 of this report); and
- there appears to be reasonable grounds for asserting that circumvention activity, that is the avoidance of the intended effect of duty, in relation to the original notice has occurred in relation to goods exported from Korea (as set out in Chapter 4 of this report).

Accordingly, the Commissioner has not rejected the application and will initiate an anti-circumvention inquiry in respect of rebar exported to Australia from Korea by Daehan.

For the purposes of the inquiry, the inquiry period to determine whether circumvention has occurred will be from 1 April 2016 to 31 March 2017.<sup>2</sup>

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<sup>1</sup> Anti-Dumping Notice (ADN) No. 2015/133 refers. Anti-Dumping Notices are available on the Anti-Dumping Commission's (the Commission) website, [www.adcommission.gov.au](http://www.adcommission.gov.au).

<sup>2</sup> The inquiry period has been set as a 12 month period ending on the most recently completed quarter in which the duties are final. This period takes into account importations where an importer is no longer able to seek an assessment of duty payable.

## 2. BACKGROUND

### 2.1 Application

On 27 October 2017, OneSteel, the sole Australian industry member, lodged an application requesting the conduct of an anti-circumvention inquiry into the circumvention of the original notice applying to rebar exported to Australia from Korea. OneSteel alleges that the sole exporter from Korea is Daehan.

In its application, OneSteel considers that it may be appropriate to alter the original notice because an importer, or an associate of the importer, Stemcor Australia Pty Ltd (Stemcor)<sup>3</sup>, sold the goods in Australia without increasing the price commensurate with the total amount payable under the Dumping Duty Act, within the meaning of subsection 269ZDBB(5A) of the Act.

### 2.2 Original notice

Anti-dumping measures in the form of a dumping duty notice apply to rebar from Korea, Singapore, Spain (with the exception of Nervacero S.A.)<sup>4</sup> and Taiwan (with the exception of Power Steel Co., Ltd) and were first imposed on 19 November 2015 following consideration of *Anti-Dumping Commission Report No. 264* ([REP 264](#)) by the then Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary).

ADN No. [2015/133](#), in notifying the findings of REP 264 specified an effective rate of interim dumping duty for Daehan of 9.7% using the ad valorem duty method. All other exporters from Korea were specified an effective rate of interim dumping duty of 14.3% also using the ad valorem duty method.

### 2.3 The goods the subject of the application

#### 2.3.1 Description

The goods the subject of the original notice are:

*“Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.*

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<sup>3</sup> The Commission understands that Stemcor is currently in the process of transitioning operations to Duferco International Trading Holdings and will examine this further during the course of this inquiry.

<sup>4</sup> The then Parliamentary Secretary’s decision was reviewed by the Anti-Dumping Review Panel (ADRP) and on 4 March 2016, the ADRP found that the decision of the Parliamentary Secretary was the correct and preferable decision except in relation to Nervacero S.A. The ADRP’s recommendation was published in ADRP Report No. 34. As a result of the ADRP’s recommendations (which were accepted by the then Parliamentary Secretary), the goods exported to Australia from Spain by Nervacero S.A are not subject to the dumping duty notice applying to the goods from Korea, Singapore, Spain and Taiwan.

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*The goods covered by this application include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.*

*Goods excluded from this application are plain round bar, stainless steel and reinforcing mesh.”*

### 2.3.2 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* specified below.<sup>5</sup> It should be noted that the statistical codes applying to these tariff classifications were modified subsequent to the initiation of the original investigation:

- 7214.20.00 (statistical code 47);
- 7228.30.90 (statistical code 40);
- 7213.10.00 (statistical code 42);
- 7227.90.10 (statistical code 69);
- 7227.90.90 (statistical code 01, 02 and 04);
- 7228.30.10 (statistical code 70); and
- 7228.60.10 (statistical code 72).

## 2.4 Consideration of the application

If an application under section 269ZDBE of the Act for the conduct of an anti-circumvention inquiry in relation to an original notice is lodged, under subsection 269ZDBE(1) the Commissioner must within 20 days of lodgement, examine the application and decide whether or not to reject the application.

In relation to this application, this decision must be made no later than **16 November 2017**.

Subsection 269ZDBE(1) of the Act specifies that the Commissioner shall reject the application if he:

- is not satisfied that the application complies with subsection 269ZDBD of the Act; or
- is not satisfied that there appear to be reasonable grounds for asserting that one or more circumvention activities in relation to the original notice have occurred.

