



ANTI-DUMPING NOTICE NO. 2018/128

INTRODUCTION OF MODEL CONTROL CODES

The purpose of this notice is to advise interested parties of the Anti-Dumping Commission's (the Commission) introduction and implementation of model control codes (MCCs).

Background

On 6 June 2018, the Anti-Dumping Commission (the Commission) published Anti-Dumping Notice (ADN) No. 2018/77 inviting submissions on the proposal to introduce model control code (MCC) structures for model matching when comparing export prices and normal values. Attached to ADN No. 2018/77 was details of the proposed policy and practice guidelines on the MCC.

The Commission received four submissions in response to ADN No. 2018/77 from the following companies:

- Australian Paper Pty Ltd;
- BlueScope Steel Limited;
- Capral Limited; and
- Liberty OneSteel Pty Ltd and Austube Mills Pty Ltd.

Non-confidential versions of the submissions are at **Attachment A**.

The Commission has considered the submissions and made amendments to the proposed policy and practice guidelines on the MCC in response to the submissions.

The Commission's consideration of the submissions are at **Attachment B** and the final policy and practice guidelines on the MCC are at **Attachment C**.

Implementation of the MCC

The Commission will commence using the MCC structure, from the date of this ADN, in relation to applications received for:

- the publication of a dumping duty notice and/or a countervailing duty notice;
- the continuation of anti-dumping measures; and
- a review of anti-dumping measures in relation to exporters generally.

For all other applications, such as duty assessments, accelerated reviews and review of measures in relation to a particular exporter, the Commission will apply MCCs on a case by case basis. Where the Commission proposes to use MCC

structure in these matters, interested parties will be notified of the application of the MCCs on the initiation of the case and it will be detailed in the questionnaires.

Revised application forms and guidelines

A revised application form for the publication of a dumping and/or countervailing duty notice¹ be approved by the Commissioner under sub-section 269SMS(1) of the *Customs Act 1901* shortly. Once the revised application form is approved, the Commission will publish an ADN notifying interested parties of the revised application form and advising that both the revised application form and existing application form will constitute the approved form, for the purposes of sub-section 269TB(4)(b) of the *Customs Act 1901*, for a period of 6 months. After this time, the existing application form will no longer be an approved form.

Importantly, an interested party lodging an application using the existing application form is not precluded from proposing an MCC structure in the application, having regard to the policy and practice guidelines at Attachment C.

Questions

Any question related to the introduction of the MCC can be directed to the Commission's Client Support team at clientsupport@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

09 August 2018

¹ No other application forms need to be revised

Attachment A

**Submissions received in response to
Anti-Dumping Notice No. 2018/77**



Australian Paper
a member of the Nippon Paper Group

Paper Australia Pty Ltd
ABN 63 061 583 533
307 Ferntree Gully Road Locked Bag 87
Mt Waverley Victoria 3149 Australia
Telephone +61 3 8540 2300
Facsimile +61 3 8540 2280
www.australianpaper.com.au

2 July 2018

Dale Seymour
Commissioner
Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne Victoria 3000

Public File

Dear Dale Seymour

Re: Interested party consultation on the introduction of Model Control Codes

Introduction:

Australian Paper (AP) would like to thank the Anti-Dumping Commission (the Commission) for the invitation to make a submission through the International Trade Remedies Forum in relation to proposed introduction of model control code (MCC) structures.

AP is generally supportive of the introduction of structures which contribute to further efficiency, accuracy and relevance of model matching within the Commission's policy. However, it should be noted that AP holds some reservations in regards to procedure through which defining and assessing the relevance of models will occur, and by extension the potential outcomes of the proposed MCC.

Background:

AP understands that physical characteristics will be used to differentiate models with account being given to unit costs and unit prices attributable to the characteristics. Given that Australian Paper has recently engaged with the Anti-Dumping system in relation to white A4 copy paper (copy paper), this will be used as an example for the purpose of better rationalising the implications of MCCs.

AP notes that whilst there might be some slight variation in physical characteristics of copy paper in the Australian market, there is often little discernible difference in the products, particularly from the perspective of the end user. This understanding of the domestic market has been echoed by the Commission in current and previous investigations where it stated:

"The Commission considers that the primary physical characteristics of the goods are the standard dimensions of A4 copy paper and the nominal whiteness in the colour of the paper. While 'whiteness' may marginally vary between different brands and models of paper, most end users would not perceive any marked difference. The Commission considers that other characteristics of the goods, such as packaging, certification, grams per square metre, brightness, recycled content and 'type of' whiteness are secondary characteristics which do not affect the essential physical likeness of domestically produced A4 copy paper to imported A4 copy paper. These

secondary characteristics may be used by manufacturers to differentiate between products for marketing and pricing purposes.”¹

For this commodity, even where slight physical characteristics of the products are able to be identified by an end user (albeit this would be a rare occurrence), there is often little difference in either the unit cost to produce or the actual sell price.

