



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**ANTI-DUMPING COMMISSION
REPORT NO. 346**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
CERTAIN HOT ROLLED STRUCTURAL STEEL SECTIONS
EXPORTED FROM THE KINGDOM OF THAILAND
BY
SIAM YAMATO STEEL CO. LTD.**

20 September 2016

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ABBREVIATIONS

ABF	Australian Border Force
the Act	The <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Siam Yamato Steel Co., Ltd or SYS
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to manufacture
CTMS	Cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Dumping Duty Regulation	<i>Customs Tariff (Anti- Dumping) Regulation 2013</i>
EPR	Electronic Public Record
the goods	the goods the subject of the application (also referred to as the goods under consideration)
HRS	Hot rolled structural steel sections
NIP	Non-injurious price
OneSteel	OneSteel Manufacturing Pty Ltd
the Parliamentary Secretary ¹	The Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 223	Anti-Dumping Commission Report No. 223
Review period	1 January 2015 to 31 December 2015
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative costs
Thailand	the Kingdom of Thailand

¹ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. 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.

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REP 346 - Review of Measures - HRS exported from Thailand by Siam Yamato Steel Co. Ltd

1 SUMMARY

1.1 Introduction

This review of measures is in response to an application from Siam Yamato Steel Co. Ltd (referred to as the applicant, or SYS) for a review of the anti-dumping measures (in the form of a dumping duty notice) applying to hot rolled structural steel sections (HRS) exported to Australia from the Kingdom of Thailand (Thailand) in so far as the anti-dumping measures affect the applicant.

This report sets out the Commissioner of the Anti-Dumping Commission (the Commissioner's) recommendations to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) in relation to this review.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² enables affected parties to apply for a review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which applications for the review of anti-dumping measures can be brought;
- sets out the procedure to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate.

The Commissioner must, after conducting a review of the variable factors relevant to the taking of the anti-dumping measures, give the Parliamentary Secretary a report recommending that:

- (i) the dumping duty notice remain unaltered; or
- (ii) the dumping duty notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

1.3 Findings

The Commissioner finds that, in relation to exports of HRS to Australia from Thailand by SYS during the review period (1 January 2015 to 31 December 2015):

² A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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

1.4 Recommendation

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

2 BACKGROUND

2.1 Application and initiation of review

On 23 March 2016, SYS lodged an application requesting a review of the anti-dumping measures as they apply to its exports of HRS to Australia from Thailand. In its application, SYS claimed that the variable factors relevant to the taking of the anti-dumping measures have changed.

Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to HRS exported to Australia from Thailand in so far as the anti-dumping measures affect the applicant.

Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2016/43, which was published on the Anti-Dumping Commission's (the Commission's) website on 18 April 2016.

Consideration Report No. 346 (CON 346) was published on the Commission's website detailing the Commissioner's reasons for not rejecting the application.

2.2 Existing measures

On 24 October 2013, the Commissioner initiated a dumping investigation into HRS exported to Australia from Japan, the Republic of Korea (Korea), Taiwan and Thailand following an application lodged by OneSteel Manufacturing Pty Ltd (OneSteel), a manufacturer of HRS in Australia.

In that investigation (Investigation 223), and as outlined in Report No. 223 (REP 223),³ it was found that:

- the goods exported to Australia from Japan, Korea, Taiwan and Thailand were dumped, with margins ranging from 2.20 to 19.48 per cent;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Particulars of the dumping margins established for each of the exporters, and the effective rates of duty, are set out in the following table:

Country	Manufacturer/ exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	JFE Bars and Shapes Corporation	12.15%	Ad valorem	

³ Electronic Public Record (EPR) 223/098 refers.

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	Uncooperative Exporters	12.23%	Ad valorem	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s.269TACB(2)(a) of the <i>Customs Act 1901</i> .
Korea	Hyundai Steel Company	2.52%	Ad valorem	
	Uncooperative Exporters	3.24%	Ad valorem	
Taiwan	TS Steel Co Ltd	4.68%	Ad valorem	
	Tung Ho Steel Enterprise Corporation	2.20%	Ad valorem	
	Uncooperative Exporters	7.89%	Ad valorem	
Thailand	Siam Yamato Steel Co Ltd	18.00% ⁴	Ad valorem	
	Uncooperative Exporters	19.48%	Ad valorem	

Figure 1 – dumping margins

The findings and recommendations in REP 223 were provided to the then Parliamentary Secretary to the Minister for Industry (the then Parliamentary Secretary), recommending the publication of a dumping duty notice in respect of the goods. Notice of the then Parliamentary Secretary's decision to accept the recommendations in REP 223 was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette*.⁵ Interested parties were also advised of this outcome in Anti-Dumping Notice No. 2014/127 on 20 November 2014.

