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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

ANTI-DUMPING COMMISSION REPORT NO. 454

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

August 2018

Report No. 454 – Hot Rolled Coil - Taiwan

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ABBREVIATIONS

ACBPS	the Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ANV	ascertained normal value
BlueScope	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	explanatory memorandum to the <i>Customs Amendment (Anti-Dumping Measures) Bill 2017</i>
FIS	Free into Store
FOB	Free on Board
the goods	the goods to which the current dumping duty notice applies
HRC	hot rolled coil steel
Korea	the Republic of Korea
the Minister	the Minister for Industry, Science and Technology
mm	millimetres
NIP	non-injurious price
the notice	the dumping duty notice published on 20 December 2012
OCOT	ordinary course of trade
PCN	Product Control Number
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
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

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SEF 454	<i>Statement of Essential Facts No. 454</i>
SG&A	selling, general and administrative
Shang Chen	Shang Chen Steel Co. Ltd
USP	unsuppressed selling price

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This report sets out the recommendations of the Commissioner of the Anti-Dumping Commission (the Commissioner) to the Minister for Industry, Science and Technology (the Minister)¹ in relation to a review of the anti-dumping measures (in the form of a dumping duty notice) applying to hot rolled coil steel (HRC) exported to Australia from Taiwan.

This review was initiated on 27 November 2017 in response to an application from BlueScope Steel Limited (BlueScope). The application for review is based on a change in the variable factors relevant to the taking of the anti-dumping measures.² In this case, the relevant variable factors are export price, normal value, and non-injurious price (NIP). BlueScope 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)³ sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for 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 that it is proposed to review the anti-dumping measures covered by the application.⁴

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

- the dumping duty notice remain unaltered; or
- the dumping duty notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.⁵

¹ For the purposes of this review, the Minister is the Minister for Industry, Science and Technology.

² The application, and all other non-confidential versions of documents associated with this review, are available on the [electronic public record](#) for case number 454.

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

⁴ Subsection 269ZC(4).

⁵ Subsection 269ZDA(1).

1.3 Findings and recommendations

The Commissioner has conducted a review of the anti-dumping measures in respect of exports of HRC from Taiwan to Australia during the period 1 October 2016 to 30 September 2017 (the review period), and is satisfied that the variable factors relevant to the taking of those measures have changed.

The Commissioner recommends to the Minister that the notice be altered as if different variable factors had been ascertained (being the export price, the normal value, and NIP) in respect of the cooperating Taiwanese exporters, and all other exporters.

2 BACKGROUND

2.1 Initiation

On 27 November 2017, the Commissioner gave public notice in Anti-Dumping Notice (ADN) No. 2017/173 of his decision to initiate a review of anti-dumping measures with respect to HRC exported to Australia from Japan, the Republic of Korea (Korea), Malaysia, and Taiwan.⁶

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 ADN which altered the scope of this review, noting that the measures only apply after that date to exports of the goods from Taiwan.⁷

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 Existing anti-dumping measures

2.2.1 Original investigation

The anti-dumping measures, the subject of the review application, were imposed following the investigation reported in *International Trade Remedies Branch Report No. 188* (REP 188), on 20 December 2012. The previous cases which are relevant to these goods and the present application are summarised below. Full details of these cases can be found on the relevant electronic public record (EPR) on the Commission website.⁸

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. The effective rate of duty for PO HRC from Japan is revised to 0 per cent.
Continuation REP 400	2017/166	16 December 2017	Japan, Korea, Malaysia, and Taiwan	Dumping measures cease to apply in relation to export of goods from Japan, Korea, and Malaysia. Measures continue in respect of Taiwan.

Table 1: Previous cases relevant to this review

⁶ [ADN No. 2017/173](#) refers.

⁷ [ADN No. 2017/186](#) refers.

⁸ www.adcommission.gov.au.

