



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

ANTI-DUMPING COMMISSION

REPORT NO. 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)**

17 April 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 and sell
Daehan	Daehan Steel Co. Ltd
DBIC	deformed bar-in-coil
DBIL	debar in lengths
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
FTC investigation	South Korea's Fair Trade Commission's investigation
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
MCC	Model Control Codes
NIP	non-injurious price
OCOT	ordinary course of trade
rebar	steel reinforcing bar
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 264	<i>Anti-Dumping Commission Report No. 264</i>
REQ	Response to the Exporter Questionnaire
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
USP	unsuppressed selling price
Wei Chih	Wei Chih Steel Industrial Co., Ltd
WTO	World Trade Organization

1 SUMMARY

1.1 Introduction

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner) recommendations to the Minister for Industry, Science and Technology (the Minister) in relation 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

These reviews of measures are 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 sole Australian manufacturer of rebar, requested a review of the variable factors in relation to all exporters from Korea and Taiwan 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, among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which applications for a review of anti-dumping measures can be brought;
- sets out the procedures to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate.

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:

- (i) remain unaltered;

¹ This report refers to "the subject exporters", meaning those exporters which are subject to the dumping duty notice and the present review of measures. Accordingly, the Commission's findings in this review do not have any impact on the dumping duty notice to which Power Steel is subject.

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

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- (ii) be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- (iii) have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

1.3 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 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 Recommendation

The Commissioner recommends to the Minister that the dumping duty notice has effect in relation to all exporters from Korea and Taiwan as if different variable factors had been ascertained.

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. 2018/112, *Consideration Report No. 486* and *Consideration Report No. 489*, which are all available on the electronic public record (EPR) maintained on the Commission website.³

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 website. 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. ⁴
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 as a result of <i>Anti-Dumping Commission Report No. 264</i> (REP 264). ⁵
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. ⁶ 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.
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). As a result of <i>Anti-Dumping Commission Report No. 380</i> , ⁷ the then Parliamentary Secretary published a notice that the dumping duty notice applying to the goods

³ [ADN No. 2018/112](#), [Consideration Report No. 486](#) and [Consideration Report No. 489](#) refer, all available on the Commission website, www.adcommission.gov.au.

⁴ On 1 September 2017, OneSteel Manufacturing Pty Ltd was acquired by the GFG Alliance and rebranded as Liberty OneSteel.

⁵ [REP 264](#)

⁶ Available at <https://adreviewpanel.gov.au/PastReviews/Pages/Steel-Reinforcing-Bar-exported-from-the-Republic-of-Korea%2c-Singapore%2c-Spain-and-Taiwan.aspx>

⁷ [REP 380](#)

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	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>Anti-Dumping Commission Termination Report No. 452</i> (TER 452) refers. ⁸
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. ⁹

2.3 The current measures

The goods exported from Korea and Taiwan¹⁰ are currently subject to an *ad valorem* measure as follows:

Country	Exporter	Effective rate of duty
Korea	Daehan Steel Co., Ltd Daehan Integrated Steel Co., Ltd	9.7%
	All other exporters	14.3%
Taiwan	Wei Chih Steel Industrial Co., Ltd	2.8%
	All other exporters (with the exception of Power Steel Co., Ltd)	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.¹¹ 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.¹²

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 countervailing duty notice or the notice(s) declaring the outcome of the last review of the dumping or countervailing duty notice.¹³

⁸ [TER 452](#)

⁹ 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

¹⁰ 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%.

¹¹ Subsection 269ZA(1) of the Act.

¹² Subsection 269ZA(1) of the Act.

¹³ Subsection 269ZA(2)(a).

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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.¹⁴ 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.¹⁵

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:¹⁶

- 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 considered to be relevant to the review.¹⁷

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.¹⁸

Following the Minister's decision, the Minister must give notice of the decision.¹⁹

2.5 Statement of Essential Facts

On 18 February 2019, the Commissioner placed on the public record *Statement of Essential Facts No. 486 and 489* (SEF486 and 489)²⁰ to inform all interested parties of

¹⁴ Subsection 269ZD(1).

¹⁵ Subsection 269ZDA(1).

¹⁶ Subsection 269ZDA(3)(a).

¹⁷ Subsection 269ZDA(3)(b).

¹⁸ Subsection 269ZDA(1)(a).

¹⁹ Subsection 269ZDB(1).