The above matters are examined in the following sections of this report.

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<sup>5</sup> As per the Commission's Dumping and Commodity Register as of 16 November 2017, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### **3. DOES THE APPLICATION COMPLY WITH SECTION 269ZDBD OF THE ACT?**

#### **3.1 Legislative framework**

Subsection 269ZDBD(1) of the Act requires that the application must:

- be in writing; and
- be in a form approved by the Commissioner for the purposes of this section; and
- contain such information as the form requires; and
- be signed in the manner indicated by the form; and
- be lodged in a manner approved under section 269SMS.

Subsection 269ZDBD(2) of the Act requires that the application must include:

- a description of the kind of goods that are the subject of the original notice; and
- a description of the original notice the subject of the application; and
- a description of the circumvention activities in relation to the original notice that the applicant considers have occurred; and
- a description of the alterations to the original notice that the applicant considers should be made.

#### **3.2 The application**

The application is in writing, is in the form approved by the Commissioner (B1236), contains such information as the form requires and is signed in the manner indicated in the form. The form was lodged in a manner approved by section 269SMS of the Act being by email to the Commission's nominated email address.

The application includes:

- a description of the kind of goods that are the subject of the original notice;
- a description of the original notice the subject of the application which was published in accordance with subsections 269TG(1) and 269TG(2) of the Act on 19 November 2015 following REP 264;
- a description and supporting evidence of the circumvention activity in relation to the original notice that the applicant considers have occurred; and
- a description of the alterations to the original notice that should be made. In particular, OneSteel considers that the original notice requires amendment to specify a different variable factor (a lower export price) in relation to Daehan from Korea (further discussion is at chapter 5).

Confidential and public record versions of the application were submitted. The Commissioner considers that the public record version of the application contains

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sufficient detail to allow a reasonable understanding of the substance of the information within the confidential application.

### **3.3 The Commissioner's assessment**

Based on the information submitted by the applicant, the Commissioner considers that the application complies with section 269ZDBD of the Act.



## 4. REASONABLE GROUNDS – HAS CIRCUMVENTION OCCURRED

### 4.1 Legislative framework

Subsection 269ZDBB(5A) of the Act prescribes what amounts to circumvention activity in the form of avoidance of the intended effect of duty. This circumvention activity occurs if the following apply:

- a) goods (the *circumvention goods*) are exported to Australia from a country in respect of which the notice applies;
- b) the exporter is an exporter in respect of which the notice applies;
- c) either or both of sections 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;
- d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act; and,
- e) the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.

### 4.2 Goods exported to Australia

Pursuant to subsections 269ZDBB(5A)(a) of the Act, the Commissioner is satisfied, based on data from the Australian Border Force (ABF) import database, that the goods are exported to Australia from Korea, a country in which the notice applies.

### 4.3 Exporter in respect of which the original notice applies

Daehan is listed in the application as the exporter and is subject to the original notice, therefore there are reasonable grounds to establish that the requirements of subsection 269ZDBB(5A)(b) of the Act are met.

### 4.4 Sections 8 and 10 of the Dumping Duty Act

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties, respectively. In this case, the goods are subject to a dumping duty notice under subsections 269TG(1) and (2) of the Act which declared that section 8 of the Dumping Duty Act applies to like goods. Accordingly, the Commission is satisfied that section 8 of the Dumping Duty Act applies to the export of the circumvention goods to Australia, therefore there are reasonable grounds to establish that the requirements of subsection 269ZDBB(5A)(c) of the Act are met.

## 4.5 Assessment of the sale of the goods in Australia

### 4.5.1 Applicant's claims

OneSteel claims that the intended effect of the dumping duties have been avoided because Stemcor has sold the goods imported from Korea in Australia without increasing the price of the goods commensurate with the total amount of duty payable under the Dumping Duty Act, as required under subsection 269ZDBB(5A)(d).

OneSteel claims that this has occurred because of a lowering of the export price.<sup>6</sup>

Specifically, OneSteel claims that, following the publication of the original notice, the export price has been lowered to a greater extent than any corresponding reduction in the normal value. OneSteel claim that the reduced export price has allowed Stemcor to sell the goods in Australia without increasing the price commensurate with the total amount payable on the circumvention goods under the Dumping Duty Act.

In addition, OneSteel claim that Stemcor has reduced its gross margin between the export price and its FIS Australian selling price and that this is evidence that the importer has *'sacrificed gross margin and circumvented the measures to an even greater extent than the exporter's decline in export price'*.

