



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

**Anti-Dumping  
Commission**

*CUSTOMS ACT 1901 - PART XVB*

# **STATEMENT OF ESSENTIAL FACTS**

## **NO. 454**

**REVIEW OF ANTI-DUMPING MEASURES  
APPLYING TO HOT ROLLED COIL  
EXPORTED TO AUSTRALIA FROM TAIWAN**

**22 June 2018**

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## ABBREVIATIONS

ABF	Australian Border Force
ACBPS	the Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ANV	ascertained normal value
the Assistant Minister <sup>1</sup>	the Assistant Minister for Science, Jobs and Innovation
BlueScope, or the applicant	BlueScope Steel Limited
Chung Hung	Chung Hung Steel Corporation
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
CSC	China Steel Corporation
CSGT	China Steel Global Trading
DSC	Dragon Steel Corporation
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
Explanatory Memorandum	<i>Customs Amendment (Anti-Dumping Measures) Bill 2017</i> Explanatory Memorandum
FIS	Free into Store
FOB	Free on Board
the goods	the goods to which the current dumping duty notice applies
HRC	hot rolled coil
IDD	interim dumping duty
Korea	the Republic of Korea
mm	millimetres
NIP	non-injurious price
the notice	the dumping duty notice published on 20 December 2012
OCOT	ordinary course of trade
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>

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<sup>1</sup> On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation.

**PUBLIC RECORD**

REP 188	<i>International Trade Remedies Branch Report No. 188</i>
REP 400	<i>Anti-Dumping Commission Report No. 400</i>
REQ	response to the exporter questionnaire
review period	1 October 2016 to 30 September 2017
SEF	statement of essential facts
SG&A	selling, general and administrative
Shang Chen	Shang Chen Steel Co. Ltd
USP	unsuppressed selling price

## 1 SUMMARY

### 1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Science, Jobs and Innovation (the Assistant Minister) relating to a review of the anti-dumping measures (in the form of a dumping duty notice) applying to hot rolled coil (HRC) steel exported to Australia from Taiwan.

This review of measures is in response to an application from BlueScope Steel Limited (referred to as the applicant, or BlueScope). The application for review is based on a change in the variable factors relevant to the taking of the anti-dumping measures.<sup>2</sup> In this case, the relevant variable factors are export price, normal value, and non-injurious price (NIP). The applicant claims the prevailing price for HRC increased materially in 2017, and therefore all of the variable factors have changed.

### 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>3</sup> sets out among other things, the procedures to be followed by the Commissioner in dealing with an application for a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating it is proposed to review the measures covered by the application.<sup>4</sup> The Commissioner must, within 110 days after the publication of the notice or such longer period as the Assistant Minister allows, place on the public record a statement of the essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Assistant Minister relating to the review of measures.<sup>5</sup>

### 1.3 Preliminary findings

The Commissioner is satisfied all variable factors relevant to the taking of the anti-dumping measures have changed for all exporters of HRC from Taiwan during the review period (1 October 2016 to 30 September 2017), such that:

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

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<sup>2</sup> [EPR 454](#) refers.

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

<sup>4</sup> Subsection 269ZC(4).

<sup>5</sup> Subsection 269ZD(1).

## **1.4 Proposed recommendation**

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice has effect in relation to all exporters from Taiwan as if different variable factors had been ascertained.

## **1.5 Final report**

The Commissioner's final report and recommendations must be provided to the Assistant Minister by 6 August 2018 or within such longer period as the Assistant Minister allows.<sup>6</sup>

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<sup>6</sup> Subsection 269ZDA(1).

## 2 BACKGROUND

### 2.1 Application and initiation

On 1 November 2017, the Commissioner received an application from BlueScope for a review of the anti-dumping measures then applying to HRC exported to Australia from Japan, the Republic of Korea (Korea), Malaysia, and Taiwan. On 27 November 2017, following consideration of the application, the Commissioner published a notice announcing the initiation of the review.<sup>7</sup>

On 20 December 2017, following the publication of *Anti-Dumping Commission Report No. 400* (REP 400) concerning a continuation inquiry in respect of the anti-dumping measures, the Commissioner published a new Anti-Dumping Notice (ADN) which altered the scope of this review, noting that the measures only apply after that date to exports of the goods from Taiwan.<sup>8</sup>

Accordingly, this review of measures only examines the variable factors relevant to the taking of the anti-dumping measures applying to HRC exported to Australia from Taiwan.