²⁰ No. 14 on the public record.

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the essential facts on which the Commissioner proposed to base a recommendation to the Minister in relation to this review.

2.6 Submissions

The Commission received the following submissions during the course of this review.

Interested party	Date Published on EPR	Document No. on EPR ²¹
Liberty Steel	6 November 2018	006
Liberty Steel	6 November 2018	007
Liberty Steel	26 November 2018	009
Liberty Steel	4 March 2019	015
Daehan	12 March 2019	016
Wei Chih	12 March 2019	017
Liberty Steel	14 March 2019	018
Liberty Steel	19 March 2019	019
DITH	19 March 2019	020
Daehan	28 March 2019	021

Submissions received during course of review

Non-confidential versions of these submissions can be accessed on the EPR. The Commissioner has had regard to these submissions in deciding on the recommendations made to the Minister in this report. Details of submissions received, and the Commission's assessment of those submissions, are included in the relevant sections of this report.

2.7 Extension of time

The SEF for this review was originally due to be placed on the public record by 19 November 2018. The Commissioner granted one extension of time for the completion of the SEF and the final report as per ADN No. 2018/171.²² As a result, the SEF was placed on the public record on 18 February 2019.²³ Another extension was granted on 3 April 2019 as per ADN no. 2019/43²⁴ and the Commissioner's Final Report and recommendations to the Minister became due on or before 17 April 2019.

²¹ [EPR](#)

²² [EPR 008](#)

²³ 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.

²⁴ [EPR 022](#)

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 EXPORTERS AND VARIABLE FACTORS

4.1 Findings

The Commission has found that, in relation to rebar exported to Australia from Korea and Taiwan 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).²⁵

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.²⁶

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

4.2.1 Submissions received before the publication of the SEF

Submissions were received from Liberty Steel in response to both Daehan's and Wei Chih's exporter questionnaire responses.²⁷

Liberty Steels' submission,²⁸ dated 14 February 2019 and the submissions relating generally to Daehan and Wei Chih included in Liberty Steel's post-SEF submissions,²⁹ have been addressed collectively in the relevant sections of this report.

Date the Minister could declare the duty to be payable

In their submission³⁰ dated 19 November 2018, Liberty Steel expressed its views 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.

²⁵ Non-confidential versions of the REQ for each exporter are available at [EPR 004](#) and [EPR 005](#)

²⁶ [EPR 012](#) and [EPR 013](#)

²⁷ [EPR 006](#), [EPR 007](#) and [EPR 009](#)

²⁸ [EPR 015](#) refers

²⁹ [EPR 018](#) refers

³⁰ [EPR 009](#)

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.

Commission assessment

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 depart from its normal practice concerning the date of effect of any changes arising from these reviews.

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

4.3 Model matching

4.3.1 Commission’s approach in the original investigation

In REP 264,³¹ 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 these reviews

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

³¹ [REP 264](#)

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	<ul style="list-style-type: none">• Grade (incorporates Standard, yield strength and carbon content differences)• Ductility• Alloy• Coating
Taiwan	<ul style="list-style-type: none">• Quality• Grade

4.3.3 Submissions received in response to the publication of the SEF

Model matching criteria

In response to SEF 486 and 489, Liberty Steel submitted³² that:

- the existence of a maximum carbon equivalent specification as an indicator of product prequalification for welding, should be considered as a mandatory reporting category within the model control codes; and
- the Commission publish an issues paper summarising the exporter's domestic sold grade with the most comparable grades exported to Australia.

Commission assessment

In determining appropriate model matching criteria for these reviews, the Commission considered claims made by interested parties to the review in addition to considering the model matching criteria from the initial investigation REP 264 and the model matching issue paper.³³

During the exporter verification visits, the verification teams identified that the steel grade type in general incorporates standards, yield strength and carbon content differences. The Commission considers these factors are relevant in this review to distinguish the difference in domestic and export sales. The Commission also considers that these factors are relevant when determining most comparable models.

Based on Liberty Steel's comments, the Commission conducted further analysis considering the impact of carbon content and carbon equivalent value on the goods and its consequent impact on price. The Commission was unable to identify a correlation between these elements and the overall price.

The Commission therefore affirms the model matching approach taken for these reviews as outlined in subsection 4.3.2 and does not consider the publication of an issues paper is warranted.

