



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**REPORT
NO. 468**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
STEEL ROD IN COILS
EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA**

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ABBREVIATIONS

Abbreviation	Full title
the Act	<i>Customs Act 1901</i>
ABF	Australian Border Force
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
ADRP Report No.83	ADRP report published on 9 November 2018 in relation to ADRP Review No. 2018/83 – steel rod in coils exported from the People’s Republic of China
then Assistant Minister	then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
China	the People’s Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 468	<i>Consideration Report No. 468</i>
CTMS	cost to make and sell
current review period	1 April 2017 to 31 March 2018
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Dumping Duty Regulations	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
EPR	electronic public record
FOB	free on board
GOC	Government of China
the goods	the goods the subject of the application
Guidelines	Guidelines on the application of forms of dumping duty
Hunan Valin	Hunan Valin Xiangtan Iron & Steel Co., Ltd.
IDD	interim dumping duty
Investigation 301 or ‘original investigation’	Anti-Dumping Investigation No. 301
Liberty Steel	Liberty OneSteel (Newcastle) Pty Ltd
the Minister	the Minister for Industry, Science and Technology
NIP	non-injurious price
original investigation period	1 Jul 2014 to 30 June 2015

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Platts	S&P Global Platts
Review 413	Review of anti-dumping measures applying to steel rod in coils exported from China by Jiangsu Shagang Group Co.,Ltd
Review 414	Review of anti-dumping measures applying to steel rod in coils exported from China by Hunan Valin Xiangtan Iron & Steel Co.,Ltd
REP 301	Anti-Dumping Commission Report No. 301
REP 413/414	Anti-Dumping Commission Report No. 413, 414
Rod in Coils	Steel rod in coils or 'the goods'
SEF	Statement of essential facts
Shagang	Jiangsu Shagang Group Co., Ltd.
USP	Unsuppressed selling price

1 SUMMARY

1.1 Introduction

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) in relation to a review of the anti-dumping measures applying to certain steel rod in coils ('rod in coils' or the goods)¹ exported to Australia from the People's Republic of China (China).

The review was initiated in response to an application lodged by Liberty OneSteel (Newcastle) Pty Ltd (Liberty Steel) for a review of anti-dumping measures applying to 'rod in coils' exported to Australia from China.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² 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 or recommend to the Minister the review be extended to consider any additional matter.³

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;
- the notice be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; 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.⁴

1.3 Findings

The Commissioner finds, in relation to exports of rod in coils to Australia from China during the period 1 April 2017 to 31 March 2018 (the current review period), that:

- the ascertained export price has changed;⁵

¹ Refer to section 3.1 of this report for a full description of the goods.

² All legislative references in this Report are to the *Customs Act 1901*, unless otherwise specified.

³ Subsection 269ZC(4).

⁴ Subsection 269ZDA(1).

⁵ Chapter 4 of this report refers.

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- the ascertained normal value has changed;⁶ and
- due to the existence of a 'particular market situation' the Minister is not required to have regard to the desirability of fixing a lesser rate of duty.⁷

1.4 Recommendations

The Commissioner recommends to the Minister that the notice in respect of the goods have effect, as if different variable factors had been ascertained, in relation to all exporters from China generally.

⁶ Ibid.

⁷ Chapter 5 of this report refers.

2 BACKGROUND

2.1 Application and initiation

On 8 March 2018, an application was lodged by Liberty Steel requesting a review of the anti-dumping measures as they apply to exports of rod in coils to Australia from China.

Liberty Steel claimed that certain variable factors relevant to the taking of the anti-dumping measures in relation to rod in coils exported to Australia from China had changed (within the period 1 January 2017 to 31 December 2017).

The Commission considered the application in accordance with sections 269ZB and 269ZC and was satisfied, on the basis of the information provided in the application and other relevant information, that:

- the application complies with section 269ZB; and
- there appear to be reasonable grounds for asserting that at least one of the variable factors relevant to the taking of the anti-dumping measures have changed.