On 7 August 2015, following a review by the Anti-Dumping Review Panel of the decision to impose these dumping duties, the dumping duty notice was varied so that the effective rate of duty for HRS exported to Australia by SYS was varied from 18.28 to 18.00 per cent with effect from 20 November 2014.

For the purposes of this review, the current notice is the dumping duty notice published on 20 November 2014.

2.3 Concurrent review of measures relating to HRS

On 21 March 2016, the Commission received an application for a review of measures on HRS exported from Taiwan by Tung Ho Steel Enterprise Corporation (Tung Ho Steel).⁶ Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to HRS exported to Australia from Taiwan in so far as the anti-dumping measures affect Tung Ho Steel (EPR 345 refers).

⁴ As varied by the then Parliamentary Secretary to the Minister for Industry and Science on 7 August 2015, following the recommendation of the Anti-Dumping Review Panel. See <http://www.adreviewpanel.gov.au/CurrentReviews/Documents/HRSSS%20Parliamentary%20Secretary%27s%20Decision.pdf>

⁵ Available at <https://www.legislation.gov.au/Details/C2014G01905>. The investigation as it related to HRS exported by Feng Hsin Iron & Steel Co Ltd from Taiwan (FHS) was terminated on 31 October 2014. As such the anti-dumping measures do not apply to HRS exported by FHS.

⁶ Notice of the initiation of this review was made in Anti-Dumping Notice No. 2016/43.

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On 8 August 2016, the Commissioner placed on the public record a statement of the facts (SEF 345) on which the Commissioner proposed to base his recommendations to the Parliamentary Secretary in relation to the review of measures. Interested parties were invited to make submissions to the Commissioner in response to SEF 345 by 29 August 2015 (20 days after the SEF was placed on the public record).

The final report for review 345 is due to be provided to the Parliamentary Secretary by 20 September 2016.

2.4 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,⁷ or the Parliamentary Secretary may request that the Commissioner conduct,⁸ a review of those measures if one or more of the variable factors has changed.

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 and report to the Parliamentary Secretary on the review of the anti-dumping measures.⁹

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 SEF on which he proposes to base his recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.¹⁰

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

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

⁷ Subsection 269ZA(1).

⁸ Subsection 269ZA(3).

⁹ Subsection 269ZDA(1).

¹⁰ Subsection 269ZD(1).

¹¹ Subsection 269ZDA(3)(a).

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

At the conclusion of the review, in respect of the dumping duty notice, the Commissioner must provide a final report. In his final report he must make a recommendation to the Parliamentary Secretary that the dumping duty notice:¹³

- remains unaltered; or
- have effect as if different variable factors had been ascertained.

The Parliamentary Secretary must make a declaration under subsection 269ZDB(1) within 30 days after 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.

Following the Parliamentary Secretary's decision, the Parliamentary Secretary must give notice of the decision.¹⁴

2.5 Statement of Essential Facts (SEF) 346

On 8 August 2016, the Commissioner placed on the public record the SEF in relation to this review of measures (SEF 346), which sets out the essential facts on which the Commissioner proposed to base his final recommendations to the Parliamentary Secretary.

2.5.1 Submissions considered as part of SEF 346

The Commissioner had regard, for the purpose of formulating the SEF, to the following submissions.

Interested party	Public record item no.
OneSteel Manufacturing Pty Ltd	4
Siam Yamato Steel Co. Ltd	5

2.5.2 Submissions received in response to SEF 346

Interested parties were invited to make submissions to the Commissioner in response to SEF 346 by 29 August 2016 (20 days after the SEF was placed on the public record).

¹² Subsection 269ZDA(3)(b).

¹³ Subsection 269ZDA(1)(a).

¹⁴ Subsection 269ZDB(1).