OneSteel claims the alleged circumvention occurred between 19 November 2015 and 18 November 2016. The Commission notes that, at the time of lodging its application on 27 October 2017, this was the most contemporaneous period in which the duties were final in accordance with the Dumping Duty Act. However, at the time of initiating this inquiry, there is a more contemporaneous period available. Accordingly, as noted at section 1.3, the inquiry will examine the period 1 April 2016 to 31 March 2017.

To evidence its claims, OneSteel supported its application with data in relation to the original investigation period (1 July 2013 to 30 June 2014) and the period between 19 November 2015 and 18 November 2016, to illustrate changes in:

- the FOB export price of the goods exported to Australia;
- Stemcor's free into store (FIS) Australian selling prices of the goods;
- the normal value of the goods in Korea; and

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<sup>6</sup> In relation to determining whether a circumvention activity has occurred, the Explanatory Memorandum to the *Customs Amendment (Anti-Dumping Measures) Bill 2013* introducing subsection 269ZDBB(5A) of the Act, at paragraph 55, states that:

*...where external factors have not caused the circumstance, but instead the inquiry concludes that the circumvention activity has occurred because of the lowering of the export price, sales at a loss, profit reduction, reimbursement or compensation from the exporter, or other activity of a similar nature, the Commissioner may choose to recommend to the Minister that the notice be altered (emphasis added).*

- the gross margin between the FOB export price and Stemcor's FIS Australian selling price of the goods.

#### **4.5.2 Export prices**

OneSteel's application was accompanied with free on board (FOB) export price data from Korea which OneSteel obtained by paid subscription through an independent supplier of trade data.<sup>7</sup> As part of its application, OneSteel compared movements in the reported FOB export prices in relation to the original investigation and the period between 19 November 2015 and 18 November 2016. OneSteel calculated that the FOB export prices have decreased.

The Commission compared OneSteel's calculations to data it verified during the original investigation and obtained from the Australian Border Force (ABF) import database.

The Commission found OneSteel's data to be a reasonably accurate and reliable. Based on available information, OneSteel's claims that there has been a decrease in the export prices from Korea following the publication of the original notice appear justified.

#### **4.5.3 Normal value**

OneSteel's application was accompanied with normal value data in relation to Korea which OneSteel obtained by paid subscription through an independent supplier of trade data.<sup>8</sup> OneSteel calculated that the normal values for Korea had decreased by an amount which was less than the reduction in export prices as discussed above at section 4.3.1.

The Commission notes that OneSteel calculated the change in Korean normal values in Australian dollars (AUD). However the normal values in relation to Korea were ascertained in Korean Won (KRW) for the purposes of the original notice. The Commission considers it more reasonable to assess changes in the normal value by reference to KRW, given that this removes currency fluctuations between the AUD and KRW. Based on available information, the Commission considers there are reasonable grounds to assert that the reduction in the export price for goods exported to Australia by Daehan have exceeded the reduction in the normal values for like goods sold into the Korean domestic market.

#### **4.5.4 Australian selling prices**

OneSteel provided Australian FIS price offers for rebar sourced from Daehan, gathered by its sales staff, in relation to the original investigation period and the period 19 November 2015 to 18 November 2016.

The Commission compared OneSteel's price offers against verified data from the original investigation. OneSteel's FIS price estimates were overstated.

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<sup>7</sup> The Commission has no reason at this stage to doubt the reliability of the data OneSteel relied on.

<sup>8</sup> The Commission has no reason at this stage to doubt the reliability of the data OneSteel relied on.

The Commission compared OneSteel's FIS price estimates for the period between 19 November 2015 and 18 November 2016 against an estimated FIS price which the Commission calculated based on:

- Daehan's FOB export prices obtained from the ABF import data;
- amounts for interim dumping duty applicable to Daehan (at the rate of 9.7%); and
- verified post importation costs verified from the original investigation.

The Commission's estimated Australian FIS selling prices were comparable to the price offers provided by OneSteel.

#### **4.5.5 FOB to FIS margin**

OneSteel's application alleges that there has been a reduction of the margin between the duty inclusive FOB price paid by Stemcor for the goods imported from Daehan and Stemcor's Australian FIS selling price.

OneSteel estimates that this margin in percentage terms has decreased by approximately 16.7 percent between the original investigation and the period between 19 November 2015 and 18 November 2016.

The Commission has compared OneSteel's calculations to its own calculations using data verified from the original investigation and its estimates of the selling prices as outlined above at section 4.6.4.