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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
	Uncooperative and all other exporters	0%	The lower of ANV and NIP

Table 2: Current anti-dumping measures

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

The 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.¹¹

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 Minister may allow, the Commissioner must place on the public record a statement of essential facts (SEF) on which he proposes to base recommendations to the Minister concerning the review of the anti-dumping measures.¹² The Commissioner has up to 155 days, or such longer time as the Minister may allow, to conduct a review and report to the Minister on the review of the anti-dumping measures.¹³

⁹ Subsections 269ZA(1)(a), (b).

¹⁰ Subsection 269ZA(1)(b).

¹¹ 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.

¹² Subsection 269ZD(1).

¹³ Subsection 269ZDA(1).

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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:

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

In his final report the Commissioner must then make a recommendation to the Minister that the notice:¹⁴

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

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

- remains unaltered; or
- has effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.¹⁶

The Minister must give notice of the decision.¹⁷

2.4 Statement of essential facts

On 22 June 2018, the Commissioner placed on the public record the *Statement of Essential Facts No. 454* (SEF 454) in relation to this review, setting out the essential facts on which the Commissioner proposed to base his final recommendations to the Minister.

2.5 Submissions

The Commission received the following submissions during the course of this review:

¹⁴ Subsection 269ZDA(1)(a).

¹⁵ Subsection 269ZDB(1A).

¹⁶ Subsection 269ZDB(1)(a).

¹⁷ Subsection 269ZDB(1).

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Interested party	Date received	Document No. on EPR ¹⁸
BlueScope	29 January 2018	005
BlueScope	6 June 2018	013
BlueScope	12 July 2018	016
Chung Hung	12 July 2018	017
Shang Chen	13 July 2018	018

Table 3: Submissions received during course of review

Non-confidential versions of these submissions can be accessed on the EPR. The Commissioner has had regard to these submissions in deciding on the recommendations made to the Minister in this report. Details of submissions received, and the Commission's assessment of those submissions, are included in the relevant sections of this report.

2.6 Extensions of time

As noted in ADN Nos. 2018/48 and 2018/83, the Commissioner granted two extensions of time for the completion of the SEF 454 and the final report. The first extension was granted on 19 March 2018, and a second extension was granted on 18 May 2018.¹⁹

¹⁸ <http://adcommission.gov.au/cases/Pages/CurrentCases/EPR-454.aspx>.

¹⁹ ADN No. [2018/48](#) and No. [2018/83](#) refer.

3 THE GOODS AND LIKE 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*:

Tariff subheading	Statistical code	Goods descriptions
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 4: Tariff classifications of HRC (the goods)

4 EXPORT PRICE AND NORMAL VALUE

4.1 Findings

The Commissioner finds that the variable factors relevant to the determination of dumping duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have changed.

4.2 Exporter questionnaires and verification

For this review, the Commission provided 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 their 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.²⁰

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 import database, as well as 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 Export price

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.

²⁰ [Document 014](#) refers.

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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 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.²¹

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.

4.3.2 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 found 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).

4.3.3 Adjustments

To ensure the normal value is comparable to the export price of goods exported to Australia, the Commission considered various adjustments in accordance with subsections 269TAC(8).

²¹ Further detail regarding the relationship between CSC and its subsidiaries is in [Document 014](#).

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The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsections 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	Deduct the cost of domestic inland transport
Domestic packing	Deduct the cost of domestic packing
Domestic warranty	Deduct the cost of domestic warranty
Domestic sales commission	Deduct the cost of domestic sales commission (between DSC and CSC)
Domestic credit	Deduct the cost of domestic credit
Export inland transport	Add the cost of export inland transport
Export packing	Add the cost of export packing
Export bank charges and fees	Add the cost of export bank charges and fees
Export sales commission	Add the cost of export sales commission (between DSC and CSC)
CSGT service fees	Add the cost of the CSGT service fees
Export related charges	Add the cost of export related charges
Specification adjustment	For models with no, or insufficient, sales in the OCOT

Table 5: Adjustments made to CSC normal value

4.3.4 Submissions

In response to SEF 454, BlueScope submitted that the adjustments applied to CSC's normal value in the current review differ from those made in REP 400.²² As such, downward adjustments for domestic packing and domestic warranty expenses have been applied to CSC's normal value in the current review however they were not identified in REP 400.