For example, as part of the Investigation No. 341 AP provided cost to make and sell data which included a breakdown of what it considers to be the only relevant models in the Australian market, being defined by recycled fibre content of the paper. Specifically the categorisation that AP put forward was for 0-20% recycled fibre, 21-79% recycled and 79-100% recycled. The data shows that there is a cost difference among the 3 categories, with higher costs linked to recycled fibre content. i.e. recycled grades are generally more expensive to produce than virgin (non-recycled grades). However, despite the higher cost to make, the sales data also provided to the Commission shows that there is little if any pricing premium attributed to grades with recycled content. AP suggests that, where any price difference between these categories does exist, it is likely to be branding (not a physical factor) that bring about any price premium, not the recycled content. i.e. a higher percentage of the recycled grades are ‘Mill branded’ as opposed to customer or private label brands. This means that despite the slight physical difference in product, as well as an increased cost of production, there is no real difference in the sale price of the goods. Therefore, it is of high importance that recycled content of the copy paper does not affect the comparison for the purpose of model matching.

Australian Paper also contends that, for this commodity, slight physical differences can give rise to the reverse situation, where cost is only somewhat affected, but sell price is more significantly influenced.

Copy paper grammage (grams per square metre) is something that can occasionally be recognised by end users particularly if lower than what is usually expected in the marketplace. In Australia, the vast majority of A4 copy paper is sold as 80gsm, with some albeit very limited imported goods sold at 70-75gsm, and also 85-100gsm (usually considered to be presentation papers).

Given the market's expectation that copy paper will be of a certain thickness, instances where the grammage varies from this might cause end users to recognise a difference in perceived quality. Interestingly, most western markets for copy paper have a similar gsm expectation of around 80gsm, with developing economies and large Asian users demanding mostly products at lower grammages. In the Australian market, when a perceived quality differential between 70 - 80gsm might cause an expectation of lower unit price for the lower grammage product. *(Detail related to AP operations).*

For clarity Australian Paper notes that an adjustment is still likely to be required for exporters, however each paper machine should be assessed on an individual basis.

Therefore the slight physical variation in copy paper gsm might give rise to a change in sell price, but caution should be taken when seeking to differentiate these products from a model matching perspective.

‘Whiteness’ and ‘brightness’ of copy paper are often mistakenly used as interchangeable terms by end users when attempting to describe quality and this submission has already quoted the Commission’s view on whiteness and the effect of other physical and/or visual paper properties on likeness of the goods. Consideration Report No. 463, clarifies this by further stating that *“Unless placed side by side, the average consumer would be unlikely to notice any difference between them. This is consistent with the findings in INV 225 and INV 341.”*² *(Comments related to cost and pricing)*, it is clear that these characteristics should not be used to differentiate models under the proposed MCC structure.

¹ Report 341 A4 Copy Paper - Brazil, China, Indonesia and Thailand (page 25).

² Consideration report number: 463 (page 9)

Australian Paper submits that all other A4 copy paper physical characteristics including ream wrap and packaging provide no tangible or discernible differences in terms of paper quality, and are negligible in terms of marginal cost and sell prices. AP also notes that certification is listed by the Commission as a physical characteristic, when it is in fact just a label used to define the administrative process under which paper becomes certified by various forestry bodies. i.e. there is no physical difference in the wood pulp or paper itself.

Conclusion:

Whilst Australia Paper supports the Commission's efforts to implement model control structures to bring consistency to model matching, it should be noted that simply identifying physical characteristics and attributable cost and unit price differences should not necessarily give rise to a different category or model, especially when the differences are usually indistinguishable to end users. Furthermore, instances where the unit cost and sell price are not mutually affected by the physical characteristic should not give rise to a different model. i.e. increased cost for no tangible value add, or decreased sell price with little cost saving. Instances where discernibility of the physical difference, as well as materially differential cost and sell price should all be satisfied in order to give rise to a new model under the structure.

If you have any questions please do not hesitate to contact me on (03) 8540 2451.

Yours sincerely



Matt Decarne
Trade Affairs Manager

4 July 2018

Dale Seymour
Commissioner
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3000

By email: clientsupport@adcommission.gov.au

Dear Dale

ADN 2018/77 - Consultation on the introduction of Model Control Codes

As a large domestic import-competing manufacturer, the operation of Australia's anti-dumping system is an important public policy issue for BlueScope Steel ("BlueScope"). BlueScope is appreciative of the opportunity to provide comments on the introduction of Model Control Codes.

BlueScope welcomes the proposal to introduce a standardised methodology to model match export prices with comparable normal values that is completely open, transparent and public, noting that there is no commercially sensitive information involved in the development of a product's Model Control Codes.

