



REVIEW 419

REVIEW OF ANTI-DUMPING MEASURES

CERTAIN HOLLOW STRUCTURAL SECTIONS

**EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, THE
REPUBLIC OF KOREA, MALAYSIA AND TAIWAN**

VISIT REPORT - EXPORTER

DALIAN STEELFORCE HI-TECH CO., LTD

**THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED THEREIN
WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND MAY NOT REFLECT
THE FINAL POSITION OF THE ANTI-DUMPING COMMISSION**

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CONTENTS

CONTENTS..... 2

1 BACKGROUND..... 3

2 THE GOODS AND LIKE GOODS..... 4

2.1 THE GOODS EXPORTED TO AUSTRALIA 4

2.2 LIKE GOODS SOLD ON THE DOMESTIC MARKET 4

2.3 LIKE GOODS – PRELIMINARY ASSESSMENT..... 4

3 VERIFICATION OF EXPORT SALES TO AUSTRALIA..... 5

3.1 VERIFICATION OF AUSTRALIAN SALES TO AUDITED FINANCIAL STATEMENTS 5

3.2 VERIFICATION OF AUSTRALIAN SALES TO SOURCE DOCUMENTS 5

3.3 THE EXPORTER 6

3.4 THE IMPORTER 6

3.5 RELATED PARTY CUSTOMERS 6

3.6 ARMS LENGTH..... 6

3.7 EXPORT PRICE – PRELIMINARY ASSESSMENT 8

4 COST TO MAKE AND SELL..... 9

4.1 VERIFICATION OF COSTS TO AUDITED FINANCIAL STATEMENTS..... 9

4.2 VERIFICATION OF COSTS TO SOURCE DOCUMENTS..... 9

4.3 RELATED PARTY PURCHASES..... 9

4.4 COST TO MAKE AND SELL – SUMMARY 9

5 VERIFICATION OF DOMESTIC SALES 10

5.1 VERIFICATION OF DOMESTIC SALES TO AUDITED FINANCIAL STATEMENTS 10

5.2 VERIFICATION OF DOMESTIC SALES TO SOURCE DOCUMENTS 10

5.3 RELATED PARTY CUSTOMERS 11

5.4 ARMS LENGTH..... 11

5.5 SUITABILITY OF DOMESTIC SALES 11

5.6 ORDINARY COURSE OF TRADE..... 12

5.7 DOMESTIC SALES – SUMMARY 12

6 ADJUSTMENTS 13

6.1 EXPORT VAT 13

6.2 CREDIT TERMS 13

6.3 INLAND FREIGHT AND HANDLING..... 13

6.4 ADJUSTMENTS – CONCLUSION 13

7 NORMAL VALUE..... 14

8 DUMPING MARGIN..... 15

9 APPENDICES AND ATTACHMENTS..... 16

1 BACKGROUND

On 14 July 2017, the Commissioner of the Anti-Dumping Commission gave public notice in Anti-Dumping Notice (ADN) No. 2017/95 of his decision to initiate a review of anti-dumping measures in relation to certain hollow structural sections (HSS) exported to Australia from the People's Republic of China (China), the Republic of Korea, Malaysia and Taiwan. The background relating to initiation of this review is contained in Consideration Report No. 419.¹

Following initiation of the review, a search of the Australian Border Force import database indicated that Dalian Steelforce Hi-Tech Co., Ltd (Dalian) exported HSS to Australia from China during the period 1 July 2016 to 30 June 2017 (the review period).

The Anti-Dumping Commission (the Commission) notified Dalian of initiation of the review, and sought its cooperation through the completion of an exporter questionnaire.

¹ www.adcommission.gov.au.

2 THE GOODS AND LIKE GOODS

2.1 The goods exported to Australia

During the review period Dalian exported HSS to Australia. The HSS exported by Dalian meets the description of 'the goods' subject to anti-dumping measures.

2.2 Like goods sold on the domestic market

Dalian sold HSS products in China during the review period. The verification team confirmed that all of Dalian's domestic sales of HSS were sales of HSS products that are initially intended to be exported but failed to meet the product standards required for export, and were therefore classified as 'downgrade' HSS and only sold in the domestic market.

2.3 Like goods – preliminary assessment

The verification team considers that HSS produced by Dalian and then sold in the domestic market have characteristics closely resembling those of the goods exported to Australia and have been preliminary assessed as 'like goods' in accordance with subsection 269T(1) of the *Customs Act 1901* (the Act).²

² References to any section or subsection in this report relate to provisions of the Act, unless specifically stated otherwise.

