



**Australian Government**  
**Anti-Dumping Commission**

**PUBLIC RECORD**

**CUSTOMS ACT 1901 - PART XVB**

**REPORT**  
**NO. 381**

**REVIEW OF ANTI-DUMPING MEASURES**  
**HOLLOW STRUCTURAL SECTIONS**  
**EXPORTED FROM MALAYSIA**

**BY**

**ALPINE MANUFACTURING SND BHD COMPANY**

**May 2017**

**REP 381 Hollow Structural Sections – Malaysia**

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**ABBREVIATIONS**

ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
Alpine	Alpine Manufacturing SND BHD Company
the applicant, Croft	Croft Steel Traders Pty Ltd
China	People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
FOB	Free on Board
the goods, HSS	hollow structural sections
Korea	Republic of Korea
NIP	non-injurious price
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
SEF	statement of essential facts

## 1 SUMMARY

### 1.1 Summary

This report sets out the recommendations of the Commissioner of the Anti-Dumping Commission (the Commissioner) to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)<sup>1</sup> in relation to a review of anti-dumping measures.

The application for review was based on a change in the variable factors relevant to the taking of the anti-dumping measures in relation to Alpine Manufacturing SND BHD Company (Alpine). The variable factors relevant to the review are the normal value, export price and non-injurious price (NIP). The application stated that the normal value and export price have changed.

Alpine is covered by specific anti-dumping measures applying to its exports of steel hollow structural sections (HSS) to Australia from Malaysia.

The statement of essential facts (SEF) was published on 11 April 2017 and set out the facts on which the Commissioner proposed to base his recommendations to the Parliamentary Secretary.

### 1.2 Findings

The Commissioner finds, in relation to exports of HSS by Alpine during the review period (1 July 2015 to 30 June 2016) that, for the review:

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

### 1.3 Recommendation

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice in respect of HSS have effect in relation to Alpine as if different variable factors had been fixed.<sup>2</sup>

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<sup>1</sup> 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, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

<sup>2</sup> Subsection 269ZDB(1)(a)(iii) of the *Customs Act 1901*.

## 2 BACKGROUND

### 2.1 Application and initiation

On 14 October 2016, an application was lodged on behalf of Croft under subsection 269ZA(1) of the *Customs Act 1901* (the Act)<sup>3</sup> for a review of the dumping duty notice as it applies to Alpine. The applicant is an importer of the goods and is therefore eligible to apply for a review in accordance with subsection 269ZA(1).<sup>4</sup>

Croft's application was not made earlier than twelve months after the publication of a notice declaring the outcome of the last review of the dumping duty notice, being 15 July 2015. The application therefore satisfied the requirements of subsection 269ZA(2)(a).

The review period for the purpose of this review is 1 July 2015 to 30 June 2016. The review is limited to examining whether the variable factors, relevant to the taking of the anti-dumping measures as they affect Alpine, have changed.

### 2.2 Previous cases

The anti-dumping measures were initially imposed by public notice on 3 July 2012 by the then Minister for Home Affairs following consideration of *International Trade Remedies Branch Report No. 177* (REP 177).

The anti-dumping measures currently apply as follows:

- the dumping duty notice applies to all exporters of certain HSS from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan; and
- the countervailing duty notice applies to all exporters of certain HSS from China except Dalian Steelforce Hi-Tech Co. Ltd. (Dalian), Huludao City Steel Pipe Industrial Co. Ltd. and Qingdao Xianxing Steel Pipe Co. Ltd.

A background to key cases<sup>5</sup> in relation to the goods is summarised in Table 1 below.

Case type and no.	ADN <sup>6</sup> No.	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

<sup>3</sup> All legislative references are to the *Customs Act 1901* unless otherwise stated.

<sup>4</sup> An importer is an affected party as defined in subsection 269T(1).

<sup>5</sup> Reports and documents relating to these cases are available on the Commission's public record at [www.adcommission.gov.au](http://www.adcommission.gov.au)

<sup>6</sup> Anti-Dumping Notices are available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

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Case type and no.	ADN <sup>6</sup> No.	Date	Country of export	Findings
Exemption EX 0017	2014/51	17 June 2014	China, Korea, Malaysia and Taiwan	Exemption granted
Federal Court decision	2016/09	17 February 2016	China	Revised dumping duty applicable to Dalian Countervailing duty notice not applicable to Dalian
Anti-circumvention REP 291	2016/24	18 March 2016	China, Korea and Malaysia	Original notices amended to expand tariff classifications covered by the notices
Exemption EX0043	2016/52	16 May 2016	China, Korea, Malaysia and Taiwan	Exemption not granted

