



CUSTOMS ACT 1901 - PART XVB

REPORT NO. 566

REVIEW OF ANTI-DUMPING MEASURES APPLYING TO STEEL REINFORCING BAR EXPORTED TO AUSTRALIA FROM THE REPUBLIC OF KOREA AND SPAIN (EXCEPT NERVACERO SA)

16 November 2021

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ABBREVIATIONS

Abbreviation	Full title
ABF	Australian Border Force
ACCC	Australian Competition and Consumer Commission
ACRS	Australasian Certification Authority for Reinforcing and Structural Steels
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AEP	ascertained export price
ANV	ascertained normal value
AUD	Australian dollars
Best Bar	Best Bar Pty Ltd
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CELSA	Compañía Española de Laminación SL
CTM	cost to make
CTMS	cost to make and sell
the Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Daehan	Daehan Steel Co Ltd
DITH	DITH Australia Pty Ltd
the Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the duty guidelines	<i>Guidelines on the Application of Forms of Dumping Duty</i>
EPR	electronic public record
FIS	free-into-store
FOB	free on board
the goods	the goods the subject of the application (also referred to as the goods under consideration)
IDD	interim dumping duty
InfraBuild	InfraBuild (Newcastle) Pty Ltd
Inquiry 546	Continuation Inquiry No. 546
the manual	<i>Dumping and Subsidy Manual</i>
MCC	model control code
the Minister	the Minister for Industry, Energy and Emissions Reduction
mm	millimetres
MPa	mega Pascals
NIP	non-injurious price
OCOT	ordinary course of trade
review period	1 July 2019 to 30 June 2020

PUBLIC RECORD

Abbreviation	Full title
REP 264	<i>Anti-Dumping Commission Report No. 264</i>
REP 489	<i>Anti-Dumping Commission Report No. 486 and 489</i>
REP 546	<i>Anti-Dumping Commission Report No. 546</i>
REQ	response to the exporter questionnaire
Review 486	Review of Measures No. 486
Review 489	Review of Measures No. 489
RIQ	response to the importer questionnaire
ROK	Republic of Korea
Sanwa	Sanwa Pty Ltd
SEF	statement of essential facts
SG&A	selling, general and administrative
the subject countries	collectively, the Republic of Korea and Spain
USP	unsuppressed selling price

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report sets out the material findings of fact on which the Commissioner of the Anti-Dumping Commission (the Commissioner) bases his recommendations to the Minister for Industry, Energy and Emissions Reduction (the Minister) in relation to a review of the anti-dumping measures applying to steel reinforcing bar (rebar or the goods) exported to Australia from the Republic of Korea (ROK) and Spain (except Nervacero SA).

This review follows an application made by InfraBuild (Newcastle) Pty Ltd (InfraBuild, or the applicant) claiming that the variable factors relevant to the taking of the anti-dumping measures have changed.

1.1.1 Scope of the review

InfraBuild requested a review of variable factors for exports of rebar from ROK, Singapore, Spain (except Nervacero SA) and Taiwan (except Power Steel Co. Ltd) in its application.

On 10 November 2020, following the consideration of *Anti-Dumping Commission Report No. 546* (REP 546), the Commissioner published a notice¹ advising of the Minister's decision to:

- secure the continuation of anti-dumping measures applying to rebar exported from the ROK and Spain (except Nervacero SA)
- not secure the continuation of anti-dumping measures applying to rebar exported from Singapore and Taiwan (except Power Steel Co. Ltd).

The effect of the decision is the dumping duty notice applying to rebar from Singapore and Taiwan (except Power Steel Co. Ltd) expired on 20 November 2020. Following the Minister's decision, the Commissioner published a notice² advising it would confine this review to consideration of the matters relevant to the dumping duty notice applying to rebar from the ROK and Spain (except Nervacero SA) (hereafter referred to collectively as the subject countries).

During the course of the review, the Commissioner has examined whether the variable factors have changed. The commission has examined the period from 1 July 2019 to 30 June 2020 (the review period) to establish the variable factors for this review. In this case, the variable factors are a reference to:

- the ascertained export price (AEP)
- the ascertained normal value (ANV)
- the non-injurious price (NIP).

¹ ADN No. 2020/111 and Anti-Dumping Commission Report No. 546 refer.

² ADN No. 2020/147.

1.2 Legislative provisions

Division 5 of Part XVB of the *Customs Act 1901* (the Act) sets out, among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures.³

1.3 Findings

In respect of rebar exported to Australia from the subject countries during the review period, the Commissioner finds that, for the purpose of the dumping duty notice, the:

- export price is different to the export price last ascertained by the Minister
- normal value is different to the normal value last ascertained by the Minister
- NIP is different to the NIP last ascertained by the Minister.

Table 1 shows the fixed component of the current measures and the dumping margins found in this review.

Country	Exporter	Current rate of dumping duty	Dumping margin found in this review
ROK	Daehan Steel Co Ltd (Daehan)	2.3%	4.7%
	Uncooperative and all other exporters	7.2%	8.5%
Spain	Compañía Española de Laminación SL (CELSA)	Floor price	9.4%
	Uncooperative and all other exporters (except Nervacero SA)	8.2%	11.8%

Table 1: Current measures and dumping margins

1.4 Recommendation

The Commissioner recommends to the Minister that the:

- dumping duty notice have effect in relation to exporters of rebar from the ROK and Spain as if different variable factors had been ascertained
- form of measures in respect of rebar exported to Australia from Spain by CELSA change from a floor price to a combination duty.

³ All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

2 BACKGROUND

2.1 Application and initiation

On 21 August 2020, the Anti-Dumping Commission (the commission) received an application⁴ from InfraBuild seeking a review of the anti-dumping measures applying to rebar exported to Australia from the subject countries.⁵ The application asserted that one or more of the variable factors have changed since they were last ascertained on 31 May 2019.⁶ The variable factors that InfraBuild alleges have changed are the export price and normal value.⁷

On 10 September 2020, following consideration of InfraBuild's application, the Commissioner decided not to reject the application and published a notice⁸ announcing the initiation of the review. Particulars of the reasons for the decision to initiate this review are outlined in *Anti-Dumping Commission Consideration Report No. 566* which is available on the electronic public record (EPR) on the commission's website at www.adcommission.gov.au.⁹

2.2 Previous cases

2.2.1 History

The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science initially imposed the anti-dumping measures, in the form of a dumping duty notice, published on 19 November 2015 after consideration of *Anti-Dumping Commission Report No. 264* (REP 264).¹⁰

The commission has conducted numerous cases relating to rebar. A list of the major relevant cases is set out in Table 2. This summary includes cases relating to all exporters from the subject countries and therefore excludes exemption and accelerated review inquiries. Further information regarding the measures on rebar is also available on the commission's EPR.¹¹

Case type	Case number	ADN number	Outcome
Investigation	264	2015/133	Imposition of measures
Review – Spain	380	2017/33	Changes to the variable factors
Anti-circumvention – ROK	452	2018/52	Termination of the inquiry

⁴ Section 269ZB.

⁵ EPR 566, item no. 01.

⁶ ADN No 2019/54, EPR 486, item no. 18.

⁷ Section 269T(4E)(a).

⁸ Anti-Dumping Notice (ADN) No. 2020/102, EPR 570, item no. 03.

⁹ EPR 566, item nos. 2 and 3.

¹⁰ Available on the commission's website, EPR 264.

¹¹ Available on the commission's website.

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Case type	Case number	ADN number	Outcome
Review – ROK and Taiwan	486 and 489	2019/54	Changes to the variable factors in relation to exporters from the ROK and Taiwan
Continuation Inquiry	546	2020/111	Continuation of measures and changes to the variable factors in relation to exporters from the ROK and Spain. Measures cease to apply for exporters from Singapore and Taiwan (except Power Steel Co. Ltd)
ADRP Review of Inquiry 546 and Reinvestigation	ADRP 2020/130	ADRP Public Notice 2020/130	Changes to the variables factors in relation to exporters from the ROK

Table 2: Major cases involving rebar from the subject countries¹²

2.3 Current anti-dumping measures

Table 3 summarises the anti-dumping measures in the form of interim dumping duties (IDD) currently applying to exporters of rebar to Australia from the subject countries.

Country	Exporter	Form of measures	Fixed component of IDD
ROK	Daehan	Combination	2.3%
	Uncooperative and all other exporters	Combination	7.2%
Spain	CELSA	<i>Floor price</i>	FOB, cash
	Nervacero SA ¹³	Combination	6.3%
	Uncooperative and all other exporters	Combination	8.2%

Table 3: Current anti-dumping measures applying to rebar from the subject countries¹⁴

2.4 Conduct of the review

2.4.1 Review period

In ADN No. 2020/102, the Commissioner notified interested parties that the review period is 1 July 2019 to 30 June 2020.

The commission sought and obtained information and data pertaining to this period in order to assess whether the variable factors relevant to the determination of duty payable have changed.

¹² The equivalent table in *Statement of Essential Facts No. 566* (Table 2) incorrectly stated that the outcome from Review 486 and 489 was a change to the variable factors in relation to exporters from the ROK and Spain (except Nervacero SA). The correct countries were the ROK and Taiwan.

¹³ Measures relating to Nervacero SA are not subject to this review.

¹⁴ The equivalent table in *Statement of Essential Facts No. 566* (Table 3) incorrectly stated that the form of measures for all exporters other than CELSA were *ad valorem* duty method. The correct form of measures for these exporters was combination fixed and variable duty method with the fixed element of the duty being an *ad valorem* rate.