On 3 April 2018, the Commissioner gave public notice in Anti-Dumping Notice (ADN) No. 2018/56 of his decision to initiate a review of anti-dumping measures with respect to rod in coils exported to Australia from China.⁸ The background relating to the initiation of this review is contained in Consideration Report No. 468 (CON 468).⁹

The current review period was set as 1 April 2017 to 31 March 2018.

2.1.1 Previous investigations

Since 2014, the Commission has conducted numerous investigations, reviews and inquiries relating to rod in coils. Full details can be found on the Commission's electronic public record (EPR) at www.adcommission.gov.au. The matters relevant to the applications are summarised below.

12 August 2015	The Commissioner initiated Anti-Dumping Investigation No 301 (Investigation 301 or original investigation) into the alleged dumping of rod in coils exported to Australia from China following an application by OneSteel Manufacturing Pty Ltd.
22 April 2016	The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (then Assistant Minister) published a dumping duty notice applying to rod in coils exported from China. <i>Anti-Dumping Commission Report No. 301</i> (REP 301) refers. The dumping margin for exporter Hunan Valin Xiangtan Iron & Steel Co., Ltd (Hunan Valin) was 44.1% and the dumping margin for Jiangsu Shagang Group Co., Ltd (Shagang) was 37.4%. The dumping margin for uncooperative and all other exporters was 53.1%.

⁸ Document 003, EPR 468.

⁹ Document 002, EPR 468.

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19 December 2016	Following a review of the then Assistant Minister's decision by the Anti-Dumping Review Panel (ADRP), the then Assistant Minister revoked her previous decision and substituted a new decision in the same terms except with different normal values in respect of Hunan Valin, Shagang, and uncooperative exporters, resulting in a dumping margin for Hunan Valin of 40.2%, a dumping margin for Shagang of 36.1% and a dumping margin for uncooperative exporters of 49%.
24 May 2017	The Commissioner initiated two single exporter reviews of anti-dumping measures with respect to rod in coils exported to Australian from China by Shagang – Review No. 413, and Hunan Valin – Review 414, following applications by these exporters for a review of measures based on a change in the variable factors relevant to them.
20 April 2018	The then Assistant Minister amended the dumping duty notice applying to rod in coils exported to Australia from China by Hunan Valin and Shagang respectively resulting in a dumping margin of 24.3% for Hunan Valin and 24.2% for Shagang. <i>Anti-Dumping Commission Report No. 413 and 414</i> (REP 413/414) refers. ¹⁰
6 November 2018	Following a review of the then Assistant Minister's decision by the ADRP, the Minister revoked the previous decision and substituted a new decision in the same terms except with different export prices for Hunan Valin and Shagang resulting in dumping margins of 26.1% and 16.4% respectively. ADRP Report No. 83 refers. ¹¹

2.2 The current measures

The current anti-dumping measures applying to Hunan Valin and Shagang are combination measures i.e. a combination of fixed and variable duty.¹² The current anti-dumping measures applying to all other exporters of rod in coils from China to Australia are *ad valorem* measures.¹³

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 anti-dumping measures as they affect a particular exporter of those goods or exporters of those goods generally. Accordingly, the affected party may apply for,¹⁴ or the Minister may request that the Commissioner conduct,¹⁵ a review of those anti-dumping measures if one or more of the variable factors relevant to the taking of those measures has changed or the anti-dumping measures are no longer warranted.

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 notice imposing the

¹⁰ Anti-Dumping Notice No 2018/50, EPR 413 and 414.

¹¹ Available on the ADRP website at <https://www.adreviewpanel.gov.au>.

¹² Per subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

¹³ Per subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

¹⁴ Subsection 269ZA(1).

¹⁵ Subsection 269ZA(3).

