



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

STATEMENT OF ESSENTIAL FACTS

Nos. 486 and 489

REVIEW OF ANTI-DUMPING MEASURES

APPLYING TO STEEL REINFORCING BAR

EXPORTED FROM THE REPUBLIC OF KOREA AND TAIWAN (WITH THE EXCEPTION OF POWER STEEL CO., LTD)

18 February 2019

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ABBREVIATIONS

\$AUD	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the Minister	the Minister for Industry, Science and Technology
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make & sell
Daehan	Daehan Steel Co. Ltd
the Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
DITH	DITH Australia Pty Ltd
the Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic Public Record
FOB	Free On Board
the goods	the goods the subject of the application
The Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty – November 2013</i>
Korea	Republic of Korea
Liberty Steel	Liberty OneSteel (Newcastle) Pty Ltd
Macsteel	Macsteel International Australia
NIP	Non-injurious price
OCOT	Ordinary Course of Trade
rebar	Steel reinforcing bar
The Regulations	<i>Customs (International Obligations) Regulations 2015</i>
REQ	Response to the Exporter Questionnaire
SEF	Statement of Essential Facts
USP	Unsuppressed Selling Price
Wei Chih	Wei Chih Steel Industrial Co., Ltd

1 SUMMARY

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister) relating to the two separate reviews of the anti-dumping measures (in the form of a dumping duty notice) applying to certain steel reinforcing bar (rebar or ‘the goods’) exported to Australia from the Republic of Korea (Korea) and Taiwan (with the exception of Power Steel Co., Ltd)¹.

This review of measures is in response to the following two separate applications for review of variable factors lodged under subsection 269ZA(1) of the *Customs Act 1901* (the Act)²:

1. DITH Australia Pty (DITH), an importer of the goods, requested a review of the variable factors in relation to Daehan Steel Co. Ltd (Daehan) from Korea. In its application, DITH claimed that the relevant variable factors that had changed were normal value and export price. DITH claims that the cost to make (CTM) for rebar has changed since the original investigation period, which has in turn impacted selling prices.
2. Liberty OneSteel (Newcastle) Pty Ltd (Liberty Steel), the Australian manufacturer, requested a review of the variable factors in relation to all exporters from Korea and Taiwan (with the exception of Power Steel Co., Ltd). Liberty Steel also claimed that the relevant variable factors that had changed were normal value and export price.

The review period is 1 July 2017 to 30 June 2018.

1.2 Legislative background

Division 5 of Part XVB of the Act sets out amongst other things, the procedures to be followed by the Commissioner in dealing with an application for a 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 it is proposed to review the measures covered by the application.³ The Commissioner must, within 110 days after the publication of the notice or such longer period as the Minister allows, place on the public record a statement of the essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Minister relating to the review of measures.⁴

¹ Power Steel Co., Ltd is subject to separate anti-dumping measures imposed with an effective date of 8 March 2018.

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

³ Subsection 269ZC(4) of the Act.

⁴ Subsection 269ZD(1) of the Act.

1.3 Preliminary Findings

The Commissioner is satisfied all variable factors relevant to the taking of the anti-dumping measures have changed for all exporters of rebar from Korea and Taiwan (with the exception of Power Steel Co., Ltd) during the review period (1 July 2017 to 30 June 2018), such that:

- the ascertained normal value has changed;
- the ascertained export price has changed; and
- the ascertained non-injurious price (NIP) should be set equal to the ascertained normal value, meaning that the ascertained NIP has changed.

1.4 Proposed recommendation

The Commissioner proposes to recommend to the Minister that the dumping duty notice has effect in relation to all exporters from Korea and Taiwan (with the exception of Power Steel Co., Ltd) as if different variable factors had been ascertained.

1.5 Final report

The Commissioner's final report and recommendations must be provided to the Minister by 3 April 2019, or within such longer period as the Minister allows.⁵

⁵ Subsection 269ZDA(1) of the Act. Extension of time granted is discussed at 2.4.1 below.

2 BACKGROUND

2.1 Application and Initiation

On 1 August 2018, the Commissioner initiated this review of anti-dumping measures with respect to rebar exported to Australia from Korea and Taiwan following receipt of two separate applications for a review of variable factors by Liberty Steel and DITH.