### 2.2 Previous cases

The original measures were imposed following the investigation reported in *International Trade Remedies Branch Report No. 188* (REP 188). The previous cases which are relevant to these goods and the present application are summarised below, with full details found on the relevant electronic public record (EPR) on the Commission website, [www.adcommission.gov.au](http://www.adcommission.gov.au).

Case type and number	ADN No.	Date	Country of export	Findings
Investigation REP 188	2012/66	20 December 2012	Japan, Korea, Malaysia and Taiwan	Dumping duties imposed.
Reinvestigation <i>Anti-Dumping Commission Report No. 209</i>	2013/49	17 July 2013	Japan, Korea, Malaysia and Taiwan	Lesser duty rule should only apply to Japanese exports of pickled and oiled (PO) HRC. Variable dumping margin for PO HRC from Japan set to 0 per cent.
Continuation REP 400	2017/166	16 December 2017	Japan, Korea, Malaysia and Taiwan	Cease to apply dumping measures in relation to export of goods from Japan, Korea and Malaysia. Floor price duty method apply to Taiwan.

**Table 1: Summary of key cases relating to HRC**

<sup>7</sup> Details of the initiation of the review and a full description of the relevant goods is available in [ADN No. 2017/173](#).

<sup>8</sup> [ADN No. 2017/186](#) refers.

## 2.3 The current measures

The goods exported from Taiwan are currently subject to the floor price duty method.

Country	Exporter	Effective rate of duty	Variable (basis of floor price component)
Taiwan	China Steel Corporation (CSC)	0%	The lower of ascertained normal value (ANV) and NIP
	Chung Hung Steel Corporation (Chung Hung)	0%	The lower of ANV and NIP
	Shang Chen Steel Co., Ltd (Shang Chen)	0%	The lower of ANV and NIP
	All other exporters	0%	The lower of ANV and NIP

**Table 2: Current measures for HRC exported from Taiwan**

## 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.<sup>9</sup> Accordingly, the affected party may apply for, or the Assistant Minister may request the Commissioner conduct, a review of those measures if one or more of the variable factors has changed.<sup>10</sup>

The Assistant Minister may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the dumping duty notice or countervailing duty notice or the notice(s), declaring the outcome of the last review of the dumping or countervailing duty notice.<sup>11</sup>

If an application for a review of anti-dumping measures is received and not rejected, within 110 days of the initiation of a review, or such longer time as the Assistant Minister may allow, the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Assistant Minister concerning the review of the anti-dumping measures.<sup>12</sup> The Commissioner has up to 155 days, or such longer time as the Assistant Minister may allow, to conduct a review and report to the Assistant Minister on the review of the anti-dumping measures.<sup>13</sup>

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this review are a reference to:

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<sup>9</sup> Subsections 269ZA(1)(a), (b).

<sup>10</sup> Subsection 269ZA(1)(b).

<sup>11</sup> Subsection 269ZA(2)(a). The application lodged by BlueScope sought the first review of the measures since the publication of the notice in 2012, although the variable factors were altered as a result of REP 400.

<sup>12</sup> Subsection 269ZD(1).

<sup>13</sup> Subsection 269ZDA(1).



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

In making recommendations in his final report to the Assistant Minister, the Commissioner must have regard to:

- 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;
- this 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.<sup>14</sup>

The Commissioner may also have regard to any other matter considered to be relevant to the review.<sup>15</sup>

At the conclusion of the review, in respect of the dumping duty notice, the Commissioner must provide a final report making a recommendation to the Assistant Minister that the dumping duty notice:

- remain unaltered; or
- has effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.<sup>16</sup>

Following the Assistant Minister's decision, the Assistant Minister must give notice of the decision.<sup>17</sup>

### 2.4.1 Extensions of time

The Commissioner has granted two extensions of time for the completion of this SEF and the final report. The first extension was granted on 19 March 2018, and a second extension was granted on 18 May 2018.<sup>18</sup> As a result, this SEF is due to be placed on the public record by no later than 22 June 2018.

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<sup>14</sup> Subsection 269ZDA(3)(a).