³² [EPR Document 15](#) and [Document 18](#) refer

³³ [Model matching Criteria REP 264](#) refers

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 as:

- Daehan is the manufacturer for the goods exported to Australia;
- Daehan directed the production of the goods, took carriage of sourcing and allocating raw materials, therefore, the Commission considers Daehan is the principal in the transaction;
- Daehan has exported goods to Australia otherwise than by the importer;
- the goods have not been purchased by the importer from the exporter; and
- the purchases of the goods were arms' length transactions.

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, DITH Australia Pty Ltd (DITH), purchased the goods through an intermediary, Duferco Asia Pty Ltd (Duferco). Duferco is a company based in Singapore and is related to DITH.

Duferco facilitates the sale of the goods, then on sells the goods to DITH without further processing of the goods. In return for the facilitation of the purchases of the goods, Duferco receives a margin of each sale to DITH.

At the time of importation of the goods to Australia, DITH:

- is declared as the importer on the importation declaration to Australian Border Force (ABF);
- arranges customs clearance and payment of duties;
- pays for all importation charges; and
- arranges for delivery within Australia.

For these reasons, the Commission considers DITH to be the beneficial owner and importer of the goods. 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. To apply the provisions of subsections 269TAB(1)(a) or (b), the sale must be between the importer and

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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 provisions as there has been no purchase by the importer from the exporter. 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.

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 Submissions in response to the SEF

In its submission dated 14 February 2019, Liberty Steel queried the nature of the sales by Duferco to DITH. Liberty Steel submitted that the Commission ought to consider the selling, general and administrative (SG&A) costs of Duferco (the related-party trader) when determining the post-importation costs of DITH.

In response to this, in a submission of 18 March 2019, DITH submitted³⁴ that, whilst some sales were unprofitable, Duferco's sales of imported rebar from Korea were profitable on a weighted average basis across the review period. Further, DITH submitted that the profitability assessment by the Commission had already considered the fully absorbed cost to import and sell of Duferco and DITH.

Commission assessment

With respect to the profitability of DITH, the Commission confirms that it had regard to the prices between DITH and Duferco, and observed payments to Duferco to on-sell the goods to DITH. Accordingly, this cost to DITH has been considered by the Commission in assessing the overall profitability of DITH's sales.

4.4.4 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.

³⁴ EPR 018, 019 and 020 refers.

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The Commission considers that domestic sales by Daehan (other than the barter sales discussed later in this report) 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.

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 (DIBC) in return. Consistent with the original investigation, the Commission excluded these sales from the normal value calculations. Detailed assessment of barter sales is provided below at subsection 4.4.7.

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).

4.4.5 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 credit cost	Add the cost of export 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

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Specification adjustment	For the model with no sales in OCOT
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4.4.6 Submissions and Commission's consideration before publication of the SEF

In its submission of 1 November 2018 regarding exports from Daehan,³⁵ 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 452.³⁶

The Commission considered the issues raised in Liberty Steel's submission, both as part of its exporter verification visit to Daehan³⁷ and more broadly as part of this review. As stated above, the Commission's approach to model matching for this review is discussed further at subsection 4.3.2 above. With regards to the treatment of barter sales and claims for specific adjustments, the Commission approached these issues in a manner consistent with the initial investigation and an earlier anti-circumvention case.

In regards to Daehan's barter sales, the initial investigation found that Daehan's barter sales were not in the ordinary course of trade as they were based on a notional price rather than an actual price for which payment could be verified.

During the anti-circumvention investigation, Daehan claimed similar specific adjustments to those claimed in this review. The Commission did not accept Daehan's claims for adjustments as these were found to be only indirectly linked to sales of the goods, were not factored into the pricing of like goods and therefore did not affect price comparability.

4.4.7 Submissions in response to SEF

Liberty Steel

Model matching

Liberty steel requested clarifications and details of the domestic grade used for model matching purposes.