Details of the initiation decision made by the Commissioner are available in Anti-Dumping Notice (ADN) No. 2018/112⁶ and Consideration Reports numbered 486 (CON 486)⁷ and 489 (CON 489)⁸, which are available on the electronic public record (EPR) maintained on the Commission’s website.

2.2 Previous cases

Since 2014, the Commission has conducted numerous investigations, reviews and inquiries relating to rebar. Full details can be found on the Commission’s website⁹. The matters relevant to the applications are summarised below.

17 October 2014	The Commissioner initiated an investigation into the alleged dumping of rebar exported to Australia from Korea, Malaysia, Singapore, Spain, Thailand and Turkey following an application by OneSteel Manufacturing Pty Ltd. ¹⁰
19 November 2015	The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (then Parliamentary Secretary) published a dumping duty notice applying to rebar exported to Australia from Korea, Singapore, Spain and Taiwan (except Power Steel Co Ltd) as a result of <i>Anti-Dumping Commission Report No. 264</i> (REP 264). ¹¹
4 March 2016	The then Parliamentary Secretary’s decision was reviewed by the Anti-Dumping Review Panel (ADRP) and the ADRP found that the decision of the then Parliamentary Secretary in REP 264 was the correct and preferable decision except in relation to the Spanish exporter Nervacero S.A. The ADRP’s recommendation was published in ADRP Report No. 34. ¹² As a result of the ADRP’s recommendations (which were accepted by the then Parliamentary Secretary), rebar exported from Spain by Nervacero S.A is not subject to the dumping duty notice applying to rebar from Korea, Singapore, Spain and Taiwan (except Power Steel Co Ltd).
13 April 2017	At the request of the then Parliamentary Secretary, the Commissioner initiated a single exporter review in relation to exports of rebar from Spain to Australia by Compania Espanola De Laminacion, S.L (Celsa Barcelona).

⁶ [ADN 2018/112](#)

⁷ [CON 486](#)

⁸ [CON 489](#)

⁹ www.adcommission.gov.au

¹⁰ On 1 September 2017, OneSteel Manufacturing Pty Ltd was acquired by the GFG Alliance and rebranded as Liberty OneSteel.

¹¹ [REP 264](#)

¹² Available at <https://adreviewpanel.gov.au/PastReviews/Pages/Steel-Reinforcing-Bar-exported-from-the-Republic-of-Korea%2c-Singapore%2c-Spain-and-Taiwan.aspx>

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	As a result of <i>Anti-Dumping Commission Report No. 380</i> , ¹³ the then Parliamentary Secretary published a notice that the dumping duty notice applying to the goods exported to Australia from Spain by Celsa Barcelona was taken to have effect as if different variable factors had been fixed in respect of Celsa Barcelona.
20 November 2017	The Commissioner initiated an inquiry into alleged circumvention activity in relation to the original notice applicable to rebar exported to Australia from Korea by Daehan. The circumvention activity alleged was the avoidance of the intended effect of the duty within the meaning of subsection 269ZDBB(5A) of the Act. The inquiry was terminated by the Commissioner on 26 April 2018. <i>AntiDumping- Commission Termination Report No. 452</i> (TER 452) refers. ¹⁴
6 August 2018	The Commissioner's decision in TER 452 was reviewed by the ADRP and the ADRP found that the decision was the correct and preferable decision. The ADRP's recommendation was published in ADRP Report No. 85. ¹⁵

2.3 The current measures

The goods exported from Korea and Taiwan (with the exception of Power Steel Co., Ltd)¹⁶ are currently subject to an *ad valorem* measure as follows:

Country	Exporter	Effective rate of duty
Korea	Daehan Steel Co., Ltd	9.7%
	Daehan Integrated Steel Co., Ltd	
	All other exporters	14.3%
Taiwan	Wei Chih Steel Industrial Co., Ltd	2.8%
	All other exporters	6.8%

2.4 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally.¹⁷ Accordingly, the affected party may apply for, or the Minister may request the Commissioner conduct, a review of those measures if one or more of the variable factors has changed.¹⁸

The Minister may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the dumping duty notice or

¹³ [REP 380](#)

¹⁴ [TER 452](#)

¹⁵ Available at https://adreviewpanel.gov.au/CurrentReviews/Pages/2018_85-Steel-Reinforcing-Bar-exported-from-the-Republic-of-Korea-by-Daehan-Steel-Co-%2c-Ltd.aspx

¹⁶ Power Steel Co., Ltd are subject to separate anti-dumping measures imposed from 8 March 2018 at an effective rate of duty of 4.4%.