2.4.2 Questionnaires and verification

2.4.2.1 Australian industry

The commission is satisfied that the applicant, InfraBuild, is a member of the Australian industry producing like goods to the goods the subject of this review.¹⁵ InfraBuild applied for the inquiry into the continuation of the anti-dumping measures in relation to the subject countries.¹⁶ The inquiry period was 1 January 2019 to 31 December 2019, which represents a 6-months overlap with the review period.

The commission conducted a verification of the information provided by InfraBuild in its application for *Continuation Inquiry No. 546 (Inquiry 546)*. The verification report is available on the public record for Inquiry 546.¹⁷

2.4.2.2 Exporters

The commission identified the largest suppliers of rebar from the subject countries during the review period using the Australian Border Force (ABF) import database. The commission provided these suppliers with an exporter questionnaire.

The commission received responses to the exporter questionnaire (REQ) from the following suppliers:

- Daehan Steel Co Ltd (Daehan)
- Compañía Española de Laminación SL (CELSA).

The non-confidential versions of the REQs¹⁸ and the verification reports¹⁹ in relation to these exporters are available on the EPR.

The commission published the relevant exporter questionnaires and associated spreadsheets on the EPR for completion by other suppliers who the commission did not contact directly. The commission did not receive responses from any other entity.

2.4.2.3 Importers

The commission identified 5 of the largest importers of rebar from the ROK, Singapore, Spain and Taiwan using the ABF import database. These importers collectively accounted for the vast majority of the importations of the goods from these countries in the review period. The commission contacted and invited these importers to participate in this review by providing a response to the importer questionnaire (RIQ).

The commission received an RIQ from the following companies:

- Best Bar Pty Ltd (Best Bar)
- DITH Australia Pty Ltd (DITH)
- Sanwa Pty Ltd (Sanwa).

¹⁵ Chapter 3 of this report refers.

¹⁶ ADN No. 2020/20, EPR 546, item no. 02.

¹⁷ EPR 546, item no. 19.

¹⁸ EPR 566, items no. 10 for Daehan and no. 11 for CELSA.

¹⁹ EPR 566, items no. 16 for Daehan and no. 20 for CELSA.

The commission placed a copy of the importer questionnaire on its website for completion by other importers who the commission did not contact directly. The commission did not receive any other responses from importers.

2.5 Statement of Essential Facts

On 27 September 2021, the Commissioner published *Statement of Essential Facts No. 566* (SEF 566)²⁰ on the EPR. SEF 566 informed interested parties of the facts established as of the date the statement of essential facts (SEF) was placed on the public record and allowed them to make submissions in response.

Following its publication on the EPR, interested parties had 20 days to respond to the SEF. Responses to the SEF were to be provided to the Commissioner by no later than 18 October 2021. The Commissioner had regard to all submissions received in preparing this report and recommendations to the Minister.

2.6 Submissions received from interested parties

Non-confidential versions of all submissions received are available on the EPR.

2.6.1 Submissions received prior to publishing SEF 566

The commission received the following submissions prior to publishing SEF 566.

Interested party	EPR number	Date published
CELSA	4	2 October 2020
NatSteel Holdings Pte Ltd	5	2 October 2020
Government of Spain	6	19 October 2020
InfraBuild	7	27 October 2020
InfraBuild	8	28 October 2020
InfraBuild	9	29 October 2020
InfraBuild	13	27 November 2020
InfraBuild	14	23 December 2020
InfraBuild	18	12 May 2021

Table 4: Submissions received prior to publishing SEF 566

2.6.1.1 Submissions concerning initiation of the review

CELSA,²¹ NatSteel²² and the Government of Spain²³ made submissions concerning the initiation of the review. These interested parties submitted that this review and Inquiry 546 should not be conducted at the same time given the similarity in procedures with overlapping time periods, which also places undue burden on exporters. These interested parties claimed that the review should be discontinued, revoked or suspended.

²⁰ EPR 566, item no. 21.

²¹ EPR 566, item no. 04.

²² EPR 566, item no. 05.

²³ EPR 566, item no. 06.

InfraBuild made submissions²⁴ in response to each of the above submissions. InfraBuild submitted that the commission properly initiated the review and that there is no basis for its discontinuation, revocation or suspension. InfraBuild claimed that the commission must consider all relevant and reliable information in its conduct of the review and is not limited to the consideration of information in the inquiry period. InfraBuild submitted that the review allows for the most contemporary, accurate and effective variable factors, and dumping margins, to be ascertained following any decision to continue the measures.

On 10 September 2020, the Commissioner decided to not reject the application for a review of measures after having examined the application.²⁵ ADN No. 2020/102 and *Anti-Dumping Commission Consideration Report No. 566* sets out the reasons why the Commissioner decided not to reject the application for review.

On 10 November 2020, the commission published a public notice to notify that the Minister decided to secure the continuation of the measures in relation to rebar exported to Australia from the subject countries.²⁶ Therefore, anti-dumping measures apply to rebar exported from the subject countries.

This review sought to establish whether the variable factors relevant to the taking of the measures in relation to exporters from the subject countries have changed. The Commissioner conducted the review in line with the provisions under Division 5 of Part XVB. This report sets out the material findings of fact on which the Commissioner bases his recommendations to the Minister.

2.6.2 Submissions received in response to SEF 566

Following the publication of SEF 566, the Commissioner received the following submissions detailed in Table 5 below. Non-confidential versions of all submissions received were placed on the EPR. The Commissioner has had regard to these submissions when making this report and recommendations to the Minister.

Interested party	EPR number	Date received
Daehan	22	18 October 2021
CELSA	23	18 October 2021
InfraBuild	24	18 October 2021
InfraBuild	25	25 October 2021

Table 5: Submissions received in response to SEF 566

²⁴ EPR 566, items no. 7, 8 and 9.

²⁵ Section 269ZC(1).

²⁶ ADN No. 2020/111, EPR 546, item no. 38.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that the locally manufactured rebar is a like good to the goods subject to the anti-dumping measures. The Commissioner considers that there is an Australian industry, of which InfraBuild is the sole member, producing like goods, and that the like goods are wholly produced in Australia.

3.2 Legislative framework

The review of measures must establish relevant variable factors in respect of the goods that are exported to Australia from the subject countries and the like goods that are sold in the relevant domestic market. Section 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 this review in determining the normal value of goods exported to Australia, the NIP and the goods subject to the anti-dumping measures. The commission's framework for assessing like goods is outlined in Chapter 2 of the *Dumping and Subsidy Manual* (the manual).²⁷

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness
- ii. commercial likeness
- iii. functional likeness
- iv. production likeness.

The Commissioner must also consider whether the 'like' goods are in fact produced in Australia. Section 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be either wholly or partly manufactured in Australia. Under section 269T(3), in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia. The following therefore establishes the scope of the commission's review.

3.3 The goods

The goods subject to the anti-dumping measures are defined in ADN 2020/102 as follows:

²⁷ Available on the commission's website.

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Full description of the goods the subject of the notice
<p>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. The goods include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.</p> <p>The goods subject to the anti-dumping measures <u>do not include</u>:</p> <ul style="list-style-type: none"> • Plain round bar • Stainless steel • Reinforcing mesh.
Further information in relation to the goods
<p>The following categories of rebar are excluded²⁸ from the goods:</p> <ul style="list-style-type: none"> • hot-rolled steel reinforcing bar with a continuous thread, commonly identified as 'threadbar' or 'threaded-bar', in straight lengths, complying with Australian/New Zealand Standard AS/NZS4671, grade 500N, with a 40mm diameter • fully threaded hot-rolled prestressing steel reinforcing bar, in straight lengths, with a minimum yield strength of 885 MPa or greater, with a 26.5mm, 32mm, 36mm, 40mm or 50mm diameter.

Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*.²⁹

Tariff subheading	Statistical code	Description
7213		BARS AND RODS, HOT-ROLLED, IN IRREGULARLY WOUND COILS, OF IRON OR NON-ALLOY STEEL
7213.10.00	42	Containing indentations, ribs, grooves or other deformations produced during the rolling process
7214		OTHER BARS AND RODS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN FORGED, HOT-ROLLED, HOT-DRAWN OR HOT-EXTRUDED, BUT INCLUDING THOSE TWISTED AFTER ROLLING
7214.20.00	47	Containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling
7227		BARS AND RODS, HOT-ROLLED, IN IRREGULARLY WOUND COILS, OF OTHER ALLOY STEEL
7227.90		Other
7227.90.10	69	Goods, as follows: <ul style="list-style-type: none"> a. of high alloy steel; b. "flattened circles" and "modified rectangles" as defined in Note 1(l) to Chapter 72

²⁸ ADN No. 2019/089 refers, following exemption inquiries EX0070, EX0071 and EX0072.

²⁹ Tariff classification 7227.90.90 (statistical code 42) was replaced by 7227.90.90 (statistical code 02) from 1 July 2015.

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Tariff subheading	Statistical code	Description
7227.90.90	01	Containing indentations, ribs, grooves or other deformations produced during the rolling process
	02	Of circular cross-section measuring less than 14 mm in diameter
	04	Other
7228	OTHER BARS AND RODS OF OTHER ALLOY STEEL; ANGLES, SHAPES AND SECTIONS, OF OTHER ALLOY STEEL; HOLLOW DRILL BARS AND RODS, OF ALLOY OR NON-ALLOY STEEL	
7228.30	Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded	
7228.30.10	70	Goods, as follows: a. of high alloy steel; b. "flattened circles" and "modified rectangles" as defined in Note 1(m) to Chapter 72
7228.30.90	40	Containing indentations, ribs, grooves or other deformations produced during the rolling process
7228.60	Other bars and rods	
7228.60.10	72	Goods, as follows: a. of high alloy steel; b. "flattened circles" and "modified rectangles" as defined in Note 1(m) to Chapter 72

Table 6: Goods subject to anti-dumping measures

These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for reference only and do not form part of the goods description.