BlueScope Steel:

BlueScope is a leading Australian trade-exposed manufacturer. BlueScope is the only manufacturer of flat steel products in Australia, including steel slab, plate, hot rolled coil and cold rolled coil. It is also the country's largest manufacturer of coated and painted flat steel products, including well-known brands such as COLORBOND® steel and ZINCALUME® steel. The technology and intellectual property that underpins these brands was developed in Australia and has been applied across the company's global manufacturing footprint.

The company operates major manufacturing plants at Port Kembla and Erskine Park in NSW, Hastings in Victoria, and Acacia Ridge in Brisbane. It also operates a network of smaller processing and distribution facilities across the country. BlueScope employs approximately 6,500 people in Australia.

BlueScope is highly exposed in Australian markets to competition from imports. Sustained overcapacity continues to put severe pressure on the global steel industry.

BlueScope is committed to free and fair trade and supports adherence to a rules based international trading system, of which Australia's WTO-compliant anti-dumping system is an important part.

Australian industries have a right to expect that the conditions of competition will be those that result from the natural competitive comparative advantages enjoyed by overseas firms and that they will not be exposed – unilaterally – to injurious dumping.

BlueScope has been an active participant in both the debates about the design of the AD system, through submissions to the Brumby Review and the Productivity Commission, as well as the ongoing improvements to the system since 2012 via direct representation to the Minister, the Anti Dumping Commission ("ADC"), the Department of Industry, Innovation and Science ("DIIS") as well as continued participation in consultative forums like the International Trade Remedies Forum.

The Introduction of Model Control Codes

BlueScope has been a long-time advocate of the development of a standard and transparent methodology to model match export prices with equivalent normal values. To this end BlueScope has always provided the ADC with public model matching hierarchy with key characteristics for every one of its products subject to an investigation. There has been an ongoing frustration at exporters' responses during all stages of an investigation to redact details of the manner in which they have proposed to model match or in which they have responded to model matching in their exporter questionnaires. This lack of transparency around the critical element of correctly calculating a dumping margin has been to the disadvantage of Australian industry.

BlueScope fully supports the introduction of public Model Control Codes at the initiation of an investigation, and the mandatory requirement that all interested parties and respondents will be required to provide their cost and selling price data in their exporter questionnaire in accordance with the Model Control Codes. The Model Control Code structure should be decided utilising both cost and selling price criteria in relation to the materiality of the differences within each physical product characteristic.

It is entirely appropriate that both the applicant(s) and the exporters propose modifications to the ADC's Model Control Code structure post initiation of an investigation. This will however require very precise and tight timelines, without extensions, and will necessarily be required to be public information (i.e. without any redaction or confidential information). BlueScope's experience in other jurisdictions is that this complete process (proposed modification(s) by all interested parties, public review of submissions with the decisions to accept, modify or deny each proposal) is completed with a final version of the Model Control Codes published within 15 calendar days. The Model Control Codes must be finalised as soon as possible after the initiation of any investigation to ensure all exporter questionnaires are formatted according to the one final ADC decided Model Control Codes. (i.e. there must be only one version of Model Control Codes to describe the goods under investigation.)

BlueScope is also firmly of the view that, in the situation where any exporter does not provide their cost and sales data consistent with the final mandatory Model Control Codes, it is to be regarded as a major deficiency in their exporter response questionnaire, and as such would result in that exporter being deemed uncooperative with the investigation.

BlueScope strongly supports the rapid introduction of a public and transparent Model Matching processes such as the one currently proposed by the ADC. BlueScope would welcome future consultations in relation to the key characteristics within the flat steel and pipe and tube product Model Control Codes. We believe that the introduction and strict adherence to properly designed Model Control Codes for cost and sales data will address the standard exporter strategy to hide from public scrutiny the critical aspects of correct model matching and as a result boost Australian industry confidence in this part of the investigative analysis.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4240 1214.

Yours faithfully



Alan Gibbs
International Trade Affairs Manager

2 July 2018

Mr Dale Seymour
Commissioner
Anti-Dumping Commission
Level 35
55 Collins Street
Melbourne Victoria 3000

Email: clientsupport@adcommission.gov.au

Dear Mr Seymour

Consultation on the Introduction of Model Control Codes

I. Introduction

Capral Limited ("Capral") is Australia's largest extruder of aluminium products. The company supplies 55,000 tonnes of aluminium extrusions into the Australian market which is estimated at between 180-200,000 tonnes annually. The Australian aluminium extrusions industry has been exposed to the injurious effects of dumping and subsidisation linked to exports from the People's Republic of China (China), Malaysia and Vietnam. Anti-dumping measures apply to certain aluminium extrusions from the People's Republic of China ("China"), certain exporters in Malaysia, and to exporters in Vietnam.

Capral welcomes initiatives by the Anti-Dumping Commission ("the Commission") to enhance the effectiveness of investigation outcomes, including improvements to introduce model control code (MCC) structures for model matching when comparing export prices and normal values.