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original anti-dumping measures or the publication of a notice declaring the outcome of the last review of the notice imposing the original anti-dumping measures.¹⁶

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 allowed, the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Minister concerning the review of the anti-dumping measures.¹⁷ The Commissioner has up to 155 days, or such longer time as allowed, to conduct a review and report to the Minister on the review of the anti-dumping measures.¹⁸

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors are a reference to:

- the ascertained export price;
- the ascertained normal value; and
- the non-injurious price (NIP).

In making recommendations in his final report to the Minister, the Commissioner must among other things have regard to:¹⁹

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter the Commissioner considered to be relevant to the review.²⁰

In his final report the Commissioner must make a recommendation to the Minister that the notice:²¹

- remain unaltered;
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- have 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

¹⁶ Subsection 269ZA(2)(a).

¹⁷ Subsection 269ZD(1).

¹⁸ Subsection 269ZDA(1).

¹⁹ Subsection 269ZDA(3)(a).

²⁰ Subsection 269ZDA(3)(b).

²¹ Subsection 269ZDA(1)(a).

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being made within that period, such longer period as the Minister considers appropriate²² that the notice:²³

- remain unaltered;
- is to take to be, or have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kinds of goods;
- 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.

The Minister must give notice of the decision.²⁴

2.4 Statement of essential facts

On 19 November 2018, the Commissioner placed on the public record a statement of essential facts (SEF) on which he proposed to base his recommendations to the Minister in relation to this review. The submission that was received in response to the SEF is available on the electronic public record on the Commission's website.²⁵

²² Subsection 269ZDB(1A).

²³ Subsection 269ZDB(1)(a).

²⁴ Subsection 269ZDB(1).

²⁵ Document 7, EPR 468.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject of the current anti-dumping measures are:

Hot rolled rods in coils of steel, whether or not containing alloys, that have maximum cross sections that are less than 14mm.

The goods covered by the measures include all steel rods meeting the above description regardless of the particular grade or alloy content.

Goods excluded from the measures include hot-rolled deformed steel reinforcing bar in coil form, commonly identified as rebar or debar, and stainless steel in coils.

3.2 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- 7213.91.00 (statistical code 44); and
- 7227.90.90 (statistical code 02).

4 EXPORT PRICE AND NORMAL VALUE

4.1 Findings

The Commission has found, in respect of exports of rod in coils to Australia from China that:

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

4.2 Uncooperative dumping margins

On initiation of the review, the Commissioner published a notice under subsection 269ZC(4) being ADN No. 2018/56, and in accordance with subsection 269ZC(7), the notice invited interested parties to lodge with the Commissioner within 37 days after publication of the notice, submissions concerning the review.

The Commission undertook a search of the Australian Border Force (ABF) import database in order to identify exporters of rod in coils from China but was unable to identify any exporters of rod in coils from China who had exported during the current review period. Exporters who had applied for a review of measures in Reviews 413 and 414 were advised of the initiation of this review, and exporter and importer questionnaires were published on the Commission's website. The Government of China (GOC) was also advised of the initiation of this review.

The Commission received no submissions to the initiation of this review from any exporters of rod in coils from China to Australia. The Commissioner is satisfied that all exporters of rod in coils from China to Australia did not provide the Commissioner with the information relevant to this review within a reasonable period of time. The Commissioner therefore considers all exporters of rod in coils from China as uncooperative exporters as defined by subsection 269T(1).

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. Subsection 269TACAB(1)(d) specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3). Subsection 269TACAB(1)(e) specifies that normal values are to be calculated under subsection 269TAC(6).

4.3 Export Price

In SEF 468 the Commissioner proposed that the best available information to determine an export price for all uncooperative exporters under subsection 269TAB(3) was the ascertained export prices determined by the Minister on 6 November 2018 in relation to Reviews 413 and 414, following ADRP Report No.83.

