



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**TERMINATION REPORT
NO. 452**

ANTI-CIRCUMVENTION INQUIRY

**STEEL REINFORCING BAR EXPORTED TO AUSTRALIA
FROM THE REPUBLIC OF KOREA
BY DAEHAN STEEL CO LTD**

April 2018

Report No. 452 - Steel Reinforcing Bar - Korea

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ABBREVIATIONS

AUD	Australian Dollar
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the applicant or Liberty OneSteel	OneSteel Manufacturing Pty Ltd, the assets of which were transferred to Liberty OneSteel (Newcastle) Pty Ltd as of 1 March 2018
the Assistant Minister	the Assistant Minister for Science, Jobs and Innovation
the Commission	Anti-Dumping Commission
the Commissioner	the Anti-Dumping Commissioner
CON 452	<i>Anti-Dumping Commission Consideration Report No. 452</i>
the circumvention goods	the goods the subject of the application (as outlined at section 3.1)
Daehan	Daehan Steel Co Ltd
Duferco	DITH Australia Pty Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping Measures) Act 1975</i>
the EM	<i>Explanatory Memorandum to the Customs Amendment (Anti-Dumping Measures) Bill 2013</i>
FIS	free into store
FOB	free on board
inquiry period	1 April 2016 to 31 March 2017
Korea	Republic of Korea
KRW	Korean Won
original investigation period	1 July 2013 to 30 June 2014
REP 264	<i>Anti-Dumping Commission Report No. 264</i>
Stemcor Australia	Stemcor Australia Pty Ltd
Stemcor	Stemcor (SEA) Pte Ltd
the then Parliamentary Secretary	the then Parliamentary Secretary to the Minister for Industry, Innovation and Science
USD	United States Dollar

1 SUMMARY AND FINDINGS

1.1 Introduction

This termination report provides the results of an inquiry by the Commissioner of the Anti-Dumping Commission (the Commissioner) into an application made by OneSteel Manufacturing Pty Ltd (Liberty OneSteel or ‘the applicant’)¹ that a circumvention activity has occurred in relation to the original notice applicable to steel reinforcing bar (rebar or ‘the circumvention goods’) exported to Australia from the Republic of Korea (Korea) by Daehan Steel Co Ltd (Daehan). The circumvention activity that Liberty OneSteel allege is avoidance of the intended effect of the duty, within the meaning of subsection 269ZDBB(5A) of the *Customs Act 1901* (the Act).²

Specifically, Liberty OneSteel allege that the importer of the goods, Stemcor (SEA) Pte Ltd (Stemcor), whether directly or through an associate or associates, sold the goods in Australia without increasing the price commensurate with the total amount of duty payable under the *Customs Tariff (Anti-Dumping Measures) Act 1975* (Dumping Duty Act). Liberty OneSteel allege that this was possible because Daehan lowered its export price following imposition of the measures.³ Liberty OneSteel also claim that Stemcor reduced the margin between the export price it paid to Daehan and Stemcor’s free into store (FIS) selling price.

To investigate the alleged circumvention activity, the Commissioner examined a period of 1 April 2016 to 31 March 2017 (the inquiry period).

This report sets out the evidence and material findings of fact on which the Commissioner has based his decision to terminate the inquiry.

1.2 Applicable law

Division 5A of Part XVB sets out, among other matters, the procedures to be followed, and the matters to be considered by the Commissioner in conducting anti-circumvention inquiries.

Unless an inquiry is terminated earlier, in accordance with subsection 269ZDBG(1), after concluding an inquiry, the Commissioner must, within 100 days after the day the notice under subsection 269ZDBE(4) concerning the inquiry is published (or such longer period

¹ On 1 September 2017, OneSteel Manufacturing Pty Ltd was acquired by the GFG Alliance and rebranded as Liberty OneSteel, a division of the Liberty Steel Group. On 1 March 2018, which followed the initiation of this inquiry, OneSteel Manufacturing Pty Ltd transferred the production of like goods to Liberty OneSteel (Newcastle) Pty Ltd which is now the sole producer of like goods in Australia. The remainder of this report will refer to both entities collectively as Liberty OneSteel.

² All legislative references are to the *Customs Act 1901* unless stated otherwise.

³ The measures were announced in Anti-Dumping Notice (ADN) No. 2015/133.

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as is allowed under section 269ZHI), provide the Assistant Minister for Science, Jobs and Innovation (Assistant Minister)⁴ a report recommending that:

- the original notice remain unaltered; or
- the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred. In these circumstances, the Commissioner must also recommend the alterations to be made to the original notice.

Under subsection 269ZDBEA(2), if the Commissioner is satisfied that no circumvention activity in relation to the original notice has occurred, within the meaning of subsection 269ZDBB(5A), the Commissioner may terminate the inquiry.

1.3 Summary of findings

The Anti-Dumping Commission (the Commission) has examined Liberty OneSteel's claims. Specifically, the Commission compared Daehan's export prices to Australia and Stemcor's FIS selling prices in Australia for the inquiry period with those of the original investigation period (1 July 2013 to 30 June 2014).⁵ The Commission has found that:

- following the imposition of measures, Daehan's export price has been lowered;
- Stemcor's FIS selling prices in Australia for the inquiry period were influenced by the lower export price from Daehan and were lower than those for the original investigation period. However, Daehan's lower export price and Stemcor's lower FIS selling prices in Australia are explainable by external factors; and
- Stemcor was profitable on its sales of the circumvention goods during the inquiry period and has not reduced its margins from the original investigation period.

