



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

REPORT

NO. 380

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
STEEL REINFORCING BAR
EXPORTED FROM SPAIN BY
COMPAÑIA ESPAÑOLA DE LAMINACION, S.L.**

March 2017

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADA	the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ADRP	Anti-Dumping Review Panel
Celsa Barcelona	Compañía Española de Laminación, S.L
Nervacero	Nervacero S.A
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	free on board
INV 264 or 'original investigation'	<i>Anti-Dumping Commission Investigation No. 264</i>
Korea	the Republic of Korea
NIP	non-injurious price
OCOT	ordinary course of trade
OneSteel	OneSteel Manufacturing Pty Ltd (Administrators appointed)
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the then Parliamentary Secretary	the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
rebar	steel reinforcing bar or 'the goods'
REP 264	<i>Report No. 264</i>
SEF	statement of essential facts
SEF 380	<i>Statement of Essential Facts No. 380</i>
Thailand	the Kingdom of Thailand
USP	unsuppressed selling price

1 SUMMARY

1.1 Introduction

This final report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) bases his recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)¹ in relation to a review of the anti-dumping measures (in the form of a dumping duty notice) applying to certain steel reinforcing bar ('rebar' or 'the goods')² exported to Australia from Spain by Compañía Española de Laminación, S.L (Celsa Barcelona).

1.2 Legislative background

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

If the Commissioner is requested by the Parliamentary Secretary to undertake a review of anti-dumping measures, either as a result of a recommendation made to the Minister under subsection 269ZC(4) or otherwise, the Commissioner must publish a notice on the Anti-Dumping Commission's (the Commission) website indicating that it is proposed to review the anti-dumping measures covered by the request.⁴

The Commissioner must, within 155 days after the publication of the notice or such longer period as the Parliamentary Secretary allows, give the Parliamentary Secretary a report containing recommendations.⁵

1.3 Findings

The Commissioner finds that, in relation to rebar exported to Australia from Spain by Celsa Barcelona during the review period (1 July 2013 to 30 June 2014):

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

The form of anti-dumping measures, the ad valorem duty method, remains unchanged.

¹ 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 review of anti-dumping measures the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

² Refer to section 3.1 of this report for a full description of the goods.

³ All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

⁴ Subsection 269ZC(5).

⁵ Subsection 269ZDA(1).

1.4 Recommendation

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to Celsa Barcelona as if different variable factors had been ascertained.

2 BACKGROUND

2.1 History of the anti-dumping measures

2.1.1 Investigation No. 264

On 17 October 2014, following an application lodged by OneSteel Manufacturing Pty Ltd (OneSteel)⁶ representing the Australian industry, the Commissioner initiated *Investigation No. 264* (INV 264) into alleged dumping of rebar exported to Australia from Republic of Korea (Korea), Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand (Thailand) and Turkey. Findings of INV 264 were outlined in *Report No. 264* (REP 264). REP 264 found that rebar was exported to Australia from Korea, Singapore, Spain and Taiwan (with the exception of Power Steel Co. Ltd) at dumped prices and recommended that a dumping duty notice be issued to that effect. The then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary) decided to accept the Commissioner's recommendation and her decision was published on 19 November 2015.⁷ The Commissioner also terminated part of the investigation relating to rebar exported from Malaysia, Thailand, Turkey and Power Steel Co. Ltd from Taiwan.

In REP 264 the Commissioner found that Celsa Barcelona and Nervacero S.A (Nervacero) from Spain were part of the same corporate group and these two companies were treated as one entity for the purpose of imposing anti-dumping measures. The dumping margin applicable to both companies was determined to be 3.0 per cent.

2.1.2 ADRP Review No. 34

On 6 January 2016 the ADRP published a notice regarding its intention to conduct a review of the then Parliamentary Secretary's decision to publish a notice imposing anti-dumping measures in relation to rebar. The ADRP's notice was in response to applications received from OneSteel, Best Bar Pty Ltd and Nervacero.

In *ADRP Report No. 34*, the ADRP found that the then Parliamentary Secretary's decision was not the correct or preferable decision in relation to Nervacero. The ADRP found that separate dumping margins should have been calculated for Nervacero and Celsa Barcelona. Following this, it was determined that Nervacero's individual dumping margin was negligible (e.g. below 2 per cent). On this basis, the ADRP found that INV 264 should have been terminated in so far as it applied to Nervacero.