4.3.1 Liberty Steel's submission

In response to SEF 468, Liberty Steel submitted that:

- the Commission was correct in recommending to the Minister that the export price be worked out under section 269TAB(3) and the normal value be worked out under section 269TAC(6);

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- due to factual errors and oversights in the ADRP Panel member's reasoning in ADRP Report No.83, the lowest ascertained export price established in Reviews 413 and 414 less any upwards timing adjustment applied in ADRP Report No. 83 should be taken as the ascertained export price under section 269TAB(3) for the current review; and
- the low volume of exports makes the approach to calculating a relevant or reliable timing adjustment factor wholly uncertain. The decision to make this discretionary upward timing adjustment to the export price in fact rewards the identified exporters' decision to not cooperate with the Commission's inquiries and review. Liberty Steel opposes the making of the timing adjustment under subsection 269TAB(3).

4.3.2 Export Price – Commissioner's consideration

The Commissioner does not accept Liberty Steel's submission that the Commission should use the lowest ascertained export price established in Reviews 413 and 414 less any upwards timing adjustment applied in ADRP Report No. 83 in order to determine an export price in the current review.

The Commissioner has determined an export price under subsection 269TAB(3) after having regard to all relevant information.

The Commissioner considers that the best available, reliable and relevant information to determine an export price for uncooperative exporters of rod in coils from China in the current review period is the ascertained export prices as per the dumping duty notice currently applying to rod in coils exported to Australia from China, that is, as determined by the Minister on 6 November 2018, following ADRP Report No. 83 (in relation to Reviews 413 and 414).

The ascertained export price for uncooperative exporters in the current review is based on export prices determined for a prior review period (i.e. for Reviews 413 and 414). The application of a timing adjustment accounts for the movement in export prices between the prior review period, and the current review period, and ensures that the export price determined under subsection 269TAB(3) reflects contemporaneous prices. The timing adjustment is based on the movement in Free on Board (FOB) export prices for wire rod exported from China as published by S&P Global Platts (Platts). The Commissioner considers that this information is recent and relevant, and is the best information available to the Commission on which to base a timing adjustment in this instance.

The Commission disagrees that the timing adjustment "rewards the identified exporters' decision to not cooperate". Applying a timing adjustment not only ensures that the export price as calculated for the purposes for the review reflects contemporary prices but also ensures that the variable component of the duty applied following this review reflects the general movements in export prices.

The Commission's analysis of FOB export prices for mesh quality wire rod exported from China as published by Platts indicates that the average price of rod in coils exported from China for the current review period 1 April 2017 to 31 March 2018 is 32.5 per cent higher than it was during the review period for Reviews 413 and 414 i.e. 1 April 2016 to 31 March 2017. Figure 1 below depicts the movement in FOB export prices for wire rod exported from China during the period 1 April 2016 to 31 March 2018.