<sup>15</sup> Subsection 269ZDA(3)(b).

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

<sup>17</sup> Subsection 269ZDB(1).

<sup>18</sup> [ADN Nos. 2018/48](#) and [2018/83](#) refer.

## **2.5 Responding to this SEF**

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Assistant Minister. The SEF represents an important stage in the review because it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note the SEF may not represent the final views of the Commissioner. The final report will recommend whether the dumping duty notice should be varied, and the extent of any interim duties that are, or should be payable.

Interested parties are invited to lodge written submissions in response to this SEF no later than the close of business on **12 July 2018**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Assistant Minister.<sup>19</sup> The Commissioner must report to the Assistant Minister on or before **6 August 2018**.

Submissions should preferably be emailed to [investigations1@adcommission.gov.au](mailto:investigations1@adcommission.gov.au). Alternatively, submissions may be sent to fax number +61 3 8539 2499, or posted to:

The Director – Investigations 1  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available on the Commission website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The EPR contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports, and other publicly available documents. The EPR can be viewed online at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Documents on the EPR for this review (EPR 454) should be read in conjunction with this SEF.<sup>20</sup>

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<sup>19</sup> Subsection 269ZDA(4).

<sup>20</sup> [EPR 454](#).

## **3 THE GOODS**

### **3.1 The goods subject to the anti-dumping measures**

The goods subject to anti-dumping measures, in the form of a dumping duty notice (the goods), are:

Hot rolled coil (including in sheet form), a flat rolled product of iron or non-alloy steel, not clad, plated or coated (other than oil coated).

Goods excluded from this application are hot rolled products that have patterns in relief (known as checker plate) and plate products.

There are several relevant international standards for HRC covering the range of products based on grade designations, including the recommended or guaranteed properties of each of these product grades. The relevant Australian Standard that applies is AS/NZS 1594.

Hot rolled sheet 4.75 millimetres (mm) thick or more is considered to be plate, and is not covered by the notice. Hot rolled sheet below 4.75mm thick is included within the goods description.

### **3.2 Tariff classification**

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

<b>Tariff subheading</b>	<b>Statistical code</b>	<b>Goods descriptions</b>
7208.26.00	33	Of a thickness of 3 mm or more but less than 4.75 mm
7208.27.00	34	Of a thickness of less than 3 mm
7208.39.00	38	Of a thickness of less than 3 mm
7208.53.00	42	Of a thickness of 3 mm or more but less than 4.75 mm
7208.54.00	43	Of a thickness of less than 3 mm
7208.90.00	39	Other
7211.19.00	41	Other

**Table 3: Tariff classifications of HRC (the goods)**

## 4 EXPORT PRICE AND NORMAL VALUE

### 4.1 Findings

The Commission has found that the export price and the normal value relevant to the taking of the anti-dumping measures have changed.

### 4.2 Exporter questionnaires and verification

For this review, the Commission provided all Taiwanese HRC exporters with an exporter questionnaire to complete. CSC, Shang Chen and Chung Hung each provided a detailed response to the exporter questionnaire (REQ), including data relating to Australian sales (where applicable), domestic sales, and details of the cost to make and sell (CTMS).

The Commission conducted an on-site verification of the information provided in CSC's REQ. The Commission's verification report is available on the Commission website.<sup>21</sup>

Based on the volume of Shang Chen's exports relative to the total export volume from Taiwan, the Commission elected not to conduct an on-site verification of the information provided in Shang Chen's REQ. The Commission compared the REQ data and information provided with data from the Australian Border Force (ABF) import database and with data previously verified with respect to Shang Chen. The Commission also benchmarked sales and cost data against CSC's verified data.

The Commission elected not to conduct an on-site verification of the information provided in Chung Hung's REQ. Chung Hung confirmed there were no exports of goods relevant to the review period. The Commission benchmarked the information provided in Chung Hung's REQ against the information (domestic sales and CTMS data) provided by the other exporters relevant to the review.

The Commission is satisfied with the accuracy, relevance and completeness of the information provided by the exporters.

### 4.3 CSC

#### 4.3.1 The exporter

The goods exported to Australia during the review period were produced by CSC and Dragon Steel Corporation (DSC). DSC is a wholly-owned subsidiary of CSC. As CSC directed the production of the goods, took carriage of sourcing and allocating raw materials for both CSC and DSC and generally controlled DSC's production activities and customers for the goods, the Commission considers CSC is the principal in the transaction.