As a result, the ADRP recommended that the then Parliamentary Secretary revoke the reviewable decision and substitute it with another decision, namely to issue a dumping duty notice in the same terms as that issued on 11 November 2015 but amended so as to exclude exports of rebar from Spain by Nervacero from the dumping duty notice.

On 14 July 2016 the then Parliamentary Secretary published a notice of her decision to accept the ADRP's recommendation and revoked the original dumping duty notice and

⁶ Administrators were subsequently appointed in April 2016.

⁷ Anti-Dumping Notice No. 2015/133 refers.

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substituted another dumping duty notice in the same terms as the original dumping duty notice but amended to exclude exports of the goods from Spain by Nervacero.

A consequence of the ADRP's recommendation, regarding the treatment of Nervacero only, is that the dumping margin currently applicable to Celsa Barcelona continues to be based on the combined sales and cost data of Celsa Barcelona and Nervacero. The dumping margin currently applicable to Celsa Barcelona is therefore not a reflection of what its dumping margin would have been had its variable factors been calculated using its own data.

2.1.3 The current review

This review was initiated on 13 October 2016 after a request was made by the Parliamentary Secretary to the Commissioner, pursuant to subsection 269ZA(3), for a review of the anti-dumping measures applying to rebar exported to Australia from Spain by Celsa Barcelona.

Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2016/106, which was published on the Commission's website on 13 October 2016.

As outlined in ADN 2016/106, the Parliamentary Secretary requested the review because Celsa Barcelona's dumping margin in INV 264 was determined with reference to (amongst other things) Nervacero's export price and normal value. Given that exports of the goods by Nervacero are now excluded from the dumping duty notice, accordingly, Celsa Barcelona's variable factors have changed since they were last ascertained.

2.2 Review process

If anti-dumping measures have been taken in respect of certain goods, the Parliamentary Secretary may, at any time, request that the Commissioner conduct,⁸ a review of those anti-dumping measures if one or more of the variable factors has changed.

Within 110 days of the initiation of a review, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a statement of essential facts (SEF) on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.⁹

The Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review and report to the Parliamentary Secretary on the review of the anti-dumping measures.¹⁰ During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this particular review are:

- the ascertained export price;
- the ascertained normal value; and

⁸ Subsection 269ZA(3).

⁹ Subsection 269ZD(1).

¹⁰ Subsection 269ZDA(1).

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- the NIP.

For this review, in making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:¹¹

- the request for the review of the anti-dumping measures;
- any submission to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter the Commissioner considers to be relevant to the review.¹²

In his final report the Commissioner must make a recommendation to the Parliamentary Secretary that the dumping duty notice:¹³

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

The Parliamentary Secretary must make a declaration within 30 days of receiving the report or, if the Parliamentary Secretary considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Parliamentary Secretary considers appropriate,¹⁴ that the dumping duty notice:¹⁵

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Parliamentary Secretary must give notice of the decision.¹⁶

For this review, the review period is 1 July 2013 to 30 June 2014.

2.3 Statement of essential facts

On 30 January 2017, the Commissioner placed on the public record¹⁷ *Statement of Essential Facts No. 380* (SEF 380) to inform all interested parties of the essential facts on which the Commissioner proposed to base a recommendation to the Parliamentary Secretary in relation to the review of anti-dumping measures.

¹¹ Subsection 269ZDA(3)(a).

¹² Subsection 269ZDA(3)(b).

¹³ Subsection 269ZDA(1)(a).

¹⁴ Subsection 269ZDB(1A).

¹⁵ Subsection 269ZDB(1)(a).

¹⁶ Subsection 269ZDB(1).

¹⁷ Public record item no. 4.