Based on these findings, the Commissioner is satisfied that the importer of the goods (Stemcor), whether directly or through an associate or associates, sold the goods in Australia by increasing the price commensurate with the total amount of duty payable under the Dumping Duty Act.

1.4 Conclusion

Based on the available evidence, the Commissioner is satisfied that no circumvention activity of the kind described by subsection 269ZDBB(5A) has occurred. Accordingly, the Commissioner has terminated the inquiry under subsection 269ZDBEA(2).

⁴ 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. For the purposes of this inquiry, the relevant decision maker is the Assistant Minister for Science, Jobs and Innovation.

⁵ The recommendations of the Commissioner in relation to the original investigation are contained in *Anti-Dumping Commission Report No. 264* (REP 264), available on the Commission's website, www.adcommission.gov.au.

2 BACKGROUND

2.1 Original notice

Anti-dumping measures, in the form of a dumping duty notice, were imposed on rebar exported to Australia from Korea, Singapore, Spain (with the exception of Nervacero S.A.) and Taiwan (with the exception of Power Steel Co., Ltd) on 19 November 2015.⁶ The measures followed consideration of REP 264 by the then Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary).

ADN No. 2015/133, in notifying the findings of REP 264, specified an effective rate of interim dumping duty for Daehan of 9.7 per cent using the ad valorem duty method.

2.2 Application and initiation of inquiry

Subsection 269ZDBC(1) provides:

(1) If:

(a) a notice (an original notice) has been published under subsection 269TG(2) or 269TJ(2) in respect of goods; and

(b) a person representing, or representing a portion of, the Australian industry producing like goods considers that one or more circumvention activities in relation to the notice have occurred; and

(c) the person considers that it may be appropriate to alter the notice because of the circumvention activities;

the person may, by application lodged with the Commissioner, request that the Commissioner conduct an anti-circumvention inquiry in relation to the notice

On 27 October 2017, Liberty OneSteel, the sole Australian industry member producing like goods, lodged an application under subsection 269ZDBC(1) requesting the conduct of an anti-circumvention inquiry in relation to the original notice in so far as it relates to Daehan from Korea.

In its application, Liberty OneSteel considers that it may be appropriate to alter the original notice because an importer, or an associate of the importer, sold the goods exported by Daehan in Australia without increasing the price commensurate with the total amount payable under the Dumping Duty Act, within the meaning of subsection 269ZDBB(5A).

⁶ The then Parliamentary Secretary's decision was reviewed by the Anti-Dumping Review Panel (ADRP) and on 4 March 2016, the ADRP found that the decision of the Parliamentary Secretary was the correct and preferable decision except in relation to Nervacero S.A. The ADRP's recommendation was published in ADRP Report No. 34. As a result of the ADRP's recommendations (which were accepted by the then Parliamentary Secretary), the goods exported to Australia from Spain by Nervacero S.A are not subject to the dumping duty notice applying to the goods from Korea, Singapore, Spain and Taiwan.

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Having considering the application, the Commissioner was satisfied that:

- the application complied with the requirements of section 269ZDBD; and
- there appeared to be reasonable grounds for asserting that a circumvention activity, avoidance of the intended effect of duty, in relation to the original notice has occurred in relation to goods exported by Daehan from Korea.

Accordingly, the Commissioner decided not to reject the application. A notice initiating the inquiry was published on the Commission's website on 20 November 2017 (ADN No. 2017/163 refers). The Commission's assessment of the application is set out in *Consideration Report No. 452 (CON 452)*.⁷

2.3 Conduct of the inquiry

ADN No. 2017/163 notified interested parties that:

- the period to determine whether a circumvention activity has occurred would be 1 April 2016 to 31 March 2017; and
- a report in relation to the inquiry would be provided to the relevant Minister (which is now the Assistant Minister) by 28 February 2018 (unless a longer period is allowed).

Two extensions of time were subsequently granted, meaning that the deadline for the report to the Assistant Minister was due on or before 27 April 2018.⁸

2.4 Public record

The Commissioner maintained a public record of this inquiry as required by section 269ZJ. The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit report to Daehan and other publicly available documents. It is available in hard copy by request in Melbourne or online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this termination report.

2.5 Submissions from interested parties

Following initiation of this inquiry, the Commission received seven submissions from interested parties, as outlined in the table below. The relevant aspects of these submissions were taken into account in preparing this report.

⁷ www.adcommission.gov.au

⁸ ADN Nos. 2018/29 and 2018/57 refer.

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EPR Item No.	Entity	Date Received
006	Liberty OneSteel	13 February 2018
009	Daehan	14 March 2018
010	Republic of Korea – Ministry of Foreign Affairs	23 March 2018
011	Stemcor	27 March 2018
013	Liberty OneSteel	5 April 2018
014	Stemcor	18 April 2018
015	DITH Australia Pty Ltd (Duferco) ⁹	20 April 2018

⁹ CON 452 noted that, as part of the inquiry, the Commission would examine whether Stemcor are transitioning operations to Duferco. Duferco's submission received 20 April 2018 noted that it was not directly concerned with the importation of the circumvention goods during the inquiry period. The submission states that Duferco is not Stemcor, is not related to Stemcor, and that they are separate companies. Duferco submitted that, should a circumvention activity be found, any recommendation should be confined to the parties involved. Given the recommendations of this report, to terminate the inquiry, the Commissioner has not given further consideration to Duferco's submission.