As set out in the Commission's verification report for Daehan, available on the Commission's website, the Commission used the following categories when comparing Daehan's sales of domestic models and export models as these were the only models sold into the Australian market:

Variable	Rationale for Model Matching	Used in Model Matching
Quality	No non-prime goods were sold	N
Production method	Single production method used for all Australian exports	N
Form	DBIL and coils produced, with only coils exported to Australia	Y

³⁵ [EPR 007](#)

³⁶ See the Commission's findings for this anti-circumvention inquiry at [TER 452](#)

³⁷ The Commission's verification report for Daehan is available at [EPR 013](#)

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Diameter	Diameter used to distinguish goods and determine price	Y
Standard	Single standard used for Australian exports. Grade considered more applicable for distinguishing goods and determining price.	N
Grade	Grade type incorporates standards, yield strength and carbon content differences. Grades of domestic and exported goods compared. Grade used to distinguish goods and determine price.	Y
Ductility	Ductility used to distinguish goods and determine price	Y
Carbon content	Grade considered more applicable for distinguishing goods and determining price.	N
Alloy	Difference in alloy type used to determine price	Y
Alloy content	Goods not distinguished on basis of alloy content of goods. Alloy type considered more applicable.	N
Sales quantity method	Not applicable for determining price	N
Coating	Difference in coating type used to distinguish goods and determine price	Y

Based on the exporter verification and information available, the Commission confirms the relevant grades used to compare domestic goods were equivalent to applicable Australian standards.

Adjustments

Liberty Steel

Liberty Steel submitted that the downward adjustments for domestic credit should not be applied when associated with a downstream processed product. Based on different payment terms in Korean domestic market, an upward adjustment to normal value should be applied.

The Commission has reviewed Daehan's information and confirmed that export credit costs were inadvertently not included in determining Daehan's normal value. The Commission has since revised the dumping margin calculation by taking account of the specific export credit terms and reconciling the amended normal value to verified source documents. As a result, there is a minor change in Daehan's dumping margin which has now been updated.

Daehan

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Daehan submitted³⁸ that the Commission should reconsider the adjustments for

- Technical support services;
- Coil test services; and
- Quality maintenance services.

Daehan claimed that these services formed part of the terms and conditions of the corresponding sales and indicated the price comparability has been affected.

Daehan presented two World Trade Organization (WTO) cases³⁹ in relation to Article 2.4 of the Anti-Dumping Agreement (ADA) regarding the due allowance. These cases confirm that Article 2.4 of the ADA requires a fact-based, case-by-case analysis of differences that affect price comparability and that due allowance should be made for any such differences.

The Commission reviewed information available about Daehan's claimed adjustments, including the outcomes of Daehan's exporter verification and the Commission's pricing analysis of Daehan's domestic and export sales. Daehan submitted that the factors listed above affected certain domestic selling prices and, for some domestic customers, certain specific goods. During verification of Daehan's data, the Commission found that the claimed technical support costs related to production of items that were not the goods under review. In relation to the claimed adjustments for coil testing and maintenance services, the Commission found that there was no evidence provided to demonstrate that these factors affected price comparability.

Therefore, based on the evidence before the Commission, Daehan's proposed adjustments do not affect price comparability between their domestic and export sales.

The Commission is therefore satisfied with these claimed adjustments are not warranted.

Barter sales

Daehan submitted that the sales arrangement in relation to Barter sales of DBIC have changed during the review period. Daehan submits that the arrangement differs from both the initial investigation REP 264⁴⁰ and anti-circumvention inquiry 452⁴¹ in a way that the actual selling price of comparable products sold and commercial sales are identical. Therefore, the barter sales ought to be included in the Commission's OCOT and normal value calculation.

Commission assessment

The Commission reviewed the exporter verification information and noted that a significant volume of domestic coil sales were made under a barter sale arrangement where Daehan sells coils to certain customers and receives other like goods (e.g.

³⁸ EPR Documents 012 and [016](#) refer.

³⁹ Panel report; WT/DS211/R, Egypt-Steel bar from Turkey, para 7.352, page 85 & Appellate Body report; WT/DS194/AB/R, US-Hot roll steel from Japan, para 177, page 60—61.

⁴⁰ [REP 264, Daehan exporter verification report page 28](#) refers.

⁴¹ [REP 452 Anti-Circumvention inquiry pager 9](#) refers.

straights in return). The sales price was formed from a published trade guide and appears to be a pre-determined price. However, there was insufficient information available for the Commission to determine an actual price for these sales. Hence the Commission is unable to determine a realistic profitability level or identify the length of storage, cost of storage and on-sell price for the like goods (e.g. straights) under the barter arrangements. For these reasons, the Commission was not satisfied that the barter sales were not made at a price that was less than the cost of the goods and that it was likely that Daehan would have been able to recover the cost of those goods in a reasonable period. As a result, the Commission considers that barter sales are not in the OCOT and affirms that barter sales are excluded from Daehan's normal value calculations.