2.4 Submissions received regarding initiation of the review

2.4.1 Submissions prior to SEF 380

Celsa Barcelona

Celsa Barcelona's 21 November 2016 submission calls for a cessation of this review. Celsa Barcelona submits that:

- the review is not a variable factors review in 'the sense understood by the legislation', but that the Commission is seeking to re-open matters that have already been finalised;
- the Commissioner has disregarded the proper purpose and function of a review;
- the variable factors have not changed, and hence the Commission has improperly initiated this review;
- the review period for the determination of variable factors is based on a period of review which is the same as the original investigation period and is therefore not contemporary; and
- the review unfairly targets Celsa Barcelona and will cause hardship to the company.¹⁸

OneSteel

In its submission of 10 January 2017, OneSteel expresses its support for the review by reiterating the Parliamentary Secretary's reasons for requesting the Commissioner to conduct the review.¹⁹

OneSteel also outlines how, as a consequence of revoking the dumping duty notice as it related to Nervacero's exports, the weighted average export price and normal value originally ascertained for Celsa Barcelona has changed. OneSteel's position on this particular issue is largely based on the treatment of Celsa Barcelona and Nervacero as a collapsed entity for the purpose of the original investigation, which, as a result of the Parliamentary Secretary adopting the ADRP's recommendations in *ADRP Report No. 34*, no longer applies.

Lastly, OneSteel highlight that Celsa Barcelona's claims that the review will cause hardship to Celsa Barcelona ignores the role of the duty assessment process in Australia's anti-dumping system.

Commission's response to submissions prior to SEF 380

In SEF 380, the Commission responded to the above submissions, where the following was noted.

The Act does not provide the Commissioner with a discretion to reject a request by the Parliamentary Secretary to conduct a review under section 269ZA(3). The Parliamentary Secretary set out his reasons for the request and provided an opinion as to the change

¹⁸ Public Record Item No. 2

¹⁹ Public Record Item No. 3

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that has occurred to the variable factors, and the Commissioner initiated this review of measures in order to ascertain whether the variable factors have indeed changed. A request to the Commissioner by the Parliamentary Secretary is in contrast to an application made to the Commissioner requesting a review under section 269ZA(1) which does allow the Commissioner to reject an application under section 269ZC(1).

Celsa Barcelona submits that the Commissioner's decision to initiate this review of measures be declared void *ab initio* and that the review cease. There is no power in Division 5 of Part XVB for the Commissioner to terminate the review of measures, and the submission does not identify any authority to support the view that the decision to initiate the review be declared void.

The Commission notes Celsa Barcelona's submission that the period of data collection for dumping investigations should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable. The submission refers to a recommendation of the World Trade Organization Committee on Anti-Dumping Practices, which was adopted in 2000. Celsa Barcelona seeks to contrast the recommendation with this review of anti-dumping measures, which relies on data collected for the review period of 1 July 2013 to 30 June 2014. This data was collected more than twelve months before the initiation of this review.

The Commission notes that this recommendation related to investigations rather than a review of measures, and that this recommendation was not incorporated into Australian law. Division 5 of Part XVB does not require data relevant to a review to be collected in a particular period, or for a review of measures to have a review period that commences six or twelve months prior to initiation of the review.

Celsa Barcelona claims that the Commissioner has disregarded the proper purpose and function of a review of measures in deciding to initiate this review. No authority for the proper purpose of a review of anti-dumping measures is identified in the submission, so the Commission has had regard to certain extrinsic material when considering the purpose of a review of anti-dumping measures.

The explanatory memorandum to the Customs Legislation (Anti-Dumping Amendments) Bill 1992 that introduced section 269ZA to the Act notes that "the Minister can review the rate of interim duty at **any** time ..." (emphasis added).²⁰ This is consistent with the drafting of subsection 269ZA(3), which appears to give the Minister a broad discretion when deciding to make a request to the Commissioner.

There is no requirement for the Minister to consult with certain parties before making a request to the Commissioner that will affect those parties, and neither is there a requirement for the Commissioner to consult with affected parties before initiating the review. Affected parties, such as Celsa Barcelona, have an opportunity to participate in the review by making submissions within certain statutory timeframes.

The explanatory memorandum further notes that the "purpose of the review is to ensure that the rate of interim duty in force is an accurate reflection of the level of duty necessary

²⁰ Available from Austlii at http://www.austlii.edu.au/au/legis/cth/bill_em/clab1992461/memo_0.html.

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to combat the identified dumping or subsidy”.²¹ The Commission notes that the ADRP review of the dumping duty notice and the Parliamentary Secretary’s subsequent decision to accept the ADRP’s recommendation cast doubt on the accuracy of the rate of interim duty that had been ascertained for Celsa Barcelona in relation to the dumping duty notice. Celsa Barcelona’s variable factors and resulting dumping margin had been worked out with reference to those of Nervacero in INV 264, which the ADRP did not think was the correct or preferable decision.