BlueScope also noted that, in the current review, an upward adjustment for export warranty expenses was applied to Shang Chen's normal value, but was not applied to CSC.

BlueScope further raised concerns regarding the possibility of warranty adjustments on product that may have been initially sold as prime product, but has been subsequently discounted due to a customer complaint / claim that the supplied product was not of prime quality.

Commission assessment

Based on the evidence examined, and verified by the Commission during the visit to CSC, the Commission has found that adjustments for domestic warranty and packing are appropriate. As there were no export warranty expenses incurred or sought by CSC during the review period, such an adjustment was not applied. The Commission has also verified that the product sold relevant to this review is all of "prime quality", and no discounting occurred.

²² [Document 016](#) on the public record refers.

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 Attachment 1**.

4.4 Shang Chen

4.4.1 Export price

The Commission is satisfied 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 it necessary to make an adjustment for timing or for specification in order to align the domestic models with those exported to Australia. 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).

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In constructing normal value under subsection 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 Free on Board (FOB) terms.

4.4.3 Adjustments

To ensure the normal value is comparable to the export price of goods exported to Australia, the Commission considered various adjustments in accordance with subsections 269TAC(8) and 269TAC(9).

The Commission is satisfied there is sufficient and reliable information to justify the following adjustments in accordance with subsections 269TAC(8) and 269TAC(9), and considers these adjustments necessary to ensure a fair comparison of normal value and export price.

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

Table 6: Adjustments made to Shang Chen normal value

4.4.4 Submissions

BlueScope submitted that packing expenses adjustments have not been applied to Shang Chen's domestic or export sales, and that both of these adjustments were applied in REP 400.²³ BlueScope also sought clarity around the omission of an upward adjustment for export commissions for Shang Chen. BlueScope considered this adjustment should continue to apply.

²³ [Document 016](#) refers.

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Shang Chen submitted that an “inadvertent error” had been made in the calculation of normal value for Shang Chen when transcribing normal values determined under subsection 269TAC(1).²⁴ The submission pointed to minor discrepancies between some of the unit normal values contained in the source table and those in the final hard-coded table (spreadsheet 454 - *Shang Chen - Appendix 4 – NV*).

Commission assessment

The Commission has reviewed the calculations and confirmed that adjustments for domestic and export packing costs, and export commissions, had been applied in the dumping margin calculation. These adjustments were inadvertently absent from the relevant table in SEF 454, which has now been updated (above).

The Commission has reviewed the dumping margin calculation, reconciled the actual unit normal values to the source table values, and corrected the minor discrepancies identified by Shang Chen. However, these changes did not have a material impact on the dumping margin.

4.4.5 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 Attachment 2**.

4.5 Chung Hung

4.5.1 Export price

It is the Commission’s view that 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.²⁵ The Commission has considered these elements as follows.

²⁴ [Document 018](#) refers.

²⁵ Subsection 269TAB(2A)(b).

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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 Attachment 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 Attachment 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* (Explanatory Memorandum) identifies factors that may affect patterns of trade for like goods not within the control of the exporter.²⁶ Such factors may include supply disruptions or natural events (such as flood, drought, or fire) that affect production levels.

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.

²⁶ Refer page 31 of the [Explanatory Memorandum](#).

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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);²⁷
- 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;²⁸
- 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).²⁹

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 initiation 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 United States Dollars. However, the Commission found this information was insufficiently detailed 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.

²⁷ Subsection 269TAB(2B)(a).

²⁸ Subsection 269TAB(2B)(b).

²⁹ Subsection 269TAB(2B)(c).

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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.³⁰ 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.

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 the adjustments that were applied in REP 400.

³⁰ In accordance with subsection 269TAB(2G)(a).

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

Table 7: Adjustments made to Chung Hung normal value

4.5.4 Submissions

The Commission has examined the issues raised in submissions concerning Chung Hung under the following topics.