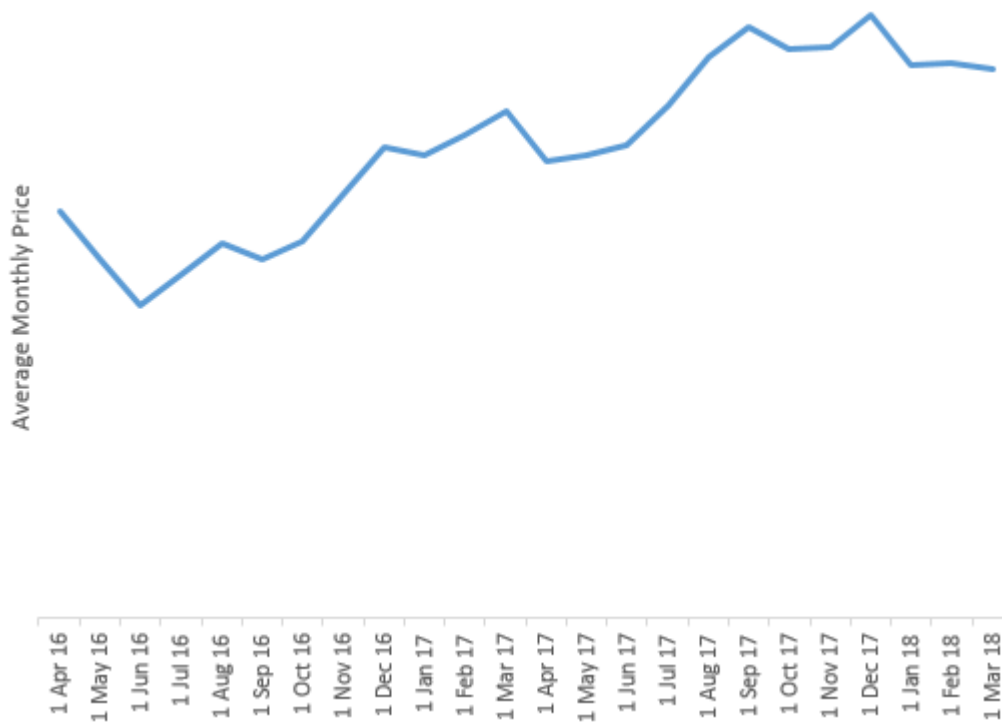


Figure 1: Wire rod (mesh quality) FOB export prices (RMB/t) - China

The Commission has therefore applied a timing adjustment by increasing the weighted average ascertained export prices determined by the Minister following ADRP Report No. 83 (in relation to Reviews 413 and 414) by 32.5 per cent to reflect the higher Chinese export prices for rod in coils during the current review period. Details of the export price calculations are at **Confidential Appendix 1**.

4.4 Normal values

As noted previously, for the purposes of this review the Commissioner considers all exporters of rod in coils from China as uncooperative exporters as defined by subsection 269T(1).

Subsection 269TACAB(1)(e) specifies that normal values for uncooperative exporters are to be calculated under subsection 269TAC(6). The Commissioner has therefore determined a normal value under subsection 269TAC(6) after having regard to all relevant information.

Specifically, the Commissioner considers that the best available information to determine the normal value for uncooperative exporters of rod in coils from China is the normal values established by Reviews 413 and 414, minus any favourable adjustments which can only be made on the basis of verified information that was not forthcoming in this review.

4.4.1 Market situation finding

Investigation 301 established that, in accordance with subsection 269TAC(2)(a)(ii), a situation exists in the domestic Chinese market that renders domestic selling prices of rod in coils as being unsuitable for the purposes of determining normal values for rod in coils under subsection 269TAC(1), i.e. a ‘particular market situation’ exists. Accordingly, normal values for cooperating exporters were constructed pursuant to subsection 269TAC(2)(c).

In Reviews 413 and 414, the Commissioner found that a particular market situation for rod in coils continues to exist in China, and that the normal values for the applicants could not be ascertained under subsection 269TAC(1).

After the Commission initiated the current review, a questionnaire was sent to the GOC to ascertain whether the market situation found in Investigation 301 and Reviews 413 and 414 had changed. The GOC, however, did not provide a response to the questionnaire.

The Commissioner considers that since the final report for Reviews 413 and 414 was published on 20 April 2018, it is unlikely the market situation found then has changed significantly. In the absence of any information to indicate that the particular market situation found in Reviews 413 and 414 has changed, the Commissioner considers that a particular market situation for rod in coils existed in China during the current review period, and that the normal values for the Chinese exporters of rod in coils cannot be ascertained under subsection 269TAC(1).

For these reasons, and for the purposes of subsection 8(5BAA) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), the Commissioner is also satisfied that:

- the normal value of the goods could not be ascertained under subsection 269TAC(1) because of the operation of a market situation, pursuant to subsection 269TAC(2)(a)(ii); and
- the Minister is therefore not required to have regard to the lesser duty rule in subsection 8(5B) of the Dumping Duty Act

This is discussed further at Chapter 5 of this report.

4.4.2 Timing adjustment

The Commissioner considers that a timing adjustment is required to the normal values determined in Reviews 413 and 414 to reflect the Chinese domestic prices for rod in coils during the current review period.

In Investigation 301, the Commission took the view that the Latin American steel billet export prices at FOB level that is published by Platts, formed an independent and reliable basis for competitive market costs.²⁶

As the Commissioner has determined that Chinese domestic prices for rod in coils during the current review period are affected by a particular market situation, the

²³ REP 301, Document 38, EPR 301.

