



## Anti-Dumping Notice 2016/09

### *Customs Act 1901 – Part XVB*

### Certain Hollow Structural Sections

### Exported from the People's Republic of China

### Public notice of decision under subsection 269ZZM(1)

This notice is to advise that the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science<sup>1</sup> has made a decision under subsection 269ZZM(1) of the *Customs Act 1901* (the Act). The decision is made pursuant to the orders of the Federal Court of Australia (Federal Court) in respect of its decision in *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885 (*Dalian*).

#### **Background**

On 12 June 2012, the then Minister for Home Affairs (Minister) accepted the recommendations in *International Trade Remedies Report No.177* (REP 177) and decided to publish dumping duty and countervailing duty notices under sections 269TG and 269TJ of the Act in respect of certain hollow structural sections (HSS) exported from, among others, the People's Republic of China. The notices were published on 3 July 2012.

Following a reinvestigation of certain findings in REP 177, on 26 April 2013, the Minister decided to accept the recommendations in *International Trade Remedies Report No.203* (REP 203). As a result, the Minister decided under section 269ZZM of the Act to affirm his decisions of 12 June 2012 to publish the dumping duty and countervailing duty notices on 3 July 2012, and vary the dumping duty notice in relation to Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce). Notice of the decision was published on 13 May 2013. Further details can be found on the Anti-Dumping Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

#### **Federal Court – decision and orders**

Following its decision in *Dalian* in August 2015, the Federal Court made orders to set aside the Minister's decision of 26 April 2013. In particular, the Federal Court ordered that:

1. *In so far as it applies to the First Applicant [Dalian Steelforce Hi-Tech Co Ltd], the decision of the First Respondent [Minister for Innovation, Industry and Science (as successor to the Minister for Home Affairs)] made on 26 April 2013 pursuant to subsection 269ZZM(1) of the Customs Act 1901 (Cth) be set aside.*
2. *The matter be remitted to the First Respondent for consideration under section 269ZZM of the Customs Act 1901 (the Cth) and in accordance with the following directions:*

<sup>1</sup> On 23 December 2014, the then Minister for Industry and Science delegated his powers and functions under Part XVB of the *Customs Act 1901* to the then Parliamentary Secretary to the Minister for Industry and Science. On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

- a. the Minister's consideration of the matter take place in accordance with the Court's reasons for judgment published on 21 August 2015 and 27 November 2015; and
- b. the Minister's consideration of the matter under section 269ZZM take place in accordance with the provisions of the Customs Act 1901 (Cth) as they stood at 26 April 2013.

### **Decision under subsection 269ZZM(1)**

I, KAREN LESLEY ANDREWS, Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science, have, under section 269ZZM of the Act and in accordance with the Federal Court orders entered on 27 November 2015, further considered the Minister's decisions made on 12 June 2012. In doing so I have:

- considered the orders of the Federal Court in *Dalian*;
- considered the recommendations, and the material findings of fact and law on which the recommendations in REP 177 and REP 203 are based, including the reasons for those recommendations; and
- accepted the recommendations and findings of REP 177 and REP 203 in so far as they are consistent with the decision of the Federal Court in *Dalian*.

Based on the above, I have decided under subsection 269ZZM(1) of the Act to:

- affirm the Minister's decision made on 12 June 2012 to publish a dumping duty notice on 3 July 2012 but with a varied dumping duty notice in so far as it relates to Dalian Steelforce as set out below; and
- revoke the Minister's decision made on 12 June 2012 to publish and substitute a new decision not to publish a countervailing duty notice in relation to Dalian Steelforce.

### **Variation of dumping duty notice**

The dumping duty notice published under subsections 269TG(1) and 269TG(2) of the Act on 3 July 2012 is varied insofar as it relates to Dalian Steelforce so that the dumping duty notice is to be taken to have had effect as if a different normal value had been fixed relevant to the determination of duty as set out in the confidential table to this notice.

The revised dumping margin for Dalian Steelforce has been calculated under subsection 269TACB(2)(a) of the Act by comparing the weighted average export prices with the corresponding normal values over the investigation period. I have determined the dumping margin to be 10.6 per cent. The effective rate of interim dumping duty for Dalian Steelforce is now 10.6 per cent.<sup>2</sup>

### **Effective rate of duty**

The effective rate of duty for Dalian Steelforce is 10.6 per cent and is comprised entirely of Dalian Steelforce's effective rate of dumping duty.

### **Date of effect**

This notice takes effect from 3 July 2012, the date the original dumping duty and countervailing duty notices were published.

### **Right of review**

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<sup>2</sup> Certain costs relating to subsidy Program 20 were previously used in the calculation of dumping and subsidy margins. These costs were previously removed from the dumping margin to calculate the effective dumping duty in order to avoid double counting. As the countervailing duty notice is revoked, the costs relating to Program 20 have been added back to the dumping margin.

Certain persons may apply for a review of this decision by lodging an application with the Federal Court in accordance with the requirements of the *Administrative Decisions (Judicial Review) Act 1977*, within 28 days of the day notice of this decision is given to the applicant.

**Enquiries**

Enquiries about this notice may be directed to the Client Support Team on telephone number 13 28 46, fax number 03 8539 2499 or by email at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au).

Dated this 4<sup>th</sup> day of February 2016

KAREN LESLEY ANDREWS

Assistant Minister for Science

Parliamentary Secretary to the Minister for Industry, Innovation and Science