In the Commission’s view, carrying out a review of anti-dumping measures in these circumstances would come within the purpose of the review of anti-dumping measures that is stated in the explanatory memorandum, because it will ensure that the level of duty collected on the goods exported by Celsa Barcelona is an accurate reflection of the level of duty necessary to address the dumping that has occurred. The Commissioner’s finding in SEF 380 is that Celsa Barcelona’s variable factors have changed from how they were last ascertained following INV 264.

OneSteel’s submission highlights that the exclusion of Nervacero’s export price and normal value data used to calculate the variable factors determined in REP 264 would change the variable factors that currently apply to Celsa Barcelona. The Commission agrees that a review that is specific to Celsa Barcelona would likely bring about a change to the variable factors currently applying to it. This is shown by the dumping margin established in section 5.6 of SEF 380, which differs to the dumping margin ascertained for Celsa Barcelona’s exports of rebar to Australia from Spain following INV 264. This outcome is counter to Celsa Barcelona’s submission that the variable factors have not changed.

Celsa Barcelona’s claims that it will suffer significant hardship as a result of the review relates to the period of time during which it will be precluded from being able to apply for another review. The Commission agrees with Celsa Barcelona’s summation of the legislative barriers to seeking a review of anti-dumping measures following the publication of a notice declaring the outcome of this review. However, the Commission notes, as does OneSteel in its submission, that the duty assessment process will be available to parties who import rebar purchased from Celsa Barcelona. In a duty assessment, the amount of interim dumping duty paid can be compared to the amount of duty that should have been payable for a particular importation period. If excess duty was paid, that excess may be refunded. The duty assessment process, available over the duration of the anti-dumping measures, allows a reconciliation of duty as the data relied on to impose or review those anti-dumping measures becomes less contemporaneous.

2.4.2 Submission following SEF 380

Celsa Barcelona

- Celsa Barcelona’s 20 February 2017 submission²² requested that the review be ceased, and notes that: the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-Dumping Agreement or ADA)

²¹ *ibid*, at page 14.

²² Public Record Item No. 5

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is “the only source of power to review dumping duties”, and that there is no power under the ADA to undertake this review;

- the Commissioner’s decision to initiate the review should be declared void *ab initio* (not terminated) and the Commissioner is “inherently granted” the authority to do so. There is precedent for this in the Commissioner’s decision in 2015 to declare void and revoke a decision to initiate an anti-circumvention inquiry; and
- the availability of a duty assessment is “no answer” to their concerns about the legality of this review of measures; that a duty assessment is not cost-free and that it is retrospective in nature.

Commission’s response to submissions following SEF 380

As discussed in the SEF, the Commissioner continues to be of the view that it was open to him to initiate this review of measures. Notwithstanding the existence of the ADA, judicial authority supports the view that the Australian anti-dumping system is to be administered according to Australian law. Australian legislation must be interpreted in accordance with the settled principles of statutory construction, which begins by considering the terms of the relevant legislation.²³ Australia’s legislation provides a source of power to review dumping duties and countervailing duties in Division 5 of Part XVB.

In this case, following the Parliamentary Secretary’s request, the Commissioner was empowered by subsection 269ZC(5) to publish a notice to indicate that he would review the measures covered by the request. The basis for this decision was explained in that notice and in the SEF in response to submissions (repeated in section 2.4.1 of this report, above). The Commission notes that Division 5 of Part XVB does not stipulate that the review period should be a specified period, or that the Commissioner must not set a review period that covers a period previously investigated. Celsa Barcelona has had opportunity during this review to submit that the variable factors for the review period should be ascertained differently, but has not done so. Accordingly, the Commissioner is satisfied that this review has correctly established Celsa Barcelona’s variable factors and resulting dumping margin for the review period. As a result, the level of interim duty collected on the goods exported by Celsa Barcelona will be a more accurate reflection of the level of duty necessary to address the dumping that has occurred, which is consistent with the purpose of a review of measures, as set out in the SEF and extracted above in section 2.4.1.

