



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**REPORT
NO. 417**

**ACCELERATED REVIEW OF
THE DUMPING DUTY NOTICE APPLYING TO
CERTAIN HOLLOW STRUCTURAL SECTIONS
EXPORTED FROM MALAYSIA BY
MELEWAR STEEL TUBE SDN BHD.**

25 August 2017

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Applicant	Melewar Steel Tube Sdn Bhd
COGS	cost of goods sold
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 417	<i>Anti-Dumping Commission Consideration Report No. 417</i>
CTMS	Cost to Make and Sell
the goods	the goods the subject of the application, hollow structural sections
HSS	Hollow Structural Sections
OCOT	ordinary course of trade
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 177	<i>Anti-Dumping Commission Report No. 177</i>
REP 379	<i>Anti-Dumping Commission Report No. 379</i>
REQ	response to the exporter questionnaire
the review period	1 April 2016 to 31 March 2017
SG&A	selling, general and administrative

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This final report has been prepared in response to an application under section 269ZF of the *Customs Act 1901*¹ (the Act) from Melewar Steel Tube Bhd Snd (Melewar, the applicant) seeking an accelerated review of the dumping duty notice (the notice) applying to hollow structural sections (the goods) exported to Australia from Malaysia, in so far as it affects Melewar.

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) is basing his recommendations to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary).²

1.2 Application of law to facts

Division 6 of Part XVB provides for eligible parties to apply for an accelerated review. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner in conducting accelerated reviews for the purpose of making a report to the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the dumping duty notice unchanged, or to declare that the notice have effect with regard to the applicant as if different variable factors had been specified relevant to the determination of duty.

Subsection 269ZE(1) sets out that a new exporter may apply for an accelerated review. A new exporter is defined in subsection 269T(1) as an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application for anti-dumping measures.

1.3 Findings

After considering the application and making further inquiries, the Commissioner is not satisfied there is sufficient and reliable information to calculate exporter specific variable factors (and therefore an individual dumping duty rate) for the goods exported to Australia by Melewar.

1.4 Recommendation

Based on the above finding, the Commissioner recommends that the dumping duty notice, the subject of the application, remain unaltered.

¹ Unless otherwise specified all legislative references in this report are to the *Customs Act 1901*.

² 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 accelerated review, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

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As a result, Melewar will remain subject to the “uncooperative and all other exporters” rate of interim dumping duty for Malaysian Exporters. The method of working out the interim dumping duty is the combination of fixed and variable duty method, which comprises a fixed component of duty and an additional amount of variable duty that may be incurred if the export price per unit is below the (confidential) ascertained export price per unit.³ The method of working out the interim dumping duty will be unchanged following this accelerated review.

If the Parliamentary Secretary accepts this recommendation, in order to give effect to the recommendation the Parliamentary Secretary must declare, by notice published on the Anti-Dumping Commission’s (the Commission) website, that for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, the dumping duty notice is to remain unchanged.

³ The existing measures have been established in the recently completed continuation of measures (REP379); section 2.3.1 refers.

2 BACKGROUND

2.1 The goods

2.1.2 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).

Finish Types

- Galvanised (including in-line galvanised (ILG), pre-galvanised or hot-dipped galvanised (HDG)); or
- Non-galvanised (including, but not restricted to, painted, black, lacquered or oiled finishes).

Sizes

- Circular products – outside diameter exceeding 21 mm up to and including 165.1 mm; or
- Oval, square and rectangular products – perimeter up to and including 1277.3 mm; that may also be categorised according to minimum yield strength, the most common classifications being 250 and 350 mega Pascals (MPa).

The following descriptions are *excluded* from measures, exemption type “GOODS” applies:

- 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 round 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; and
- Air heater tubes to AS 2556.

As a result of *Anti-Dumping Commission Anti-Circumvention Inquiry No. 291*, the notice was altered to specify different goods that are to be the subject of the notice (to include two additional tariff classifications for certain exporters as specified below).