¹⁷ Subsections 269ZA(1)(a), (b) of the Act.

¹⁸ Subsection 269ZA(1)(b) of the Act.

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countervailing duty notice or the notice(s) declaring the outcome of the last review of the dumping or countervailing duty notice.¹⁹

If an application for a review of anti-dumping measures is received and not rejected, within 110 days of the initiation of a review, or such longer time as the Minister may allow, the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Minister concerning the review of the anti-dumping measures.²⁰ The Commissioner has up to 155 days, or such longer time as the Minister may allow, to conduct a review and report to the Minister on the review of the anti-dumping measures.²¹

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

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

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

- 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;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.²²

The Commissioner may also have regard to any other matter considered to be relevant to the review.²³

At the conclusion of this review, in respect of the dumping duty notice, the Commissioner must provide a final report making a recommendation to the Minister that the dumping duty notice:

- remain unaltered; or
- has effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.²⁴

Following the Minister's decision, the Minister must give notice of the decision.²⁵

¹⁹ Subsection 269ZA(2)(a) of the Act.

²⁰ Subsection 269ZD(1) of the Act.

²¹ Subsection 269ZDA(1) of the Act.

²² Subsection 269ZDA(3)(a) of the Act.

²³ Subsection 269ZDA(3)(b) of the Act.

²⁴ Subsection 269ZDA(1)(a) of the Act.

²⁵ Subsection 269ZDB(1) of the Act.

2.4.1 Extension of time

The SEF for this review was originally due to be placed on the public record by 19 November 2018. The Commissioner has granted an extension of time for the completion of this SEF as per ADN No. 2018/171.²⁶ As a result, this SEF is due to be placed on the public record by no later than 17 February 2019.²⁷ The Commissioner's Final Report and recommendations to the Minister is now due to be provided to the Minister on or before 3 April 2019.

2.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister. The SEF represents an important stage in the review because it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether the dumping duty notice should be varied, and the extent of any interim duties that are, or should be payable.

Interested parties are invited to lodge written submissions in response to this SEF no later than the close of business on **11 March 2019**.²⁸ The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.²⁹ The Commissioner must report to the Minister on or before **3 April 2019**.

²⁶ [EPR 008](#)

²⁷ However, as this publication date is a Sunday, the effective due date for publication of the SEF is the following business day, Monday 18 February 2019.

²⁸ In accordance with subsection 269ZDA(3)(a)(iv) of the Act. However, as 20 days from the publication of this SEF is a Sunday, the effective due date for submissions in response to the SEF is the following business day, Monday 11 March 2019.

²⁹ Subsection 269ZDA(4) of the Act.

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Submissions should preferably be emailed to investigations4@adcommission.gov.au. Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

The Director - Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record (clearly marked "PUBLIC RECORD").³⁰

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents.

Documents on the public record for this review should be read in conjunction with this SEF.³¹

³⁰ A guide for making submissions is available at the Anti-Dumping Commission's web site www.adcommission.gov.au.

³¹ Public records for both case 486 and case 489 are available at www.adcommission.gov.au.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject to anti-dumping measures, in the form of a dumping duty notice, are:

- *Hot-rolled deformed steel reinforcing bar whether or not in coil form;*
- *Commonly identified as rebar or debar;*
- *In various diameters up to and including 50 millimetres;*
- *Containing indentations, ribs, grooves or other deformations produced during the rolling process; and*
- *Regardless of the particular grade or alloy content or coating.*

Goods excluded from the measures are:

- *Plain round bar;*
- *Stainless steel; and*
- *Reinforcing mesh.*

3.2 Tariff classification

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

- 7213.10.00 statistical code 42;
- 7214.20.00 statistical code 47;
- 7227.90.10 statistical code 69;
- 7227.90.90 statistical code 01, 02 and 04;
- 7228.30.10 statistical code 70;
- 7228.30.90 statistical code 40;
- 7228.60.10 statistical code 72.

3.3 Like goods

Subsection 269T(1) defines like goods as:

“goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.

The definition of like goods is relevant in the context of reviews, among other things, in determining the normal value of goods exported to Australia, the non-injurious price and the goods subject to the dumping duty notice.