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<sup>21</sup> [EPR 454](#).

CSC's other related party intermediary involved in the export of the goods to Australia, China Steel Global Trading (CSGT), is also a subsidiary of CSC and acts as CSC's agent in all export sale transactions. CSC retains ownership of the goods and CSC invoices the customer. For some sales, CSGT purchases the goods from CSC and then carries out minor processing. As CSC generally retains ownership of the goods and CSGT acts on behalf of CSC rather than in its own right, the Commission does not consider CSGT's role in the export of the goods, or further minor processing of the goods in certain transactions, changes the preliminary finding that CSC is the principal in the transaction. For all Australian export sales during the review period, the Commission considers CSC to be the exporter of the goods.

Further details about the relationship between CSC and its subsidiaries can be found on the Commission website in the verification report.

#### **4.3.2 Export price**

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are arms length transactions under section 269TAA. Subsection 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid or payable for the goods by the importer where, inter alia, the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in arms length transactions.

The Commission is satisfied that CSC is the exporter, and the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter. Accordingly, the Commission calculated the export price for CSC under subsection 269TAB(1)(a), being the price paid by the importer to the exporter less transport and other costs arising after exportation.

#### **4.3.3 Normal Value**

Subsection 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade (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 Commission is satisfied there are sufficient volumes of domestic sales of HRC, for all models except one, exported to Australia from Taiwan that are arms length transactions, and at prices within the OCOT. For one export model there was insufficient sales of an identical model on the domestic market in the OCOT. For this export model, a specification adjustment was made to the selling price of the next closest matching domestic model with sufficient sales within OCOT to determine the normal value, accounting for the specification difference between models. Based on this, the Commission is satisfied the prices paid in respect of domestic sales of HRC are suitable for assessing normal value under subsection 269TAC(1).

#### 4.3.4 Adjustments

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

Adjustment Type	Deduction/addition
Domestic inland transport	<b>Deduct</b> the cost of domestic inland transport
Domestic packing	<b>Deduct</b> the cost of domestic packing
Domestic warranty	<b>Deduct</b> the cost of domestic warranty
Domestic sales commission	<b>Deduct</b> the cost of domestic sales commission (between DSC and CSC)
Domestic credit	<b>Deduct</b> the cost of domestic credit
Export inland transport	<b>Add</b> the cost of export inland transport
Export packing	<b>Add</b> the cost of export packing
Export bank charges and fees	<b>Add</b> the cost of export bank charges and fees
Export sales commission	<b>Add</b> the cost of export sales commission (between DSC and CSC)
CSGT service fee	<b>Add</b> the cost of the CSGT service fee
Export related charges	<b>Add</b> the cost of export related charges
Specification adjustment	For models with no, or insufficient sales in the OCOT

**Table 4: Adjustments made to CSC normal value**

#### 4.3.5 Dumping Margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by CSC for the review period. The dumping margin is **5.2 per cent**.

The Commission's calculations are included at **Confidential Appendix 1**.

### 4.4 Shang Chen

#### 4.4.1 Export price

The Commission is satisfied that Shang Chen is the exporter, and the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter. Accordingly, the Commission calculated the export price for Shang Chen under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

#### 4.4.2 Normal Value

Based on the Commission's examination of the REQ, and consistent with previous findings, the Commission found that for some models there were sufficient volumes of domestic sales of HRC that are arms length transactions, and at prices within the OCOT. For some models, the Commission considered that it was necessary to make an adjustment for timing or for specification in order to align the domestic models with those exported to Australia.

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For all of these models, the Commission is satisfied the prices paid in respect of these domestic sales of HRC are suitable for assessing normal value under subsection 269TAC(1).

For the remaining models, there were insufficient sales of an identical model on the domestic market in the OCOT. The Commission found that multiple specification adjustments would be required to account for the differences between the domestic and export models, and that to do so would be an unreliable basis for calculating the normal value under subsection 269TAC(1).

Noting the above, the Commission believes it is reasonable to ascertain Shang Chen's normal value for the remaining models by applying subsection 269TAC(2)(c) for constructed normal value. The purpose of using constructed normal value is to estimate as closely as possible, using costs and profit, the price of HRC (the like goods) sold in the OCOT in Taiwan.