3 VERIFICATION OF EXPORT SALES TO AUSTRALIA

3.1 Verification of Australian sales to audited financial statements

The verification team verified the completeness and relevance of Dalian's Australian sales listing by reconciling it to audited financial statements in accordance with ADN. No 2016/30.

The verification team did not identify any issues during this process. Details of this verification process are contained in the verification work program, and its relevant attachments, at **Confidential Attachment 1**.

3.2 Verification of Australian sales to source documents

The verification team verified the accuracy of Dalian's Australian sales listing by reconciling it to source documents in accordance with ADN No. 2016/30. During this process, there were two amendments to the Australian sales listing relating to customer names and payment terms. The verification team did not identify any further issues.

Details of this verification process are contained in the verification work program, and its relevant attachments, at **Confidential Attachment 1**.

3.2.1 Customer names

The verification team noted from the Australian sales listing submitted in the response to the exporter questionnaire that there were two customers during the review period. During the visit, Dalian confirmed that all sales were made to one customer, being Steelforce Trading Pty Ltd (Steelforce Trading), and that sales to a second customer were erroneously reported as the end customer in Australia. The team was satisfied that the amendments to this customer name were reasonable, and were supported by satisfactory evidence.

3.2.2 Payment terms

The verification team found that the payment terms identified in the Australian sales listing were not reflective of the actual timing of payments; this was confirmed verbally by representatives of Dalian during the visit. In the absence of documentation that will allow the verification team to calculate an average credit term, the team has elected to amend the Australian sales listing to reflect:

- the actual payment terms verified for each selected export sales transaction; and
- for all other export sales transactions not selected for verification, the average number of days between invoice and payment of the selected transactions.

This is considered to be the most appropriate methodology, based on the information available to the verification team at this time.

3.3 The exporter

For all Australian exports of the goods during the review period, the verification team considers Dalian to be the exporter of the goods.³

3.4 The importer

In relation to HSS exported to Australia by Dalian, the verification team considers that the customer listed in the Australian sales listing, is the beneficial owner of the goods at the time of importation, and therefore is the 'importer' of the goods.

3.5 Related party customers

According to Dalian's response to the exporter questionnaire, the company only sold HSS to a related party during the review period. There were no other Australian customers during the review period.

3.6 Arms length

In respect of Australian sales of the goods made by Dalian to the related customer during the review period, the verification team found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.⁴

However, the verification team did find evidence that:

- the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller.

The Act does not provide any guidance or criteria that describes the type or form of evidence that would substantiate that a price has been influenced by a commercial relationship. The Dumping and Subsidy manual states that whether transactions are at arms length is as a matter of fact to be determined having regard to all the circumstances of the sales in question.⁵ The Commission's policy position provides an ability to assess arms length transactions on a case by case basis. This policy is particularly relevant in

³ The Commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

⁴ Section 269TAA refers.

⁵ Dumping and Subsidy Manual, Anti-Dumping Commission, (1 April 2017) p 25 pp 5.2.

PUBLIC RECORD

this matter because Dalian only made export sales to related parties during the review period.

As a result, the verification team was unable to undertake a price comparison between related and non-related parties to obtain factual evidence of the price being influenced by the commercial relationship. Therefore the Commission requested Dalian to provide evidence of negotiation and real bargaining⁶ between them and the related customer that led to the final price paid being paid by the related customer.

Dalian provided the verification team with the following evidence for the months of May 2016, October 2016 and May 2017;

- an exchange of emails between Dalian and the related customer containing information relevant to the price setting mechanism; and
- an exchange of emails between a related customer and Dalian discussing pricing. Dalian concedes that this evidence does not relate to the current review but the negotiation process evidenced by these emails is indicative of the negotiation that occurs between the related customer in Australia and Dalian.

Dalian's evidence only demonstrates that price information is shared by the related parties at a particular time each month. The evidence reflects an exchange of information between the related parties but does not demonstrate that any negotiation or real bargaining regarding price has taken place between Dalian and the related customer. Once this information is shared, Dalian set a price for HSS taking into account its relevant costs and prevailing market conditions in Australia.

Part of the evidence provided by Dalian shows that it provided its related customer with key information used in its price setting mechanism. The verification team recognises that Dalian and the related customer are part of the same group however, the verification team considers that such key information would be considered confidential information and would not be shared with an unrelated customer as it would diminish its commercial ability to negotiate and bargain on price.

The verification team notes that the evidence relating to the related customer does imply that negotiation is occurring between this related customer and Dalian. However, the reason for the attempt at negotiation relates to particular circumstances in the market. As a result the verification team considers that this evidence is not applicable to Australian market conditions and the current Review of measures.

Having considered the evidence the verification team is satisfied that the price paid by the related customer appears to be influenced by the commercial relationship as the price has not been achieved through any negotiation or any real bargaining.