II. Proposed MCC structures

Capral welcomes the Commission's initiative to introduce MCC structures to identify different models of the goods and like goods in the conduct of trade measures investigations. It is noted in ADN 2018/77 that the proposed system is similar to those used by other anti-dumping administrations (notably, the Department of Commerce in the U.S.) that will permit the identification of closely matching models of the goods sold for export with those sold domestically in the country of export.

Capral considers that the model matching methodology involving the comparison of domestic and export models is critical to the determination of relevant dumping margins for exporters. In the aluminium extrusions industry, there are four broad categories of finished goods, namely mill finish, painted, powder coated, anodised extrusions and bright dip anodised polished extrusions. Within each broad category, differing models exist (including differing alloys of aluminium used in the aluminium extrusion).

Examples of different models of Aluminium Alloys

6005	6005A	6060
6061	6082	6106
6063	6351	6463
6101	1350	

In some instances, the models incorporate manufacturer-specific grades that are unique to that manufacturer (for example, precision cut, machined, punched or drilled, differing thicknesses of powder coating, etc). This can make model-matching by the Commission difficult.

In investigations involving aluminium extrusions to date, specific details of models/grades of the goods (beyond the broad mill finish, painted, powder coated and anodized generic descriptors) used for model matching purposes have not been disclosed. The absence of information concerning the exporter's domestic models used for model matching purposes does not enable the applicant industry to comment on whether the selected model nominated by the exporter as comparable with the exported goods is a reasonable basis for comparison. The need for full disclosure of the exporter's applicable MCC's for model matching purposes is therefore a critical procedural element of the investigation process.

It is Capral's view that a detailed MCC process commences with the applicant identifying the specific models and/or grades that are included within the goods description. The Commissioner initiates an investigation based upon the information provided by the applicant. Upon initiation, a detailed process for the disclosure of domestic and exported models follows to identify all sales of the goods by the exporter on its home market, including those that fall within the goods description. The exporter would also identify the models/grades of the exported goods. To permit full disclosure and examination of the exporter's identified domestic and exported models, the exporter is required to submit this information and supporting technical information (e.g. product brochures for each model/grade) by Day 14 of the investigation.

The exporter's disclosure of MCC information in a timely fashion (i.e. by Day 14) is important to permit interested parties to comment on the proposed MCC comparisons. The Commission would seek submissions (within a further prescribed period of up to 14 days) from interested parties commenting on the proposed model matching as detailed by the exporter and whether grounds exist to dispute/challenge the model matching identified by the exporter.

The exporter's questionnaire response (due by Day 37) will therefore include cost and sales data for each model/grade identified in the MCC process (subject to the exporter's ability to provide from its records). Where identical sales and cost information is not available for an export model, the exporter will identify the closest comparable domestic sales and detail the specification differences that are apparent with the export model when contrasted with the domestic model. It is important that full disclosure is made of the specification differences that exist for each of the similar domestic model and the export model so that interested parties can comment on the likely adjustments to be made for fair comparison purposes.

The objective with the MCC process is to achieve full disclosure of technical specifications of the models used in model matching assessments.

Capral understands that the identification of product grades and models used in model matching methodologies by other administrations is examined in the early stages of the investigation. Capral concurs that full, public disclosure of models/grades used in model matching in an anti-dumping investigation requires resolution in time for the exporter to submit information in response to the 37-day deadline for the exporter questionnaire response (and certainly no later than prior to the Commission's verification visit with the cooperative exporter).

A key requirement of the MCC process is to permit all interested parties to comment on the validity of the suggested MCC comparisons, and whether the proposed comparisons can be relied upon.

III. Improved outcomes

The introduction of a proposed MCC methodology that involves full transparency prior to the Commission's exporter verification visit will enhance confidence in the Commission's verification process that defines the normal values and dumping margins for exported goods.

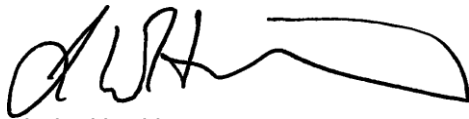
The timely provision of MCC information is integral to the proposed methodology. The Commission will be required to remain alert to delays by interested parties to supply information in a manner that is

consistent with the milestones in an investigation timeframe. The MCC process should not unnecessarily extend beyond the exporter verification visit phase of an investigation; hence strict deadlines and directives to respond to the Commission's queries must be adhered to.

Where an exporter does not provide the relevant supporting information to models/grades the subject of model matching assessment, Capral contends that the Commission must view the exporter as 'deficient' in responding to the information required in the Exporter Questionnaire and, consequently, uncooperative. Capral supports the introduction of the full disclosure of MCC information to permit the Commission to conduct model matching comparisons in a transparent and open manner, taking full account of comments received from interested parties. The proposed MCC process will significantly enhance stakeholder's confidence in the Anti-Dumping System outcomes.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 8222 0113.

Yours sincerely

A handwritten signature in black ink, appearing to read 'LHAWKINS', with a long horizontal flourish extending to the right.