2.1.3 Tariff classification

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

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37)
- 7306.61.00 (statistical codes 21, 22 and 25)

- 7306.61.00 (statistical code 90)⁴
- 7306.69.00 (statistical code 10)
- 7306.50.00 (statistical code 45)⁵

2.2 The accelerated review process

If a dumping duty notice or a countervailing duty notice has been published in respect of certain goods, a new exporter, as defined in subsection 269T(1), may request an accelerated review of those measures in so far as they affect that exporter.

If an application for an accelerated review of anti-dumping measures is received and not rejected, the Commissioner has up to 100 days after the application is lodged to conduct his review and complete a report to provide to the Parliamentary Secretary.⁶

Under subsection 269ZG(1), the Commissioner must, after considering the application and making such inquiries as the Commissioner thinks appropriate, recommend to the Parliamentary Secretary that the notice the subject of the application:

- remain unaltered; or
- be altered so as to apply to the applicant as if different variable factors had been fixed.

Following the Parliamentary Secretary's decision, a notice is published on the Commission website advising of the decision.

2.3 Existing measures

2.3.1 The original investigation

On 19 September 2011, an investigation into the alleged dumping and subsidisation of certain HSS 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:

- HSS imported from China, Korea, Malaysia and Taiwan were dumped at various margins; and
- HSS 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

⁴ These tariff subheadings only apply to: Dalian Steelforce Hi-Tech Co. Ltd. (China); Tianjin Friend Steel Pipe Co. Ltd. (China); Tianjin Ruitong Iron and Steel Co. Ltd. (China); Roswell S A R Limited (China); and Alpine Pipe Manufacturing SDN BHD (Malaysia).

⁵ Ibid.

⁶ Subsection 269ZG(2) refers.

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these recommendations and, on 3 July 2012, published a dumping duty notice and countervailing duty notice.

Since measures were initially imposed in July 2012, the Commission has conducted numerous inquiries relating to HSS. Full details can be found on the Commission's electronic public record at www.adcommission.gov.au. A summary of the inquiries in relation to the goods is set out in Table 1 below.

Case type and no.	ADN No. ⁷	Date	Country of export	Findings
Investigation REP 177	2012/31	3 July 2012	China, Korea, Malaysia and Taiwan	Dumping and countervailing duties imposed
Reinvestigation REP 203	2013/35	13 May 2013	China, Korea, Malaysia and Taiwan	REP 177 affirmed with variation to dumping duty applicable to Dalian Steelforce (China)
Federal Court decision	2016/09	17 February 2016	China	Revised dumping duty applicable to Dalian Steelforce Countervailing duty notice not applicable to Dalian Steelforce
Anti-circumvention REP 291	2016/24	18 March 2016	China, Korea and Malaysia	Original notices amended to expand the description of the goods covered by the notices
Exemption EX0043	2016/52	16 May 2016	China, Korea, Malaysia and Taiwan	Exemption not granted
Exemption EX0044	2016/116	7 November 2016	China, Korea, Malaysia and Taiwan	Exemption granted
Continuation REP 379	2017/70	21 June 2017	China, Korea, Malaysia and Taiwan	Measures continued and revised variable factors
Review REP 381	2017/71	22 June 2017	Malaysia	Changed variable factors for Alpine Manufacturing

2.4 The current review

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

The Commission examined the application and considered that:

- the application was taken to have been lodged in accordance with subsection 269ZF(2);

⁷ Anti-Dumping Notices are available on the Commission's website at www.adcommission.gov.au

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- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied;
- the conditions for rejection under subsection 269ZE(2) were not satisfied; and
- the application was in writing and contained a description of the kind of goods to which the notice relates and a statement of the basis on which Melewar considers that the notice is inappropriate in so far as it is concerned (subsection 269ZF(1)).

Accordingly, the Commissioner did not reject the application and commenced the accelerated review. The *Anti-Dumping Commission Consideration Report No. 417* (CON 417) provides further details in relation to the Commission's consideration of the application and the Commissioner's decision. CON 417 should be read in conjunction with this report and is available on the public record.