Adjustments

BlueScope expressed concern that the adjustments applied to Chung Hung mirror those applied in REP 400.³¹

As Chung Hung did not export the goods during the review period, the Commission considers it is reasonable to apply the same adjustments to Chung Hung’s data as those last applied (REP 400). Chung Hung’s last exportation of HRC to Australia took place during the review period of REP 400. Therefore, those export adjustments provide the most recent and relevant information on which to base adjustments to Chung Hung’s normal value.

Error in normal value calculations

Chung Hung submits that there has been “an inadvertent formula error which overstates the normal values to be compared with the corresponding export prices”.³² The calculation for normal value “reflected only the net invoice values and do not account for the post-invoice adjustments and discounts offered on domestic sales”.

³¹ [Document 016](#) refers.

³² [Document 017](#) refers.

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The Commission has reviewed and revised its normal value calculation to be consistent with previous practice, and has taken the price adjustments and discounts applied to domestic selling prices into consideration. In its revision of the normal value calculations, the Commission also identified a minor error in the recoverability test within the OCOT calculations. These have been rectified but made no material difference to the dumping margin.

Treatment of Chung Hung as a low / no volume exporter

Chung Hung submitted that the Commission needs to consider whether “other factors may have contributed to the exporter’s volumes being lower or whether the pattern of trade for like goods was indicative of an overall trend from the subject country.” Chung Hung also made reference to the recent steel reinforcing bar case currently before the Anti-Dumping Review Panel and claims that “consideration ought to be given to the purpose of the low / no volume provisions” in this review.³³ Chung Hung further claims that evidence is required to demonstrate the exporter’s intent of implementing strategies to reduce its export volumes in the hope of obtaining floor price measures in subsequent reviews. The submission indicates that there is no evidence to show Chung Hung has any such intention to “game the system”.

According to the Explanatory Memorandum, the amendments to the Act:

provide greater certainty in the determination of export prices ... [and] will facilitate the use of appropriate methodologies to determine an export price during a review of measures for those Exporters who have not exported the goods, or exported low volumes of the goods such that the export price cannot be reliably determined, during the period examined.³⁴

That is, in the Commission’s view, the primary purpose of subsection 269TAB(2B) is to establish an export price that is reasonably reflective of the export price that would have existed, had the exporter made exports (or made exports of a greater volume).

Subsection 269TAB(2A) provides three factors that the Commission must give consideration to in determining whether there is insufficient or unreliable information to ascertain the export price under subsection 269TAB(1) due to an absence or low volume of exports of the goods to Australia. The Commission has applied these three factors in its consideration of whether Chung Hung’s export price should be determined pursuant to subsection 269TAB(2B). The Commission confirms that appropriate consideration has therefore been given to Chung Hung’s circumstances in the current review.

Definition of a low volume exporter

Chung Hung submitted that the Commission “has overlooked key facts” in determining whether it should be considered a low volume exporter in accordance with subsection 269TAB(2A), and in accordance with the Explanatory Memorandum. It further suggested that the Commission consider:

³³ This is matter 2018/84, details of which are available on the Anti-Dumping Review Panel [website](#).

³⁴ [Explanatory Memorandum](#), page 2.

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- Chung Hung's export volume was not "much higher" prior to this review and there was no indication of an intended strategy to "exploit the dumping framework";
- Chung Hung's disparity in export volume when compared to the main Taiwanese exporters; and
- Chung Hung's production capacity constraints and the effect on potential exports to Australia.

The Commission notes that the paragraph referenced provides an illustrative example of one situation where, having regard to the exporter's previous volumes of exports, may indicate that subsection 269TAB(2B) may not apply. Subsection 269TAB(2A)(b)(i) does not require previous volumes be "much higher".

The Commission analysed Chung Hung's export data from 2010 onwards and notes that 2017 was the only year in which there were no exports of the goods to Australia by Chung Hung. Following the imposition of measures in December 2012, Chung Hung continued exporting the goods to Australia until late 2016. Chung Hung's export volumes increased in 2013 from 2012, dropped sharply in 2014, and remained low across 2015 and 2016.