4 VARIABLE FACTORS

4.1 Findings

The Commission has found that, in relation to rebar exported to Australia from Korea and Taiwan (with the exception of Power Steel Co., Ltd) during the review period (1 July 2017 to 30 June 2018):

- the ascertained export price;
- the ascertained normal value; and
- the non-injurious price

relevant to the taking of the anti-dumping measures have changed.

4.2 Exporter questionnaires and verification

For these reviews, the Commission provided Korean and Taiwanese rebar exporters with an exporter questionnaire to complete. Daehan and Wei Chih Steel Industrial Co., Ltd (Wei Chih) each provided a detailed response to the exporter questionnaire (REQ), including data relating to Australian sales, domestic sales, and details of the cost to make and sell (CTMS).³²

The Commission conducted on-site verification of the information provided by both Daehan and Wei Chih. The Commission's verification reports are available on the Commission's website.³³

The Commission is satisfied with the accuracy, relevance and completeness of the information provided by the exporters.

4.2.1 Relevant information received from other sources

The Commission provided Australian importers of rebar with the opportunity to provide information.

Submissions were received from Liberty Steel in response to both Daehan's and Wei Chih's exporter questionnaire responses.³⁴

In its submission of 28 October 2018 regarding exports from Wei Chih,³⁵ Liberty Steel stated its opinion on the most appropriate categories for a model control code for the goods, and raised its concerns regarding the need for clarity around the theoretical or actual weight basis of both export and domestic sales.

The Commission considered the issues raised in Liberty Steel's submission when the Commission conducted its exporter verification visit for Wei Chih.³⁶ The Commission's approach to matching comparable sales of domestic and export models for this review is

³² Non-confidential versions of the REQ for each exporter are available at [EPR 004](#) and [EPR 005](#)

³³ [EPR 012](#) and [EPR 013](#)

³⁴ [EPR 006](#), [EPR 007](#) and [EPR 009](#)

³⁵ [EPR 006](#)

³⁶ The Commission's verification report for Wei Chih is available at [EPR 012](#)

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discussed further at 4.3.2 below. With regards to the issue raised by Liberty Steel in relation to the use of a theoretical or actual weight basis for sales, the Commission notes that Wei Chih sells goods on both a theoretical weight and actual weight basis, dependent on the customer's requirement, however the Commission does not consider that the sales quantity has an effect on the price of the goods.

In its submission of 1 November 2018 regarding exports from Daehan,³⁷ Liberty Steel stated its opinion on the most appropriate categories for a model control code for the goods, and expressed its support for the Commission's treatment of barter sales and claims for specific adjustments as set out in the Commission's anti-circumvention inquiry 452.³⁸

The Commission considered the issues raised in Liberty Steel's submission, when the Commission conducted its exporter verification visit for Daehan.³⁹ As stated above, the Commission's approach to model matching for this review is discussed further at 4.3.2 below. With regards to the treatment of barter sales and claims for specific adjustments, the Commission approached these issues in a manner consistent with the earlier anti-circumvention case.

A submission⁴⁰ from Liberty Steel was also received regarding the date the Minister could declare the duty to be payable from, and a proposal as to the form that the duty should take following this review.

Liberty Steel submitted that the Minister has the power under subsection 269ZDB(6)(a) to declare that duty is payable from the date of publication of a notice initiating a review. Liberty Steel proposed that as a matter of practice the Commission should '*recommend to the Minister that any declaration made under s. 269ZDB(1) should specify the date on which responses to the Exporter Questionnaires were due, to be the date on which the declaration is to be taken to have had effect...*'. The basis for this proposed date is that by preparing and providing a response to the Commission's exporter questionnaire, an exporter has, from that date, '*constructive notice of their future duty liability*', and that a practice change would discourage exporters from attempting to exploit any perceived duty advantage while the review is conducted.

The Commission agrees that subsection 269ZDB(6)(a) permits the Minister to make a declaration which has limited retrospective effect. The Commission's established practice, however, is to recommend that the outcome of a review has effect from the date the Minister publishes a notice advising the outcome of the review. This approach is based on the principle that, in general, market participants should be able to make commercial decisions with certainty about the duty liability of any imports. While Liberty Steel notes that 'the exporters have in effect, constructive notice of their future duty liability', it is importers which are liable for the payment of interim duty. The Commission's practice ensures regulatory certainty for importers and facilitates an Australian trade remedies system that is transparent. The Commission does not consider that there are grounds to

³⁷ [EPR 007](#)

³⁸ See the Commission's findings for this anti-circumvention inquiry at [TER 452](#)

³⁹ The Commission's verification report for Daehan is available at [EPR 013](#)

⁴⁰ [EPR 009](#)

depart from its normal practice concerning the date of effect of any changes arising from this review.