4.4.8 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 **3.9 per cent**.

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

4.4.9 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.

Export price and normal value

Subsection 269TACAB(1) sets out the provisions for calculating export price and normal value for uncooperative exporters. In the original investigation⁴², 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.

⁴² [REP 264](#)

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In these reviews, 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 **4.0 per cent**.

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 also notes that 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 verification team considers that the customers listed for each shipment were the beneficial owners of the goods at the time of importation, and therefore were the importers of the goods.

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

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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.

The Commission is satisfied that Wei Chih is the exporter, 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.

In these circumstances, the Commission considers it appropriate to have regard to subsection 269TAC(2)(c), which provides that a constructed normal value is to be calculated as the sum of:

- such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade (OCOT) in the country of export, the SG&A costs associated with the sale, and an amount for profit.

Pursuant to the provisions of subsection 269TAC(2)(c) the Commission has calculated Wei Chih's normal value in accordance with the conditions set out in sections 43, 44, and 45 of the Regulation. In particular, the profit amount for Wei Chih has been determined in accordance with subsection 45(2), being an amount worked out by using the production and sale of like goods in the exporter's domestic market, sold in 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 Submissions and Commission's consideration before publication of the SEF

In its submission of 28 October 2018 regarding exports from Wei Chih,⁴³ 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.⁴⁴ The Commission's approach to matching comparable sales of domestic and export models for this review is discussed further at subsection 4.5.6 below.

4.5.6 Submissions in response to the SEF

Liberty Steel

In its submission dated 14 February 2019, Liberty Steel:

- submitted that, due to the absence and lower volume of domestic sales of S490, the domestic grades SD420 and SD420W should be considered as the most comparable model to the goods exported and Wei Chih's normal value should be considered under subsection 269TAC(1) with an upward specification adjustment; and
- reiterated their concerns in a previous submission regarding the theoretical or actual weight basis of both export and domestic sales.

In its submission dated 11 March 2019, Liberty Steel submitted that the Commission should consider any grade sold domestically based on pre-qualification for welding and carbon equivalent value for normal value calculation.

Wei Chih

In its submission dated 11 March 2019, Wei Chih disagreed with Liberty Steel's comments regarding comparable domestic models.

Commission assessment

The Commission reviewed the exporter verification and analysed the characteristics between the domestic models (S420 to S420W) that Liberty Steel argues are comparable models to the export model 500N. The Commission's analysis shows that models S420 to S420W differ in chemical composition and grade standards to the export model; domestic models include strengthening alloys whilst the export model is water quenched; and the domestic models do not meet Australian standards.

The Commission therefore affirms the views set out in subsection 4.5.3 that there were not sufficient volumes of sales of domestic models appropriately comparable to the models Wei Chih exported to Australia.

⁴³ [EPR 006](#)

⁴⁴ The Commission's verification report for Wei Chih is available at [EPR 012](#)

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The Commission has reviewed the calculations undertaken in respect of Wei Chih and confirms that the verified actual weight of goods has been applied in determining the dumping margin calculation for both export and domestic sales.

4.5.7 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**.

4.5.8 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 (for the review period). After having regard to all relevant information, the export price and normal value for all other exporters 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 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 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 264,⁴⁵ 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.

⁴⁵ [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,⁴⁶ 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 policy⁴⁷ 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 the level of the 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.

⁴⁶ 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.

⁴⁷ Whereby the Australian industry prices its goods based on the lowest import offers received by an individual customer.

6 FINDINGS AND EFFECT OF THE REVIEWS

6.1 Summary of findings

The Commissioner has found in relation to exports to Australia of rebar (the goods) from Korea and Taiwan 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 Recommendations

The Commissioner recommends to the Minister that the dumping duty notice have effect in relation to all exporters from Korea and Taiwan as if different variable factors had been ascertained.

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

The Commissioner also recommends 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 the floor price method.

6.3 Form of measures

The forms of duty available when implementing measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- combination of fixed and variable duty method (combination method);
- floor price duty method;
- fixed duty method (\$X per tonne); or
- *ad valorem* duty method (i.e. a percentage of the export price).⁴⁸

The current form of measures applicable to rebar from Korea and Taiwan is an amount 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 Submissions received before publication of the SEF

In its submission of 19 November 2018,⁴⁹ Liberty Steel claimed that the current form of measures, being an *ad valorem* duty, was insufficient to prevent exporters from

⁴⁸ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*

⁴⁹ [EPR 009](#)

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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.