Subsection 269TAC(2)(c) provides that constructed normal value is to be calculated as:

- the cost of production or manufacture of the goods in the country of export; and
- on the assumption the goods, instead of being exported, had been sold for home consumption in the OCOT in the country of export, the selling, general and administrative (SG&A) costs associated with the sale, and an amount for profit.

Pursuant to the provisions of subsection 269TAC(2)(c) the Commission has calculated Shang Chen's normal value in accordance with the conditions set out in sections 43, 44, and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation).

### Shang Chen's cost of production

As required by subsection 269TAC(5A)(a), the cost of production or manufacture must be worked out in accordance with section 43 of the Regulation. The Commission is satisfied that Shang Chen keeps its records in accordance with the generally accepted accounting principles in Taiwan, and that those records reasonably reflect competitive market costs associated with the production or manufacture of the like goods. The Commission has therefore established Shang Chen's cost of production using information associated with its cost of producing the goods exported to Australia under subsection 43(2) of the Regulation.

### SG&A expenses relating to the domestic sales of like goods

As required by subsection 269TAC(5A)(b), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the SG&A costs for Shang Chen have been determined in accordance with subsection 44(2) of the Regulation.

### Profit on the domestic sales of like goods

As required by subsection 269TAC(5B), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulation. Subsections 45(1) and 45(2) of the Regulation require where reasonably practicable, profit must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the OCOT.



Accordingly, the Commission has calculated a profit margin for like goods based on domestic sales of like goods in the OCOT, the selling prices of which were compared to Shang Chen’s actual cost to make and sell of those goods.

In constructing normal value under 269TAC(2)(c), the Commission also applied adjustments to ensure a proper comparison between the constructed price of HRC in the domestic market, and the export price of HRC exported to Australia at FOB terms.

#### 4.4.3 Adjustments

The Commission is satisfied there is sufficient and reliable information to justify the following adjustments in accordance with subsection 269TAC(9), and considers these adjustments necessary to ensure a fair comparison of Shang Chen’s normal value and export price.

Adjustment Type	Deduction/addition
Domestic inland transport	<b>Deduct</b> the cost of domestic inland transport
Domestic warranty expense	<b>Deduct</b> the cost of domestic warranty expenses
Domestic credit cost	<b>Deduct</b> the cost of domestic credit
Export inland transport	<b>Add</b> the cost of export inland transport
Export survey fee	<b>Add</b> the cost of export survey fees
Export customs brokerage	<b>Add</b> the cost of export customs brokerage
Export handling and other	<b>Add</b> the cost of export handling and other
Export bank charges	<b>Add</b> the cost of export bank charges
Export related charges	<b>Add</b> the cost of export related charges
Specification adjustment	For certain models with no, or insufficient sales in the OCOT
Timing adjustment	For certain models, <b>add or deduct</b> the difference in timing

**Table 5: Adjustments made to Shang Chen normal value**

#### 4.4.4 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Shang Chen for the review period. The dumping margin is **2.5 per cent**.

The Commission’s calculations are included at **Confidential Appendix 2**.

### 4.5 Chung Hung

#### 4.5.1 Export Price

It is the Commission’s view the application of subsection 269TAB(1) would require Chung Hung to have exported the goods to Australia. The Commission found Chung Hung did not export the goods to Australia during the review period. The *Customs Amendment (Anti-Dumping Measures) Act 2017* amended section 269TAB to introduce specific provisions for exporters with zero or low volumes of exports.



The Commission therefore considered if the requirements of subsection 269TAB(2A) have been met, and whether Chung Hung's export price should be determined under subsection 269TAB(2B).

For Chung Hung to be considered a low volume exporter in accordance with subsection 269TAB(2A), the Minister must have regard to (i) previous volumes of exports by that exporter, (ii) patterns of trade for like goods, and (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.<sup>22</sup> The Commission has considered these elements as follows.

Previous volumes of exports of those goods to Australia by Chung Hung – subsection 269TAB(2A)(b)(i)

The Commission has found that during the original investigation period (1 April 2011 to 31 March 2012) and the period examined in REP 400 (1 January 2016 to 31 December 2016), Chung Hung exported HRC to Australia from Taiwan. Chung Hung has not exported HRC to Australia since September 2016. This analysis is outlined at **Confidential Appendix 3**.