3 THE CIRCUMVENTION GOODS

3.1 The circumvention goods

The circumvention goods (those currently subject to the original notice) are:

Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.

The goods subject to measures includes all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.

A full description of the circumvention goods is available in ADN No. 2014/100 (relating to the initiation of the original investigation no. 264).

3.2 Tariff classification

The circumvention goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* specified below.¹⁰ It should be noted that the statistical codes applying to these tariff classifications were modified subsequent to the initiation of the original investigation:

- 7214.20.00 (statistical code 47);
- 7228.30.90 (statistical code 40);
- 7213.10.00 (statistical code 42);
- 7227.90.10 (statistical code 69);
- 7227.90.90 (statistical code 01, 02 and 04);
- 7228.30.10 (statistical code 70); and
- 7228.60.10 (statistical code 72).

3.3 Excluded goods

Goods excluded from the original notice are plain round bar, stainless steel and reinforcing mesh.

¹⁰ As per the Commission's Dumping and Commodity Register, available at www.adcommission.gov.au.

4 SUBSECTIONS 269ZDBB(5A)(a), (b) and (c)

4.1 Legislative framework

Subsection 269ZDBB(5A) prescribes what amounts to a circumvention activity in the form of avoidance of the intended effect of duty. This circumvention activity occurs if the following apply:

- a) goods (the ***circumvention goods***) are exported to Australia from a country in respect of which the notice applies;
- b) the exporter is an exporter in respect of which the notice applies;
- c) either or both of sections 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;
- d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act; and,
- e) the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.

This chapter examines whether the requirements of subsections 269ZDBB(5A)(a), (b) and (c) are met. The following chapter examines whether the requirements of subsections 269ZDBB(5A)(d) and (e) are met.

4.2 Goods exported to Australia

As part of this inquiry, the Commission sought Daehan's cooperation through completion of an exporter questionnaire. Following receipt of Daehan's completed exporter questionnaire, the Commission conducted a verification visit to Daehan's head office in Seoul, Korea.

Pursuant to subsection 269ZDBB(5A)(a), the Commissioner is satisfied, based on data gathered from the verification visit, that the circumvention goods were exported to Australia from Korea, a country in respect of which the original notice applies.

4.3 Exporter in respect of which the original notice applies

The Commission verified that Daehan exported the goods to Australia during the inquiry period. Daehan is an exporter in which the original notice applies. On this basis, the Commissioner is satisfied that the requirements of subsection 269ZDBB(5A)(b) are met.

4.4 Sections 8 and 10 of the Dumping Duty Act

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties, respectively. In this case, the circumvention goods are subject to a dumping duty notice under subsection 269TG(2) which declared that section 8 of the Dumping Duty Act applies to like goods. Accordingly, the Commissioner is satisfied that section 8 of the Dumping Duty Act applies to the export of the circumvention goods to Australia, and that the requirements of subsection 269ZDBB(5A)(c) are met.

5 HAS CIRCUMVENTION ACTIVITY OCCURRED OVER A REASONABLE PERIOD?

5.1 The Commission's findings

The Commission has examined:

- Daehan's export prices for the inquiry period and the original investigation period to determine whether the export price has been lowered; and
- Stemcor's FIS selling prices in Australia for the inquiry period to ascertain whether they have increased over those observed for the original investigation period, by an amount commensurate with the total amount of duty payable under the Dumping Duty Act.

In conducting this analysis, the Commission has considered the effect that external factors have played in the price comparisons.

Whilst the Commission has found that Daehan has lowered its export price following imposition of the measures and that Stemcor's FIS selling prices in Australia for the inquiry period were influenced by the lower export price from Daehan, the relative changes are explainable by external factors. In particular, the Commission has found that scrap metal prices, which are a main raw material input used in the production of the circumvention goods, have led to a significant reduction in Daehan's export price and Stemcor's FIS selling prices in Australia for the inquiry period.

After taking into account external factors, the Commission is satisfied that the importer, Stemcor, has increased its FIS selling prices in Australia by an amount commensurate with the total duty payable under the Dumping Duty Act.

Based on the available evidence, the Commission is satisfied that Daehan has not caused, or that Stemcor has not engaged in, a circumvention activity which avoids the intended effect of the duty within the meaning of subsection 269ZDBB(5A)(d). Accordingly, the requirements of subsections 269ZDBB(5A)(e) are also not met.

5.2 The application

5.2.1 Liberty OneSteel's claims in the application

Liberty OneSteel claims that the intended effect of the measures have been avoided because Stemcor sold the circumvention goods, which it imported from Daehan, in Australia without increasing the price of the goods commensurate with the total amount of duty payable under the Dumping Duty Act.

Liberty OneSteel claims that the circumvention activity occurred because of a lowering of the export price by Daehan.

Specifically, Liberty OneSteel claims that, following publication of the original notice, Daehan's export price has been lowered to a greater extent than any corresponding reduction in Daehan's normal value. Liberty OneSteel claims that Daehan's reduced export price allowed Stemcor to sell the circumvention goods in Australia without

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increasing the price commensurate with the total amount payable under the Dumping Duty Act.

In addition, Liberty OneSteel claims that Stemcor has reduced the margin between the export price it paid to Daehan and Stemcor's FIS selling price in Australia. Liberty OneSteel consider this is evidence that the importer has '*sacrificed gross margin and circumvented the measures to an even greater extent than the exporter's decline in export price*'.¹¹

In its application, Liberty OneSteel claims that the alleged circumvention occurred between 19 November 2015 and 18 November 2016.