6.3.2 Submissions in response to the SEF

Liberty Steel

In its submission⁵⁰ of 14 February 2019, Liberty Steel:

- submitted that the combination duty method was appropriate where dumping margins were positive, and a floor price based on the ascertained normal value be applied to exporters with negative dumping margins.
- further submitted that the combination duty method would prevent exporters' intentionally reducing export prices to offset the effect of the fixed amount of *ad valorem duty*.

In a further submission⁵¹ dated 11 March 2019, Liberty Steel:

- disagreed with the effectiveness of ad valorem measures. Liberty Steel noted that the ad valorem method may reduce 'variability' in a declining market; whilst an importer can, on a regular basis, seek a duty refund, and the Australian industry is likely to observe an ever decreasing 'effective rate', irrespective of whether those lower export prices are at greater rates of dumping;
- submitted that the decision to initiate a review of measures is entirely independent and based the changes in the variable factors, therefore the frequency of the review should be regarded as irrelevant;
- reiterated its arguments for combination duty method based on the *Guidelines on the Application of Forms of Dumping Duty – November 2013 (the Guidelines)* and submitted that during the review period:
 - Daehan has multiple subsidiary companies and its complex company structure can make circumvention of measures likely. Liberty Steel also referred to a recent article ⁵² from South Korea's Fair Trade Commission's investigation (FTC investigation) regarding Daehan's "*price falsification behaviour*";
 - the goods in this review only have limited models and measures can be applied more precisely,
 - the effective rate of duty is not relevant as Liberty Steel is not advocating a combination duty method that uses a 'fixed amount per unit';
 - the Commission should look at implementing more effective measures rather than the frequency of the reviews;
 - "the punitive effect" of measures should not be a relevant consideration; and
 - the normal value and ascertained export price for exporters can easily become out- of-date.

⁵⁰ Document 15 on the EPR refers

⁵¹ Document 18 on the EPR refers

⁵² Document 20 on the EPR refers

Wei Chih and Daehan

In their respective submissions of 11 March 2019, Wei Chih and Daehan disagreed that a combination duty method should be applied. Wei Chih and Daehan presented three previous reviews (380, 383 and 445) where both claimed the Commission has continued to leave the ad valorem duty unchanged from the original investigation in subsequent reviews, when a positive dumping margin has been determined.

Daehan

In its respective submission of 27 March 2019, Daehan strongly disagreed with the “*price falsification behaviour*” alleged by Liberty Steel.⁵³

- The FTC investigation was for Korean steel reinforcing bar and was not relevant to the Commission’s assessment on form of measures;
- the product involved in the FTC investigation was debar in lengths (DBIL) and not debar in coil (DBIC). As all of Daehan’s exports are DBIC, there is no link between the investigation into domestic sales of DBIL and Daehan’s exports of DBIC; and
- FTC investigation was targeting local producers of DBIL colluded to reduce sales discounts, in order to achieve higher net selling prices of DBIL products to domestic customers. If so, this has the effect of increasing the dumping margin.

Daehan submitted that there was no links exists between the FTC investigation into domestic sales of DBIL, with Daehan’s exports of DBIC.

Commission’s consideration

In considering the appropriate form of measures the Commission has had regard to all relevant submissions and the *Guidelines on the Application of Forms of Dumping Duty – November 2013* (the Guidelines),⁵⁴ 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 Guidelines set out issues to be considered when determining the form of duties. It is important to note that the various forms of dumping duty available all have the purpose of removing the injurious effects of the dumping. However, in achieving this purpose certain forms of duty will better suit particular circumstances more so than other forms of duty. The Guidelines list the key advantages and disadvantages of each form of duty.

6.3.3 Factors taken into consideration by the Commission

The Commission has weighed up a number of factors in determining which duty method is the most appropriate in the circumstances. These factors include:

⁵³ Document 21 on the EPR refers

⁵⁴ The [Guidelines](http://www.adcommission.gov.au), available at www.adcommission.gov.au.

Effectiveness of combination duty methods

Combination duty methods are considered to be suitable for exporters with limited models or types of the goods with minimal price differences. In addition, combination duties are effective in instances where there are complex company structures with related parties and price manipulation or circumvention of measures is likely. Conversely, there is a risk that a combination duty method can be unreasonably punitive, in situations where prices fluctuate, including in falling markets.