3.4 Model control codes

The commission has used a model control code (MCC) structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values.³⁰

Australian industry members, exporters and importers participating with this review provided sales and cost data (to varying degrees) in accordance with the proposed MCC structure detailed in ADN No 2020/102³¹ and repeated in Table 7.

Item	Category	Sub-category	Identifier	Sales data	Cost data
1	Prime	Prime	P	Mandatory	Optional
		Non-Prime	N		
2	Minimum yield strength specified by	Less than or equal to 300	A	Mandatory	Mandatory
		Greater than 300 but less than or equal to 480	B		

³⁰ ADN No 2019/132 and the manual, p. 60, refer.

³¹ EPR 566, item no. 03.

Item	Category	Sub-category	Identifier	Sales data	Cost data
	product standard (Mega Pascals or 'MPa')	Greater than 480 but less than 550	C		
		Equal to or greater than 550	D		
3	Finished form	Rebar in length/straight	S	Mandatory	Mandatory
		Rebar in coil	C		
4	Nominal diameter (millimetres or 'mm')	Less than 12	A	Mandatory	Optional
		Greater than or equal to 12 and less than or equal to 16	B		
		Greater than 16 and less than or equal to 32	C		
		Greater than 32 and less than or equal to 50	D		
5	Length (metres or 'm')	Less than or equal to 6	1	Mandatory	Optional
		Greater than 6 and less than or equal to 12	2		
		Greater than 12	3		
		Coil product	C		
6	Deformation pattern along Length	Threaded	T	Mandatory	Optional
		Non-Threaded	N		

Table 7: MCC structure

As requested in ADN No. 2020/102 (the initiation ADN), interested parties were invited to make submissions with proposals to modify the MCC structure as it applied to them.

Any changes to the proposed MCC structure or alterations in terms of its application in respect of each interested party have been addressed in chapters 5 and 6 of this report.

3.4.1 Other information – Certification

The Australasian Certification Authority for Reinforcing and Structural Steels (ACRS) is an independent, not-for-profit production certification scheme. The ACRS 'mark' is internationally recognised as the means of showing conformity to the Australian Standard. Whilst not compulsory, ACRS certification is a generally preferred minimum market requirement for the supply of rebar into the Australian market. Steel mills with ACRS certification are subject to the manufacturing and testing processes prescribed by ACRS to meet the requirements of the Australian Standard. Imported rebar sold in the Australian market generally originates from mills that are ACRS certified. The commission found that the exporters of rebar from the subject countries maintained ACRS certification.

3.5 Like goods

The following sets out the commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods under consideration imported into

Australia from the subject countries and are therefore 'like goods'. For the purposes of the findings below, the commission has relied on information provided by InfraBuild, previous investigations and inquiries, and information provided by exporters of the goods from the subject countries.

3.5.1 Physical likeness

The commission finds that the goods exported to Australia from the subject countries are physically similar to the rebar produced by the Australian industry. The commission finds that the key characteristics (as outlined in the MCC) of the rebar imported from the subject countries closely resemble or are identical to the characteristics of the rebar produced and sold by InfraBuild. Test certificates showed that the exported goods satisfied the requirements of the Australian Standard. Further, both InfraBuild and many of the exporters from the subject countries held ACRS accreditation during the inquiry period (section 3.4.1 above refers).

3.5.2 Commercial likeness

The commission finds that the goods exported to Australia from the subject countries are commercially similar to the rebar produced by the Australian industry. In Inquiry 546,³² the commission found that the goods are sold via the same channels, to the same or similar customers, and compete directly for sales to those customers. In addition, customers have regard to the pricing of rebar from the subject countries (and other countries) when assessing the relative competitiveness of rebar prices from the Australian industry. In Inquiry 546, the verified exporter and importer data indicates that parties in the supply chain switch between purchasing rebar from import sources and the Australian industry. The commission has observed that there is close price competition in the market suggesting that product differentiation is not recognised by the market.

3.5.3 Functional likeness

The commission finds that the goods exported to Australia from the subject countries are functionally alike to the rebar produced by the Australian industry. In Inquiry 546, the commission found that domestically produced goods are completely interchangeable with the imported goods, as both have similar end uses, predominantly in concrete reinforcement and pre-casting.

Rebar can be used 'as is' or may be subject to post-production processing, such as bending, welding and cutting. The use of rebar coil requires straightening and cutting machines before the coil can be used in straight lengths or be further fabricated. Rebar processors or service centres can use either rebar straights or rebar coils depending on the equipment available at their processing facility.

3.5.4 Production likeness

The commission finds that the goods exported to Australia from the subject countries are produced in essentially the same way as the rebar produced by the Australian industry. The commission finds that exporters from the subject countries use similar raw material feedstock (scrap steel and billet) to produce rebar, and that the key processes (rolling,

³² The inquiry period of Inquiry 546 and the review period overlap by 6 months.

forming, coiling, cutting etc.) are identical when the rebar is produced to the Australian Standard.

InfraBuild and many of the exporters from the subject countries are ACRS certified and the goods produced meet the Australian Standard, which stipulates rebar production methods and is a strong indicator of production likeness.

3.5.5 Conclusion – Like goods

The Commissioner is satisfied that the domestically produced goods are ‘like goods’ as defined in section 269T(1) to the goods under consideration.

3.6 Australian industry

InfraBuild asserts in its application that it is the sole producer of rebar in Australia. InfraBuild produces rebar at its facilities in Laverton North in Victoria, and Rooty Hill and Newcastle in New South Wales. The commission is not aware of any other producer of rebar in Australia and therefore considers that InfraBuild represents the Australian industry for rebar.

3.6.1 Production process

The commission previously observed the production processes relevant to rebar as part of Investigation 495.³³ The commission is satisfied that there have been no substantive changes to InfraBuild’s manufacturing processes in the period between the Australian industry verification in respect of Investigation 495 and this inquiry.

3.7 Conclusion

Based on the information obtained from the verification, submissions and market intelligence, the Commissioner is satisfied that:

- the like goods were wholly manufactured in Australia³⁴
- there is an Australian industry that produces like goods in Australia.³⁵

³³ EPR 495.

³⁴ Section 269T(2).

³⁵ Section 269T(4).

4 VARIABLE FACTORS – FINDINGS AND FRAMEWORK

4.1 Findings

The Commissioner's findings in relation to rebar exported to Australia during the review period are summarised in Table 8.

Country	Exporter	Dumping margin
ROK	Daehan	4.7%
	Uncooperative and all other exporters	8.5%
Spain	CELSA	9.4%
	Uncooperative and all other exporters (except Nervacero SA)	11.8%

Table 8: Dumping margins for exporters from subject countries

4.2 Legislative framework

4.2.1 Variable factors

The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

The NIP is defined in section 269TACA 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 methodology for calculating the NIP is described in detail at chapter 7 of this report.

4.2.2 Dumping margin

For all dumping margins calculated for the purposes of this review, the commission compared the weighted average export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period.³⁶

4.2.3 Cooperative and uncooperative exporters

Section 269T(1) provides that, in relation to a review of measures, an exporter is a 'cooperative exporter' if the exporter's exports were examined as part of the review and the exporter was not an uncooperative exporter.

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

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction) states at section 8 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

³⁶ Section 269TACB(2)(a).

- fails to request a longer period to do so within the legislated period.

After having regard to the Customs Direction, the Commissioner has determined that all exporters from subject countries that did not provide an REQ are uncooperative exporters for the purposes of this review.

4.3 Identity of the importer

Section 269T(1) defines the importer as ‘the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed.’³⁷

4.3.1 Best Bar

Following the Minister’s decision to not secure the continuation of the anti-dumping measures applying to rebar exported from Singapore and Taiwan (except Power Steel Co. Ltd),³⁸ Best Bar did not import the goods from the subject countries during the review period. Accordingly, the commission did not review the RIQ provided by Best Bar for the purpose of ascertaining whether the variable factors have changed in respect of rebar exported from the subject countries.

4.3.2 DITH

In respect of rebar imported by DITH in the review period, the commission has found that a related-party intermediary, Duferco Asia Pte Ltd (Duferco) acted between it and the exporter, Daehan. The commission found that DITH:

- was named on the commercial invoice
- was named as the notify party on the bill of lading
- declared itself as the importer on the importation declaration to the ABF
- paid for all the post-exportation and importation charges and arranged delivery from the Australian port
- paid Duferco for the rebar from Daehan according to the agreed terms
- was the beneficial owner of the goods at the time of importation.

The commission also had regard to the nature of the import transactions and the relationships between Daehan and Duferco, and Duferco and DITH, and found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price
- the price appeared to be influenced by a commercial or other relationship between the buyer and the seller
- any reimbursement or compensation subsequent to the sale was payable in respect of the whole or any part of the price.³⁹

The commission therefore considers that the rebar imported in the review period by DITH, via Duferco, from Daehan were purchased in ‘arms length’ transactions.

The commission’s assessment is at **Confidential Attachment 1**.

³⁷ The manual, p. 28.

³⁸ Section 1.1.1 of this report refers.

³⁹ Section 269TAA.

4.3.3 Sanwa

In respect of rebar imported during the review period, the commission found that Sanwa was the importer as Sanwa:

- was named on the commercial invoice
- was named as the notify party on the bill of lading
- declared itself as the importer on the importation declaration to the ABF
- paid for all the post-exportation and importation charges and arranged delivery from the Australian port
- was the beneficial owner of the goods at the time of importation.