Luke Hawkins
General Manager – Supply and Industrial Solutions

July 3, 2018

Anti-Dumping Commissioner
Anti-Dumping Commission
55 Collins St
Melbourne Vic 3000

Dear Commissioner,

Anti-Dumping Notice No 2018/77.

Consultation on the Introduction of Model Control Codes

Liberty OneSteel and Austube Mills jointly welcome the opportunity to comment on the Anti-Dumping Commission's proposal to introduce model control code (**MCC**) structures for model matching as outlined in Anti-Dumping Notice No 2018/77.

Accurate and transparent model matching is fundamental to the integrity of the anti-dumping system as it determines whether a fair comparison is made between the export price and the normal value. If dumping is found to have occurred, accurate model matching also determines the level to which measures should be imposed to remove injury caused by dumping to Australian manufacturers and producers.

Liberty OneSteel endorses the need identified in the Commission's stated intention that

"The proposed change aims to facilitate a consistent approach to the collection of financial data in responses to the exporter questionnaires and calculating dumping margins."

However, Liberty OneSteel notes that the proposed policy and practice guidelines as outlined in Attachment A to ADN 2018/77 are not consistent with this goal. Whilst Liberty OneSteel fully supports a transparent and contestable process with regard to determining the MCC structure, it does not support the Commission altering the MCC for specific exporters during an exporter verification visit as this will not generate consistent outcomes and will impair transparency and contestability. The most appropriate manner for the Commission to decide whether or not to modify the MCC structure is at the beginning of the investigation via contestable public submissions that do not contain redactions or confidential information. In this manner the process is consistent and fair for all stakeholders, the basis for model comparisons is established at the outset of an investigation and the likelihood of delays to investigation timelines are avoided.

Liberty OneSteel also supports the Commission's proposal that the initial MCC structure for a case be determined on the basis of the application, and that exporters are obliged to use it to complete the exporter questionnaire. Whilst previous findings may be useful in informing the Commission, they may not have previously been consistent between exporters and the selection criteria may not have been transparent during a prior investigation or Review of Measures. To avoid lengthy delays to investigations, the proposed MCC structure would ideally form part of the initiation notice and allow a subsequent short period of time (eg 7 days) for interested parties to make a submission in relation to modifying the MCC, and

a similar timeframe (eg 7 days) should be allowed for other parties to publicly respond. Submissions containing redactions should be rejected as should those that are not lodged within the stated timeframes.

Comments in relation to Attachment A

Liberty OneSteel is generally in agreement with the *Policy* section as outlined in ADN 2018/77, with the following exceptions:

1. Paragraph 3 in Attachment A as currently proposed does not fully reflect a correct interpretation of subsection 269TAC(8)(b) of the *Customs Act* or the Commission's *Dumping and Subsidy Manual* (April 2017 edn).

In assessing the materiality of the differences in physical characteristics, the Commission may take into account any differences in unit costs and unit prices attributable to those different physical characteristics.¹

Adjustments for transactions of like goods that are not identical and made at arm's length in the ordinary course of trade, should only be made on the basis of **price comparability** not simply **differences in unit costs**. Subsection 269TAC(8)(b) of the *Customs Act* states:

(8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:

..... (b) are not in respect of identical goods;

.....that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.²

The Commission's policy on this matter in the *Dumping and Subsidy Manual* also recognises the importance of price comparability:

Adjustments will be made if there is evidence that a particular difference affects price comparability.³

Indeed, there may be differences in the physical characteristics of the goods which affect price comparability that are not captured in the costs to produce. Examples of this include:

- Products that are graded or sorted based on certain qualities after production runs, eg, fine wool versus coarse wool.
- Products that are sold based on the grade to which they are certified to have been produced and the properties that grade is guaranteed to deliver eg. Higher strength steel grades versus lower strength steel grades. Prime products that are downgraded to non-prime.

In these examples differences in costs to produce may not be identified in exporters' cost accounting system yet the different physical characteristics affect price comparability.

¹ Anti-dumping Notice No 2018/77 – Attachment A p.1

² Customs Act 1905 subsection 269TAC(8)(b)

³ Dumping and subsidy Manual p 60

Liberty OneSteel

Level 8, 205 Pacific Highway, St Leonards NSW 2065 Australia

T: +61 (2) 8424 9880 E: contactus@libertyonesteel.com

www.libertyonesteel.com

2. Whilst Liberty OneSteel agrees that it is appropriate that any modification to the MCC structure be based on facts and evidence, it does not support the current wording which infers that it may be different for particular exporters.

Modifications to the MCC structure may be considered based on the facts and evidence pertaining to a particular exporter.⁴

The MCC structure should only be modified based on all publicly available facts and evidence that form part of submissions made shortly after initiation of the investigation. To ensure consistency, once the MCC structure is finalised by the Commission, the same structure ought to apply to all exporters. For example, an MCC structure that has been established based on a comparison of technical Standards at the outset of an investigation ought not to be challenged by an exporter providing a selection of batch test certificates for an alternative product at a verification visit as “facts and evidence” to support a departure from the MCC structure. A verification team may be persuaded to modify the MCC structure for that individual exporter without fully understanding that test certificate results only apply to a small batch of goods produced and goods will still be selected and sold based on a technical Standard to which they are certified to have been produced.