²⁶ REP 301, Document 38, EPR 301.

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Commission has used FOB Latin American export prices of billet during the review period to determine a timing adjustment.

The Commission's analysis of Latin American FOB export prices for billet published by Platts indicates that the average billet price for the current review period 1 April 2017 to 31 March 2018 is 30.3 per cent higher than it was during the review period for Reviews 413 and 414, i.e. 1 April 2016 to 31 March 2017. The movement in Latin American FOB export prices for billet during the period 1 April 2016 to 31 March 2018 is depicted below at Figure 2.

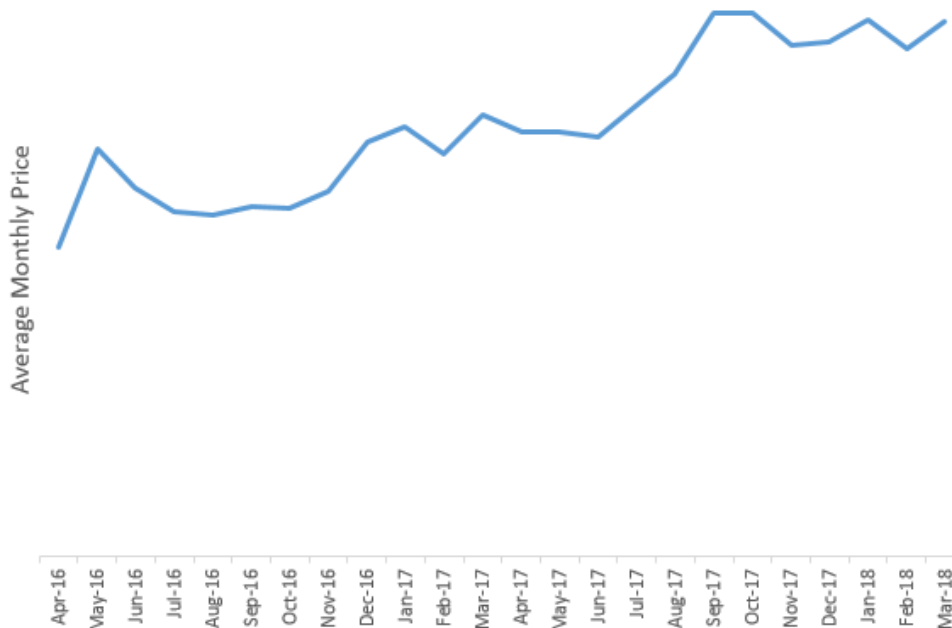


Figure 2: Billet prices – Latin American export FOB (RMB/t)

Accordingly, the Commission has adjusted the normal values determined during Reviews 413 and 414 by increasing those values by 30.3 per cent to reflect the higher billet prices during the current review period. Details of the normal value calculations are at **Confidential Appendix 1**.

4.5 Dumping margins

The Commissioner has determined a dumping margin for all exporters of rod in coils from China to Australia by comparing the adjusted highest normal value established by Reviews 413 and 414 with the adjusted lowest ascertained export price as determined by the Minister following ADRP Report No. 83. The resultant dumping margin is 39.5%. Details of the dumping margin calculation are at **Confidential Appendix 1**.

5 NON-INJURIOUS PRICE

5.1 Finding

The Commissioner has found that due to the operation of subsection 269TAC(2)(a)(ii), the normal value of rod in coils exported to Australia from China cannot be ascertained under subsection 269TAC(1). As such, the Minister is not required to have regard to the desirability of fixing a lesser rate of duty. However the Minister may still consider and apply the lesser duty rule. In this instance, the Commissioner considers that due to the lack of cooperation from the exporters it is appropriate that the Minister not have regard to the desirability of fixing a lesser rate of duty.

5.2 Introduction

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.