To evidence its claims, Liberty OneSteel supported its application with data in relation to the original investigation period (1 July 2013 to 30 June 2014) and the period between 19 November 2015 and 18 November 2016, to illustrate changes in:

- Daehan's FOB export price of the circumvention goods exported to Australia;
- Stemcor's FIS selling prices of the circumvention goods in Australia;
- Daehan's normal value of the circumvention goods in Korea; and
- the margin between Daehan's FOB export price and Stemcor's FIS selling price of the circumvention goods in Australia.

Based on the Commission's assessment of the application, in CON 452, the Commissioner considered that there were reasonable grounds to establish that a circumvention activity of the kind outlined in subsection 269ZDBB(5A) had occurred. However, the Commission also pointed out in CON 452 that:

- further examination of external factors would be conducted during the course of the inquiry; and
- a different (more contemporaneous period) would be examined.¹²

5.2.2 Submission from interested parties

Stemcor

In a submission received 27 March 2018, Stemcor and Stemcor Australia Pty Ltd (Stemcor Australia) alleged that Liberty OneSteel's application is a misuse of the anti-circumvention provisions. Stemcor consider that Liberty OneSteel's claims related only to an increase in the dumping margin. According to Stemcor, the appropriate path for addressing such circumstances is a review of measures. Stemcor pointed out that Liberty OneSteel were prevented from applying for a review until 14 April 2018, due to the outcomes of *Review No. 380*, which were published on 13 April 2017.

¹¹ Case 452 Public Record Item No.1 - OneSteel Application, p.7

¹² In CON 452, the Commission noted that, at the time of lodging its application on 27 October 2017, Liberty OneSteel had identified the most contemporaneous period in which the duties were final in accordance with the Dumping Duty Act. However, at the time of initiating this inquiry, there was a more contemporaneous period available. Accordingly, as noted at section 2.3, this inquiry has examined the period 1 April 2016 to 31 March 2017 to determine whether a circumvention activity occurred.

Liberty OneSteel

In a submission received on 5 April 2018, Liberty OneSteel rejected Stemcor's claims. Among other things, Liberty OneSteel referred to the findings of investigation no. 264, a draft chapter of the *Dumping and Subsidy Manual* and the *Explanatory Memorandum to the Customs Amendment (Anti-Dumping Measures) Bill 2013* ('the EM' – relevant extracts of which are at Appendix A) to support its ability to seek an anti-circumvention application.

Commission's response to submissions

The Commission considers that the Act provides for anti-circumvention inquiries of this nature. The basis for the Commissioner's decision to initiate this inquiry was explained in the initiation notice (ADN No. 2017/163) and CON 452. The Commissioner is satisfied that Liberty OneSteel's application is not a misuse of the anti-circumvention provisions.

5.3 Circumvention activity

In determining whether a circumvention activity has occurred, the EM introducing subsection 269ZDBB(5A), at paragraph 55, states that:

...where external factors have not caused the circumstance, but instead the inquiry concludes that the circumvention activity has occurred because of the lowering of the export price, sales at a loss, profit reduction, reimbursement or compensation from the exporter, or other activity of a similar nature, the Commissioner may choose to recommend to the Minister that the notice be altered (emphasis added).

Whilst behaviours such as lowering of the export price by the exporter, sales at a loss, profit reduction, reimbursement or compensation etc. in and of themselves, do not satisfy the definition of circumvention activity, the Commission considers that such practices may contribute to a situation in which the selling price of an importer is not commensurate with the total amount of duty payable.

A fundamental characteristic of the anti-dumping system is the price effect on goods subject to anti-dumping measures in the Australian market resulting from the payment of additional duties. It is reasonable to expect that the price of the goods subject to measures would increase, all things being equal, as the imposed duty would see an increase in cost to importers. It is also reasonable to expect that, where an additional cost is imposed (i.e. through the payment of dumping duties) a business would seek to pass on the cost increase associated with the payment of dumping duties in its selling prices to customers. Any increased price in the market can remedy or prevent injury to the Australian industry caused by the dumped goods. Accordingly, in circumstances such as this anti-circumvention inquiry, the Commission has inquired whether the payment of dumping duties is fully reflected in the selling prices of importers to determine whether selling prices are commensurate with the total duty payable under the Dumping Duty Act.

5.4 Commission's approach to assessing circumvention allegations

In conducting this inquiry, the Commission has focussed in the main on comparing Daehan's export prices and Stemcor's FIS selling prices in Australia for the original investigation period and the inquiry period, to examine Liberty OneSteel's claims that:

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1. Daehan has reduced its export prices to allow Stemcor to circumvent the effect of measures (section 5.5); and
2. Stemcor has reduced the margin between the FOB export price of the circumvention goods and its FIS selling prices in Australia (section 5.6).¹³

The various external factors considered by Commission are listed below and discussed further in section 5.7:

- exchange rate fluctuations;
- export price trends of rebar exported to Australia by other exporters;
- global rebar price trends;
- trends in the cost of key manufacturing inputs, i.e. scrap metal; and
- nature of the relationship between the importer and exporter.