The commission also had regard to the nature of the import transactions and the commercial relationship between Sanwa and the exporter, and found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price
- the price appeared to be influenced by a commercial or other relationship between the buyer and the seller
- any reimbursement or compensation subsequent to the sale was payable in respect of the whole or any part of the price.⁴⁰

The commission therefore considers that the rebar imported in the review period by Sanwa from the exporter were purchased in 'arms length' transactions.

The commission's assessment is at **Confidential Attachment 2**.

⁴⁰ Section 269TAA.

5 VARIABLE FACTORS – REPUBLIC OF KOREA

5.1 Daehan

The commission conducted a verification of Daehan's REQ. The commission is satisfied that Daehan is the producer of the goods. A report setting out the commission's findings from the verification is available on the public record.⁴¹

The commission examined the circumstances of Daehan's exports of rebar to Australia during the review period. The commission considers that Daehan was the principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia. The commission considers that Daehan is therefore the exporter.

In response to the verification report for Daehan, InfraBuild noted⁴² that the commission had relied on audited financial statements for 2019 to verify Daehan's information. InfraBuild claimed that Daehan published its audited financial statements for 2020 during the verification process, which it claims show significant changes in Daehan's financial position. InfraBuild requested that the commission verify Daehan's information using the audited financial statements for 2020.

The commission was satisfied that the Daehan's sales and cost to make and sell (CTMS) data was complete and relevant after having verified the information to audited financial statements for 2019, which was information available to the commission during the verification process. The auditors expressed an opinion that the financial statements for the period had been fairly presented and did not provide a qualified opinion. This verification process enabled the commission to be satisfied that the management accounts verified to audited accounts and were reliable, which allowed the commission to rely on the same management accounts for transactions occurring in 2020.

Therefore, the commission does not consider it necessary to repeat the same process for the 2020 period using the financial statements for 2020. Further, it is unclear whether the financial information sourced from Wall Street Journal Markets by InfraBuild reflects audited accounts.

5.1.1 Amendments to the MCC

Daehan did not request MCC amendments and the commission did not identify models in Daehan's data that would warrant an MCC amendment.

5.1.2 Export price

The commission is satisfied that all export sales made by Daehan (regardless of whether through an intermediary or direct to customer) 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 their price

⁴¹ EPR 566, item no. 16.

⁴² EPR 566, item no. 18.

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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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

In respect of the one (1) export sale of the goods by Daehan direct to the Australian customer during the review period, the commission calculated the export price under section 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

In respect of all other Australian sales of the goods by Daehan through an intermediary during the review period, the commission considers that as the goods were not purchased by the importer from the exporter, the export price cannot be ascertained under subsections 269TAB(1)(a) or 269TAB(1)(b). The commission calculated the export price under subsection 269TAB(1)(c), having regard to all the circumstances of the exportation. Specifically, the commission calculated the export price as the price between Daehan and the intermediary trader involved in the sale of the goods to Australia.

Table 9 lists the MCCs relevant to Daehan's export sales to Australia in the review period.

	MCC
1.	P-C-C-B-C-N
2.	P-C-C-C-C-N

Table 9: Export MCCs for Daehan

5.1.3 Normal value

The commission is satisfied that there were sufficient volumes of domestic sales of like goods that were sold in 'arms length' transactions and at prices that were within the ordinary course of trade (OCOT). In respect of all Daehan's domestic sales of like goods during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.⁴³

The commission is therefore satisfied that the price paid in respect of those domestic sales of like goods were suitable for assessing normal value under section 269TAC(1).

Table 10 lists the MCCs relevant to Daehan's domestic sales in the ROK in the review period.

	MCC		MCC		MCC
1.	P-A-S-A-2-N	8.	P-B-S-B-1-N	15.	P-C-S-B-1-N
2.	P-A-S-B-2-N	9.	P-B-S-B-2-N	16.	P-C-S-B-2-N
3.	P-A-S-C-1-N	10.	P-B-S-C-1-N	17.	P-C-S-C-1-N

⁴³ Section 269TAA.

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	MCC		MCC		MCC
4.	P-A-S-C-2-N	11.	P-B-S-C-2-N	18.	P-C-S-C-2-N
5.	P-B-C-A-C-N	12.	P-C-C-A-C-N	19.	P-D-S-B-2-N
6.	P-B-C-B-C-N	13.	P-C-C-B-C-N	20.	P-D-S-C-1-N
7.	P-B-S-A-2-N	14.	P-C-S-A-2-N	21.	P-D-S-C-2-N

Table 10: Domestic MCCs for Daehan

For one of the MCC exported to Australia, the commission found that there was insufficient domestic sales volumes of the same MCC made in the OCOT. Therefore, the commission adopted a surrogate model with a specification adjustment for physical differences, as described in Table 11 below.

The commission found that there was a sufficient domestic sales volume of the identical MCC made in OCOT for export MCC P-C-C-B-C-N. For the other export MCC P-C-C-C-C-N, there were no domestic sales of the same MCC. For this MCC, the commission used a surrogate model P-C-C-B-C-N and found sufficient domestic sales volumes. In relying on the surrogate model, the commission considered a specification adjustment under section 269TAC(8) was warranted to ensure fair comparison between the export model and surrogate domestic model.

Table 11 describes this specification adjustment.

Export MCC	Description of adjustment
P-C-C-C-C-N	The commission adjusted for the difference in normal value between two other MCCs which displayed the same physical differences in the relevant MCC subcategory of nominal diameter, in accordance with section 269TAC(8).

Table 11: Description of specification adjustment for Daehan

In response to the verification report for Daehan, InfraBuild agreed⁴⁴ with the preliminary conclusion that barter sales are not taken to be ‘arms length’ transactions. InfraBuild submitted that the commission should test whether products received by Daehan in barter sales are not then on-sold with little or no further processing to ‘arms length’ customers. Further, InfraBuild queried how production costs are allocated in the event that rebar coil received by Daehan in barter trade are further processed by Daehan to rebar straight lengths.

Consistent with previous findings and for the reasons set out in the verification report,⁴⁵ Daehan’s barter sales during the review period are not taken to be ‘arms length’ transactions and not in the ordinary course of trade. As such, the commission excluded barter sales from the calculation of the normal value.

The commission has reviewed Daehan’s domestic sales data regarding barter and commercial sales, and the production and sale of 20mm nominal diameter rebar coil. Based on the information verified, Daehan received rebar straight lengths in exchange for rebar coil products in the vast majority of barter sales during the review period. Daehan then consumed these rebar straight lengths to produce processed rebar (not like goods). A negligible quantity of rebar straight lengths received in barter sales were on-sold

⁴⁴ EPR 566, item no. 18.

⁴⁵ EPR 566, item no. 16.

without further processing, and the commission excluded these sales from the calculation of the normal value.

The commission verified the domestic sales data with respect to nominal diameter and the classification of barter sales, and considers that the data is complete, relevant and accurate.

The commission verified Daehan's cost to make (CTM) data to source documents, and was satisfied with the accuracy and allocation of the raw material costs. The commission did not identify that Daehan consumed rebar coil as the raw material for the manufacture of rebar straight lengths.

In relation to determining the selling price of like goods, InfraBuild submitted⁴⁶ that it was unclear whether there was a commercial or trading basis for the billing adjustments listed as exceptions 6, 7 and 8 in the verification report for Daehan. The commission verified the billing adjustments to source documents and substantiated that the amounts, which related to credit and debit notes, impacted the net selling price of like goods. After having established that the billing adjustments were relevant to determining the net selling price, the commission identified that Daehan's allocation of these adjustments was inappropriate in certain cases.

In relation to exception number 6, the commission verified that the billing adjustment related to a larger pool of sales than had originally been included in the allocation. As such, Daehan revised the billing adjustment within the domestic sales listing so that it was allocated to the larger pool of sales. In verifying the revised domestic sales listing, the commission identified that the revision resulted in negative sales values for a negligible quantity of like goods sold to one customer. Daehan presented a revised domestic sales listing that changed the allocation basis of the billing adjustment to be sales value, rather than sales quantity. The commission considers that the revisions better reflect the nature of the billing adjustment. This is detailed as exception number 7 in the verification report.⁴⁷

The commission then selected a domestic sale with the largest credit note value to test Daehan's reallocations. The commission notes that the billing adjustments represent a very small proportion of the total net invoice value for sales of like goods during the review period. Given the nature of the reallocations and billing adjustments, the commission is satisfied that the revised listing is accurate.

In relation to the CTM, InfraBuild submitted that it was unclear whether Daehan's CTM for rebar coil was differentiated from rebar straight lengths given Daehan's different manufacturing plant locations. The commission verified the integrated nature of Daehan's production process. The commission validated that the full, actual cost of production and transfer of steel billet, which incorporated freight for transfer between plants, was captured in the CTM for rebar coil. As such, the commission is satisfied that Daehan's CTM is complete, relevant and accurate.

In response to the verification report for Daehan, InfraBuild queried⁴⁸ why an adjustment to the normal value for domestic inland transport was necessary when domestic sales were at ex-works terms. The commission notes that Daehan sold like goods domestically

⁴⁶ EPR 566, item no. 18.

⁴⁷ EPR 566, item no. 16.

⁴⁸ EPR 566, item no. 18.

at ex-works and delivered terms during the period. The commission conducted the OCOT test for sales and CTMS at ex-works terms and therefore confirms that deductions for inland transport costs were only made to sales with free-into-store (FIS) terms. As outlined in the verification report, the commission calculated the normal value at free on board (FOB) terms, which was exclusive of domestic costs (domestic credit and domestic inland transport) and inclusive of all export costs to the FOB level.