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act. The lesser duty rule requires the Minister to have regard to the desirability of specifying a lesser amount of duty than the full dumping margin where the imposition of that lesser amount is adequate to remove injury.

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 if she is satisfied that either or both of the following apply in relation to the goods the subject of the notice:

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises.

By operation of section 269T(4E), the NIP of the goods is a variable factor for the purposes of a review of measures under section 269ZA(1).

5.3 The Commissioner’s approach to calculating a NIP

The Commission generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This is referred to as the unsuppressed selling price (USP).

The Commission’s preferred approach to establishing the USP observes the following hierarchy:

- market approach using the Australian industry’s weighted average selling price at a time when the Australian market was unaffected by dumping;
- construction approach using the Australian industry’s CTMS, plus where applicable, a reasonable rate of profit; or
- selling prices of un-dumped imports.

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In Investigation 416, the Commissioner took the view that prices in the Australian market for rod in coils during the investigation period (1 April 2016 to 31 March 2017) were unaffected by dumping. The Commissioner therefore had regard to Australian industry's weighted average selling price as the USP and calculated the NIP by deducting the lowest sum of costs incurred by any verified importer to deliver the goods from FOB.²⁷

In its application Liberty Steel submitted that "as the steel scrap price is a global commodity value, and broadly reflective of international steel making conditions it is a good indicator of overall material cost conditions for steel making, and changes over time, and the movements in price will be followed by most producers of finished steel products globally".²⁸

In order to calculate a NIP for the current review period, the Commission has therefore indexed the NIP calculated in Investigation 416 to the movement in scrap prices. The calculation of the NIP is at **Confidential Appendix 1**.

The NIP calculated in this review is less than the ascertained normal value. In the absence of any of the circumstances specified in subsection 8(5BAA) of the Dumping Duty Act, the Minister is required to have regard to the lesser duty rule.

However, as discussed at section 4.4 of this report, the Commission has found the normal value of rod in coils exported to Australia from China cannot be ascertained under subsection 269TAC(1) because the situation in the Chinese market is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1). As such, the Minister is not required to have regard to the desirability of fixing a lesser rate of duty.

The Commissioner notes that the Minister may still consider and apply the lesser duty rule. In this instance, the Commissioner considers that due to the lack of cooperation from the exporters it is appropriate that the Minister not have regard to the desirability of fixing a lesser rate of duty.

²⁷ Document 1, EPR 468.

²⁸ Document 1, EPR 468.

6 FINDINGS AND RECOMMENDATIONS

6.1 Findings

The Commissioner has found, in respect of exports of rod in coils to Australia from China, that:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the NIP is less than the ascertained normal value but the the Minister need not have regard to the desirability of fixing a lesser rate of duty.

The Commissioner therefore recommends to the Minister that the notices in respect of exports of rod in coils to Australia from China have effect as if different variable factors had been ascertained.

6.2 Form of duty

The current anti-dumping measures applying to Hunan Valin and Shagang are combination measures i.e. a combination of fixed and variable duty.²⁹ The current anti-dumping measures applying to all other exporters of rod in coils from China to Australia are *ad valorem* measures.³⁰

As a result of the current review, the dumping margin for all Chinese exporters of rod in coils including Hunan Valin and Shagang is now 39.5 per cent. In SEF 468, the Commissioner proposed recommending to the Minister that the form of measures applicable to all exporters of rod in coils from China revert to *ad valorem* as the Commissioner considered that the high dumping margin reduces the likelihood of significant reduction in export prices to avoid the intended effect of the duties.

In its submission to SEF 468, Liberty Steel opposed the proposed reversion to *ad valorem* duties stating that:

- if the outcome of Review 468 is challenged with the ADRP or a new review of measures application is lodged, the dumping margin may be reduced with no specific requirement to change the form of duty; and
- the combination method of duty is the most effective form of measure in preventing ongoing injury, particularly for commodity products such as rod in coils as the variable duty element acts as a floor price to capture additional interim duty if the exporter further reduces export prices.