The Commission acknowledges a previous decision of the Commissioner to declare void *ab initio* and revoke an initiation decision, although that was a decision to initiate an anti-circumvention inquiry rather than a review of measures.²⁴ However, that anti-circumvention inquiry is distinguishable from this review of measures. The Commissioner was satisfied that the decision to initiate the anti-circumvention inquiry was affected by jurisdictional error. As there was no basis under the Act to initiate the anti-circumvention inquiry, the decision to do so was revoked and the application for the anti-circumvention inquiry was considered afresh and subsequently rejected. By contrast, the Commissioner was satisfied that there was a basis in law to initiate this review of measures for the reasons set out in the SEF and extracted in this report at section 2.4.1.

²³ See *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, at [9].

²⁴ As set out in ADN 2015/140.

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Noting the Commissioner's view expressed above that the decision to initiate this review of measures was not in error, the Commissioner has not given further consideration to the method of revoking that decision as it is not necessary to do so.

The Commission notes that a duty assessment and a review of measures have distinct purposes under Part XVB. Unlike this review of measures, which will vary the dumping duty notice as it affects Celsa Barcelona and change the rate of interim dumping duty payable on Celsa Barcelona's exports of the goods, a duty assessment would not result in a variation to the dumping duty notice. Nevertheless, as set out in the SEF, a duty assessment under Division 4 of Part XVB in relation to imports of Celsa Barcelona's goods may be available to certain parties, and allows a reconciliation of the interim dumping duty paid with the amount that should have been paid as the data relied on for this review becomes less contemporaneous.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods subject to anti-dumping measures 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.

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

Goods excluded are plain round bar, stainless steel and reinforcing mesh.

3.2 Tariff classification

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

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

3.3 Like goods

Subsection 269T(1) defines like goods as:

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

The definition of like goods is relevant in the context of this review in determining the normal value of goods exported to Australia, the goods subject to the dumping duty notice, and in determining the NIP. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the *Dumping and Subsidies Manual*.²⁵

²⁵ Available on the Commission’s website at www.adcommission.gov.au

4 EXPORTER INFORMATION

4.1 Finding

The Commission is satisfied that the information provided by Celsa Barcelona in INV 264 is accurate, relevant and complete. Accordingly, further examination of Celsa Barcelona's data is not warranted in this review.

4.2 Exporter questionnaire

4.2.1 Data provided

This review of anti-dumping measures has relied on the data provided by Celsa Barcelona in its exporter questionnaire response for INV 264. The Commission considers that the information provided by Celsa Barcelona in INV 264 is relevant to this review, given that it related to the same period of time as the review period, and was collected during an investigation into the same commodity.

Celsa Barcelona provided detailed information and data in its exporter questionnaire response to INV 264, including data relating to its export sales and cost to make and sell (CTMS).

4.2.2 Accuracy, relevance and completeness of information provided

The Commission conducted an on-site visit to Celsa Barcelona to verify the information and data provided in its exporter response to INV 264.

The Commission was satisfied as to the accuracy, relevance and completeness of the data provided by Celsa Barcelona during the verification visit. Since the data relied on for this review has already been subject to verification, no additional verification of the exporter's data is warranted.²⁶

²⁶ Item No. 71, electronic public record for INV 264

5 EXPORT PRICE AND NORMAL VALUE

5.1 Finding

The Commissioner finds that the export price and normal value relevant to the taking of anti-dumping measures in relation to rebar exported to Australia by Celsa Barcelona have changed.

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to Celsa Barcelona as if a different export price and normal value been ascertained.

5.2 Determination of the exporter

The Act does not provide a definition of 'exporter'. The Commission will generally identify the exporter as:

- a principal in the transaction located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.²⁷

The Commission does not find that further assessment of the identity of the exporter is warranted and relies on the findings contained in Section 5.5 of the Celsa Barcelona and Nervacero Visit Report published in relation to INV 264 as adopted in REP 264.

The Commission is therefore satisfied that Celsa Barcelona was the exporter of the goods subject to this review.

5.3 Determination of importer

Subsection 269T(1) defines the importer as the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed.

The Commission does not find that further assessment of the identity of the importer is warranted and relies on the findings contained in Section 5.6 of the Celsa Barcelona and Nervacero Visit Report published in relation to INV 264 as adopted in REP 264.

²⁷ Dumping and Subsidy Manual, Chapter 6.2, p.27.