The verification team therefore considers that all Australian export sales made by Dalian to the related customer during the review period were not arms length transactions.

⁶ Ibid.

3.7 Export price – preliminary assessment

The verification team is satisfied that the revised Australian sales listing is complete, relevant and accurate.

Due to the verification teams preliminary finding that all export sales are not arms length, the verification team recommends that the export price be determined under paragraph 269TAB(1)(b), as the price at which the goods were sold by the importer to a person who is not an associate of the importer less the prescribed deductions.

The prescribed deductions required under 269TAB(1)(b) to calculate the export price is information that is not available to the verification team. As a result, the verification team is unable to calculate an export price based on the verified data of the exporter. The verification team recommends that the case team undertake further analysis once the prescribed deductions required under 269TAB(1)(b) have been determined in order to calculate an export price as required under 269TAB(1)(b).

Dalian's verified export price data is at **Confidential Appendix 1**.

4 COST TO MAKE AND SELL

4.1 Verification of costs to audited financial statements

The verification team verified the completeness and relevance of Dalian's cost to make and sell (CTMS) spreadsheet by reconciling it to audited financial statements in accordance with ADN No. 2016/30.

The verification team did not identify any issues. Details of this verification process are contained in the verification work program, and its relevant attachments, at **Confidential Attachment 1**.

4.2 Verification of costs to source documents

The verification team verified the accuracy of Dalian's CTMS spreadsheet by reconciling it to source documents in accordance with ADN No. 2016/30.

The verification team did not identify any issues. Details of the verification process are contained in the verification work program, and relevant attachments, at **Confidential Attachment 1**.

4.3 Related party purchases

The verification team did not identify any suppliers that might be related to Dalian, based on the company's response to the exporter questionnaire, and documentation supplied for the purpose of verification.

4.4 Cost to make and sell – summary

Having verified Dalian's CTMS spreadsheet and reconciled it to audited financial statements and to source documents, the verification team is satisfied that the CTMS spreadsheet is complete, relevant and accurate.

Dalian's verified CTMS spreadsheet is at **Confidential Appendix 2**.

5 VERIFICATION OF DOMESTIC SALES

5.1 Verification of domestic sales to audited financial statements

The verification team verified the completeness and relevance of Dalian's domestic sales listing and copy of sales to the free trade zone⁷ by reconciling to audited financial statements in accordance with ADN. No 2016/30.

The verification team did not identify any issues during this process. Details of the verification process are contained in the verification work program, and relevant attachments, at **Confidential Attachment 1**.

5.2 Verification of domestic sales to source documents

The verification team verified the accuracy of Dalian's domestic sales listing, and copy of sales to the free trade zone, by reconciling to source documents in accordance with ADN No. 2016/30. During this process, there was one amendment to the domestic sales listing relating to product finish details of downgrade product, and one amendment to the copy of free trade zone sales relating to additional freight costs and calculation of a profit amount per tonne (further to certain claimed adjustments). The verification team did not identify any further issues.

Details of this verification process are contained in the verification work program, and its relevant attachments, at **Confidential Attachment 1**.

5.2.1 'Downgrade' product finish details

The verification team noted that Dalian had listed all domestic sales of HSS in its domestic sales listing as 'downgrade'. The team requested that Dalian update the sales listing to reflect the finish of each domestic transaction. As a result, Dalian provided the verification team with a revised list of domestic sales, categorising individual sales as either 'downgrade pregal', 'downgrade NOPC', 'downgrade painted' or 'downgrade mixed'. The 'mixed downgrade' classification indicates that these sales were bundles of HSS containing a mixture of the aforementioned categories.

5.2.2 Additional detail for free trade zone transactions

Dalian stated that it sells HSS to a customer located in a free trade zone (FTZ sales). Dalian stated further that the HSS sold to this customer is used as a component in further manufactured goods and these further manufactured goods are then exported. Dalian claim that these sales are not domestic sales because they are treated as export sales by Chinese customs. The verification team is satisfied that these sales are domestic sales as

⁷ This is consistent with the approach taken in Duty Assessment No. 59 and 71, although Dalian has stated that it considers sales of prime HSS into the free trade zone to be export, not domestic, sales. The team recommends that this issue be considered further by the case team.

PUBLIC RECORD

the customer is located in China and the HSS product is consumed by the customer in China.