**Table 1: Summary of cases undertaken in relation to the goods**

### 2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party who considers it may be appropriate to review those measures as they affect a particular exporter of those goods or as they affect exporters of those goods generally, may apply for a review of those measures because one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed.<sup>7</sup> The Parliamentary Secretary may also request that the Commissioner initiate a review at any time.<sup>8</sup>

A review application may not be lodged earlier than twelve months after publication of the notice implementing the original anti-dumping measures or the notice declaring the outcome of the last review of the notice.<sup>9</sup>

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review of anti-dumping measures and report to the Parliamentary Secretary.<sup>10</sup> Within 110 days of the initiation, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF, on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.<sup>11</sup>

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<sup>7</sup> Subsection 269ZA(1)(a)(i).

<sup>8</sup> Subsection 269ZA(3).

<sup>9</sup> Subsection 269ZA(2)(a).

<sup>10</sup> Subsection 269ZDA(1).

<sup>11</sup> Subsection 269ZD(1).

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In making recommendations in this final report to the Parliamentary Secretary, the Commissioner must have regard to:

- the application for review;
- any submission relating generally to the review to which the Commissioner had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that was received by the Commissioner within 20 days of it being placed on the public record.<sup>12</sup>

The Commissioner may also have regard to any other matters that the Commissioner considers relevant to the review.<sup>13</sup>

In this final report the Commissioner must make a recommendation to the Parliamentary Secretary that the dumping duty notice:<sup>14</sup>

- remain unaltered; or
- have effect, in relation to Alpine, as if different variable factors had been fixed.

Variable factors in this particular review are a reference to:

- the ascertained export price;
- the ascertained normal value; and
- the NIP.<sup>15</sup>

The Parliamentary Secretary must give notice of the decision.<sup>16</sup>

### **2.4 SEF**

On 11 April 2017, the Commissioner placed on the public record the SEF in relation to the review, which set out the essential facts on which the Commissioner proposed to base his final recommendations to the Parliamentary Secretary for the review.

### **2.5 Submissions**

The Commissioner has had regard to the single submission received in response to the SEF in formulating his recommendations in this report.<sup>17</sup>

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<sup>12</sup> Subsection 269ZDA(3)(a).

<sup>13</sup> Subsection 269ZDA(3)(b).

<sup>14</sup> Subsection 269ZDA(1)(a).

<sup>15</sup> Subsection 269T(4E).

<sup>16</sup> Subsection 269ZDB(1)(a).

<sup>17</sup> The submission from Alpine actually referenced Continuation Inquiry 379, however the Commission considered that it was also clearly relevant to this review [EPR – 379, 056 refers.](#)

## 3 THE GOODS AND LIKE GOODS

### 3.1 Finding

The Commissioner considers that the HSS produced locally is “like” to the goods exported to Australia by Alpine.<sup>18</sup>

### 3.2 Legislative framework

The Commissioner must be satisfied that “like” goods to the goods subject to measures are produced in Australia. Subsection 269T(2) of the Act specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with subsection 269T(3) of the Act, for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia.

### 3.3 The goods subject to measures

The goods subject to the anti-dumping measures and therefore this review are:

*certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include in-line galvanised (ILG), pre-galvanised or hot-dipped galvanised (HDG) and non-galvanised HSS.*

Sizes of the goods are, for circular products, those –exceeding 21 mm up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3 mm. Categories of HSS excluded from the goods are conveyor tube; precision RHS with a nominal thickness of less than 1.6 mm; and air heater tubes to Australian Standard (AS) 2556.

#### 3.3.1 Tariff classification of the goods

The goods are currently classified to the following tariff subheading of 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)<sup>19</sup>
- 7306.69.00 (statistical code 10)
- 7306.50.00 (statistical code 45)<sup>20</sup>
- 7306.69.00 (statistical code 10).

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<sup>18</sup> In accordance with the definition of ‘like goods’ under subsection 269T(1).

<sup>19</sup> 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).

<sup>20</sup> Ibid.



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The goods exported to Australia from Malaysia are not subject to a rate of duty.

### **3.4 Like goods produced by the Australian industry**

During the original investigation, the then Australian Customs and Border Protection Service (ACBPS) found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods;
- the like goods were wholly manufactured in Australia; and
- there was an Australian industry consisting of four Australian companies that produce like goods in Australia.