The Commission has found Stemcor's FOB to FIS margin has likely increased in percentage terms during the proposed circumvention period. However, the Commission does not consider that an increase in the importer's FOB to FIS margin in itself discounts whether a circumvention activity has occurred.

#### **4.5.6 Commissioner's assessment – sale of the goods in Australia**

The Commissioner considers that OneSteel's application evidences that the export price of the goods from Korea has been lowered following the original investigation period. The Commission has examined OneSteel's claims that this enabled Stemcor to sell the goods in Australia without increasing the price commensurate with the total amount of duty payable under the Dumping Duty Act.

In assessing OneSteel's application, and the effect of the lower export price on Stemcor's selling prices in Australia, the Commission has attempted to separate out the effects of external factors such as fluctuations in the value of the Australian dollar and an observed general downwards trend in world steel prices.

Notably, compared to the original investigation period, the value of the Australian dollar has decreased by 18 per cent against the US Dollar. Taking into account that Daehan exports the goods to Australia in US dollars, the Commission would expect that the FIS price in Australia for the goods following the original investigation period would have increased. It is expected that this would be offset by the general reduction in steel prices.

The Commission estimates that, all things being equal, Stemcor's Australian FIS selling price for rebar sourced from Daehan during the period 19 November 2015 to 18 November 2016:

- inclusive of dumping duty;
- taking into account the effects of the devaluation in the Australian dollar; and
- a reduction in steel prices,

ought to have been higher.

The Commission's FIS price analysis is at **Confidential Appendix 1**

Based on the Commission's analysis, the Commissioner considers that there are reasonable grounds to establish that a circumvention activity of the kind outlined in subsection 269ZDBB(5A)(d) of the Act has occurred. Further examination of external factors will be conducted during the course of the inquiry.

#### **4.6 Occurring over a reasonable time**

The Commission's policy is that it will generally not consider a period of less than 3 months to be a reasonable period for the purpose of subsection 269ZDBB(5A)(e) of the Act. OneSteel claims that the circumvention activity has been occurring since the imposition of measures, in particular the period between 19 November 2015 and 18 November 2016.

The Commission is satisfied that this is a reasonable period of time for the purposes of the application and in assessing whether there are reasonable grounds that a circumvention activity has occurred in the form of avoidance of the intended effect of the duty.

For the purposes of the inquiry, the inquiry period to determine whether circumvention has occurred will be from 1 April 2016 to 31 March 2017.

## **5. ALTERATION OF THE NOTICE**

### **5.1 Legislative framework**

Section 269ZDBH of the Act details the Minister's powers in relation to an anti-circumvention inquiry.

Subsection 269ZDBH(1) of the Act provides that the Minister may declare alterations to the original notice. Without limiting subsection 269ZDBH(1), subsection 269ZDBH(2) of the Act provides that the alterations may be of the following kind:

- the specification of different goods that are to be subject to the original notice;
- the specification of different foreign countries that are to be the subject of the original notice;
- the specification of different exporters that are to be the subject of the original notice;
- the specification of different variable factors in respect of existing exporters the subject of the original notice; and
- the specification of variable factors in respect of exporters that are to be the subject of the original notice.

### **5.2 OneSteel's suggested alterations**

OneSteel contends that, based on the above claims of circumvention, the original notice should be altered to specify a different variable factor (a lower export price) in relation to Daehan from Korea. OneSteel requests that this alteration to the original notice take effect from the date of initiation of the inquiry.

The Commission will take this into consideration, along with alterations to the variable factors of normal value and non-injurious price relevant to the original notice and the appropriate form of anti-dumping measure when making final recommendations to the Parliamentary Secretary at the conclusion of the inquiry.

## **6. CONCLUSION**

The Commissioner has examined the application and is satisfied that:

- the application complies with section 269ZBDB of the Act; and
- there appear to be reasonable grounds for asserting that a circumvention activity in relation to the original notice has occurred, that is the avoidance of the intended effect of duty, in relation to the original notice has occurred in relation to goods exported from Korea.

Accordingly, the Commission recommends that the Commissioner decide to not reject the application for the conduct of an anti-circumvention inquiry in relation to the original notice under section 269ZDBE of the Act in relation to goods exported from Korea.

**7. APPENDICES AND ATTACHMENTS**

<b>Attachment 1</b>	Commissioner's public notice
<b>Confidential Appendix 1</b>	FIS price analysis