The commencement of the accelerated review was publicly notified in ADN No. 2017/83, which was published on 8 June 2017. The review period is 1 April 2016 to 31 March 2017 (review period).

2.5 Response to the exporter questionnaire

Following receipt of the application, the Commission sent an exporter questionnaire to Melewar for completion, with a due date of 23 June 2017. Melewar provided a response to the exporter questionnaire (REQ) on 30 June 2017. A non-confidential version of the REQ was not provided to the Commission.

The Commission reviewed the REQ and determined that it was deficient. The Commission subsequently notified Melewar of the deficiencies of the REQ.

Several attempts were made by the Commission to allow Melewar to rectify the deficiencies in the information provided, in order to ensure that the Commission had sufficient information to be able to ascertain the variable factors as they pertain to Melewar. Correspondence with Melewar is summarised in the table below.

Date notified of deficiencies	Due date for rectification	Date provided to the Commission	Deficiencies substantially rectified?	Reasons for deficiency
3 July 2017	6 July 2017	5 July 2017	No	Costing information was not provided with the REQ, Melewar was provided with additional time to prepare and provide the data.
11 July 2017	14 July 2017	14 July 2017	No	Costing information was provided but it was not evident which costs the CTMS data pertained to, as it was not broken down by model and did not reconcile to the goods under consideration figures provided in the income statement. Sales information was lacking sufficient detail to determine model/product characteristics and appeared to include services as well as the goods and some additional products not the subject of this application. Further information was

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				requested in order for the Commission to be able to identify the goods and to ascertain the FOB export price.
17 July 2017	19 July 2017	19 July 2017	No	<p>Information provided was insufficient to be able to identify the goods sold on a line by line basis, or the domestic sales costs associated with each sale (such as inland transport and delivery expenses to be able to ascertain FOB).</p> <p>These were instead provided in the CTMS spreadsheet, which did not provide a sufficient level of detail to be able to determine which products the cost to make and sell pertained to.</p>
28 July 2017	1 August 2017	1 August 2017	No	<p>Sales data was provided in a format in which a product code could be identified for each sales transaction, but there was insufficient information to be able to identify the model characteristics.</p> <p>Costs data was provided by model, but was not broken up into the relevant cost components to be able to discern cost of production from selling costs. Additionally, the data appeared to be cost of goods sold rather than cost of production. Data also appeared to include services such as further processing and transportation costs. Model characteristics were not identifiable.</p>

2.6 Public record

There is no legislative requirement under Division 6 for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the Commission website at www.adcommission.gov.au.

3 ASSESSMENT OF VARIABLE FACTORS

3.1 Findings

On the basis of Melewar's REQ and the verification of information contained therein, the Commissioner is satisfied that Melewar is a manufacturer of like goods.

However, due to the deficiencies in Melewar's cost data and other relevant information (section 2.5 of this report refers), the Commissioner is not satisfied there is sufficient and reliable information to calculate exporter specific variable factors (and therefore an individual dumping duty rate) for the goods exported to Australia by Melewar.

Whilst the Commission is open to ascertaining variable factors using all other relevant information pursuant to s269TAB(3) and s269TAC(6) of the *Customs Act 1901* (the Act), there is only one other exporter from Malaysia which has had exporter specific variable factors calculated. This information was also used to calculate the all other exporter rate which is the rate currently applicable to Melewar. This information was provided for the purpose of a continuation inquiry (REP379 refers). There is a timing difference between REP379 and this review.

In order to calculate contemporaneous variable factors relying on the information of other exporters obtained in REP379, the Commission would also need sufficient information from the applicant to determine any timing, specification or any other exporter specific adjustments that may need to be taken into consideration in order for the Commission to reasonably rely on the information to ascertain exporter specific variable factors for this review period. As reliable information specific to the exporter is not available to the Commission to reasonably ascertain the adjustments required to calculate the variable factors as they related to Melewar, the Commission cannot reasonably rely on this information to ascertain variable factors pursuant to s269TAB(3) or s269TAC(6).