Further, InfraBuild submitted that any profit achieved by Daehan's related party for the brokerage of delivery should reflect no more than the related party's fully absorbed selling, general and administrative (SG&A) expenses, otherwise the transactions may not be 'arms length'. The commission examined the role of the related party, and verified to source documents the costs charged by independent logistic providers and the profit achieved by the related party. Based on this examination, the commission considers the delivery costs incurred by Daehan and the profit achieved by the related party are reasonable and reflect 'arms length' transactions.

The commission notes that the total domestic delivery costs represents a very small proportion of the total selling price. As such, the commission considers the amount of profit achieved by the related party on the brokerage service does not have a material impact on the determination of the normal value.

5.1.4 Adjustments

To ensure the comparability of normal values to export prices, the commission made adjustments pursuant to section 269TAC(8).

These adjustments are summarised in Table 12.

Adjustment type	Deduction/addition
Specification adjustment	Deduct an amount for the specification adjustment difference for the surrogate MCC ⁴⁹
Domestic credit terms	Deduct an amount for domestic credit terms
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport	Add an amount for export inland transport
Export port and handling charges	Add an amount for port and handling charges
Export bank charges	Add an amount for export bank charges

Table 12: Adjustments to Daehan's normal value

In response to Daehan's REQ, InfraBuild submitted⁵⁰ that, given the 6-months overlap between Inquiry 546 and this review, it is unclear whether in this review Daehan has addressed the deficiencies identified by the commission in Inquiry 546. Following verification of Daehan's REQ for the purpose of this review, the commission is satisfied that the sales and CTMS data provided by Daehan, and revised as part of the verification, is complete, relevant and accurate.

⁴⁹ In response to SEF 566, InfraBuild submitted that the commission should clarify whether the specification adjustment had an upward or downward effect on Daehan's normal value.

⁵⁰ EPR 566, item no. 14.

In relation to Daehan's claim for a domestic technical services cost adjustment, InfraBuild submitted⁵¹ that it is unclear whether the commission applied this adjustment to the normal value. The commission clarifies that this adjustment claim was investigated but not accepted, and therefore was not applied to the normal value.

In relation to Daehan's claim for a domestic inventory carrying cost adjustment, InfraBuild submitted that the commission must consider whether the inventory carrying costs affect price comparability between export and domestic sales. As outlined in the verification report for Daehan, the commission assessed the claim for domestic inventory carrying costs but did not accept the adjustment, and therefore did not apply the adjustment to the normal value.

InfraBuild submitted that the commission should not apply a domestic credit rate greater than 3.5%, which it claims reflects the total interest, and the short and long-term debt expenses, in Daehan's audited financial statements for 2020. The commission verified the credit interest rate to Daehan's publically issued short-term corporate bonds and considers the amount to reasonably reflect Daehan's short-term borrowing rate. The commission notes that it would be inappropriate to rely on long-term debt given that Daehan's credit terms for domestic sales reflect short-term debt.

5.1.4.1 Specification adjustment

In response to the verification report for Daehan, InfraBuild submitted⁵² that the commission's method of making a specification adjustment was unclear, as the verification report did not specify the MCC used to calculate the adjustment. As there were no domestic sales of MCC P-C-C-C-C-N, the commission adopted the closest MCC P-C-C-B-C-N as it only differed with respect to one sub-category, being nominal diameter ('C' and 'B'). Therefore, the commission sought to calculate a specification adjustment to account for the difference in nominal diameter between those MCCs. The commission calculated the specification adjustment using two separate MCCs with reference to the MCC hierarchy. The commission had regard to MCCs P-C-S-B-1-N and P-C-S-C-1-N given they exhibited the same difference in nominal diameter ('B' and 'C'), were identical to each other with respect to all other MCC sub-categories, and reflected reasonable prices for the purpose of calculating the adjustment.

The commission found that for one of the MCCs used to calculate the specification adjustment, being P-C-S-B-1-N, there were no sales available for certain quarters of the review period. To obtain the normal value in these missing quarters, the commission identified the closest MCC with reference to the MCC hierarchy, being P-C-S-B-2-N, and calculated a timing adjustment based on the quarterly movements. The commission then applied the timing adjustment to the previous quarter's normal value of P-C-S-B-1-N to obtain the normal values.

In addition, InfraBuild submitted that Daehan's claim in its REQ for a specification adjustment using its standard price list is inappropriate, and should be based on verified domestic sales data.

Based on price analysis of Daehan's verified domestic sales, the commission considers that differences in nominal diameter impact price comparability and therefore a

⁵¹ EPR 566, item no. 18.

⁵² *ibid.*

specification adjustment is required. As outlined in the verification report,⁵³ the commission was unable to establish how the list, which showed price differences for products across certain nominal diameters, was reflected in Daehan's verified domestic selling prices during the review period. The commission applied the specification adjustment using differences in the normal value, which reflect Daehan's verified domestic selling prices. The specification adjustment is described in Table 11.

5.1.5 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 **4.7%**.

The commission's calculations are included at **Confidential Attachment 3**.

5.2 Uncooperative and all other exporters

5.2.1 Export price

In accordance with section 269TACAB(1), the commission has determined the export price for the uncooperative exporters and all other exporters from the ROK pursuant to section 269TAB(3). Specifically, the commission has had regard to the ascertained export price for Daehan in this review.

InfraBuild submitted⁵⁴ that based on its export trade intelligence, there was an additional exporter from the ROK, being Dongkuk Steel Mill Co Ltd, which exported the goods to Australia during the review period at prices lower than Daehan's export prices. For calculating the export price under section 269TAB(3), InfraBuild claimed it would be inappropriate to rely on Daehan's export price and proposed that the commission should rely on the weighted average FOB price of goods exported from the ROK from the ABF import database.

The commission undertook an assessment of export volumes and prices to Australia by exporters from the ROK using data from the ABF import database and Daehan's verified information. The commission identified suppliers from the ROK other than Daehan ('all other suppliers') that exported the goods to Australia during the review period, but at volumes that were very low relative to Daehan.

The commission compared Daehan's ascertained export price and export prices from all other suppliers on a quarterly basis. The commission found that these prices were very similar and followed a consistent trend during the review period. While the export price for all other suppliers was materially lower than Daehan's price for one quarter within the review period, the export volume in that quarter was very low and does not appear to allow for a reasonable comparison.

The commission also assessed the volumes and prices in the four quarters⁵⁵ after the review period. The commission found that despite an increase in export volume from all other suppliers following the review period, the export prices were similar and followed the same trend as Daehan.

⁵³ EPR 566, item no. 16.

⁵⁴ EPR 566, item no. 13.

⁵⁵ Quarter ending 30 September 2020 to quarter ending 30 June 2021.

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As such, the Commission considers it appropriate to have regard to Daehan's ascertained export price, which is based on verified information, to determine the export price for uncooperative and all other exporters from the ROK.

The commission's assessment is at **Confidential Attachment 4**.

In addition, the commission notes that in the absence of other information, importation data from import declarations made to the ABF may provide a reasonable basis for determining export prices of uncooperative exporters. However, verified export price data from a cooperative exporter provides a more accurate and reliable basis for the calculation. This is because the commission validated the various components that comprise an FOB export price, which cannot be said of the information within the ABF import data. For the purpose of this review, the commission found that the invoice terms recorded in ABF import data for the majority of all other suppliers' export sales during the review period were not FOB invoice terms. Therefore, the FOB export prices within the ABF import data represent estimated amounts and, in this instance, may not be the best available information.

5.2.2 Normal value

In accordance with section 269TACAB(1), the commission has determined the normal value for uncooperative and all other exporters from the ROK pursuant to section 269TAC(6). Specifically, the commission considers that the most reliable and contemporaneous information is verified information from Daehan.

In calculating the normal value, the commission used Daehan's ascertained normal value without deductions for favourable adjustments under section 269TAC(8).

5.2.3 Dumping margin

The dumping margin for uncooperative and all other exporters from the ROK is **8.5%**.

The commission's calculations are included at **Confidential Attachment 5**.

6 VARIABLE FACTORS – SPAIN

6.1 CELSA

The commission conducted a verification of CELSA's REQ. The commission is satisfied that CELSA is the producer of the goods. A report setting out the commission's findings from the verification is available on the public record.⁵⁶

The commission examined the circumstances of CELSA's exports of rebar to Australia during the review period. The commission considers that CELSA was the principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia. The commission considers that CELSA is therefore the exporter.

6.1.1 Amendments to the MCC

Consistent with Inquiry 546, CELSA proposed an amendment to the MCC in relation to the nominal diameter subcategory. The amendment is detailed in the verification report.⁵⁷

In response to CELSA's REQ, InfraBuild opposed⁵⁸ the proposed amendments to the MCC on the basis that CELSA's models do not reflect unique or special requirements. InfraBuild claimed that CELSA's models already align with the MCC structure. InfraBuild claimed that CELSA sells rebar with nominal diameters between 12mm–16mm, which it considers to be standard run-of-the-mill products.

The commission analysed price differences for the nominal diameters of 12mm and 16mm using the verified domestic and Australian sales data and took into account the key factors of level of trade, customer, MCC, quantity and timing. The commission observed that there were material and consistent price differences between nominal diameters 12mm and 16mm for domestic sales across the review period. Therefore, the commission is satisfied that there is a price difference such that the proposed MCC amendment is warranted for the purposes of this review.

The commission's assessment is at **Confidential Attachment 6**.

6.1.2 Export price

The commission is satisfied that all export sales made by CELSA 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 their price
- 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

⁵⁶ EPR 566, item no. 20.

⁵⁷ *ibid*.

⁵⁸ EPR 566, item no. 14.

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The commission calculated the export price under section 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Table 13 lists the MCCs relevant to CELSA's export price in the review period.