During the original inquiry period, Chung Hung's exports were comparable to other Taiwanese exporters. Although exports from Taiwan declined following the imposition of measures, other Taiwanese exporters maintained relatively stable export volumes to Australia. The Commission therefore remains of the view that 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 examples provided in the Explanatory Memorandum are not taken to be exhaustive. As part of its assessment, the Commission must take into account factors affecting patterns of trade for like goods outside of the exporter's control. All exporters are limited by capacity in the short term. However, exporters make their own decisions regarding the markets they will sell into and the countries to stop exporting to if demand outstrips their ability to supply. The Commission therefore remains of the view that during the review period there were no factors affecting patterns of trade for like goods that were not within Chung Hung's control.

4.5.5 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 **2.6 per cent**.

The Commission's calculations are included at **Confidential Attachment 4**.

4.6 Uncooperative and all other exporters

Pursuant to subsection 269T(1), 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 review, within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the review.

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Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states 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. After having regard to the Direction, the Commissioner determined that all exporters which did not provide a REQ, or which did not request a longer period to provide a response within the legislated period, are uncooperative exporters for the purposes of this review.

As provided for in subsection 269TACAB(1), for uncooperative exporters, export price and normal value were calculated 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.

As a result of changes made to the dumping margins (as set out above), the Commission has revised the dumping margin applicable to uncooperative and all other exporters. The dumping margin applicable to uncooperative and all other exporters is **7.1 per cent**.

5 NON-INJURIOUS PRICE

5.1 Non-Injurious Price

The NIP is defined in section 269TACA of the Act as “the minimum price necessary to prevent the injury, or a recurrence of the injury” caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice.

5.1.1 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act.³⁵

The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but where the NIP of the goods is less than the normal value of the goods, the 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 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.

5.1.2 The Commission’s preferred approach to establishing unsuppressed selling prices

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.

³⁵ Subsection 8(5B).

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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.³⁶

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 400.³⁷ BlueScope has further submitted that the Commission ought to also consider an appropriate rate of return that steel makers would seek in a market unaffected by dumping.³⁸

5.2 Commission assessment

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 for all exporters in 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 (and not incorporate an additional, theoretical rate of return), 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 REP 400, being the most recently verified and complete data available to the Commission and which overlaps with the present review period. The deductions result in a NIP calculated at FOB delivery terms.

Details of the USP and NIP calculations are at **Confidential Attachment 5**.

³⁶ [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.

³⁷ [Document 013](#) on the public record refers.

³⁸ [Document 016](#) refers.

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During the review period, the Commission found the NIP has changed based on the calculations above. As a result of revisions to the dumping margins (explained above) and the correction of minor errors in the NIP calculation in SEF 454, the Commission has established that the NIP is the operative provision for all exporters subject to the notice. The Commission notes that the NIP is higher than was last established.

6 FINDINGS AND RECOMMENDATIONS

6.1 Findings

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

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

6.2 Recommendations

The Commissioner recommends that the Minister **declare**:

- in accordance with subsection 269ZDB(1)(a)(iii), with effect from the day following publication of the notice declaring the outcome of the review, and for the purposes of the Act and the Dumping Duty Act, the dumping duty notice is taken to have effect in relation to CSC, Shang Chen, Chung Hung and all other Taiwanese exporters, as if different variable factors had been ascertained.

The Commissioner recommends the Minister **be satisfied that**:

- in accordance with subsection 269TAC(2)(c) the normal value for some of the models of HRC exported to Australia from Taiwan by Shang Chen cannot be ascertained under subsection 269TAC(1) because sufficient information is not available.
- in accordance with subsection 269TAB(2A)(b), there is insufficient information to ascertain Chung Hung's export price under subsection 269TAB(1) due to an absence of exports of the goods to Australia.