The Commission's approach to the form of duty is discussed at 6.3 below.

4.3 Model matching

4.3.1 Commission's approach in the original investigation

In REP 264,⁴¹ the Commission had regard to available evidence when considering the most appropriate criteria for identifying which models sold in the exporter's domestic market most closely corresponded to the models exported to Australia. The model-matching factors, applied on a specific exporter basis, included minimum yield strength, form (straight lengths or in coil) and diameter of the goods.

4.3.2 Commission's approach to model matching in this SEF

The Commission applied the following criteria to match rebar sold domestically with rebar exported to Australia:

Country	Model matching criteria
Korea	<ul style="list-style-type: none">• Form (only coils exported to Australia)• Diameter• Grade (incorporates Standard, yield strength and carbon content differences)• Ductility• Alloy• Coating
Taiwan	<ul style="list-style-type: none">• Quality• Grade

4.4 Exporter from Korea - Daehan

4.4.1 The exporter

The goods exported to Australia from Korea during the review period were produced by Daehan. Daehan is listed on the Korean Stock Exchange, and has seven subsidiary companies and one affiliated company. The Commission found that while Daehan sells the goods under consideration to one of its subsidiary companies, the Commission did not find evidence to suggest that these sales were not arm's length transactions.

For all Australia export sales during the review period, the Commission considers Daehan to be the exporter of the goods. The Commission found that during the review period, Daehan manufactured and exported rebar to two importers in Australia. One importer, dealt directly with Daehan, while the other purchased the goods through an intermediary, which is a related company

⁴¹ [REP 264](#)

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The Commission considers DITH, to be the beneficial owner and importer of the goods at the time of importation as DITH was:

- declared as the importer on the importation declaration to ABF;
- arranged customs clearance and paid duties;
- paid for all importation charges; and
- arranged for delivery within Australia.

The use of an intermediary in some of the export sales during the review period does not alter the Commission's view that Daehan is the exporter of the goods.

4.4.2 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are arms length transactions under section 269TAA. Subsection 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid or payable for the goods by the importer where, inter alia, the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in arms length transactions. Subsection 269TAB(1)(c) provides for the determination of the export price, by having regard to all circumstances of the exportation, for circumstances where subsections 269TAB(1)(a) or 269TAB(1)(b) do not apply.⁴²

For the goods that were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter, the Commission calculated the export price under subsection 269TAB(1)(a), being the price paid by the importer to the exporter less transport and other costs arising after exportation.

For other export sales where there was an intermediary involved between the exporter and importer, the Commission calculated the export price under subsection 269TAB(1)(c) based on all the circumstances of exportation, and using the price between Daehan and the intermediaries involved in the sale to Australia.

4.4.3 Normal value

Subsection 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are arms length transactions by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.

The Commission considers that all domestic sales by Daehan during the review period were arms length transactions as there was no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or

⁴² To apply the provisions of subsections 269TAB(1)(a) or (b), the sale must be between the importer and exporter and the goods must have been exported by someone other than the importer. Where an intermediary is the vendor, directly dealing with the importer in Australia, export price will not be assessed under these provision as there has been no purchase by the importer from the exporter.

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- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

Section 269TAAD provides that if like goods are sold in the domestic market at a price less than the cost of such goods, and those costs are unrecoverable within a reasonable period, then the like goods are taken not to have been sold in OCOT.

After comparing the revenue for each domestic sale of like goods to the corresponding quarterly domestic cost to make and sell to test for profitability, the Commission found that domestic sales of 5 models of like goods were in OCOT.

The Commission also found that a significant volume of domestic rebar sales were made under a barter arrangement, whereby Daehan received deformed bar-in-lengths in return. Consistent with the original investigation, the Commission excluded these sales from the normal value calculations.