Patterns of trade for like goods – subsection 269TAB(2A)(b)(ii)

The Commission examined the patterns of trade for like goods by comparing exports from other exporters, and from other countries. The Commission also compared these patterns with those of Chung Hung to determine if changes in its export volume reflect broader market trends. This analysis is outlined at **Confidential Appendix 3**.

The Commission found that exports from Chung Hung to Australia declined markedly after the anti-dumping measures were implemented on exports of the goods from Taiwan. Exports from all other Taiwanese exporters declined overall, but remained steady as a proportion of the market during the period from 2012 to 2017. The Commission interprets these results as the general market demand for the goods remaining persistent. Chung Hung's lack of exports during the review period does not pertain to a general lack or low volumes of HRC exports from Taiwan to Australia.

Factors affecting patterns of trade for like goods that are not within the control of the exporter – subsection 269TAB(2A)(b)(iii)

The Commission notes the explanatory memorandum to the *Custom Amendment (Anti-Dumping Measures) Bill 2017* identifies factors that may affect patterns of trade for like goods not within the control of the exporter.<sup>23</sup> Such factors may include supply disruptions or natural events (such as flood, drought, or fire) that affect production levels.

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<sup>22</sup> Subsection 269TAB(2A)(b).

<sup>23</sup> Refer page 31 of the [explanatory memorandum](#).

The Commission found that Chung Hung manufactured and sold like goods on the domestic market and to third countries during the review period. The Commission suggests this indicates an absence of factors (such as natural events) not within Chung Hung's control affecting trade for like goods.

Commission's consideration – subsection 269TAB(2A)

The Commission considers Chung Hung previously exported the goods to Australia in a period outside of the current review period. Despite the partial decline in exports to Australia from Taiwan generally, overall volumes have subsequently remained steady. Chung Hung's lack of exports during the review period is not matched by a lack or low volume of exports from Taiwan generally. The Commission is not aware of any factors beyond Chung Hung's control which have affected its patterns of trade.

Having regard to the above factors, and in accordance with subsection 269TAB(2A)(b), the Commission considers there is insufficient information to ascertain the export price due to an absence of exports of the goods to Australia by Chung Hung. The Commission therefore considers it appropriate to ascertain an export price under subsection 269TAB(2B). Under this subsection the Commission is able to determine an export price having regard to any of the following:

- a previous export price for the goods exported to Australia by Chung Hung established in accordance with subsection 269TAB(1) for a decision of a kind mentioned in subsection 269TAB(2D);<sup>24</sup>
- the price paid or payable for like goods sold by Chung Hung in arms length transactions for exportation from Taiwan to a third country determined by the Minister to be an appropriate third country;<sup>25</sup>
- an export price for like goods exported to Australia from Taiwan by another exporter or exporters established in accordance with subsection 269TAB(1) for a decision mentioned in subsection 269TAB(2D).<sup>26</sup>

Previous export price – subsection 269TAB(2B)(a)

Chung Hung's export price in the original investigation (REP 188) and subsequent continuation inquiry (REP 400) was established pursuant to subsection 269TAB(1). Notice of the decision under subsection 269ZHG(1) following REP 400 was published on 18 December 2017, which is within two years of the notice of this review being published. Therefore the Commission can determine the export price in accordance with subsection 269TAB(2B)(a).

Third country export price – subsection 269TAB(2B)(b)

The Commission found that during the review period Chung Hung sold like goods to a group of third countries including Korea, Malaysia, Vietnam, and Spain. The REQ provided information including export destinations, annual quantity, and total sales in USD.

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<sup>24</sup> Subsection 269TAB(2B)(a).

<sup>25</sup> Subsection 269TAB(2B)(b).

<sup>26</sup> Subsection 269TAB(2B)(c).

However, the Commission found this information was insufficient for determining the export price under subsection 269TAB(2B)(b).

Another exporter's export price – subsection 269TAB(2B)(c)

In applying the provisions of subsection 269TAB(2B)(C) of the Act, the Commission examined the export price of other exporters in the same review period of this all exporter review, and for which an export price for each was determined under subsection 269TAB(1). Therefore subsection 269TAB(2B)(c) is available for determining the export price.