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The Commission received the following submissions in response to SEF 346 within the requested timeframe.

Interested party	Public record item no.
Siam Yamato Steel Co. Ltd	8
OneSteel Manufacturing Pty Ltd	9

Table 2: Submissions received in response to SEF 345

The Commission also received the following, further, submission after the deadline of 29 August 2016.

Interested party	Public record item no.
Siam Yamato Steel Co. Ltd	10

Non-confidential versions of these submissions are available on the Commission's website.

The Commissioner has had regard to these submissions for the purposes of the recommendations made to the Parliamentary Secretary in this report. Details of submissions received, and the Commissioner's response to these submissions, are included in section seven of this report.

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commissioner finds that HRS manufactured by the Australian industry are 'like' goods as defined in subsection 269T(1) of the Act.

3.2 Legislative framework

The Commissioner must be satisfied that 'like' goods to the goods the subject of the anti-dumping measures are produced in Australia.

In making this assessment, the Commissioner must first determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) defines like goods as:

"...means 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."

Subsection 269T(2) 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), 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 the anti-dumping measures

The goods to which the current anti-dumping measures apply (the goods) are:

Hot rolled structural steel sections in the following shapes and sizes, whether or not containing alloys:

- *universal beams (I sections), of a height greater than 130mm and less than 650mm;*
- *universal columns and universal bearing piles (H sections), of a height greater than 130mm and less than 650mm;*
- *channels (U sections and C sections) of a height greater than 130mm and less than 400mm; and*
- *equal and unequal angles (L sections), with a combined leg length of greater than 200mm.*

Sections and/or shapes in the dimensions described above, that have minimal processing, such as cutting, drilling or painting do not exclude the goods from coverage of the investigation.

The measures do not apply to the following goods:

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- *hot rolled 'T' shaped sections, sheet pile sections and hot rolled merchant bar shaped sections, such as rounds, squares, flats, hexagons, sleepers and rails; and*
- *sections manufactured from welded plate (e.g. welded beams and welded columns).*

3.4 Tariff classification

Goods identified as hot rolled non-alloy steel sections (meeting the specified shapes and sizes set out above) are currently classified to the tariff subheading in Schedule 3 of the *Customs Tariff Act 1995*:

- 7216.31.00 statistical code 30;
- 7216.32.00 statistical code 31;
- 7216.33.00 statistical code 32; and
- 7216.40.00 statistical code 33.

For the tariff subheadings outlined above, the general rate of duty varies. Imports from Korea and Thailand are duty free. The general rate for imports from Japan is 2 per cent and for Taiwan 5 per cent.

Goods identified as hot rolled other alloy steel sections (meeting the specified shapes and sizes set out above) are classified to tariff subheading 7228.70.00 in Schedule 3 of the *Customs Tariff Act 1995*. The applicable duty rate for imports from Taiwan is 5 per cent. Imports from Japan, Korea and Thailand are duty free.

3.5 Like goods produced by Australian industry

During Investigation 223, the then Australian Customs and Border Protection Service 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; and
- there was an Australian industry consisting of eight companies that produce like goods in Australia.

The Commission did not find any evidence to suggest that these findings had changed.

3.6 Like goods produced and sold in Thailand by SYS

Based on the information provided by SYS in its response to the exporter questionnaire and in the course of on-site verification, the Commissioner is satisfied that HRS sold by SYS on the domestic market in Thailand possess similar physical characteristics, have similar uses, and have similar manufacturing processes to the HRS subject to the dumping duty notice.

4 EXPORTER INFORMATION

4.1 Findings

The Commissioner is satisfied that the information provided by SYS for the purposes of this review is accurate, relevant and complete.

4.2 Exporter questionnaire

The Commission provided SYS with an exporter questionnaire to complete.

SYS provided detailed information and data in its response to the exporter questionnaire, including data relating to its export and domestic sales and cost to make and sell. SYS also provided additional information when requested.

4.3 Accuracy, relevance and completeness of information supplied by SYS

The Commission conducted an on-site verification of the information and data provided in SYS's response to the exporter questionnaire.

The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by SYS during this verification and upon which the findings of this review are based.

The visit report contains further information on these matters. A copy of the visit report is available on the Commission's website at www.adcommission.gov.au

The Commission also compared the information provided by SYS in the review to information provided by it and verified in the original investigation and compared data verified as part of a duty assessment application covering four months of the review period.