The Commission is satisfied there are sufficient volumes of domestic sales of rebar, for all models except one, exported to Australia by Daehan that are arms length transactions, and at prices within OCOT. For one export model there were no sales of an identical model on the domestic market in OCOT. For this export model, a specification adjustment was made to the selling price of the next closest matching domestic model with sufficient sales within OCOT to determine the normal value, accounting for the specification difference between models. Based on this, the Commission is satisfied the prices paid in respect of domestic sales of rebar are suitable for assessing normal value under subsection 269TAC(1).

4.4.4 Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with subsection 269TAC(8), and considers these adjustments necessary to ensure a fair comparison of Daehan's normal values and export prices.

Adjustment type	Deduction/addition
Domestic inland transport	Deduct the cost of domestic inland transport
Domestic credit cost	Deduct the cost of domestic credit
Export inland transport	Add the cost of export inland transport
Export handling, loading and ancillary expenses	Add the cost of export handling, loading and ancillary expenses
Specification adjustment	For the model with no sales in OCOT

4.4.5 Dumping Margin

The Commission calculated a dumping margin in respect of the goods exported to Australia by Daehan for the review period. The dumping margin is **3.8 per cent**.

The Commission's calculations are included at **Confidential Appendix 1**.

4.4.6 Uncooperative exporters and all other exporters

Subsection 269T(1) provides that an exporter is an “uncooperative exporter”, where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation, within a period the Commissioner considered to be reasonable or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states at subsection 8(b)(i) that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period.

After having regard to the Direction, the Commissioner has determined that all exporters which did not provide a response to the exporter questionnaire, or which did not request a longer period to provide a response within the legislated period (being 37 days), are uncooperative exporters for the purposes of this review.

Exporter price and normal value

Subsection 269TACAB(1) sets out the provisions for calculating export price and normal value for uncooperative exporters. In the original investigation⁴³, for uncooperative and all other exporters from Korea, the export price and normal value were worked out in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively by having regard to all relevant information. Specifically, the Commission had regard to the highest weighted average normal value and the lowest weighted average export price from the quarter of the investigation with the greatest dumping margin from the cooperating exporters.

In this review, the Commission identified only one exporter from Korea during the review period. After having regard to all relevant information, the export price for all other exporters was established in accordance with subsection 269TAB(3), using Daehan’s export price for the entire investigation period, excluding any part of that price that relates to post-exportation charges. Similarly, the normal value for all other exporters was calculated in accordance with subsection 269TAC(6), using Daehan’s normal value for the entire investigation period, excluding any favourable downward adjustments.

Dumping margin

The dumping margin for uncooperative and all other exporters from Korea was established in accordance with subsection 269TACB(2)(a) of the Act, by comparing the export prices established under subsection 269TAB(3) with the normal values established under subsection 269TAC(6).

The dumping margin applicable to uncooperative and all other exporters from Korea is **3.9 per cent**.

⁴³ [REP 264](#)

The Commission's calculations are included at **Confidential Appendix 3**.

4.5 Exporter from Taiwan – Wei Chih

4.5.1 The exporter

The goods exported to Australia from Taiwan during the review period were produced by Wei Chih. Wei Chih is a publicly-traded company on the Taiwan Stock Exchange, with no parent company, nor subsidiaries.

For all Australian export sales during the review period, the Commission considers Wei Chih to be the exporter of the goods. The Commission found that Wei Chih manufactured and exported rebar directly to Australian importers during the review period.

The Commission considers Wei Chih to be the exporter of the goods, as Wei Chih remained the principal in the transaction, located in the country of export from where the goods were shipped, and gave up responsibility by knowingly placing the goods in a position that they could be exported to Australia.

4.5.2 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are arm's length transactions under section 269TAA. Subsection 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid or payable for the goods by the importer where, inter alia, the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in arm's length transactions.

The Commission considers that all domestic sales by Wei Chih during the review period were arms length transactions as there was no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The Commission is satisfied that Wei Chih is the exporter, and the goods were exported to Australia otherwise than by the importer and were purchased in arm's length transactions by the importer from the exporter. Accordingly, the Commission calculated the export price for Wei Chih under subsection 269TAB(1)(a), being the price paid by the importer to the exporter less transport and other costs arising after exportation.

4.5.3 Normal value

The Commission found that there was either an absence, or not sufficient volumes, of sales of domestic models in the domestic market, that were comparable to the models Wei Chih exported to Australia. The Commission therefore constructed normal values under subsection 269TAC(2)(c), and determined an amount of profit in accordance with

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section 45 of the *Customs (International Obligations) Regulation 2015* (the Regulations). Subsection 45(2) of the Regulations requires that, where practicable, profit for constructed normal values under subsection 269TAC(2)(c) must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the OCOT.