5.5 Daehan's export price

To assess Liberty OneSteel's claims, the Commission sought Daehan's cooperation through the completion of an exporter questionnaire, in particular to assess relative movements in Daehan's export price, normal values and cost to produce the goods. Daehan provided its response to the questionnaire on 15 January 2018 after receiving a short extension to the original deadline of 27 December 2018.¹⁴

5.5.1 Verification

The Commission conducted an in-country visit to Daehan's head office in Seoul, Korea during early February 2018 to verify the information disclosed in its exporter questionnaire response.

A report covering the visit findings is available on the public record.¹⁵

5.5.2 Export price

The verification findings contained in Daehan's verification report include that:

- Daehan was the exporter of the circumvention goods to Australia;
- Daehan sold the circumvention goods to Stemcor, either directly or through an intermediary; and
- the export sales by Daehan were the result of arms length transactions.

During the inquiry period it was established that the circumvention goods were exported to Australia otherwise than by the importer (e.g. they were exported by Daehan who is the exporter). Some of the goods were purchased directly by the importer, Stemcor, from the exporter. For those goods, the export price has been ascertained under subsection

¹³ Notwithstanding that this is the emphasis of the inquiry, the Commission has also examined whether other activities of a similar nature, for example, reimbursement or some type of compensation from the exporter or a third party has occurred.

¹⁴ Case No. 452 Public Record Item No.4

¹⁵ Case No. 452 Public Record Item No.8

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269TAB(1)(a), as 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 the transport of the goods after exportation or in respect of any other matter arising after exportation.

For other goods, there was an intermediary involved between the exporter and importer and the export price cannot be ascertained under subsections 269TAB(1)(a) or (b). The export price for those goods was determined under subsection 269TAB(1)(c) based on all the circumstances of exportation. Specifically, the export price has been determined as the price between Daehan and the intermediaries involved in the sale to Australia.

Export prices were calculated at free-on-board (FOB) terms.

5.5.3 Export price analysis

The Commission has compared Daehan's export price for the original investigation period and the inquiry period. This comparison confirms Liberty OneSteel's claims that Daehan's export price has reduced.¹⁶

In a submission received on 14 March 2018, Daehan accepted that its export price has reduced. Daehan attributed its lower export price to a lower cost of production and the exchange rate movement between the Korean Won (KRW) and the US Dollar (USD).¹⁷

5.5.4 Cost of production

The Commission verified Daehan's cost of production in relation to its Australian export sales of the goods. The Commission observed that Daehan's cost of production in relation to the inquiry period had decreased compared to the cost of production in relation to the original investigation period. The decrease in cost of production observed correlates with the decrease in Daehan's export price, which supports the claims in Daehan's submission.¹⁸

5.5.5 Exchange rate impact

Daehan sells the goods to Australia in USD. Therefore Daehan's export sales are exposed to exchange rate fluctuations between the USD and KRW. Following the original investigation period, the Commission has found that the USD strengthened against the KRW. As export prices are set in USD, the Commission considers it reasonable that Daehan would take the strength of the USD against the KRW into consideration when determining its export prices. In the case of the inquiry period, Daehan could reduce its export prices in USD to some extent without impacting revenue earned in KRW.

5.5.6 Profitability of export sales

Using the verified cost and sales data in relation to the inquiry period and the verified cost and sales data in relation to the original investigation period, the Commission has

¹⁶ Confidential Attachment 1 – Table 1

¹⁷ Case No. 452 Public Record Item No.9

¹⁸ Confidential Attachment 1 – Table 3

calculated that Daehan maintained a similar level of profitability (i.e. Daehan has not taken a reduction of profit) on its export sales to Australia.¹⁹

5.5.7 Commission's assessment of Daehan's export price behaviour

Having analysed various aspects of Daehan's export sales of the circumvention goods to Australia, the Commission is satisfied that Daehan's export price has reduced. However, the reduction in Daehan's export price is commensurate with the reduction in its cost of production and the exchange rate fluctuation between the KRW and USD, such that Daehan's profit margin on its Australian exports sales effectively remains unchanged. Based on the available evidence, the Commission is satisfied that Daehan is not contributing to a circumvention activity, through a lowering of the export price in order to allow Stemcor to avoid the intended effect of the measures.

5.6 Stemcor and selling prices in Australia

In its application, Liberty OneSteel provided data to support its opinion that a circumvention activity was able to be demonstrated through a reduction in the margin between Daehan's export price and Stemcor's FIS selling prices in Australia.

As part of the inquiry the Commission invited Stemcor to complete an importer questionnaire to assess Liberty OneSteel's claims. Stemcor provided its response to the importer questionnaire on 18 December 2017 after receiving a short extension to the original deadline of 11 December 2017.

5.6.1 Verification

The Commission conducted a visit to Stemcor's Australian based subsidiary in Sydney, New South Wales during late January 2018 to verify the information disclosed in its importer questionnaire response.

The Commission is satisfied that Stemcor is the importer of the circumvention goods from Daehan.

A report covering the visit findings is available on the public record.²⁰

5.6.2 Stemcor's FIS selling prices in Australia

The Commission compared Stemcor's FIS selling prices in Australia in relation to the circumvention goods imported from Daehan for the inquiry period and the original investigation period. The Commission observed that Stemcor's FIS selling prices in Australia have reduced. However, due to a depreciation of the Australian Dollar (AUD) against the USD, FIS selling prices in AUD have not reduced to the same extent as export prices. Further consideration of Stemcor's FIS selling prices in Australia is given in section 5.7, which discusses external factors.²¹

¹⁹ Confidential Attachment 1 – Table 4

²⁰ Case No. 452 Public Record Item No.7.