4.4 Australian Border Force Database

The Commission compared SYS's export sales information to the data in the Australian Border Force's (ABF's) import database. The data supplied by SYS was consistent with the ABF database.

5 VARIABLE FACTORS – DUMPING DUTY NOTICE

5.1 Findings

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

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to SYS as if different variable factors, the export price and the normal value, had been ascertained.

5.2 Export price

The Commission followed the same methodology as in the original investigation to ensure a consistent approach to ascertaining the variable factors.

The Commission considers that:

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

As such, export prices were established pursuant to subsection 269TAB(1)(a), using SYS's export invoice prices, excluding any part of that price that related to post-exportation charges.

The resulting ascertained export price for HRS exported by SYS to Australia has changed since the original investigation.

Details of export price calculations for HRS exported by SYS are at **Confidential Appendix 1.**

5.3 Normal value

Normal values were established in accordance with subsection 269TAC(1), using SYS's domestic invoice prices for like goods, by grade, shape and size, sold in the ordinary course of trade in arms length transactions.

Adjustments to the normal value were made under subsection 269TAC(8) to ensure fair comparison with the export price. Adjustments made for the review of measures were consistent with the approach undertaken in respect of SYS at the time of the original dumping investigation.

The resulting ascertained normal value for HRS exported by SYS has changed since the original investigation.

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Details of normal value calculations for SYS are at **Confidential Appendix 2.**

5.4 Dumping margin

The Commission compared the quarterly weighted average of export prices over the whole of the review period with the quarterly weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a) of the Act.

The Commission finds that HRS exported to Australia by SYS in the review period was not dumped.

Details of dumping margin calculations for HRS exported to Australia by SYS are at **Confidential Appendix 3.**

6 NON-INJURIOUS PRICE

6.1 General

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause material injury to an Australian industry producing like goods. 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 section 8 of the *Customs Tariff (Anti-Dumping) Act 1975*,¹⁵ 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. Subsection 269TACA(a) of the Act identifies the non-injurious price (NIP) of the 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. FOB).

In the context of determining interim dumping duty, where the NIP is lower than the normal value, the Parliamentary Secretary must have regard to the desirability of applying the lesser duty rule.

6.2 Original investigation

In Investigation 223, the Commission considered that there was no suitable method of determining the USP and so considered an alternative approach to establishing the NIP.

The Commission expressed the view that in a market unaffected by dumping, it is reasonable to expect that OneSteel 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 would also be higher by at least the percentage of the dumping margins found.

It was on this basis that the Commission considered that the NIP for each exporter, including SYS, would be a price equal to the respective normal value. As such, the Parliamentary Secretary was not required to consider the lesser duty rule.

¹⁵ Subsection 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*

6.3 Assessment of the NIP

The Australian industry and the applicant made submissions on the NIP in the course of the current review inquiry, which are discussed at section 7.

The Commission considers that the approach to determining the NIP in REP 223 remains valid for the purpose of this review.

7 SUBMISSIONS

7.1 Submissions regarding model matching

7.1.1 Australian industry submission regarding model matching prior to SEF 346

Prior to the publication of the SEF, OneSteel submitted, in relation to this review (and the concurrent review of measures of exports of HRS from Tung Ho Steel), that:

- the Commission should carefully reassess its model matching of steel grades; and
- if the Commission is to maintain a position of using test certificates rather than assessing the standards that goods are produced to then “it is incumbent that the Commission compare all test certificates” for domestic and export goods sold during the review period.

7.1.2 The Commission’s approach to model matching in SEF 346

In Investigation 223, the Commission considered that standards governing the production of HRS may be an influential factor in demonstrating physical comparability of the goods. To take into account the different circumstances in each exporter’s domestic production and sales, the Commission took into account a number of model-matching factors and considered them on an exporter-by-exporter basis. The Commission considered that the actual physical specifications of products were more determinative in establishing physical likeness for like goods and consequently, normal values.¹⁶ The Commission therefore relied on a sampling methodology of mill test certificates (test certificates) as part of the verification process in Investigation 223.