4.5.4 Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with subsection 269TAC(9), and considers these adjustments necessary to ensure a fair comparison of Wei Chih's constructed normal values and export prices (to Australia at free-on-board (FOB) terms).

Adjustment type	Deduction/addition
Export inland transport	Add the cost of export inland transport
Export handling, loading and ancillary expenses	Add the cost of export handling, loading and ancillary expenses
Export sales commission	Add the cost of export sales commission

4.5.5 Dumping Margin

The Commission calculated a dumping margin in respect of the goods exported to Australia by Wei Chih for the review period. The dumping margin is **-0.4 per cent**.

The Commission's calculations are included at **Confidential Appendix 2**.

4.5.6 Uncooperative exporters and all other exporters

Subsection 269T(1) provides that an exporter is an "uncooperative exporter", where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation, within a period the Commissioner considered to be reasonable or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states at subsection 8(b)(i) that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period.

After having regard to the Direction, the Commissioner has determined that all exporters which did not provide a response to the exporter questionnaire, or which did not request a longer period to provide a response within the legislated period (being 37 days), are uncooperative exporters for the purposes of this inquiry.

Exporter price and normal value

Subsection 269TACAB(1) sets out the provisions for calculating export price and normal value for uncooperative exporters. The Commission identified only one exporter from Taiwan (with the exception of Power Steel Co., Ltd) for the review period. After having regard to all relevant information, the export price and normal value for all other exporters

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was established in accordance with subsection 269TAB(3), and subsection 269TAC(6) respectively.

Dumping margin

The dumping margins for uncooperative and all other exporters from Taiwan (with the exception of Power Steel Co., Ltd) was established in accordance with subsection 269TACB(2)(a) of the Act, by comparing the export prices established under subsection 269TAB(3) with the normal values established under subsection 269TAC(6).

The dumping margin applicable to uncooperative and all other exporters from Taiwan (with the exception of Power Steel Co., Ltd) is **-0.4 per cent**.

The Commission's calculations are included at **Confidential Appendix 3**.

5 NON-INJURIOUS PRICE

5.1 General

The Non-Injurious Price (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 goods the subject of a dumping duty notice.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). The Commission’s preferred approach to establishing the USP is set out in Chapter 23 of the *Dumping and Subsidy Manual* and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

5.2 Original Investigation

In REP 264,⁴⁴ the Commission was not satisfied that an USP could be established using industry selling prices at a time unaffected by dumping or using constructed industry price, due to the Commission being unable to substantiate claims from the Australian industry of the existence of dumping preceding the investigation, and there being no satisfactory evidence to establish a profit level in constructing an USP. The Australian industry submitted that it established pricing for rebar relative to landed import prices. The Commission therefore adopted the view that in a market unaffected by dumping, it is reasonable to expect that the Australian industry would continue to set its prices with regard to benchmarked import prices. As the price of imports would be higher at least by the dumping margins found, it would be expected that Australian industry prices would also be higher at least by the percentage of the dumping margin’s found.

It was on this basis that the Commission considered that the NIP for each exporter would be a price equal to the respective normal value.

⁴⁴ [REP 264](#)

5.3 Assessment of NIP

Consistent with the Commission's approach in the original investigation, and subsequent dumping cases for rebar exported to Australia,⁴⁵ the NIP has been assessed to be a price equal to the normal value determined for each exporter.

In considering an appropriate method to assess the NIP for this review, the Commission has taken into account the market based pricing policy⁴⁶ of the Australian industry, and whether it is reasonable to expect that Liberty Steel would continue to implement this policy in the future and in a market unaffected by dumping, where that market continues to be supplied by imports subject to measures and other imports.

The Commission has also had regard to the findings in previous dumping cases for rebar regarding the suitability of determining an USP based on a constructed USP with unsatisfactory evidence regarding a profit level, or on the selling price of un-dumped imports into the Australian market. The Commission continues to be of the view that these methods would be insufficient to prevent injury caused by dumping, and that setting the NIP at normal value is the most effective method to remove the effects of dumping.

5.4 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).

The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Minister must also have regard to the desirability of fixing a lesser amount of duty.

Pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. Neither of those circumstances (being the composition of the Australian industry, or the method of ascertaining normal value in circumstances of a particular market situation in the country of export), are relevant to the present review.

As the NIP is set at the same price as the normal value for each exporter, and is not less than the normal value, the Minister is not required to have regard to the lesser duty rule.

⁴⁵ See previous cases discussed at 2.2 above, and cases regarding measures for steel reinforcing bar on exports of other countries listed on the Commission's website.

⁴⁶ Whereby the Australian industry prices its goods based on the lowest import offers received by an individual customer.

6 FINDINGS AND PROPOSED RECOMMENDATIONS

6.1 Summary of findings

The Commissioner has found in relation to exports to Australia of rebar (the goods) from Korea and Taiwan (with the exception of Power Steel Co., Ltd) during the review period:

- the ascertained normal value has changed;
- the ascertained export price has changed; and
- the ascertained NIP should be set equal to the ascertained normal value, meaning that the ascertained NIP has changed.

6.2 Proposed recommendations

The Commissioner proposes to recommend to the Minister that the dumping duty notice have effect in relation to all exporters from Korea and Taiwan (with the exception of Power Steel Co., Ltd) as if different variable factors had been ascertained.

The Commissioner proposes to recommend that the ascertained NIP be determined such that it is equal to the ascertained normal value.

The Commissioner also proposes to recommend that the amount of IDD payable be specified in accordance with:

- for all exporters from Korea, the *ad valorem method*; and
- for all exporters from Taiwan (with the exception of Power Steel), the floor price method.

6.3 Form of measures

The current form of measures applicable to rebar from Korea and Taiwan is an amount which will be worked out in accordance with the *ad valorem* method pursuant to subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. The *ad valorem* method expresses the dumping margin as a proportion of the export price of the goods to obtain the interim dumping duty payable on the goods.

6.3.1 Submission received on form of measures

In its submission of 19 November 2018,⁴⁷ Liberty Steel claimed that the current form of measures, being an *ad valorem* duty, was insufficient to prevent exporters from significantly lowering their export prices to avoid the effects of any duty. Liberty Steel proposed that the combination method of duty, where an *ad valorem* rate and a variable rate set at the ascertained export price is imposed, would be more appropriate and lessen the ability for exporters to effectively avoid the effects of any duty.

⁴⁷ [EPR 009](#)

6.3.2 The Commission's approach to form of measures

In considering the appropriate form of measures the Commission has had regard to Liberty Steel's submission and the *Guidelines on the Application of Forms of Dumping Duty – November 2013* (the Guidelines),⁴⁸ noting that rebar is a product that demonstrates significant price volatility due to its high correlation with global steel prices. The Guidelines specify that the *ad valorem* duty method has an advantage for goods which are subject to significant price variations over time because:

- a) it does not show the same variability in the 'effective rate' of the duty – as export prices fluctuate – that arises under the other methods; and
- b) may require less frequent reviews than other duty methods in this situation.

The Commission generally considers the *ad valorem* duty method appropriate given the volatility of rebar prices over time.

For this review, the Commission considers that the *ad valorem* method remains the most appropriate form of measures to be applied to exports from Korea, as there is no evidence that exporters have lowered their export prices to avoid the effects of any duty. The Commission's findings regarding the dumping of the goods during the review period is discussed at 4.4.5 and 4.4.6 above.

With respect to conducting a review of measures, where the Commission has determined that there is no dumping, or a negative dumping margin for a specific exporter, the Commission usually considers it appropriate to use a floor price method of calculating interim dumping duty. Accordingly, the Commission considers that the form of measures applied to exports from Taiwan should be determined in accordance with the floor price method, with the floor price set equal to the normal value. The Commission considers that as the goods exported from Taiwan, during the review period, were not found to be at dumped prices as discussed at 4.5.5 and 4.5.6 above, the setting of a floor price is most appropriate form of measure to prevent future injury being caused to the Australian industry.

⁴⁸ The [Guidelines](http://www.adcommission.gov.au), available at www.adcommission.gov.au.

7 APPENDICES

Confidential Appendix 1	Dumping margin calculations for Daehan
Confidential Appendix 2	Dumping margin calculations for Wei Chih
Confidential Appendix 3	Dumping margin calculations for uncooperative and all other exporters for Korea and Taiwan