5.4 Export price

The circumstances of the exportations and the data relied on for the calculation of Celsa Barcelona's export price in this review were established in REP 264. However, as stated earlier in section 2.4, the export price which was found to be applicable to Celsa Barcelona was actually based on the combined export sales data reported by Celsa Barcelona and Nervacero. When examined individually, the export price for Celsa Barcelona is found to have changed.

For export sales to Australia by Celsa Barcelona, in INV 264, the Commission found that for the goods exported by Celsa Barcelona only:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchases of the goods were arm's length transactions.

Consistent with the findings in INV 264 related to the above points, the Commission's assessment remains unchanged. Relying on Celsa Barcelona's export sales data only, the Commission has determined that export prices be established under subsection 269TAB(1)(a), using the invoiced price less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

The Commission's export price calculations are at **Confidential Attachment 1**

5.5 Normal value

Subsection 269TAC(1) states 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 (OCOT) for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

The circumstances of the domestic sales and the data relied on for the calculation of Celsa Barcelona's normal value in this review were established in REP 264. However, as stated earlier in section 2.4, the normal value which was found to be applicable to Celsa Barcelona was actually based on the combined domestic sales data reported by Celsa Barcelona and Nervacero. When examined individually, the normal value for Celsa Barcelona is found to have changed.

In this review, the Commission found sufficient volumes of domestic sales in OCOT of rebar in grades which were equivalent to the export models sold to Australian importers by Celsa Barcelona. The Commission is therefore satisfied that prices paid in respect of domestic sales of those models are suitable for assessing normal values under subsection 269TAC(1).

For the purpose of assessing whether the exporter's domestic sales were in OCOT, the CTMS data provided by the exporter is at **Confidential Attachment 2**.

The Commission's assessment of the exporters domestic sales in OCOT are at **Confidential Attachment 3**.

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In using domestic sales as the basis for normal values, the Commission has applied certain adjustments, in accordance with subsection 269TAC(8), to ensure comparability of normal values with export prices. The adjustments are tabled below.

Adjustment type	Description
Domestic inland transport	Deduct downwards adjustment for actual domestic inland transport costs
Domestic credit terms	Deduct downwards adjustment for domestic credit costs
Domestic other financial expenses	Deduct a downwards adjustment for other financial expenses
Domestic selling, general and admin expenses	Deduct a downwards adjustment to domestic selling, general and admin expenses
Export inland transport, handling and other expenses	Add an upwards adjustment for export inland transport
Export letter of credit costs	Add an upwards adjustment for export letter of credit costs
Export commissions	Add an upwards adjustment export commission costs
Export other financial expenses	Add an upwards adjustment for other export financial expenses
Export selling, general and administrative expenses	Add an upwards adjustment to the export sales for selling, general and administrative expenses

The Commission's normal value calculations for the exporter are at **Confidential Attachment 4**.

5.6 Dumping margin

The dumping margin has been assessed by comparing the weighted average Australian export prices of each model to the corresponding quarterly weighted average normal values for the review period.²⁸

The Commission has calculated a dumping margin in respect of rebar exported to Australia by Celsa Barcelona for the review period of **4.5 per cent**.

The Commission's dumping margin calculations are at **Confidential Attachment 5**.

²⁸ In accordance with subsection 269TACB(2)(a).

6 NON-INJURIOUS PRICE

6.1 Assessment of NIP

Consistent with the approach discussed in REP 264, the Commission recommends that the NIP relating to exports by Celsa Barcelona be determined by setting the NIP equal to its normal value. Given the findings in Chapter 5 that the normal value has changed it follows that the NIP has changed.

6.2 General

Subsection 269TACA(a) identifies the NIP of goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to derive a NIP that is expressed in similar delivery terms to export price and normal value (e.g. free on board (FOB)).

6.3 Original Investigation

In REP 264, the Commission approached establishing a USP by observing the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry CTMS plus profit; or
- selling prices of un-dumped imports.

However, as outlined in REP 264, the Commission was not satisfied that a USP could be established using industry selling prices at a time unaffected by dumping or using constructed industry price. The Commission therefore adopted the view that in a market unaffected by dumping, it is reasonable to expect that the Australian industry would continue to set its prices with regard to benchmarked import prices. As the price of imports would be higher at least by the dumping margins found, it would be expected that OneSteel's prices (representing the entirety of the Australian industry) would also be higher at least by the percentage of the dumping margin's found.