²¹ Confidential Attachment 6 – Items 1 and 2 refer

5.6.3 Were Stemcor's sales in Australia at a loss?

The verification of Stemcor's importation and sales of the circumvention goods sourced from Daehan in the inquiry period resulted in the Commission being satisfied that:

- the circumvention goods were exported to Australia otherwise than by the importer;
- the circumvention goods were either purchased directly by the importer from the exporter, or by the importer indirectly through an intermediary; and
- the purchases of the circumvention goods by the importer were arms length transactions.

The Commission analysed the profit margin earned by Stemcor on its Australian sales of the circumvention goods. The Commission is satisfied that the FIS selling price at which Stemcor sold the circumvention goods in Australia, which was sourced from Daehan, during the inquiry period, was sufficient to recover the full cost of importation (including dumping duty payable) and all relevant overhead costs incurred by both Stemcor's operations in Singapore and Stemcor Australia.²²

The Commission has observed that Stemcor's profit margin in the inquiry period was slightly higher than that for the original investigation period.²³

This is evidence that Stemcor has not made sales at a loss, which as outlined in the EM, may lead to a circumvention activity within the meaning of subsection 269ZDBB(5A).

5.6.4 FOB to FIS Margin

Using the verified data provided by Stemcor and Daehan, the Commission has calculated a margin between the FOB export price of the circumvention goods imported by Stemcor from Daehan and Stemcor's FIS selling price in Australia.

The Commission compared the FOB to FIS margin determined for the original investigation period and the inquiry period. The available evidence does not demonstrate that Stemcor has reduced the FOB to FIS margin in either percentage or absolute terms.²⁴ This is further evidence that Stemcor has not engaged in a circumvention activity within the meaning of subsection 269ZDBB(5A).

5.6.5 Commission's assessment of Stemcor's Australian rebar sales

The Commission's assessment of Stemcor's importation and sale of the circumvention goods sourced from Daehan has resulted in the following findings:

- Stemcor's FIS selling prices in Australia have reduced for the inquiry period when compared to the original investigation period;

²² With respect to Stemcor Australia, the verification team took into account the costs it incurred in relation to trading of the goods on the basis that it is the Stemcor Group's Australian based entity charged with undertaking a large proportion of the day to day administrative functions on behalf of Stemcor.

²³ Confidential Attachment 6 – Items 3 and 4 refer.

²⁴ Confidential Attachment 6 – Items 5 and 6 refer. In its submission received 27 March 2018, Stemcor explain that its import costs (in particular ocean freight) have reduced since the original investigation period.

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- Daehan's reduced export price has impacted on Stemcor's FIS selling prices in Australia. However, as explained previously, Daehan's reduced export price is explainable by a lower cost of production and exchange rate movements;
- a weakening of the AUD against the USD has partially offset the export price reduction;
- Stemcor's profit margin on sales of the circumvention goods imported from Daehan was slightly higher in the inquiry period compared to the original investigation period; and
- Stemcor's FOB to FIS margin in the inquiry period did not decrease compared to the original investigation period.

Based on the available evidence, the Commission is satisfied that Stemcor is not engaging in a circumvention activity which avoids the intended effect of the duty.²⁵ To the extent that Stemcor's FIS selling prices have not increased following imposition of measures is attributable to external factors as outlined below.

5.7 External factors

The Commission has undertaken an analysis of external factors relevant to explaining movements in Stemcor's FIS selling prices in Australia.

Paragraph 53 of the EM discusses "external factors" which may contribute to, or cause a circumstance where, the selling price of the importer to not increase in accordance with the total amount of duty payable. Paragraph 54 of the EM indicates that investigators should give due consideration to various characteristics such as:

- the goods concerned;
- market conditions;
- nature of the relationship between importer and exporter; and
- reasonable levels of profit.

Where the Commission finds, as part of an anti-circumvention inquiry, that selling prices in Australia have been influenced by one or more of these external factors, the Commissioner may determine that a circumvention activity has not occurred.

5.7.1 Exchange rate fluctuations

Since Stemcor purchases the circumvention goods from Daehan in USD, fluctuations in the AUD/USD exchange rates influence selling prices in Australia. The Commission has found that there has been a depreciation of the AUD against the USD following the original investigation period. This has impacted on Stemcor's FIS selling prices of the circumvention goods in Australia (making them somewhat higher).²⁶

²⁵ In submission received on 27 March 2018, Stemcor and Stemcor Australia reiterated that the evidence demonstrates that there has been no circumvention activity as defined by the Act and that the Commissioner should terminate the inquiry pursuant to subsection 269ZDBEA(2).

²⁶ Confidential Attachment 7 – Chart 1 and Table 1

However, the price increases brought about by the depreciation of the AUD against the USD were wholly offset by other external factors, as discussed below.²⁷

5.7.2 Export price trends

The Commission has analysed and compared the export price trends for rebar exported to Australia from other countries. The analysis covered the period from July 2013 to March 2017 and includes approximately 90 per cent of all rebar exported to Australia from 9 major exporting countries.²⁸

Following the imposition of measures in November 2015, the export prices for all exporters of rebar to Australia which were examined, exhibited similar trends. Daehan export price trends were not materially different to other exporters. This supports a finding that Daehan's export prices were consistent with general market trends.²⁹

5.7.3 Global rebar price trends

In addition to analysing the trends in export prices for rebar exported to Australia, the Commission has gathered price information about the global rebar market.³⁰ The Commission has observed price indices in USD for four key global regions; South East Asia, Midwest North America, Middle East and Europe.