Practice

Liberty OneSteel makes the following comments on the key points as outlined under the section Practice in ADN 2018/77

- i. *The MCC structure will be based on information contained in the application and any other information that the Commission considers relevant⁵.*

Liberty OneSteel supports this approach as the Australian industry applicant will have technical and market expertise in relation to the like goods and suggests that a proposed MCC structure form part of an anti-dumping or countervailing application. Other information that the Commission considers relevant would likely include product literature and brochures, and information from public sources including government agencies and trade associations, internet searches, and consultations with technical experts. Where technical Standards exist for domestic and export products sold, the minimum requirements outlined in the Standards for physical, chemical and mechanical properties ought to form the basis for establishment of the MCC.

In any event, the exporter should identify the model/product code it claims belongs to a particular MCC structure code. This will permit interested parties to properly interrogate the MCC structure claimed, and the Commission may more readily ensure that domestic and export sales are properly applied to the claimed MCC structure code.

⁴ Para 5 – attachment A

⁵ Attachment A p2 paragraph 2

Liberty OneSteel

Level 8, 205 Pacific Highway, St Leonards NSW 2065 Australia

+61 (0) 8424 9880 contactus@libertyonesteel.com
www.libertyonesteel.com

- ii. *In assessing the materiality of the differences in physical characteristics, the Commission may take into account differences in unit costs and unit prices attributable to those different physical characteristics⁶*

As discussed earlier, Liberty OneSteel does not fully agree with the above statement. The Commission's statement in paragraph 3 acknowledges the unreliability of using costs rather than physical characteristics to determine price comparability

*A category that is mandatory in the exporter's domestic sales spreadsheet may be optional in the corresponding cost spreadsheet, **recognising the likelihood that sales data is often captured in accounting records on a more granular basis than cost data.***⁷

Liberty OneSteel proposes the following modification to wording in paragraph 2

In assessing the materiality of the differences in physical characteristics for determining the normal value of non-identical like goods under the conditions of 269TAC1 the Commission may take into account differences in unit costs attributable to those different physical characteristics where they affect price comparability.

- iii. *While exporters are required to follow the MCC structure in their responses to the exporter questionnaire, proposed modifications to the categories and/or sub-categories specific to an exporter may be considered on a case by case basis. Reasoning for such modifications will need to be demonstrated and supported with data and evidence from the exporter. Proposals to modify the MCC structure should be raised before submitting a response to the exporter questionnaire and placed on the public record prior to any verification, otherwise the response may be deemed deficient. Interested parties are encouraged to make submissions on whether proposed modifications to the MCC structure should be accepted by the Commission. Any changes to the MCC structure will be considered by the Commission and reported in the Verification Report or in the statement of essential facts.*⁸

LOS supports the proposal that exporters are required to follow the MCC structure in their responses to the exporter questionnaire but not that any proposed modifications be considered on a case by case basis. A consistent MCC structure should apply to all exporters and should be established at the beginning of the investigation.

LOS supports the proposal that exporters who do not provide cost and sales data for models that are consistent with the mandatory MCC categories, be regarded as deficient in their response to the exporter questionnaire and thereby deemed uncooperative and/or the data be treated as unreliable.

OneSteel welcomes the opportunity to discuss any of the matters raised in this submission with the Commission if required.

For and on behalf of Liberty OneSteel and Austube Mills

⁶ ibid

⁷ Ibid p2. Para 3

⁸ Ibid p3 para 2

Liberty OneSteel

Level 8, 205 Pacific Highway, St Leonards NSW 2065 Australia

T: +61 (2) 8424 9880 **E:** contactus@libertyonesteel.com

www.libertyonesteel.com

Consideration of submissions on the Anti-Dumping Commission's proposed use of model control codes

The Anti-Dumping Commission (the Commission) received four submissions in response to the Commission's proposal to introduce Model Control Codes (MCCs), including comments on the proposed policy and practice guidelines, from the following companies:

- Australian Paper Pty Ltd (Australian Paper);
- BlueScope Steel Limited (BlueScope);
- Capral Limited (Capral); and
- Liberty OneSteel Pty Ltd and Austube Mills Pty Ltd (Liberty OneSteel).

All four submissions were supportive of the Commission's proposal to introduce MCCs, however, the submissions included comments on policy and practice guidelines, which can be grouped into the following categories:

- A MCC submission period;
- Exporter specific modifications;
- Relevant factors affecting the MCC categories and sub-categories; and
- Disclosure of MCCs by exporters.

The Commission's consideration of the submissions are detailed below.