The Commission conducted onsite verification visits to Austube Mills Pty Ltd and Orrcon Pty Ltd as part of Continuation Inquiry 379, which concerns all exports of HSS subject to the measures and was conducted by the Commission concurrently with this review. As a result of the information verified during those visits, the Commission remains satisfied for the purposes of this review that there is an Australian industry producing like goods.<sup>21</sup>

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<sup>21</sup> 052 EPR 379 – see chapter 3 of SEF 379 for the Commission’s most recent assessment of the goods and like goods as part of Continuation Inquiry 379.

## **4 EXPORTER INFORMATION**

### **4.1 Exporter questionnaire**

The Commission provided Alpine with an exporter questionnaire to complete. Alpine's response to the exporter questionnaire (REQ) included information concerning its organisation, domestic sales, export sales and costs to make and sell (CTMS).

### **4.2 Reliability of data supplied by Alpine**

The Commission attended Alpine's premises and conducted an on-site verification of the data and information that was provided in its REQ. The Commissioner is satisfied that the data and information that was provided by Alpine is a reasonably complete, reliable and accurate description of its organisation, export sales, domestic sales and its CTMS.

## 5 EXPORT PRICE AND NORMAL VALUE

### 5.1 Finding

The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to HSS exported to Australia by Alpine have changed.

The Commissioner recommends to the Parliamentary Secretary that the variable factors of export price and normal value be altered.

### 5.2 Export price

For all Australian export sales during the review period, the Commission is satisfied that Alpine is exporter of the goods.<sup>22</sup>

In relation to HSS exported to Australia by Alpine, the Commission considers that the customer listed for each shipment in the Australian sales listing was the beneficial owner of the goods at the time of importation, and therefore was the 'importer' of the goods.

The Commission is satisfied that Alpine's Australian sales listing is complete, relevant and accurate and recommends that the export price be determined under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

Export price calculations form **Confidential Appendix 1**.

### 5.3 Normal value

The Commission is satisfied that there was a sufficient volume of domestic sales made in the ordinary course of trade for two of the six model groups of HSS exported to Australia during the review period. For those model groups where there were insufficient domestic sales of an identical model group, the Commission used a surrogate model group as discussed in section 2.3 of the verification report and made specification adjustments outlined in section 6.6 of the verification report.

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values with export prices:

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<sup>22</sup> The Commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

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Adjustment Type	Deduction/addition
Specification	<b>Add or deduct</b> the differences in specification.
Domestic delivery	<b>Deduct</b> the cost of domestic delivery.
Domestic credit	<b>Deduct</b> the cost of domestic credit.
Container stuffing	<b>Add</b> the cost of container stuffing.
Level of trade	<b>Remove</b> end user sales from the normal value.
Export delivery to FOB	<b>Add</b> the cost of export delivery to FOB.
Export credit	<b>Add</b> the cost of export credit.

The Commission is therefore satisfied that the prices paid in respect of domestic sales of HSS are suitable for assessing normal value under subsection 269TAC(1).

Details of normal value calculations are at **Confidential Appendix 1**.

### 5.4 Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding quarterly weighted average normal value for the investigation period.

The dumping margin in respect of HSS exported to Australia by Alpine for the investigation period is **53.1 per cent**.

Details of the dumping margin calculation are at **Confidential Appendix 1**.

### 5.5 Submission regarding Alpine's dumping margin

Alpine has stated that the timeframe to check the draft visit report and calculations for accuracy and confidentiality was inadequate, that its dumping margin should be recalculated after expanding the model matching criteria to include thickness ranges to account for price difference, and that domestic sales of BS EN 10219 specified product be included to provide a greater volume of sufficient sales to establish a more accurate normal value for fair comparison.

The verification report and dumping margin calculations were provided to Alpine for review prior to the SEF being published. Due to the complexity of the dumping margin calculation, these documents were provided to Alpine outside of the Commission's preferred timeframe. However, the Commission notes that there is no legislated timeframe for the provision of the verification report or the dumping margin calculations. Alpine was informed that the dumping margin contained in the SEF was a preliminary calculation and Alpine was provided with seven days, consistent with all other cooperative exporters, to review the verification report for confidentiality and the dumping margin calculations for accuracy.

The Commission has undertaken analysis of Alpine's export sales and domestic sales of the goods and considers that the approach to model matching as described in the SEF is the most accurate for making a proper comparison of the goods and like goods. During

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the onsite verification, Alpine did not provide the verification team with a price list evidencing the alleged price difference. After conducting further analysis, the Commission did not find any discernible trend to support a further dividing of the thickness ranges. Alpine also did not provide any evidence attached to its submission on this point. (See **Confidential Attachment 1.1**)

As described in the SEF the Commission found sufficient volumes<sup>23</sup> of models that were of identical standard to Alpine's export sales, (BS EN 10219 is not an identical model) which were sold in the ordinary course of trade. The sales of these models were used for the purpose of determining normal value.