For the purposes of this review and consistent with Investigation 223, the Commission has examined a number of test certificates pertaining to SYS’s export and domestic sales. These test certificates contain evidence of the mechanical properties and chemical composition of the goods, which establish the actual physical specifications to which the goods are produced and sold. The Commission has also had regard to a number of other model-matching factors including production processes, in particular, whether goods were produced from the same semi-finished product, for example blooms and cost and selling price information.

7.1.3 Submission received post SEF 346 from Australian industry regarding model matching

OneSteel in response to SEF 346 submitted that:

¹⁶ REP 223, page 35.

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- the Commission's reliance on a small sample of test certificates is not an appropriate method of model matching and has led to an incorrect calculation of SYS's normal value and is grading by selection; and
- OneSteel recommends that the Commission base its model matching on standards, and have particular regard to minimum yield strength and ease of welding.

7.1.4 Submission received from SYS post SEF 346 in response to Australian industry submission on model matching

SYS, in response to OneSteel's submission post SEF stated that:

- there is no indication in the verification report or SEF to support the statement by OneSteel that a small sample of the test certificates has been used or that there has been grading by selection;
- the test certificates provided by SYS are representative of the test certificates issued for the period under investigation;
- while OneSteel states that standards should determine the functional application and commercial value of models, in Investigation 223 OneSteel confirmed that its standard HRS range is manufactured to meet or exceed the Australian standard;¹⁷ and
- the use of test certificates for model matching fully takes into account not only the properties of the relevant standards but also other model matching factors that exceed the standards concerned.

7.1.5 The Commission's approach to model matching in this final report

SYS provided and the Commission examined all test certificates relevant for all exports made by SYS during the review period. SYS also provided test certificates for all domestic transactions selected by the Commission.

The approach taken by the Commission in this review follows the Commission's established sampling and risk-based verification procedures and the methodology of Investigation 223.

The Commission also notes that the Anti-Dumping Review Panel (ADRP), in reviewing the Commission's approach to model matching in Investigation 223, stated that it was satisfied the Commission's approach to determining a sufficiently similar subset of domestically sold goods for normal value purposes was thorough and reasonable.¹⁸

¹⁷ See page 18 of REP 223.

¹⁸ See ADRP Report No. 20, *Hot Rolled Structural Steel Sections exported from Japan, the Republic of Korea, Taiwan and the Kingdom of Thailand*, at paragraph 59. This report may be accessed at

7.2 Submissions regarding form of duty

7.2.1 Australian industry submission regarding form of duty prior to SEF 346

Prior to the publication of the SEF, OneSteel submitted that:

- recent behaviour indicates that SYS has embarked on a deliberate short term strategy to nullify the ad valorem anti-dumping measures applicable to its exports of HRS to Australia;
- since the measures were imposed, SYS has only exported small volumes of the goods to Australia, at relatively high prices; and
- if SYS is found to have a *de minimis* dumping margin, anti-dumping measures in the form of a floor price must be imposed, based on the ascertained export price of the goods.

7.2.2 The Commission's approach to form of duty at SEF 346

The forms of duty available to the Parliamentary Secretary when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti- Dumping) Regulation 2013* (the Dumping Duty Regulation) and are as follows:

- combination of fixed and variable duty method ('combination duty');
- fixed duty method;
- floor price duty method; and
- ad valorem duty method.¹⁹

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others.

In considering which form of duty to recommend to the Parliamentary Secretary, the Commissioner has had regard to its published *Guidelines on the Application of Forms of Dumping Duty November 2013*²⁰ (the Guidelines), relevant factors in the HRS market and the particular circumstances of this review.

The fixed and ad valorem duty methods are operative where the ascertained export price and ascertained normal value result in a positive dumping margin calculation. As the Commission determined that the weighted average dumping margin for HRS exported to

http://www.adreviewpanel.gov.au/CurrentReviews/Documents/HRSSS%20REPORT%20No%20%20%20-%20FINAL%20for%20PUBLICATION_Redacted.pdf

¹⁹ Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013*.

²⁰ Available at <http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsofdumpingduty-November2013.pdf>

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Australia by SYS in the review period was less than zero (a negative dumping calculation), the Commission views these forms of duty to be inappropriate in the present circumstances as they are unable to be implemented effectively.²¹

The Commission notes OneSteel's submission that a floor price be imposed based on the ascertained export price of the goods.