	MCC
1.	P-C-C-B-C-N
2.	P-C-C-C-C-N

Table 13: Export MCCs for CELSA

6.1.3 Normal value

The commission is satisfied that there were sufficient volumes of domestic sales of like goods that were sold in 'arms length' transactions and at prices that were within the OCOT. The commission is therefore satisfied that the prices paid in respect of those domestic sales of like goods were suitable for assessing normal value under section 269TAC(1).

Table 14 lists the MCCs relevant to CELSA's domestic sales in Spain in the review period.

	MCC		MCC		MCC		MCC
1.	N-C-S-C-1-N	6.	P-C-C-B-C-N	11.	P-C-S-B-1-N	16.	P-C-S-D-1-N
2.	N-C-S-D-1-N	7.	P-C-C-C-C-N	12.	P-C-S-B-2-N	17.	P-C-S-D-2-N
3.	N-C-S-E-1-N	8.	P-C-C-D-C-N	13.	P-C-S-C-1-N	18.	P-C-S-D-3-N
4.	P-B-C-A-C-N	9.	P-C-S-A-1-N	14.	P-C-S-C-2-N	19.	P-C-S-F-2-N
5.	P-C-C-A-C-N	10.	P-C-S-A-2-N	15.	P-C-S-C-3-N		

Table 14: Domestic MCCs for CELSA⁵⁹

In respect of all CELSA's domestic sales of like goods during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁶⁰

The commission considers that all domestic sales made by CELSA during the period were 'arms length' transactions. The commission has ascertained the normal value under section 269TAC(1).

In response to CELSA's REQ, InfraBuild submitted⁶¹ that non-prime MCCs should be excluded from the determination of the normal value and adjustments. As CELSA did not export non-prime MCCs to Australia during the review period, the commission did not

⁵⁹ The equivalent table in SEF 566 (Table 13) incorrectly stated MCC number 10 as P-C-S-A-1-N and MCC number 13 as P-C-S-B-2-N. The correct MCCs were P-C-S-A-2-N and P-C-S-C-1-N respectively.

⁶⁰ Section 269TAA.

⁶¹ EPR 566, item no. 14.

have regard to non-prime MCCs in calculating the normal value or for the purposes of adjustments.

InfraBuild requested that the commission verify whether the minimum yield strength MCC sub-category was inadvertently misclassified for any domestic sales. This was claimed on the basis that CELSA reported only one MCC with sub-category 'B', whereas its website lists minimum yield strengths of 400MPa and 500MPa for its range of rebar coil and rebar straight lengths. The commission verified CELSA's domestic sales to source documents and did not identify any issues relating to the accuracy of the minimum yield strength categorisation.

6.1.4 Adjustments

The commission also considered that further adjustments in accordance with section 269TAC(8) were necessary to ensure the normal value is comparable to the export price of goods exported to Australia. The commission is satisfied that there is sufficient and reliable information to justify the adjustments described in Table 15.

Adjustment type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for port charges
Export credit terms	Add an amount for export credit terms

Table 15: Adjustments to CELSA's normal value

6.1.5 Submission concerning date of sale

In response to CELSA's REQ, InfraBuild submitted⁶² that the commission establish the date of sale according to the date that best aligns with the costs of production for export and domestic sales, having regard to the factors outlined in the manual.

The commission ascertained CELSA's export price and normal value using the proforma invoice date as the date of sale. The commission has examined the evidence provided and the factors outlined in the manual⁶³ to establish whether the proforma invoice date, as opposed to the invoice date, best reflects the material terms of sale.

The commission notes that CELSA's export price and normal value were ascertained in REP 546 using the proforma invoice date as the date of sale. In verifying CELSA's information as part of this review, the commission identified that the proforma invoice date reflects the date on which the material terms were established without continued negotiation or variation to these terms following this date.

The commission found that transactions are recognised as sales in CELSA's accounting system on the proforma invoice date, rather than the invoice date. In addition, this treatment of sales recognition is supported by CELSA's audited financial statements.

In comparing the time period between the issue of the proforma invoice date and invoice date, the commission identified that there was on average a short time period for domestic sales, while there was a longer period for Australian export sales. However,

⁶² EPR 566, item no. 14.

⁶³ The manual, pp. 66–67.

having regard to CELSA's CTM for Australian exported goods, the proforma invoice date is closer to the production period than the invoice date. By using the proforma invoice date as the date of sale, the date of sale for all Australian export transactions occurs within the same quarter as the production of those goods. This would not be the case if relying on the invoice date as the date of sale.

In addition, the commission assessed the raw material (steel scrap) costs incurred by CELSA in the production of the Australian exported goods and like goods sold domestically. The commission found that there was neither a significant difference in the steel scrap costs between Australian export and domestic goods, nor in the variation of these costs on a quarterly basis. As such, the commission considers that for CELSA's Australian export and domestic sales, the production timing and steel scrap costs are best reflected by the proforma invoice date, as opposed to the invoice date.

The commission's assessment of date of sale is at **Confidential Attachment 7**.

Given the above factors, the commission considers that the proforma invoice date best reflects CELSA's material terms for Australian export and domestic sales, and therefore is the date of sale.

6.1.6 Submission concerning physical differences adjustment

6.1.6.1 Preliminary findings in SEF 566

In its REQ, CELSA claimed that the commission should consider making an adjustment to the normal value to account for physical/grade differences between the goods sold domestically and those exported to Australia. In response to CELSA's REQ, InfraBuild submitted⁶⁴ that there was insufficient information on the public record to justify the specification adjustment for physical differences claimed by CELSA. Consistent with the verification report⁶⁵, the commission's recommendation in SEF 566 was that an adjustment to the normal value to account for physical/grade differences between domestic and export sales was not necessary.

6.1.6.2 CELSA submission in response to SEF 566

In response to SEF 566, CELSA submitted⁶⁶ that the commission should reconsider the specification adjustment to account for physical/grade differences between the goods exported to Australia and those sold domestically. CELSA stated that it provided an explanation during the verification process of how specification differences, namely between the domestic 500SD product and the export 500N product, differ in cost due to the use of different billet and raw materials. CELSA observe that due to these differences, the domestically sold 500SD product, on average, experienced a higher cost and demanded higher prices than the exported 500N product.

CELSA also disagree with the commission's observations in CELSA's verification report with respect to unit cost differences for components of the CTM being inconclusive or higher for export MCCs compared to domestic MCCs. CELSA claim that the commission has incorrectly observed export scrap and ferroalloy costs across all quarters of the review period and should have only focussed on the single quarter with exports. CELSA

⁶⁴ EPR 566, item no. 14.

⁶⁵ EPR 566, item no. 21.

⁶⁶ EPR 566, item no. 23.

further claims that ferroalloy costs for that one quarter were affected by monthly variances within that quarter and represent a small portion of CELSA's CTM.

6.1.6.3 Commission's assessment

The commission notes that adjustments to the normal value are permitted in prescribed circumstances under section 269TAC(8). Pursuant to section 269TAC(8), where the normal value is the price paid or payable for like goods and that price and the export price:

- (a) relate to sales occurring at different times
- (b) are not in respect of identical goods, or
- (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate

adjustments may be made to the normal value so that those differences would not affect its comparison with that export price.

In accordance with the Manual, the commission has determined an MCC structure having regard to the differences in physical characteristics that give rise to distinguishable and material differences in price. Where the commission is reasonably satisfied that unit cost differences affect price comparability, these are taken into account.

The commission does not dispute the fact that domestic and export costs can be different for the same MCCs. However, the commission does not consider it appropriate to make adjustments for differences in costs where the models are essentially the same. Where there is evidence of differences in physical characteristics that give rise to distinguishable and material differences in price, the commission would instead first consider making amendments to the MCC structure.

The commission has compared domestic and exported MCCs which contain grades with physical characteristics that are almost identical. The commission is satisfied that in setting the MCC structure, differences in physical characteristics and price comparability within each MCC have already been considered. No alternate MCC structure has been provided by CELSA to account for the domestic and export physical/grades differences claimed here.

CELSA referred to price differences between its models B 400SD and B 500SD as evidence that specification differences in the form of grade difference affect price. The commission notes however that these models fall under different MCC categories, further evidencing the appropriateness of the current MCC structure.

Further, CELSA advised that the cost differences between the goods exported to Australia and those sold domestically are reflected in the use of different billet and raw materials. The commission notes that, even if a consistent unit cost difference could be identified, raw materials in the form of ferroalloy costs make up a negligible portion of overall CTM. Based on this information, the commission conducted an analysis of these cost components for the single quarter when CELSA exported the goods to Australia. The commission is satisfied that the differences in the unit costs are higher for some components and lower for others when comparing export and domestic MCCs. The commission is therefore not satisfied that these differences in billet and raw materials are consistent with the adjustment requested by CELSA to account for physical/grade differences in domestic and export products. This analysis is contained at **Confidential Attachment 8**.

Consistent with the reasons in the verification report⁶⁷, SEF 566⁶⁸ and this report, the commission is not satisfied that any specification adjustment under section 269TAC(8) should be made to the normal value.

6.1.7 Submission concerning import duty adjustment

6.1.7.1 *InfraBuild submission*

In response to CELSA's REQ, InfraBuild submitted⁶⁹ that post-exportation expenses such as import duties paid by importers would not be a relevant adjustment to the normal value under section 269TAC(8).