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<sup>23</sup> s 269TAC(14)

## 6 NON-INJURIOUS PRICE

### 6.1 General

The NIP is defined in section 269TACA of the Act as “the minimum price necessary ... to prevent the injury, or a recurrence of the injury” caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice. The NIP is ordinarily determined by having regard to the Australian industry’s selling prices from a period where the industry is not affected by dumping.

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).<sup>24</sup>

For goods subject to a dumping duty notice, the level of dumping duty imposed by the Parliamentary Secretary cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Parliamentary Secretary must also have regard to the desirability of fixing a lesser amount of duty.<sup>25</sup>

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.

The Commission’s preferred approach to establishing unsuppressed selling prices is set out in chapter 23 of the Manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the unsuppressed selling price, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

### 6.2 Assessment of USP and NIP

During the original investigation, the then ACBPS determined the unsuppressed selling price (USP) utilising Australian industry’s CTMS for the investigation period plus an amount for profit during the period of January to September 2008. The then ACBPS chose January to September 2008 as the period to calculate profit because material injury, if any, to the Australian industry was negligible during that period. A separate USP was calculated by finish and the NIP for each finish was then calculated by deducting amounts for post exportation costs. Reviews 265 and 266 followed the same methodology for establishing the NIP.

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<sup>24</sup> Subsections 8(5B), 8(5BA), 10(3C) and 10(3D) of the Dumping Duty Act.

<sup>25</sup> Subsection 8(5B) of the Dumping Duty Act.

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For the purpose of this review, a weighted average USP has been determined based on a weighted average of all Australian industry CTMS data during the review period plus an amount of profit achieved by Australian industry in the period of January to September 2008. This approach is consistent with the original investigation and Reviews 265 and 266, which established a profit in a period unaffected by dumping. The Commission acknowledges that the profit figure is now nine years old. However, despite the Australian industry's improved profitability occurring during the review period, the Commission has confirmed that dumping is still occurring that is affecting the market. The NIP has been calculated to FOB delivery terms by deducting from the USP amounts for:

- importer profit;
- importer expenses;
- Australian customs duty, port charges, delivery commission, storage and handling; and
- overseas freight and insurance.

The Commission notes that, during Investigation 177, a NIP was determined for exporters of the goods separately for each finish, as anti-dumping measures were also established separately for each finish of the goods. This was not subject to reinvestigation.

However, since finalising Investigation 177, the Federal Court of Australia has handed down a decision that anti-dumping measures cannot be determined at a model (e.g. finish) level.<sup>26</sup> As such, the Commission considers that NIPs for the goods should not be calculated by finish as they were during Investigation 177, but rather only one weighted average combined NIP for each country should be determined as described above. This has been performed for this review.

In the context of this review, the sum of the ascertained export price and the dumping margin for Alpine was lower than the NIP and hence the NIP is not the operative measure during this review period.

Details of the USP and NIP calculations are at **Confidential Appendix 1**.

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<sup>26</sup> *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870

## 7 FINDINGS AND RECOMMENDATIONS

### 7.1 Findings

The Commissioner finds that, in relation to exports to Australia of HSS from Malaysia by Alpine 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 Malaysia by Alpine 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 Appendix 1;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the OCOT for home consumption in Malaysia in sales that are arms length transactions by Alpine, that the normal value of HSS exported to Australia from Malaysia is the price paid or payable for like goods, as set out in Confidential Appendix 1;
- the dumping margin in respect of the goods exported to Australia from Malaysia by Alpine 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 Appendix 1;
- 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 Malaysia by Alpine is an amount which will be worked out in accordance with the method pursuant to subsections 5(2) and 5(3) 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 HSS exported to Australia is the price paid or payable for like goods sold in Malaysia, the normal value be adjusted for specified differences between like goods sold in Malaysia 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 Appendix 1.

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 6.2.



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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 Alpine, as if different variable factors of export price, normal value and NIP, as set out in Confidential Appendix 1, 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 HSS exported by Alpine to Australia from Malaysia is an amount worked out in accordance with the combination duty method pursuant to subsections 5(2) and 5(3) of the Customs Regulation.<sup>27</sup>

As a result of this review, there is no change in the form of measures in relation to Alpine and the combination duty method will continue to apply.

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<sup>27</sup> *Customs Tariff (Anti- Dumping) Regulation 2013.*

**8 LIST OF APPENDICES**

Confidential Appendix 1	Calculations regarding the variable factors
Confidential Appendix 1.1	Price considerations