The floor price duty method sets a 'floor' – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is normal value or the non-injurious price, whichever becomes applicable under the duty collection system. This duty method does not use an ascertained export price as a 'floor price.'²²

The combination duty method comprises two elements: the "fixed" duty element and the "variable" duty element. Consistent with the analysis above, the fixed duty element would not be operative in the present circumstances of this case. The variable component of the combination duty is set by reference to the ascertained export price. However, it would be inappropriate to impose a duty for exports that fall below the ascertained export price where the ascertained normal value is less than the ascertained export price (a situation of no dumping). To do so would lead to a situation where duties would be collected on exports that are not dumped. Furthermore, as the non-injurious price is set at the ascertained normal value, the lesser duty rule would prevent the imposition of measures above the non-injurious price.²³

7.2.3 Australian industry submission regarding form of duty post SEF 346

OneSteel submitted that it supports the Commissioner's proposal to use the floor price method to determine the amount of interim dumping duty payable.

7.2.4 Submission received from SYS post SEF 346 in response to Australian industry submission regarding form of measures

SYS, in response to OneSteel's submission stated that:

- although it is understandable that OneSteel supports the floor price system, such a system should be subject to regular adjustments so that the effects of movements in normal value, either up or down, can be taken into account for the benefit of both the domestic industry and the exporter(s) concerned.

²¹ In order to impose a fixed or ad valorem duty method, a positive dumping margin must be determined.

²² See section 5(4) and 5(5) of the Customs Tariff (Anti-Dumping) Regulation 2013.

²³ See section 7.1 below.

7.2.5 The Commission's final recommendation regarding form of duty

In considering which form of duty to recommend to the Parliamentary Secretary, the Commissioner has had regard to submissions from interested parties, the Guidelines, relevant factors in the HRS market and the particular circumstances of this review. The Commissioner remains of the view that the most appropriate form of duty in this case is a floor price.

7.3 Submission regarding whether changes to normal values and export prices are lasting in nature

7.3.1 Australian industry submission regarding whether changes lasting in nature prior to SEF 346

Prior to the publication of the SEF, OneSteel submitted that it did not agree with SYS's statements that the changes to its normal value and export prices are lasting in nature as included in its application for review.

7.3.2 Requirements of the legislation in relation to reviews

The opinion of an applicant, in relation to changes to its normal value and export prices, forms part of the information required to be submitted as part of the application seeking a review of measures.²⁴

In determining whether to accept an application for a review based on a change in the variable factors the matters to be considered are whether:

- the application complies with information and lodgement requirements of section 269ZB; and
- there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed.

The Commissioner's consideration of these matters for this review is contained in consideration report, CON 346.

7.3.3 Submissions received post SEF 346 regarding the lasting nature of changes

No submissions were received by the Commission post SEF regarding this issue.

²⁴ See section 269ZB - Content and lodgment of applications for review of anti-dumping measures.

7.4 Submission regarding dumping margin calculation

7.4.1 Submission received from Australian industry post SEF 346 regarding dumping margin calculation

OneSteel in response to SEF 346 submitted that:

- the calculation of the dumping margin using normal values based on “s269TAB(2)(a) quarterly average of the whole review period” is not the most appropriate; and
- the dumping margin be recalculated “based on s269TACB(2)(aa) so that the dumping margin calculation is determined for a similar time period since scrap, and therefore normal values, fell significantly in the 2nd half of the review period.

7.4.2 Submission received from SYS post SEF 346 in response to Australian industry submission regarding dumping margin calculation

SYS, in response to OneSteel’s submission post SEF stated that:

- the calculation of the dumping margin aligns the normal value and export prices to the same period of time. Even if a weighted average normal value had been used for the whole period of investigation, the result would be comparable.

7.4.3 The Commission’s approach to calculating the dumping margin

The Commission calculates a weighted average dumping margin by comparing the total normal value for the review period to the total export value for the investigation period. The total normal value for the investigation period is calculated either by summing the quarterly weighted average unit normal value multiplied by the corresponding quarterly export volume; or summing the quarterly weighted average unit normal value multiplied by the export volume for each export transaction in the corresponding quarter.