During the visit, Dalian re-submitted a copy of its sales into the free trade zone (FTZ sales) during the review period. The revised sales information contained an amendment to the shipping terms and consequent inclusion of the relevant ocean freight costs. The revised sales document also outlined a calculation of profit per tonne, using a base CTMS (which differed depending on the grade of feed coil used), plus residual export VAT, level of trade, credit terms and ocean freight. The verification team consider that the FTZ sales do incur a residual VAT cost and ocean freight cost. As a result, the verification team has added these costs to the base CTMS relating to the FTZ sales in the calculation of profit. The verification team considers that no further adjustments for level of trade or credit terms is reasonable in the calculation of profit of the FTZ sales.

5.3 Related party customers

According to Dalian's response to the exporter questionnaire, the company sold HSS to a related party, during the review period.

The verification team did not identify any additional domestic customers that might be related to Dalian, based on the relevant response to the exporter questionnaire, sales data and audited financial statements.

5.4 Arms length

In respect of domestic sales of HSS made by Dalian to its related customer and the FTZ sales during the review period, the verification team found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The verification team therefore considers that all domestic sales made by Dalian during the review period were arms length transactions.

5.5 Suitability of domestic sales

Subparagraph 269TAC(2)(a)(ii) provides that the normal value of goods exported to Australia cannot be determined under subsection 269TAC(1) where the Minister is satisfied that '... the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)'.

Taking into account the finding of a particular market situation in the original Investigation, subsequent Reviews and the recent Continuation inquiry, the verification team understands that the case team is again considering market situations claims.

PUBLIC RECORD

The verification team considers that it is likely that a finding of particular market situation will be found in the current Review, that will require the verification team to calculate normal values under paragraph 269TAC(2)(c) (Section 7 refers).

5.6 Ordinary course of trade

Section 269TAA provides that if like goods are sold in the country of export at a price less than the cost of such goods, and are unrecoverable within a reasonable period, then they are taken not to have been sold in the ordinary course of trade (OCOT). Dalian only sold downgrade HSS products in the domestic market during the review.

Dalian stated that their sales of downgrade product may or may not enter the domestic steel market as HSS they may be further formed and converted to fabricated product or used for some other purpose.

As a result, the verification team is satisfied that Dalian's domestic sales are not in the ordinary course of trade.

5.7 Domestic sales – summary

The verification team is satisfied that the revised domestic sales listing and copy of sales to the free trade zone are complete, relevant and accurate.

The revised and verified domestic sales listing and is at **Confidential Appendix 3**.

6 ADJUSTMENTS

To ensure the normal value is comparable to the export price of goods exported to Australia at FOB terms, the verification team has considered the following adjustments in accordance with subsection 269TAC(9).

6.1 Export VAT

The verification team considers that an upward adjustment to normal value is required to account for residual export VAT.

6.2 Credit terms

The verification team considers that an upward adjustment for export credit is necessary to ensure a fair comparison to the FOB export price. The verification team has applied this adjustment based on the average number of days between invoice and payment of the selected transactions (Section 3.2.2 refers) and the verified interest rate incurred by Dalian during the review period.

6.3 Inland freight and handling

The verification team considers that an upward adjustment to the normal value for export inland freight and handling expenses is necessary to ensure a fair comparison to the FOB export price. The verification team has applied this adjustment based on the weighted average cost (per tonne) for this expense over the period.

6.4 Adjustments – conclusion

The verification team is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(9), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Export VAT	Add export VAT
Export inland freight and handling	Add the cost of export inland freight and handling.
Export credit	Add the cost of export credit.

7 NORMAL VALUE

As outlined in Section 5.5, the verification team is satisfied that Dalian's domestic sales of like goods have not been made in the OCOT and cannot be used for the purpose of determining normal values in accordance with subsection 269TAC(1) of the Act.

As a result, the verification team is satisfied that a preliminary normal value should be constructed under paragraph 269TAC(2)(c).

To construct the normal value, the verification team requires the following data:

- the weighted average cost to make (CTM) for Australian export sales; plus
- selling, general and administrative expenses applicable to goods sold domestically; plus
- profit calculated from the same general category of goods.

In the original Investigation, subsequent Reviews and the recent Continuation inquiry Dalian's CTM has been determined not to reasonably reflect competitive market costs. In particular, its costs relating to HRC, which is the major raw material input to HSS. As a result, Dalian's costs of HRC have been uplifted using a benchmark.

The verification team does not have benchmark data available to it and has not constructed a preliminary normal value.

8 DUMPING MARGIN

The verification team has not calculated a preliminary dumping margin. The verification team recommends that the case team conduct further analysis of the verified data once benchmark data and prescribed deductions required under 269TAB(1)(b) have been finalised.

9 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Verified Australian export sales data
Confidential Appendix 2	Verified CTMS spreadsheet
Confidential Appendix 3	Verified Domestic sales listing
Confidential Attachment 1	Verification work program and attachments