3.2 Circumstances of Melewar's production and sale of like goods

The Commission has examined the circumstances of Melewar's production and sale of HSS.

3.2.1 Status as a manufacturer

Melewar provided evidence of its production volumes, sales data, and details of cost to make and sell in its REQ. However, the information provided by Melewar was not sufficient to determine different types of the goods sold by Melewar on the domestic market, nor the costs associated with the production of the like goods.

3.2.2 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.

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Melewar has not exported the goods to Australia during the review period. In these circumstances, the Commission is required to compare the goods produced by Melewar for sale on its domestic market to the goods that it would produce for export to Australia to assess whether the goods ought to properly be considered “like”.

In the Commission’s view, the product sold on the domestic market has characteristics that closely resemble the goods that Melewar would be expected to export to Australia. Accordingly, the Commission is satisfied that the goods produced by Melewar for sale on its domestic market are considered to be “like goods”.

3.3 Normal value

Subsection 269TAC(1) provides that:

the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length by the exporter or, if the goods are not sold by the exporter, by other sellers of the like goods.

3.3.1 Calculation of normal value

Noting the Commission’s findings in section 2.5 of this report that Melewar’s data, is not sufficient to determine the cost to make and sell, and therefore the Commission is therefore unable to assess whether the like goods were sold in the ordinary course of trade (OCOT) and is therefore unable to calculate a normal value by reference to Melewar’s sales under subsection 269TAC(1).

Subsection 269TAC(1) provides that a normal value can be established having regard to the prices obtained by other sellers of the like goods. There is only one other seller of like goods in the Malaysian domestic market subject to its own exporter specific rate of duty, and therefore with exporter specific variable factors. These variable factors were most recently ascertained in a continuation inquiry (REP379).

However, as there is only one common quarter between this accelerated review and the recent continuation inquiry (REP 379 refers) in which the measures were most recently set, the Commission does not consider the information suitable to ascertain a normal value pursuant to this provision. For the reasons specified in section 2.5 of this report, the information provided by Melewar cannot be relied upon to make the appropriate adjustments to the variable factors ascertained for another exporter in REP379.

Therefore, the Commission considers that a calculation of the normal value pursuant to s269TAC(1) would not be appropriate to ascertain a normal value as it related to Melewar for the review period.

Constructed normal value

Subsection 269TAC(2)(c) provides that, where the normal value cannot be ascertained under subsection 269TAC(1), the normal value of the goods is to be calculated as:

- the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the OCOT in the country of export, the selling, general and

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administrative (SG&A) costs associated with such a sale and the profit on that sale.

As required by subsections 269TAC(5A) and 269TAC(5B), the costs of production or manufacture, the SG&A costs and profit are established in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015*, respectively.

Neither Melewar's REQ nor the additional information provided to the Commission, included sufficient information to enable the Commission to calculate a cost of production and SG&A costs of HSS as if it had been sold for home consumption in the OCOT. This is because the cost data was provided in an aggregate form, whereby the cost of production could not be separated from the cost to sell, and the components of the cost to make could not be identified.

The different 'model' costs provided by the applicant appeared to also include services (such as further processing) and other costs (which appear to be related to transport). There was insufficient detail in the costs data to determine the characteristics of the product in order to determine whether the costs related to the cost of production or manufacture of like goods. Further, it appeared that the cost to make and sell data provided was in fact the cost of goods sold rather than the cost of production of the like goods.

As the cost of producing the goods and the associated SG&A costs are unable to be reliably ascertained or verified, the Commission found that the cost data provided was unreliable pursuant to s269TAC(7) and was therefore unable to ascertain the normal value under subsection 269TAC(2)(c).