6.2.1 Commissioner's consideration

In determining the most appropriate form of measures, the Commission had regard to the submission from Liberty Steel and the *Guidelines on the Application of Forms of Dumping Duty – November 2013* (Guidelines). In particular, the Guidelines note that a potential disadvantage of *ad valorem* duties is that export prices might be lowered

²⁹ Per subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

³⁰ Per subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

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to avoid the potential effects of duty. As noted in Liberty Steel's submission, the variable duty element of the combination duty method acts to impose additional interim duty if an importer reduces export prices below the ascertained export price. In this instance, the Commission's findings regarding the existence of a market situation and the lack of cooperation by the Chinese exporters are factors which suggest that a combination duty is appropriate.

The Commissioner therefore recommends to the Minister that the form of measures applicable to all exporters of rod in coils from China be a combination form of duty.

A summary of the variable factors as they apply to all exporters of rod in coils from China is at **Confidential Appendix 2 – Summary of variable factors**.

6.3 Retrospective declaration

In its submission to SEF 468, Liberty Steel stated that subsection 269ZDB(6) permits the Minister to make a declaration which has limited retrospective effect, enabling the Minister to "backdate" the declaration to the date of publication of the initiation notice under section 269ZC. It claimed that it observes the practise of exporters increasing their volume of exports to Australia, following the publication of an initiation notice but before a declaration is made under section 269ZDB in circumstances where there is an expectation of an increase in future duty liabilities. It submitted that following the end of the 37 day period for a response to an exporter questionnaire, exporters will have formed a view of the new variable factors and in effect have constructive notice of their future duty liability.

Accordingly, Liberty Steel submitted that as a matter of practice the Commission should recommend to the Minister that any new declaration made under subsection 269ZDB(1) should specify the date of which exporter questionnaires were due, as the date on which the declaration is taken to have had effect. Such a practice would ensure that the interests of the exporter and the interests of Australian industry are fairly balanced.

6.3.1 Commissioner's consideration

The Commission undertook a search of the ABF import database in order to identify exporters of rod in coils from China but was unable to identify any exporters of rod in coils from China who had exported to Australia during, or subsequent to, the current review period.

The Commissioner therefore recommends that the changes to the variable factors take effect from the date of publication of the notice specifying the changes. Such an approach balances the interests of Australian importers of rod in coils (in having some certainty regarding duty liabilities) and that of Australian industry producing like goods.

6.4 Recommendations

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

- 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 all Chinese exporters of rod in coils, as if different variable factors as set out in **Confidential Appendix 2**, had been fixed relevant to the determination of duty.

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

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished, and is not available, to enable the export price of rod in coils exported to Australia from China by the category of 'uncooperative and all other exporters' to be determined under subsection 269TAB(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of rod in coils exported to Australia from China by the category of 'uncooperative and all other exporters' to be ascertained under the preceding subsections of 269TAC (other than subsection 269TAC(5D)); and
- the normal value of rod in coils exported to Australia from China cannot be ascertained under subsection 269TAC(1) because the situation in the market of China is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1), as per subsection 269TAC(2)(a)(ii). As a result, and pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Minister is therefore not required to have regard to the lesser duty rule in subsection 8(5B) of the Dumping Duty Act.

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

- pursuant to subsection 269TAB(3), the export prices of rod in coils exported to Australia by all exporters from China, are as set out in **Confidential Attachment 2**, having regard to all relevant information;
- pursuant to subsection 269TAC(6), normal values for all exporters of rod in coils from China, are as set out in **Confidential Attachment 2**, having regard to all relevant information; and
- in accordance with subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of the goods exported to Australia from China by all exporters is an amount which will be worked out in accordance with the combination duty method pursuant to Regulation 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Dumping Duty Regulation) with effect from the date of signature of the determination.

7 APPENDICES

Confidential Appendix 1	Uncooperative rate – Analysis and export price, normal value and dumping margin calculations
Confidential Appendix 2	Summary of variable factors