6.1.7.2 *CELSA submission in response to SEF 566*

In response to SEF 566, CELSA submitted⁷⁰ that an import duty related adjustment was warranted under section 269TAC(8)(c) noting the prices 'are modified in different ways by taxes or the terms or circumstances of the sales to which they relate'. CELSA states that the sales prices of rebar to Australia are modified in different ways to sales prices of rebar within Spain due to the different circumstances of the sales brought about by Australia's 5% import duty on rebar. CELSA asserted that the source of payment of the import duty is not the relevant issue, confirming that it did not pay the duty itself. CELSA provided evidence of a discussion relating to the payment of the import duty forming part of price negotiations. CELSA stated that the nature of this adjustment is not principally different to adjustments applied to differences in VAT refund rates and to import duty drawbacks.

6.1.7.3 *Commission's assessment*

When calculating the export price under section 269TAB(1)(a), the commission deducts any expenses arising after exportation as those expenses do not form part of the FOB export price. This means that any taxes, including duties, which arise after the exportation of rebar were already excluded from the export price. As such, an adjustment in relation to import duties is not required.

The commission does not consider import duties to be comparable to standard adjustments such as VAT refunds and import duty draw backs often made by the commission, as claimed by CELSA. This is primarily due to each of these expenses resulting in either an additional expense to the exporter or a reimbursement of an amount paid prior to the exportation of the goods. Import duties are however an expense paid after the exportation of the goods.

On this basis, the commission is not satisfied that an adjustment for import duty under section 269TAC(8) is required.

⁶⁷ EPR 566, item no. 20.

⁶⁸ EPR 566, item no. 21.

⁶⁹ EPR 566, item no. 14.

⁷⁰ EPR 566, item no. 23.

6.1.8 Submission concerning increased export expenses during COVID-19

6.1.8.1 CELSA submission in response to SEF 566

In response to SEF 566, CELSA submitted⁷¹ that the COVID-19 global pandemic created special circumstances that had disrupted CELSA's normal international trade resulting in an 'incidental and accidental' dumping margin.⁷² CELSA stated that the pandemic led to an 'unforeseen surge' in export costs, in particular ocean freight charges, which contributed to the higher dumping margin due to CELSA operating on Carriage Paid To sales terms. This had occurred as a dumping margin is calculated on FOB terms and therefore, when increased ocean freight charges are removed from the export price, the FOB export price is lower than intended by CELSA.

6.1.8.2 Commission's assessment

The commission has observed, from independent research, that ocean freight costs have increased during the COVID-19 pandemic, and that the Australian Competition and Consumer Commission (ACCC) and other commentators suggest that these increases may be ongoing.⁷³ The commission however considers fluctuations in export-related costs such as ocean freight charges to be part of the ebb and flow of business, acknowledging it can have both positive and negative effects on sales profitability and prices. The commission considers the upside and downside risks associated with making sales under certain terms of trade is for the buyer and seller to manage. The risk of future expenses arising is a risk on the exporter as part of this negotiation process. The commission therefore does not agree that these expenses should be adjusted in any way and the FOB export price has been calculated using the commission's standard practice. During this review, the commission relied on verified export prices and export-related costs.

6.1.9 Submission concerning fumigation charges

6.1.9.1 CELSA submission in response to SEF 566

In response to SEF 566, CELSA stated that it was unaware of the biosecurity requirements for exports to Australia in relation to the brown marmorated stink bug infestation at the time of sale.⁷⁴ This resulted in additional handling and port charges for CELSA which are removed from the export price when calculating an FOB export price resulting in a higher dumping margin.

6.1.9.2 Commission's assessment

The commission considers fluctuations in handling and port charges driven by changes to biosecurity requirements to be part of the ebb and flow of business, acknowledging it can have both positive and negative effects on sales profitability and prices. The commission is aware that the Department of Agriculture, Water and the Environment first introduced

⁷¹ EPR 566, item no. 23.

⁷² *ibid.*

⁷³ H Ren, [Higher shipping costs are here to stay, sparking price increases](#), *Bloomberg*, 12 April 2021; [Why freight rates are high right now and how shippers can adapt?](#), *Hellenic Shipping News*, 4 May 2021; G Miller, [Why stratospheric container rates could rocket even higher](#), *American Shipper*, 16 May 2021; S Lannin, [Shipping cost surge raises retail price pressures and inflation risks](#), *ABC News*, 10 June 2021.

ACCC, [Container stevedoring Monitoring Report 2020-21](#) October 2021.

⁷⁴ EPR 566, item no. 23.

biosecurity requirements in relation to stink bug in December 2014 and added Spain to the target risk countries list on 29 April 2019 for the 2019/20 risk season. The commission considers that before goods can be exported to Australia, it is important that exporters understand their responsibilities as an exporter and the export conditions that may apply to their goods when negotiating prices for export to Australia. The risk of future expenses arising is a risk on the exporter as part of this negotiation process. The commission therefore does not agree that these expenses should be adjusted in any way and the FOB export price has been calculated using the commission's standard practice. During this review, the commission relied on verified export prices and export-related costs to ascertain the variable factors.

6.1.10 Dumping margin

The commission calculated a dumping margin for CELSA for the review period. The dumping margin is **9.4%**.

The commission's calculations are included at **Confidential Attachment 9**.

6.2 Uncooperative and all other exporters

6.2.1 Export price

In accordance with section 269TACAB(1), the commission has determined the export price for the uncooperative exporters and all other exporters from Spain pursuant to section 269TAB(3). Specifically, the commission has had regard to the ascertained export price for CELSA in this review.

6.2.2 Normal value

In accordance with section 269TACAB(1), the commission has determined the normal value for uncooperative and all other exporters from Spain pursuant to section 269TAC(6). Specifically, the commission considers that the most reliable and contemporaneous information is verified information from CELSA.

In calculating the normal value, the commission used CELSA's ascertained normal value without deductions for adjustments under section 269TAC(8).

6.2.3 Dumping margin

The dumping margin for uncooperative and all other exporters from Spain is **11.8%**.

The commission's calculations are included at **Confidential Attachment 10**.

7 VARIABLE FACTORS – NON-INJURIOUS PRICE

7.1 Findings

The commission found that the NIP relevant to the determination of duty payable under the Dumping Duty Act changed in respect of the goods exported to Australia from exporters from the subject countries in the review period. However, the NIP is not operative in respect of exports from the subject countries during the review period.

7.2 Non-injurious price

Section 269TACA defines the NIP as ‘the minimum price necessary to prevent the injury, or a recurrence of the injury’ caused by the dumped or subsidised goods, the subject of a dumping duty notice or a countervailing duty notice. The commission will generally derive the NIP from the Australian industry’s unsuppressed selling price (USP).

7.3 Lesser duty rule

Where the Minister is required to determine the IDD, section 8(5B) of the Dumping Duty Act applies.

Section 8(5B) requires the Minister to have regard to the ‘lesser duty rule’ when determining the IDD payable. In relation to a dumping duty notice, the lesser duty rule requires consideration of whether the NIP is less than the normal value of the goods.

However, pursuant to section 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:⁷⁵

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

7.4 Establishing an USP

The manual provides that the commission will normally use the following approaches, in order of preference, subject to the facts of the case, for establishing a USP:

1. The price or market approach of the Australian industry’s selling prices of like goods in a period unaffected by dumping.
2. The constructed approach, using the Australian industry’s CTMS of like goods plus a reasonable amount for profit.
3. The selling prices of undumped imports of like goods in the Australian market.⁷⁶

⁷⁵ Sections 8(5BAA)(a) and (b) of the Dumping Duty Act concern the calculation of dumping duty.

⁷⁶ The manual, pp. 137–140.

7.4.1 Approach in Inquiry 546

In Inquiry 546, the commission considered that the Australian industry selling prices of like goods were affected by the presence of dumped imports in the market during the inquiry period such that the first method under the manual's hierarchy is unsuitable.

The commission calculated the USP according to the second method under the manual's hierarchy, being the sum of:⁷⁷

- InfraBuild's CTMS for the inquiry period (1 January 2019 to 31 December 2019)
- a reasonable amount for profit based on InfraBuild's forward projections under its rebar pricing policy for the period July to September 2020 sourced from management reports.

7.4.2 Commission's approach

Given the finding that the goods exported to Australia from the ROK and Spain (except Nervacero SA) were dumped,⁷⁸ the commission considers that the Australian industry selling prices of like goods were affected by the presence of dumped imports in the market during the review period such that the first method under the manual's hierarchy is unsuitable.

The inquiry period of Inquiry 546 overlaps with this review period by 6 months, being 1 July 2019 to 31 December 2019. The commission verified InfraBuild's CTMS data for like goods for the inquiry period.

The manual provides that when determining the USP under a constructed method, there is a preference for using a weighted average of the most recent verified Australian industry CTMS, with a preference for a one year minimum. This allows for fluctuations for seasonal or longer cyclical trends to be taken into account.

As such, the commission considers that InfraBuild's verified CTMS data for like goods for the period 1 July 2019 to 31 December 2019 to be relevant and preferable for the purpose of establishing the USP for the review period.⁷⁹ In addition, the commission considers that the amount for profit based on a projection under its rebar pricing policy for the period July to September 2020 that was applied in Inquiry 546 reasonably reflects the amount of profit that InfraBuild could achieve in a market unaffected by dumping for the purpose of establishing the USP for the review period.

Consistent with the approach in Inquiry 546, the commission considers that the USP should be calculated according to the constructed approach, being the sum of:

- InfraBuild's CTMS for like goods for the period 1 January 2019 to 31 December 2019
- a reasonable amount for profit based on InfraBuild's forward projections on the profit margin under its rebar pricing policy for the period July to September 2020 sourced from management reports.

The commission's USP calculations are at **Confidential Attachment 11**.

⁷⁷ REP 546, section 8.6 refers.

⁷⁸ Chapters 5 and 6 of this report refer.

⁷⁹ The commission does not possess verified information for the second half of the review period, being 1 January 2020 to 30 June 2020.