The Commissioner recommends that the Minister **determine**:

- in accordance with subsection 269TAB(1)(a), the export price of HRC exported from Taiwan to Australia by CSC is the price paid by the importer to the exporter less transport and other costs arising after exportation;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the OCOT for home consumption in Taiwan in sales that are arms length transactions, that the normal value of HRC exported to Australia from Taiwan by CSC is the price paid or payable for like goods, as adjusted in accordance with subsection 269TAC(8);
- in accordance with subsection 269TAB(1)(a), the export price of hot rolled coil exported from Taiwan to Australia by Shang Chen is the price paid by the importer to the exporter less transport and other costs arising after exportation;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the OCOT for home consumption in Taiwan in sales that are arms length transactions, that the normal value of HRC exported to Australia from Taiwan by Shang Chen is the price paid or payable for like goods, as adjusted in accordance with subsection 269TAC(8);

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- in accordance with subsection 269TAC(2)(c) that the normal value for some of the goods exported to Australia from Taiwan by Shang Chen be the normal value established in accordance with 269TAC(2)(c) for constructed normal value, calculated as:
 - cost of production pursuant to subsection 269TAC(5A)(a) in accordance with section 43(2) of the Regulation;
 - SG&A expenses relating to the domestic sales of like goods as required by subsection 269TAC(5A)(b), in accordance with subsection 44(2) of the Regulation;
 - profit on the domestic sales of like goods as required by subsection 269TAC(5B), having regard to subsections 45(1) and 45(2) of the Regulation; and
 - adjustments in accordance with subsection 269TAC(9) to ensure that the normal value of the goods so ascertained is properly comparable to the export price of the goods;
- in accordance with subsection 269TAB(2A)(b), that there is insufficient or unreliable information to ascertain the export price for Chung Hung due to an absence of exports of those goods to Australia by that exporter having regard to previous volumes of exports of those goods to Australia by that exporter, patterns of trade for like goods, and factors affecting patterns of trade for like goods that are not within the exporter's control;
- in accordance with subsection 269TAB(2B)(a), that the export price for the goods exported to Australia by Chung Hung be the export price established in accordance with subsection 269TAB(2B)(c), being the weighted average export price of other exporters, and adjustments pursuant to subsection 269TAB(2G) to reflect differences in timing or where the goods were not identical;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the OCOT for home consumption in Taiwan in sales that are arms length transactions, that the normal value of hot rolled coil exported to Australia from Taiwan by Chung Hung is the price paid or payable for like goods, as adjusted in accordance with subsection 269TAC(8);
- in accordance with subsection 269TAB(3), the export price for uncooperative exporters from Taiwan be determined using the lowest weighted average export price (at FOB) established amongst the cooperating exporters (CSC, Shang Chen, and Chung Hung);
- in accordance with subsection 269TAC(6), the normal value for uncooperative exporters from Taiwan be established under subsection 269TAC(6) using the highest weighted average normal value established amongst cooperating exporters and adjusted to FOB level.

The Commissioner recommends the Minister **have regard to:**

- in accordance with subsection 8(5B) of the Dumping Duty Act, the desirability of specifying a method whereby the sum of the amounts outlined in subsections 8(5B)(c) and (d) of the Dumping Duty Act, does not exceed the NIP. In line with the findings of this report, the NIP is lower than the normal value.

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6.3 Form of measures

Following the adjustments made to the dumping margins and NIP following SEF 454 described in this report, the Commission has found that the NIP is the operative measure for all exporters. The effective rate of duty for all exporters of HRC from Taiwan is therefore zero.

The Commissioner notes that the only form of measures available which will facilitate the application of the lesser duty rule is the floor price duty method. Interim dumping duty and dumping duty for HRC exported from Taiwan for all exporters is currently calculated by reference to the floor price duty method, and therefore the Commissioner recommends that there be no change to the form of measures. The following table therefore summarises the effect of the Commissioner's recommendations if they are accepted by the Minister.

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

Table 8: Recommended measures

7 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	CSC calculations
Confidential Attachment 2	Shang Chen calculations
Confidential Attachment 3	Chung Hung export price consideration
Confidential Attachment 4	Chung Hung calculations
Confidential Attachment 5	Non-injurious price calculations and uncooperative exporter calculations