Commission's consideration – subsection 269TAB(2B)

The Commission has considered the two available options under subsection 269TAB(2B). The Commission considers the most appropriate method of ascertaining Chung Hung's export price is to use subsection 269TAB(2B)(c), being a weighted average export price for like goods exported to Australia from Taiwan by other exporters for which an export price was established under subsection 269TAB(1). This method reflects actual prices received by other exporters for specific HRC grades, and is most reflective of prevailing market conditions for HRC sold in the Australian market during the review period.

The Commission notes Chung Hung's last established export price under subsection 269TAB(1) (as per subsection 269TAB(2B)(a)) relates to the period January to December 2016. However, the last export sales made by Chung Hung were in September 2016, which is outside of the current review period. The Commission does not consider it has sufficient reliable information to adjust Chung Hung's previous export price so it is relevant to the review period.<sup>27</sup> The Commission observes the weighted average export price of other exporters determined under subsection 269TAB(2B)(c) is relevant to the entire review period, and is therefore most reflective of current market conditions pertaining to the current review period.

To ensure a fair comparison of models of HRC sold in Taiwan by Chung Hung (its normal values) with the models of HRC exported to Australia (for export prices established under subsection 269TAB(2B)(c)), the Commission constructed a group of comparable product control numbers that aligned to Chung Hung's domestic sales and model specifications. In accordance with subsection 269TAB(2G) and the explanatory memorandum, the Commission considers it appropriate to make certain adjustments to account for differences in timing or where the goods were not identical.

**4.5.2 Normal value**

The Commission is satisfied there are sufficient volumes of domestic sales of HRC, for most models exported to Australia from Taiwan that are arms length transactions, and at prices within the OCOT. For some models, the Commission considered that it was necessary to make an adjustment for timing or for specification in order to align the domestic models with those exported to Australia.

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<sup>27</sup> In accordance with subsection 269TAB(2G)(a).

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

### 4.5.3 Adjustments

The Commission is satisfied there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8), and considers these adjustments necessary to ensure a fair comparison of normal values and export prices. These adjustments are consistent with adjustments applied in REP 400.

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport	<b>Deduct</b> the cost of domestic inland transport
Domestic warranty expense	<b>Deduct</b> the cost of domestic warranty expenses
Domestic credit cost	<b>Deduct</b> the cost of domestic credit
Export inland transport	<b>Add</b> the cost of export inland transport
Export survey fee	<b>Add</b> the cost of export survey fees
Export customs brokerage	<b>Add</b> the cost of export customs brokerage
Export handling and other	<b>Add</b> the cost of export handling and other
Export bank charges	<b>Add</b> the cost of export bank charges
Export related charges	<b>Add</b> the cost of export related charges
Timing adjustment	<b>Add or deduct</b> the difference in timing
Specification adjustment	For models with no, or insufficient sales in the OCOT

**Table 6: Adjustments made to Chung Hung normal value**

### 4.5.4 Dumping Margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Chung Hung for the review period. The dumping margin is **13.4 per cent**.

The Commission’s calculations are included at **Confidential Appendix 4**.

## 4.6 Uncooperative exporters

Subsection 269T(1) provides that an exporter is an “uncooperative exporter”, where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation, within a period the Commissioner considered to be reasonable or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states at subsection 8(b)(i) that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period.

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After having regard to the Direction, the Commissioner has determined that all exporters which did not provide a response to the exporter questionnaire, or which did not request a longer period to provide a response within the legislated period (being 37 days), are uncooperative exporters for the purposes of this inquiry.

As provided for in subsection 269TACAB(1), for uncooperative exporters, export price and normal value were worked out in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively by having regard to all relevant information. Specifically, the Commission had regard to the highest weighted average normal value and the lowest weighted average export price of those established for cooperating exporters. The dumping margin applicable to uncooperative and all other exporters is **14.2 per cent**.

## 5 NON-INJURIOUS PRICE

### 5.1 Non-Injurious Price

The NIP is defined in section 269TACA 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.

### 5.2 Lesser Duty Rule

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>28</sup>

The level of dumping duty imposed by the Assistant Minister cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Assistant Minister must also have regard to the desirability of fixing a lesser amount of duty.

Pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Assistant Minister is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. Neither of those circumstances (being the composition of the Australian industry, or the method of ascertaining normal value in circumstances of a particular market situation in the country of export), are relevant to the present review.

### 5.3 Calculating the NIP

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). The Commission’s preferred approach to establishing the USP is set out in Chapter 23 of the *Dumping and Subsidy 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 USP, 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.

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<sup>28</sup> Subsection 8(5B) of the Dumping Duty Act.

In REP 188, the then Australian Customs and Border Protection Service (ACBPS) determined the USP to be a price equal to the respective normal value for each exporter. In the case of exports to the automotive sector, ACBPS found the NIP to be equal to determined export prices and therefore a floor price equal to the NIP (export price) was used. For all other exports, ACBPS found that the lesser duty rule did not come into effect.<sup>29</sup>

In REP 400, the Commission re-examined the hierarchy applying to the establishment of the USP rather than following the approach in REP 188. The Commission established the USP by reference to BlueScope's CTMS, plus an amount for the profit actually realised during the relevant inquiry period. The Commission then made deductions for the profit obtained and the SG&A expenses and into store costs incurred by the most efficient importer amongst those verified during that inquiry. In the context of this review, BlueScope has submitted that it supports the use of the same methodology as was applied in REP 400.<sup>30</sup>

#### **5.4 Assessment of NIP**

The Commission considers that the approach taken in REP 400 remains appropriate, and has therefore constructed the USP by reference to BlueScope's CTMS during the review period. However, the Commission observes that the profit obtained by BlueScope in the period examined in REP 400 was achieved in the absence of dumping from Taiwan by the three cooperating exporters, and in circumstances where the remaining exporters subject to the notice (i.e. exporters from Japan, Korea and Malaysia) were found not to be engaging in injurious dumping and were unlikely to do so in the future. In contrast, the Commission has established positive dumping margins applying to the review period, which has coincided with a reduced profit obtained by BlueScope. In these circumstances, the Commission considers it appropriate to use the profit amount established in REP 400 as the profit component of the USP, since it is an amount for profit that was largely unaffected by dumping.

From this USP, the Commission then made deductions for the profit obtained and the SG&A expenses and into store costs incurred by the most efficient importer in this inquiry to calculate a NIP at FOB delivery terms. Details of the USP and NIP calculations are at **Confidential Appendix 5**.

During the review period, the Commission found the NIP has changed based on the calculations above, and is the operative provision for some exporters.

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<sup>29</sup> [REP 188](#), pages 76-79 refer. This approach occurred in the years prior to the decision in *Panasia Aluminium (China) Ltd v Attorney-General of the Commonwealth* [2013] FCA 870.

<sup>30</sup> [Document 013](#) on the public record refers.



## 6 FINDINGS AND PROPOSED RECOMMENDATIONS

### 6.1 Summary of findings

The Commission has found in relation to exports to Australia of HRC (the goods) from Taiwan during the review period, the:

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

### 6.2 Form of duty

The Commission notes its earlier findings that the goods exported from Taiwan by the cooperating exporters were at dumped prices. Prior to REP 400, the combination form of duty method was the prevailing form of measures for all exporters from Taiwan, but the form changed as no dumping had been found in REP 400. In the present circumstances, the Commission considers it appropriate to return to the combination duty method in order to discourage further dumping.

### 6.3 Proposed recommendations

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice have effect in relation to all exporters from Taiwan as if different variable factors had been ascertained. The Commissioner proposes to recommend that the Assistant Minister specify an amount of IDD payable with regard to ensuring that the amount of IDD payable and the ascertained export price do not exceed the NIP.

The Commissioner also proposes to recommend that the amount of IDD payable, for all exporters, be specified in accordance with the combination of fixed and variable duty method. The fixed rate of duty is to be set equal to the proportion of the ascertained export price by which the NIP exceeds the ascertained export price.



**7 LIST OF APPENDICES AND ATTACHMENTS**

<b>Confidential Appendix 1</b>	CSC calculations
<b>Confidential Appendix 2</b>	Shang Chen calculations
<b>Confidential Appendix 3</b>	Chung Hung export price consideration
<b>Confidential Appendix 4</b>	Chung Hung calculations
<b>Confidential Appendix 5</b>	Non-injurious price calculations