A MCC submission period

A number of submissions proposed a consultation period at the beginning of a case to receive submissions from interested parties on the MCC structure and, subject to consideration of the submission, require exporters to strictly follow the MCC structure.

The Commission considers that there are significant limitations to implementing such a process due to the legislative requirement for exporters to submit responses to the exporter questionnaire by day 37 of a case. In addition, implementing a consultation period may result in exporter requests for lengthy extensions, which will make it difficult for the Commission to conduct cases within legislated timeframes.

The Commission may also use the MCC structure for other purposes, such as for price undercutting analysis and/or calculating a deductive export price. Therefore, delaying the finalisation of the MCC structure may also cause delays to the Commission's verification schedule in relation to Australian industry members and importers.

The policy and practice guidelines have been amended to clarify that the MCC may be used for material injury assessment purposes, such as for an undercutting analysis, and require importers to submit the response to the importer questionnaire having regard to the MCC.

Furthermore, the Commission is required to have regard to all submissions received within 37 days of initiation², including submissions on model matching. As such, the Commission is not able to disregard submissions from exporters on modifications to the MCC received within the legislative timeframe.

² Or later unless to do so would prevent the timely placement of the statement of essential facts on the public record.

Exporter specific modifications

A number of submissions argued that modifications to the MCC for specific exporters should not be permitted. This position is usually coupled with the proposal above on a consultation period, specifically that modifications to the MCC should only be permitted within a consultation period and an exporter's sales and cost data must be provided in accordance with the finalised MCC structure. As detailed above, the Commission is not proposing to introduce a MCC consultation period. Exporters must follow the MCC structure outlined by the Commission. However, the Commission acknowledges that there may be circumstances where certain models sold by the exporter do not align within the proposed MCC structure, such as models specific to the exporter, unanticipated factors that the Commission did not have regard to in determining the MCC or new information on the characteristics that is put before the Commission. The Commission accepts that there may be situations where the Commission must modify the MCC as the cases progress and new information is received.

The onus will be on the exporter to provide a submission on the proposed modification with sufficient time for the Commission to consider the modification or risk the modification being rejected by the Commission and the exporter's data deemed deficient.

The policy and practice guidelines have been amended to clarify that the proposals to modify the MCC structure should be raised no later than the time the questionnaires are due and provide clarification on the circumstances where exporter specific modifications are considered by the Commission.

Relevant factors affecting the MCC categories and sub-categories

Two submissions provided comments in relation the relevant factors to be considered in assessing the physical characteristics relevant to determining an MCC structure.

The Commission agrees with Australian Paper that, in determining the MCC structure, the physical differences being considered must be material and not just slight physical differences that has an insignificant effect on the price and/or cost of the models.

In addition, the Commission agrees with Liberty OneSteel's submission that in determining the MCC structure, the key relevant factor is price. It provided examples where differences in physical characteristics affect prices but not costs.

The policy and practice guidelines have been amended to clarify that the Commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price. Cost differences may be taken into account where it affects price comparability.

Disclosure of MCCs by exporters

A number of submissions provided comments on the disclosure of MCCs by exporters. The Commission agrees that the MCC structure in and of itself is not likely to be commercially sensitive information. As such, any submissions from interested parties on the MCC structure and any proposed modifications to that structure (either for specific exporters or exporters generally) will require full disclosure on the public record, unless the interested party can demonstrate to the Commission that disclosing the information is confidential or would adversely affect its business or commercial interests.

Other amendments

Two other amendments to the policy and practice guidelines have been made as follows:

- A paragraph in the practice section has been removed as it was repeated from the policy section.
- An exception to certain goods has been included where it is not meaningful to adopt a MCC structure.

POLICY

When determining normal value under subsection 269TAC(1) based on domestic sales of like goods in the exporter's domestic market, the Commission obtains information on all sales of these goods. In cases where different models of the goods exist, it is necessary to select the domestically sold models that are most directly comparable to the particular models exported to Australia. This allows for a proper comparison between the normal value and export price of the goods for the purposes of working out the dumping margin.

Appropriate model matching of the goods exported to Australia to like goods sold on the domestic market is therefore critical when ascertaining normal values under subsection 269TAC(1).

The Commission undertakes model matching using a Model Control Code (MCC) structure to identify key characteristics that will be used to match models of the goods exported to Australia and like goods sold domestically in the country of export. In determining the MCC structure, the Commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price. Unit costs may also be taken into account in assessing differences in physical characteristics where the Commission is reasonably satisfied that those cost differences affect price comparability. An assessment such as this may be required, for example, where the models sold domestically and the models exported to Australia are different.

The Commission will also use the MCC structure to compare domestic selling prices of the like goods to the costs of such goods for the purposes of assessing whether the domestic sales are in the ordinary course of trade.