The data shows that whilst each region has its own distinct price point, the overall trend in prices is similar across regions. Prices in all four regions in the inquiry period reduced by approximately 30 per cent when compared to the original investigation period.³¹

The Commission compared these global price indices to the export prices of rebar exported to Australia over the same period. The trends and features of both data sets were similar. Noting that Daehan's export prices were part of this analysis and were observed to exhibit the same trends and features, the Commission is satisfied that Daehan's export prices are consistent with global rebar market trends generally. This in turn has led to Stemcor's FIS selling price in Australia following a trend similar to that occurring in global rebar markets.

5.7.4 Scrap metal price

Scrap metal is a key input cost for the production of rebar. Given the price sensitivities in a commodity product such as rebar, scrap metal prices are a key price determinant. The Commission has obtained scrap metal price data to assess whether the movement in

²⁷ Confidential Attachment 6 – Items 1 and 2

²⁸ Confidential Attachment 7 – Table 2

²⁹ Confidential Attachment 7 – Table 3 and Charts 2(a) to 2(d).

³⁰ It is noted that submissions by the Korean Ministry of Foreign Affairs and Stemcor raised global demand, global rebar price trends, and scrap metal prices as a possible explanations for OneSteel's allegations that selling prices in Australia have not increased following imposition of the measures.

³¹ Confidential Attachment 7 – Table 4 and Chart 3

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scrap metal prices were consistent with the movement in selling prices of the circumvention goods.

The Commission observed that scrap prices, global rebar price indices and the export price of rebar exported to Australia, including Daehan's, all exhibited similar trends and features.³²

Scrap prices in the inquiry period are approximately 30 per cent lower than the prices in the original investigation period. This reduction is comparable to the reduction in Daehan's cost of production discussed at 5.5.4.³³ The Commission is also in possession of verified cost of production data for Liberty OneSteel relating to the inquiry period, which was obtained as part of investigation no. 418.³⁴ The Commission has found that Liberty OneSteel's cost of production for the inquiry period reduced compared to the original investigation period.³⁵

The Commission attributes the reduction in Stemcor's FIS selling prices to be caused, in the main, by a reduction in scrap metal prices.

5.7.5 Nature of the relationship between the importer and exporter

The transactions between Stemcor and Daehan were arms length. Stemcor and Daehan are not related parties. Although both parties have maintained an on-going trading relationship since the original investigation period, the Commission found no evidence of reimbursement or compensation from the exporter, or other activity of a similar nature.

5.8 Normal value in Korea

5.8.1 Claims by interested parties

Liberty OneSteel's application

In its application, Liberty OneSteel compared what it considered to be the reduction in Daehan's export price to changes in what it considered to be Daehan's normal value. Liberty OneSteel concluded that following the imposition of measures, the exporter had "*...decreased the export price by an additional 9.0% (when compared to prevailing market conditions) in order to circumvent the operation of the original notice.*"

Liberty OneSteel considered that:

- had the exporter not reduced its export price by an additional amount over and above the general decline in normal value, the importer's selling prices in Australia would have been higher; and

³² Confidential Attachment 7 – Table 5 and Chart 4

³³ Confidential Attachment 7 – Table 6 and Chart 5(a)

³⁴ Dumping investigation into steel reinforcing bar from Greece, Indonesia, Spain, Taiwan and Thailand.

³⁵ Confidential Attachment 7 – Table 6 and Chart 5(b)

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- the exporter's reduction in export price has in turn allowed the importer to sell the circumvention goods in Australia without increasing the price commensurate with the total amount payable on the circumvention goods.

Daehan

In a submission received on 14 March 2018, Daehan commented on the Commission's approach to calculating its normal value. It contends that:

- an upwards adjustment for export credit expenses is not required because there are no credit terms extended by Daehan to the importer;
- the downwards adjustments it claimed for inventory carrying costs, technical support services and expenses relation to leasing equipment should be accepted by the Commission; and
- the normal value for a particular model with insufficient models should not be based on a surrogate model with a specification adjustment. In its view the normal value for this model should be constructed pursuant to subsection 269TAC(2)(c).³⁶

Stemcor

In a submission received on 18 April 2018, Stemcor and Stemcor Australia put forward two reasons why Daehan's normal value may not have moved in line with the export price, including:

- a change in the Commission's consideration of the normal value adjustment claims relating to inventory carrying costs, technical support services and expenses relating to leasing equipment; and
- a lag between the date of contract when export prices are negotiated and agreed, and date of invoice which approximates the date of shipment of the goods.

5.8.2 Commission's assessment regarding normal values

The Commission notes that Daehan's normal value has reduced. To the extent that Daehan's normal value has not reduced in line with Daehan's export price is reflective of Australia and Korea being separate markets where pricing negotiations are different in each market.

For reasons explained above at section 5.7, due to the effect of external factors, this inquiry is being terminated because no circumvention activity has been found to have occurred.

Therefore in the circumstances, even though Daehan's normal value has not moved in line with the export price, as described by Liberty OneSteel in its application, the Commissioner cannot recommend a change to the original notice as part of this inquiry.

As a consequence, the Commission does not consider it necessary to consider Daehan's submission requesting further consideration of its normal value calculations.