Effectiveness of ad valorem measures

Ad valorem measures are the simplest and easiest form of duty to administer and are suitable for goods which are subject to significant price variations over time because it does not lead to the same variability in the 'effective rate' of the duty, as export prices fluctuate, that arises under the other duty methods.

Potential for Circumvention

The Commission notes that one of the potential disadvantages of *ad valorem* measures is that export prices can be lowered to avoid the effects of the duty if circumvention exists.

In respect of Daehan sales, as stated in subsection 4.4.2, the export price of the arm's length transactions were determined under paragraph 269TAB (1)(a) using arm's length invoice prices less any other costs occurring after exportation.

For other export sales where there was an intermediary involved between the exporter and importer, the export price was determined 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.

A combination duty can be suitable for cases where the Commission considers that there is a likelihood of price manipulation because of complex related party company structures, or where there has been proven instances of price manipulation. While Liberty Steel provided information potentially relevant to Daehan's behaviour⁵⁵ in lowering export prices and price falsification, no evidence has been put forward to demonstrate:

- the alleged price falsification related to the goods exported to Australia within the review period;
- Daehan's prices were influenced by a commercial or any other specific commercial relationship; and
- any direct or indirect reimbursement or compensation was received in respect of, the whole or part of the price.

The Commission is of the view that the potential behaviour highlighted by Liberty Steel as a reason for changing the proposed form of measures has not been demonstrated as likely. Further, as stated in TER 452, whilst the Commission has found that Daehan has lowered its export price following imposition of the measures these relative changes were

⁵⁵ EPR 020 refers

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explained by external factors. In particular, the Commission found that scrap metal prices, which are a main raw material input used in the production of the goods, led to a significant reduction in Daehan's export price between 1 April 2016 and 31 March 2017.

Rebar market

The Commission considers that rebar is a commodity product where the price is largely determined by factors such as demand and supply. Price is also impacted by the costs of raw material inputs. In relation to rebar, the most significant cost component is scrap metal. In this regard, global indicators of scrap metal costs have been volatile during the review period and are trending downwards as depicted in Figure 1 and 2 below:

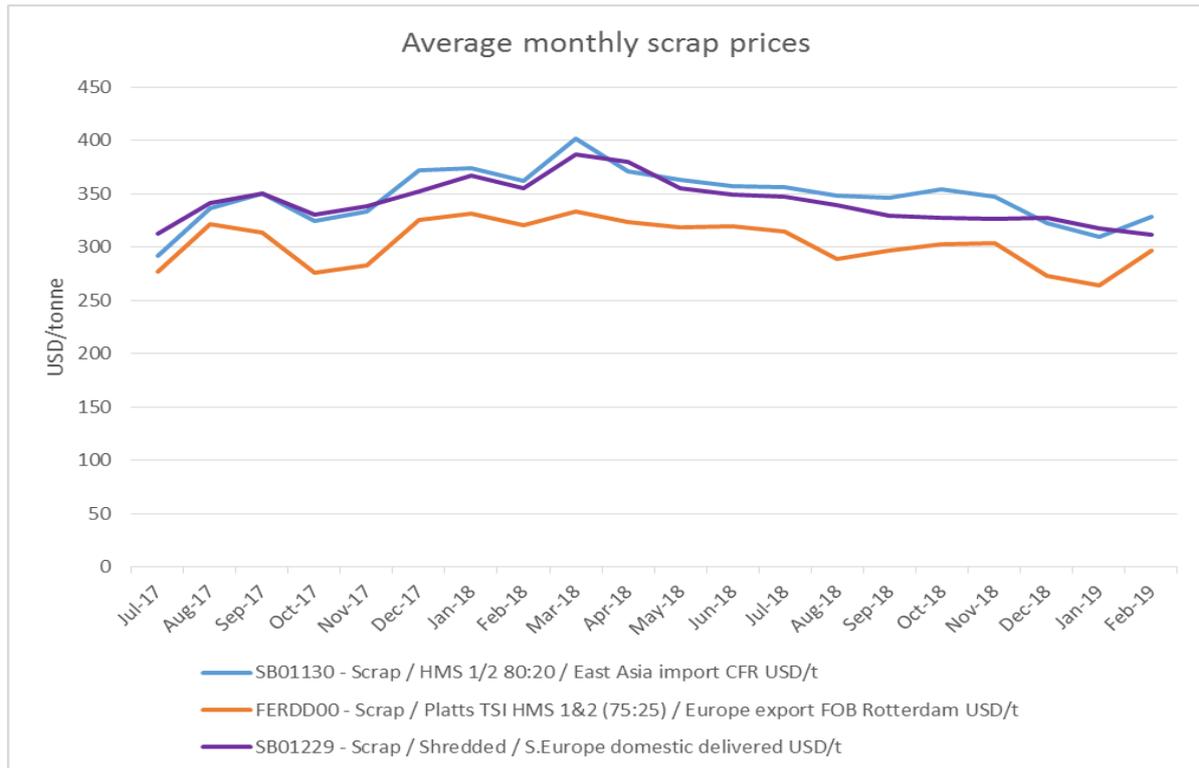


Figure 1: scrap metal prices July 2017 to February 2019⁵⁶

Source: SBB Steel Price

⁵⁶ SBB Steel Prices – <https://www.steelbb.com>



Figure 2: scrap metal prices July 2017 to February 2019⁵⁷

Source: Argus metal

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 section 4.5 above, the setting of a floor price is the most appropriate form of measure to prevent future injury being caused to the Australian industry.

Based on the above, there are indications that the prices for the main inputs into the production of rebar are volatile with an overall downwards trend. The level of volatility cast doubts as to whether the combination duty method is the most suitable measures. For these reviews, 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 section 4.4 above.

The Commission recognises Liberty Steel’s concerns about an appropriate form of measures, but based on the evidence available the Commissioner is satisfied that the *ad valorem* duty method is the most appropriate form of measure in the circumstances for

⁵⁷ Argus Metals – <https://metals.argumedia.com>

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exporters from Korea. The Commission's detailed analysis of forms of measures is included at **Confidential Appendix 5**.

7 RECOMMENDATIONS

The Commissioner recommends that the Minister be SATISFIED that:

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of rebar exported to Australia by 'uncooperative and all other' exporters from Korea and Taiwan, to be ascertained under subsections 269TAB(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished, or is not available, to enable the normal value of rebar exported to Australia to be ascertained under the preceding provisions of subsection 269TAC for 'uncooperative and all other' exporters from Korea and Taiwan.

The Commissioner recommends that the Minister DETERMINE:

- in accordance with subsection 269TAB(1)(c), that the export prices of certain shipments of rebar exported to Australia from Korea by Daehan, having regard to all the circumstances of the exportation, are as set out in Confidential Appendix 1;
- in accordance with subsection 269TAB(3), the export prices for 'uncooperative and all other' exporters from Korea and Taiwan are as set out in Confidential Appendix 3, having regard to all relevant information;
- in accordance with subsection 269TAC(2)(c) of the Act, the ascertained normal values for rebar exported to Australia from Taiwan by Wei Chih for the review period as the cost of production or manufacture of the goods in Taiwan plus the SG&A costs and the profit associated with such sales, as adjusted in accordance with subsection 269TAC(9);
- in accordance with subsection 269TAC(6), normal values for 'uncooperative and all other' exporters from Korea and Taiwan having regard to all relevant information, are as set out in Confidential Appendix 3;
- pursuant to subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable on rebar exported to Australia from Korea by Daehan and all other exporters is an amount to be worked out in accordance with the ad valorem duty method pursuant to subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Dumping Duty Regulation) and from Taiwan for Wei Chih and all other exporters is an amount that has been worked out in accordance with the floor price duty method pursuant to subsections 5(4) and (5) of the Dumping Duty Regulation with effect from the day following publication of the notice declaring the outcome of the review .

The Commissioner recommends that the Minister DIRECT that:

- in accordance with subsection 269TAC(8), that, as the normal value of rebar exported to Australia is the price paid or payable for like goods sold in Korea by Daehan, the normal value be adjusted for differences between like goods sold in

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Korea by Daehan and Daehan's export sales of rebar to Australia, as set out in chapter 4.

The Commissioner recommends that the Minister consider this report, and if agreed, DECLARE, by notice published on the Commission's website 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 in respect of rebar exported to Australia from Korea and Taiwan is to be taken to have effect, in relation to all exporters generally, as if different variable factors in respect to the exporters generally, as set out in Confidential Appendix 4, had been fixed relevant to the determination of duty.

8 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
Confidential Appendix 4	Summary of variable factors
Confidential Appendix 5	Form of duty analysis –Daehan Korea