Third country sales

In accordance with subsection 269TAC(2)(d), in certain circumstances, the normal value can be based on comparable third country sales. However, as outlined in Chapter 10 of the *Dumping and Subsidy Manual*, in determining whether it is appropriate to do so, regard will be had to:

- whether the trade between the country of export and the third country is at arms length and in the OCOT;
- the volume of trade from the country of export to the selected third country is similar to the volume of trade from the country of export to Australia; and
- the nature of the trade in like goods between the country of export and the selected third country is similar to the nature of trade between the country of export and Australia (in considering "nature of trade" such things as the level of trade in a third country may be relevant).

As Melewar did not export the goods under consideration to Australia during the review period, the Commission is unable to identify a country where similar volumes of like goods were being exported during the period. As a result, the Commission is also unable to establish whether third country sales were like goods, or whether they occurred in the OCOT. Accordingly, the normal value cannot be established under subsection 269TAC(2)(d).

Normal value based on all relevant information

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Subsection 269TAC(6) provides that where sufficient information has not been furnished or is not available to enable the calculation of normal value under the preceding subsections of section 269TAC, the normal value is such amount as determined having regard to all relevant information. Chapter 13 of the *Dumping and Subsidy Manual* lists examples of relevant information such as information from independent sources, information from other countries and earlier dumping investigations.

Aside from the data provided by the exporter, the only relevant information available to the Commission in the present circumstances is the information relating to other exporters that was collected in REP 379. However, this information was for a different period, and the data provided by Melewar is unsuitable to derive a timing or exporter specific adjustment in order to determine the variable factors specific to Melewar for the review period..

As such, the Commission does not consider this information to be suitable in order to reliably calculate a normal value which is relevant to the review period and appropriate to Melewar's circumstances.

3.3.2 Conclusion

The Commission has concluded it has insufficient reliable information to be able to calculate a normal value for Melewar that is relevant to the review period.

3.4 Export price

A search of the Australian Border Force import database confirmed that Melewar has not exported the goods to Australia during the review period. As a result, the Commission considers that sufficient information is not available to determine the export price of the goods pursuant to subsection 269TAB(1).

In past accelerated reviews where there have been no exports during the review period, the Commission's usual practice has been to determine the export price as being equal to the exporter's normal value. However, for the reasons set out in the preceding sections, the Commission has been unable to establish a normal value. Therefore, in the absence of reliable information, the Commission has not calculated an export price specific to Melewar.

3.5 Conclusion

The Commissioner notes the findings of the Commission with respect to the absence of reliable information and the inability to calculate the variable factors relevant to the taking of the anti-dumping measures in so far as they affect Melewar.

In these circumstances, the Commissioner therefore recommends that the Parliamentary Secretary declare that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, that the dumping duty notice remain unchanged.

Noting its findings concerning normal value and export price, the Commission has not calculated for the purpose of this review. The relevant notice established that dumping duty would be calculated by reference to the combination of fixed and variable duty method, and this will be unchanged.

4 EFFECT OF THE REVIEW

If the Parliamentary Secretary accepts the recommendations in this report, in respect of hollow structural sections exported by Melewar to Australia from Malaysia:

- the notice will remain unchanged in accordance with subsection 269ZG(3)(a); and
- Melewar will remain subject to the “uncooperative and all other exporters” rate of interim dumping duty for Malaysian exporters.

The Commissioner notes that if the recommendations in this report are accepted by the Parliamentary Secretary, Melewar may apply again for an accelerated review in accordance with subsection 269ZE(1).

5 RECOMMENDATIONS

The Commissioner recommends that the Parliamentary Secretary considers this report and, if in agreement, sign the attached notice at Attachment 1 **to declare**:

- in accordance with subsection 269ZG(3)(a), for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, the notice remains unchanged.

The Commissioner recommends the Parliamentary Secretary **be of the opinion that**:

- in accordance with subsection 269TAB(4), information provided by Melewar as set out in chapter 3 is unreliable and therefore disregard that information; and
- in accordance with subsection 269TAC(7), information provided by Melewar as set out in chapter 3 is unreliable and therefore disregard that information.

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6 ATTACHMENTS

Attachment 1	Public Notice
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