³⁶ The reasons for the Commission disallowing certain claimed adjustments, and the approach to calculating Daehan's normal values is outlined in Daehan's verification report, Case No. 452 Public Record Item No.8.

The Commission further notes that, from 14 April 2018, affected parties, including Liberty OneSteel, are able to apply for a review of variable factors in relation to the original notice.

5.9 Conclusion

The Commission's has found that the circumvention goods were exported to Australia by Daehan at an export price which was lower than the export price observed in the original investigation period. However Daehan's export price reduction is consistent with export prices of other exporters to Australia. Daehan's export price has not moved in isolation or contrary to the global market generally.

An assessment of scrap metal prices, which is a key input cost for the production of the circumvention goods, revealed that the trends and features in scrap metal prices are closely followed by the global rebar market and the export prices of rebar exported to Australia by exporters generally.

Daehan's export price is consistent with these trends. The change in Daehan's export price between the original investigation period and inquiry period was comparable with the reduction in Daehan's cost of production which was consistent with reductions in scrap metal prices. The Commission concludes that Daehan's reduced export price is predominately the result of reduced scrap metal prices.

The Commission is also satisfied that, during the inquiry period, the importer of the circumvention goods, Stemcor, was profitable. Stemcor increased its profit margin in the inquiry period from that observed in the original investigation period. In contrast to the allegation made by Liberty OneSteel, Stemcor has not reduced the margin between the FOB export price it paid to Daehan and its FIS selling price in Australia.

Whilst Stemcor's FIS selling prices in Australia have reduced in the inquiry period from those observed during the original investigation period, the Commission concludes that Stemcor's FIS selling price in Australia was influenced by external factors, namely a reduction in scrap metal prices. Those external factors also affected Liberty OneSteel.

Once external factors are taken into account, the Commission is satisfied that Stemcor's FIS selling prices in Australia have increased commensurate with the total duty payable under the Dumping Duty Act. Based on the available evidence, the Commissioner is satisfied that Daehan have not contributed to, or that Stemcor have not engaged in a circumvention activity which seeks to avoid the intended effect of the duty.

The Commissioner considers that the conditions of subsection 269ZDBB(5A)(d) and (e) are not met.

6 TERMINATION OF INQUIRY

Under subsection 269ZDBEA(2), the Commissioner may terminate an anti-circumvention inquiry if the Commissioner is satisfied that no circumvention activity in relation to the original notice has occurred.

As a result of the findings in Chapter 5, the Commissioner has decided to terminate this inquiry.

7 APPENDICES AND ATTACHMENTS

Confidential Appendix A	Extract from EM
Confidential Attachment 1	Daehan Export Price Analysis
Confidential Attachment 2	Daehan Australian Export Sales (Original Investigation Period)
Confidential Attachment 3	Daehan Australian Export Sales (Inquiry Period)
Confidential Attachment 4	Stemcor (S.E.A.) Pte Ltd Sales and Cost Data (Original Investigation Period)
Confidential Attachment 5	Stemcor (S.E.A.) Pte Ltd Sales and Cost Data (Inquiry Period)
Confidential Attachment 6	Stemcor (S.E.A.) Pte Ltd Import and Sales Analysis
Confidential Attachment 7	External Factors Analysis

APPENDIX A: EXTRACT FROM EM

51. *The new circumvention activity, called, avoidance of intended effect of duty, describes the situation where dumping or countervailing duty has been imposed and is being paid by the importer; however, the imposition of the duty has little or no effect as, over a reasonable period, the price at which the goods are sold by the importer has not increased in line with the duty payable. A reasonable period may be different for different goods depending on the characteristics of the goods, the conditions of the market for the goods, and other relevant factors. The reasons for the effect of the duty being avoided may be because there has been a reduction in profit taken on the sale, or where the export price has been decreased post the imposition of measures.*

52. *An inquiry into the new circumvention activity is aimed at investigating the reasons why the price of the goods has not increased to a price that is commensurate with the total amount of duties payable. In particular, the inquiry seeks to address situations where the circumstances are occurring because the exporter has lowered the export price, where a party in the transaction is making sales at a loss, or where the importer is absorbing the duties.*

53. *If external factors, for example such as currency fluctuation, have caused the circumstance where the selling price of the importer has not increased in accordance with the duties, the circumvention activity will not be determined to have occurred. Further, recognising that profit reduction of itself is a legitimate business practice, an importer who is independent of the exporter, and who may be absorbing part of the duty but not making sales at a loss, will generally be considered as not engaging in the circumvention activity - unless the inquiry found, for example, evidence that the exporter was compensating in some form the reduction in profit allowing no, or limited, movement in the price of the goods.*

54. *In determining if circumvention activity has occurred, investigators will give due consideration to the characteristics of the goods concerned, the market conditions, the nature of the relationship between the importer and exporter, and reasonable levels of profit. After having such consideration, the Commissioner may consider that it is appropriate to recommend to the Minister that the notice not be altered, even when the circumvention activity may be occurring to a limited extent.*

55. *In cases where external factors have not caused the circumstance, but instead the inquiry concludes that the circumvention activity has occurred because of the lowering of the export price, sales at a loss, profit reduction, reimbursement or compensation from the exporter, or other activity of a similar nature, the Commissioner may choose to recommend to the Minister that the notice be altered. Alteration of the notice may specify a new export price at a value ascertained in accordance with the relevant provisions in the Customs Act (for example, relating to arms-length transactions in section 269TAA) to account for the circumvention activity.*