It was on this basis that the Commission considered that the NIP for each exporter would be a price equal to the respective normal value.

6.4 Assessment of the NIP

Consistent with the approach adopted in REP 264, the NIP has been assessed to be a price equal to the normal value determined for Celsa Barcelona.

6.5 Lesser duty rule

The level of dumping duty imposed cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury. Under subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury or a recurrence of the injury.

The Parliamentary Secretary is not required to have mandatory consideration of the lesser duty rule where the Parliamentary Secretary is satisfied that certain prescribed circumstances exist. However, if considered appropriate, the Parliamentary Secretary is not prevented from considering and applying the lesser duty rule where these circumstances exist.

The prescribed circumstances are where:

- the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- the Australian industry in respect of like goods consists of at least two small-medium enterprises; or
- the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period.

None of the above prescribed circumstances exist, however as the NIP in this review is set at the same price as the normal value and is not less than the normal value, the Parliamentary Secretary is not required to have mandatory consideration of the lesser duty rule.

7 FINDINGS AND RECOMMENDATIONS

7.1 Findings

The Commissioner finds that, in relation to exports to Australia of rebar from Spain by Celsa Barcelona during the review period:

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

7.2 Recommendations

The Commissioner recommends that the Parliamentary Secretary determine that:

- being satisfied that subsection 269TAB(1)(a) applies, that the export price of goods exported to Australia from Spain by Celsa Barcelona is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in Confidential Attachment 1;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the OCOT for home consumption in Spain in sales that are arms length transactions by Celsa Barcelona, that the normal value of rebar exported to Australia from Spain is the price paid or payable for like goods, as set out in Confidential Attachment 4;
- having applied subsection 269TACB(2)(a), and in accordance with subsection 269TACB(4), that the goods exported to Australia from Spain by Celsa Barcelona are taken to have been dumped, and the dumping margin in respect of the goods is the difference between the weighted average export prices of the goods and the weighted average of corresponding normal values over the review period as set out in Confidential Attachment 5;
- in accordance with subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of the goods exported to Australia from Spain by Celsa Barcelona is an amount which will be worked out in accordance with the method pursuant to subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Customs Regulation).

The Commissioner recommends that the Parliamentary Secretary direct that:

- in accordance with subsection 269TAC(8), that, as the normal value of rebar exported to Australia is the price paid or payable for like goods sold in Spain, the normal value be adjusted for specified differences between like goods sold in Spain and export sales, to ensure that the normal value of the goods so ascertained is properly comparable with the export price of the goods, as set out in Confidential Attachment 4.

The Commissioner recommends that the Parliamentary Secretary ascertain the NIP at the FOB level by setting the NIP equal to the normal value for the reasons outlined in Chapter 6 of this report.

PUBLIC RECORD

The Commissioner recommends that the Parliamentary Secretary not have regard to:

- in accordance with subsection 8(5B), the desirability of specifying a method such that the sum of amounts outlined in subsections 8(5B)(c) and (d) of the Dumping Duty Act do not exceed the NIP in light of the findings in section 6.4 that the NIP is equal to the normal value.

The Commissioner recommends that the Parliamentary Secretary declare, by notice published on the Commission's website that:

- in accordance with subsection 269ZDB(1)(a)(iii), for the purposes of the Act and the Dumping Duty Act, and with effect from the date of publication of the declaration, the dumping duty notice is taken to have effect, in relation to Celsa Barcelona, as if different variable factors of export price, normal value and NIP, as set out in Confidential Attachment 6, had been fixed relevant to the determination of dumping duty.

7.3 Form of anti-dumping measures

The current form of anti-dumping measures applicable to rebar exported by Celsa Barcelona to Australia from Spain is an amount worked out in accordance with the ad valorem duty method pursuant to subsection 5(7) of the Customs Regulation.

As a result of this review, there is no change in the form of measures in relation to Celsa Barcelona and the ad valorem method will continue to apply.

8 ATTACHMENTS

Confidential Attachment 1	Celsa Barcelona Australian Export Sales
Confidential Attachment 2	Celsa Barcelona CTMS
Confidential Attachment 3	Celsa Barcelona Domestic Sales
Confidential Attachment 4	Celsa Barcelona Normal Value
Confidential Attachment 5	Celsa Barcelona Dumping Margin
Confidential Attachment 6	Summary of Variable Factors