The Commission confirms that for this review, the weighted average normal values used in the dumping margin calculation correspond to the quarter in which the export sale was made. As such, normal values in the 2nd half of the review period did not feature in the calculation of the dumping margin.

7.5 Submission regarding calculation of the NIP

7.5.1 Submission received from Australian industry post SEF 346 regarding calculation of the NIP

OneSteel in response to SEF 346 submitted that it continues to set its prices with regard to benchmarked import prices and as such the rationale and logic adopted by the Commission in relation to setting the NIP remains relevant.

7.5.2 Submission received from SYS post SEF 346 in response to Australian industry submission regarding the calculation of the NIP

SYS, in response to OneSteel's submission post SEF stated that:

- it is understandable that OneSteel supports a NIP based on the normal value because it means that the lesser duty rule does not apply;
- this approach was justified due to the conclusion of the Commission that, in the absence of dumping, an import price parity policy would apply;
- however, the absence of the lesser duty rule may allow OneSteel to generate unreasonable profits on domestic sales because the situation in Thailand and Australia is different due to the level of industry integration and the availability of raw material supplies. This may be detrimental to Australian consumers; and
- although the floor price is confidential, presumably to avoid issues of anti-trust, it will inevitably be revealed over time as non-dumped export prices become known. As such, domestic industry may be in a position to exercise control on the Australian market beyond what is desirable by setting prices not at parity levels, but below normal value.

7.5.3 The Commission's final recommendation regarding the NIP

When establishing the NIP in reviews under Division 5 of Part XVB of the Act, the Commission will generally not depart from the approach taken in the original investigation or a previous review, unless there has been a change in circumstances that makes the earlier approach unreasonable and/or less preferred amongst the other available options.²⁵

The Commissioner remains of the view that the NIP in REP 223 remains valid for the purpose of this review.

²⁵ See section 23.2 of the *Dumping and Subsidy Manual November 2015*, which may be accessed here: http://adcommission.gov.au/accessadsystem/Documents/Dumping%20and%20Subsidy%20Manual%20-%20November%202015_20%20Nov%202015%20-%20final%20on%20website.pdf

8 FINDINGS AND EFFECT OF REVIEW

8.1 Findings

The Commissioner finds that, in relation to exports of HRS to Australia from Thailand by SYS during the review period:

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

8.2 Effect of the review

If the Parliamentary Secretary accepts the Commissioner's recommendations, SYS's exports of HRS will not attract interim duty as long as its export prices are at or above the floor price established by reference to the ascertained normal value during the review period. The interim dumping duty will be payable if the actual export price falls below the ascertained normal value.

A summary of the variable factors as they apply to SYS are provided in a confidential table that accompanies **Non-Confidential Attachment 1**.

9 RECOMMENDATION

The Commissioner recommends that the Parliamentary Secretary considers this report, and if agreed, sign the attached notice (**Non-Confidential Attachment 1**) and sign the attached schedules (**Confidential Attachment 2**) to DECLARE that:

- under subsection 269ZDB(1)(a)(iii) of the Act, that, with effect from the date of signature of the determination, that the Act and the Dumping Duty Act have effect as if the current dumping duty notice applies to SYS as though different variable factors had been fixed in respect of this exporter relevant to the determination of duty.

The Commissioner recommends that the Parliamentary Secretary DETERMINE that:

- in accordance with subsection 269TAB(1)(a) of the Act, the ascertained export price for HRS exported to Australia from Thailand by SYS for the review period has been established using the price paid or payable for the goods by the importer;
- in accordance with subsection 269TAC(1) of the Act, the ascertained normal value for HRS exported to Australia from Thailand by SYS for the review period has been established using the price paid for like goods sold by SYS for home consumption in Thailand in the ordinary course of trade in arms length transactions; and
- pursuant to section 8(5) of the Dumping Duty Act, that the interim dumping duty payable on HRS exported to Australia by SYS is an amount that has been worked out in accordance with the floor price duty method pursuant to subsections 5(4) and (5) of the Dumping Duty Regulation with effect from the date of signature of the determination.

10 LIST OF APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Export price calculation
Confidential Appendix 2	Normal value calculation
Confidential Appendix 3	Dumping margin calculation
Non-Confidential Attachment 1	Anti-Dumping Notice No. 2016/98
Confidential Attachment 2	Schedule of Determinations