Sales and cost data submitted in the response to the exporter questionnaire are required to follow the MCC structure. At a minimum, the data must report sales and cost data separately for each of the mandatory MCC categories identified by the Commission. Modifications to the MCC structure may be considered based on the facts and evidence pertaining to a particular exporter. As sales data from importers may also be used to calculate a deductive export price, importers are also required to follow the MCC structure in submitting sales data in its response to the importer questionnaire.

Where there are no sales or insufficient sales of identical models of the goods exported to Australia that are sold in the ordinary course of trade on the domestic market, the Commission may use a surrogate model and make appropriate specification adjustments. In deciding the appropriate surrogate model and specification adjustments, the Commission will rely on the MCC structure and the hierarchy of categories or sub-categories. If comparing a constructed normal value under subsection 269TAC(2)(c) to export prices, the Commission will also use the MCC structure to identify the relevant costs of production.

The Commission may also have regard to the MCC structure in its assessment of material injury to the Australian industry, such as for an undercutting analysis.

There may be specific cases where the Commission considers that a MCC structure is not meaningful or cannot be established for the goods under consideration (for example power transformers where each sale is a unique model which is not comparable to any other sale). The Commission will make this determination on a case by case basis.

PRACTICE

The MCC structures provide a system of identifying fundamental characteristics of the goods subject to investigation (the goods) and assigns an alphanumeric code to define categories and sub-categories of the goods.

On initiation, the Commission will advise interested parties of the MCC structure that they will need to apply in their response to the questionnaires. The MCC structure will be based on information contained in the application and any other information that the Commission considers relevant.

The MCC structure comprises categories and sub-categories of the goods and like goods. Each of these categories and sub-categories will have mandatory or optional reporting requirements with respect to sales data and cost data. A category that is mandatory in the exporter's domestic sales spreadsheet may be optional in the corresponding cost spreadsheet, recognising the likelihood that sales data is often captured in accounting records on a more granular basis than cost data.

Importantly, the MCC structure will establish the model matching hierarchy. The categories in the MCC structure will be listed, in descending order, according to the significance of the category to the goods when model matching. This is to ensure that the most comparable surrogate models are chosen, for model matching purposes, when there are insufficient domestic sales of the identical model. The most comparable model is usually considered to be the surrogate model that has the closest physical characteristics (an indicator of this may be the model that has the smallest difference in cost of production per unit).

In addition, the MCC structure will identify certain key categories. For any key category (identified by a YES in the "Key category" column of the MCC structure), the approach will be that sub-categories within each key category should be compared directly and should not be used as surrogate models for other sub-categories within that key category. This would generally be because the physical characteristics are significantly different and making an adjustment for physical differences would not be meaningful in terms of estimating a price difference.

Below is an MCC structure which may apply in a case involving pens:

Category	Sub-category	Sales Data	Cost data	Key category
Material	P: Plastic NP: Non-plastic	Mandatory	Mandatory	Yes
Cover	N: None L: Lid C: Click T: Twist	Mandatory	Mandatory	No
Clip	WC: With Clip NC: No Clip	Mandatory	Optional	No

Based on the above MCC structure, a plastic pen with no cover or clip will have an MCC of: P-N-NC. Where there are insufficient domestic sales of that model, the next model to test for sufficiency of domestic sales will be a plastic pen with no cover but with a clip (i.e. MCC P-N-WC). Where there are still insufficient sales of that model, then the model matching hierarchy moves up to the next category. In this example, a plastic pen with a different cover will be used as a surrogate to test for sufficiency. However, as "material" is a key category, a plastic pen cannot be matched with a non-plastic pen. If there are insufficient sales of models with the same key category, then the normal value may be constructed under 269TAC(2)(c) for that model.

While responses to questionnaires are required to follow the MCC structure, proposed modifications to the categories and/or sub-categories specific to an exporter may be considered on a case by case basis. Such modification may be considered, for example, where certain models sold by the exporter do not align within the proposed MCC structure, such as models specific to the exporter; unanticipated factors that the Commission did not have regard to in determining the MCC; or new information on the characteristics that is put before the Commission.

In the pens example above, there may be a new pen innovation with a cover that does not fit within the sub-category of a lid, click or twist, requiring the MCC structure to be modified to include this type of lid. Reasoning for such modifications will need to be demonstrated and supported with data and evidence.

Proposals to modify the MCC structure should be raised as soon as is practicable, but no later than the time the responses to the questionnaires are due and placed on the public record prior to any verification, otherwise the response may be deemed deficient. Interested parties are encouraged to make submissions on whether proposed modifications to the MCC structure should be accepted by the Commission. Any changes to the MCC structure will be considered by the Commission and reported in the Verification Reports or in the statement of essential facts.

The Commission will consider modifications to the MCC structure from the original investigation in subsequent reviews and continuations, where justified.

Where exporters do not provide cost and sales data for models that are consistent with the mandatory MCC categories, this may be regarded as a major deficiency in the response to the exporter questionnaire and therefore may result in the exporter being deemed uncooperative and/or the data being treated as unreliable.