7.5 Establishing a NIP

Having calculated the USP, the commission then calculated a NIP for each exporter, by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to a comparable level of trade in Australia. The deductions included were into-store costs, importer profit, importer selling expenses, Australian customs fees and charges, overseas freight and marine insurance. In this review, the commission applied deductions sourced from importer data that the commission verified as part of this review.

The commission calculated a NIP for each of the ROK and Spain. The commission's calculation of the NIP is at **Confidential Attachment 11**.

7.6 The lesser duty rule and the effective rate of duty

As described above, the Minister must have regard to the lesser duty rule unless one of the 3 exceptions in section 8(5BAA) of the Dumping Duty Act applies.

The Australian industry producing like goods does not consist of at least 2 small-medium enterprises and therefore the second exception to the lesser duty rule does not arise.

With respect to exporters from the subject countries, the operation of section 269TAC(2)(a)(ii) does not apply and the exception to the Minister's consideration of the desirability of applying the lesser duty rule does not arise. Accordingly, where the NIP is less than the normal value, the Minister must consider the desirability of imposing a lesser amount of duty with respect to the goods and exporters of the goods from the subject countries.

The commission compared the NIP with the normal values of the goods exported to Australia from the ROK and Spain by each exporter. The commission found that in respect of the goods exported to Australia by exporters from the ROK and Spain, the NIP is greater than the normal value of those goods and therefore the NIP is not the operative measure. As a result, the Minister is not required to have regard to the desirability of specifying a lesser amount of duty in accordance with section 8(5B) of the Dumping Duty Act.

8 FORM OF MEASURES AND RATES OF DUTY

8.1 Findings

The Commissioner finds that, in relation to rebar exported to Australia from the subject countries during the review period, for all exporters:

- the ascertained export price has changed
- the ascertained normal value has changed
- the NIP has changed.

8.2 Forms of duty available – dumping

The forms of duty available to the Minister when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013*. In relation to IDD, the forms of duty are:

- fixed duty method (AUD per tonne)
- floor price duty method
- combination of fixed and variable (combination) duty method
- *ad valorem* duty method (i.e. a percentage of the export price).⁸⁰

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances than others. In considering which form of duty to recommend to the Minister, the Commissioner had regard to the *Guidelines on the Application of Forms of Dumping Duty* (the duty guidelines)⁸¹ and relevant factors applicable to the market for the goods.

In this case, the goods exported to Australia are subject to the floor price duty method or the combination duty method.

Under the floor price duty method, IDD is payable if the export price of the goods exported to Australia is less than the floor price. The amount of IDD payable is the difference between the export price and the floor price.

Under the combination duty method, the IDD payable is the combination of a:

- fixed component, which may be a percentage of the export price of the goods or an amount per unit of the goods, and
- variable component, whereby additional IDD is payable if the export price of the goods is less than the export price last ascertained by the Minister following an investigation, review or inquiry.

8.3 Submissions received in response to SEF 566

8.3.1 Daehan's submission

In response to SEF 566, Daehan submitted the particular risks that would support using a combination duty method were not present and not relevant to Daehan's circumstances.⁸²

⁸⁰ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

⁸¹ The duty guidelines are available on the commission's website.

⁸² EPR 566, item no. 22.

Daehan states that the commission should have regard to the circumstances of the global and Australian market for rebar when considering the form of measures. Daehan stated that exports of rebar to Australia were dominated by suppliers from countries not currently, or no longer, subject to measures. The submission states that there are 'virtually no risks associated with exports from Daehan' and such risks do not undermine the effectiveness of the measures. Daehan asserted that the appropriate form of measures was to revert to the originally imposed *ad valorem* duty method.

8.3.2 InfraBuild's submission

In response to SEF 566, InfraBuild agreed with the commission's proposed forms of measure.⁸³ InfraBuild stated that the current combination duty method for Daehan was appropriate given its history of dumping.

In response to Daehan's submission⁸⁴, InfraBuild asserted that Daehan's exports volumes peaked at a time when it was subject to *ad valorem* dumping duties. InfraBuild stated that risks for Daehan's exports of the goods to Australia have increased, citing the increased dumping margin as evidence. With reference to the duty guidelines, InfraBuild provided its assessment of the key considerations relevant to the combination duty method stating:

- As Daehan only exported rebar in coils to Australia there are not 'significantly different prices' caused by 'many models or types'.
- Daehan has 7 subsidiary companies and one affiliated company thereby demonstrating 'complex company structures'. InfraBuild reported the recent history of price falsification by Daehan as well as statements relevant to Daehan's past behaviours of lowering export prices, by a greater rate than its normal value, and price falsification in respect of rebar.
- InfraBuild is not advocating that a 'fixed amount per unit' be used in the combination duty method thereby ameliorating the potential punitive effective rate in a declining market.
- The frequency of reviews as a result of the combination duty method should not be a determining factor when the commission imposes a particular form of measures.
- Potential adverse effects on downstream industries, as a result of punitive effects in a falling market, are not evident in this case as downstream industries can source rebar from many countries not subject to measures.
- If the AEP and ANV become out of date, the legislation provides for a review of measures or a duty assessment to compensate affected parties for these changes.

InfraBuild submitted⁸⁵ that measures should be applied in the following manner:

- exporters with a negative dumping margin set to a floor price equal to the ANV
- exporters with negligible dumping margin using a combination duty method
- Daehan and exporters generally from the ROK using a combination duty method where the variable element is a floor price equal to the AEP and the fixed element is an *ad valorem* rate.

⁸³ EPR 566, item no. 24.

⁸⁴ EPR 566, item no. 25.

⁸⁵ *ibid*.

In relation to the form of measures for CELSA, InfraBuild noted that the combination duty method suited CELSA's particular circumstances given its complex company structure. It referenced the duty guidelines⁸⁶ where it states that combination duty method suits 'circumstances where there are complex company structures with related parties; and where circumvention of measures is likely'. It supported this view by reference to findings made by the ADRP⁸⁷ regarding the interaction between companies within the CELSA group of companies.

8.3.3 Submission from CELSA

In response to SEF 566, CELSA submitted that the COVID-19 global pandemic created special circumstances that had disrupted CELSA's normal international trade resulting in an 'incidental and accidental' dumping margin.⁸⁸ As a consequence, CELSA asserted that the commission should not alter the measures but use the current dumping duty notice with the variable factors ascertained in Inquiry 546, given the 6-months overlap between Inquiry 546 and this review. Alternatively, the submission recommended that the floor price duty method remain in place with the floor price made equal to the normal value or NIP from this review. CELSA stated that the normal value and NIP were less affected by the distortive effect of the pandemic than the export price was.

8.3.4 Commission's assessment of Daehan form of measures

The duty guidelines state that the forms of duty are the methods by which the amount of interim dumping duty payable on goods exported to Australia is calculated.⁸⁹ Therefore, determining the form of measures relates to the price paid for the goods rather than the volume of the goods. This is consistent with the purpose of a review of measures as section 269ZA(1)(b)(i) states that affected parties can apply for a review of measures if they believe one or more of the variable factors relevant to the taking of anti-dumping measures have changed. The variable factors relevant to this review are the AEP, ANV and NIP which are all price factors.

The commission notes that evidence supplied by Daehan in relation to exports to the Australian market relates to the volume of goods from various countries and not to the price of those goods.

When considering the form of measures for Daehan, the commission considered various endogenous factors including patterns of trade, the types and prices of its exported models and the variable factors ascertained in this review. The commission notes that Daehan did not provide any new information specific to their own company in its submission.

The commission notes that the dumping margins for all exporters from the ROK found in this review are higher than the dumping margins found in Inquiry 546. In this respect, the risks associated with exports from Daehan are higher in this review than in Inquiry 546.

⁸⁶ The duty guidelines are available on the commission's website.

⁸⁷ ADRP Report No. 130, p. 33.

⁸⁸ EPR 566, item no. 23.

⁸⁹ The duty guidelines are available on the commission's website.

The commission notes that Daehan is currently subject to a combination duty following REP 546.

With respect to InfraBuild's submission, the commission recognises that a potential disadvantage of *ad valorem* measures is that export prices can be lowered to avoid the intended effect of duty. Combination duty may be suitable where the commission considers that there is a likelihood of price manipulation owing to the existence of complex related party company structures, or where there have been proven instances of price manipulation.

The commission is of the view that Daehan's company structure could be considered complex. With respect to the statements made by InfraBuild regarding Daehan's past behaviours of lowering export prices and price falsification in respect of rebar, this information was also furnished in Inquiry 546, Review of Measures No. 486 (Review 486) and Review of Measures No. 489 (Review 489).⁹⁰ In relation to this information, the commission concluded in *Anti-Dumping Commission Report No. 486 and 489* that there was no evidence before it to demonstrate that the alleged price falsification concerned the goods exported to Australia during the period relevant to Review 486 and Review 489.⁹¹ In Inquiry 546 and in this review, InfraBuild has not provided evidence to support that the alleged price falsification concerned the goods exported to Australia.

The commission is of the view that the potential behaviour highlighted by InfraBuild as a reason for using a combination duty method has not been demonstrated as likely. As set out in *Anti-Dumping Commission Termination Report No. 452*⁹², whilst the commission found that Daehan lowered its export price in the period following the imposition of measures these relative changes were explained by external factors. Specifically, concerning the period from 1 April 2016 to 31 March 2017 referred to in InfraBuild's submission, the lowering of scrap metal prices led to the reduction in Daehan's export prices.

On the basis of the above, the commission is satisfied that the most appropriate form of duty for Daehan is a combination of a fixed and variable component.

8.3.5 Commission's assessment of CELSA form of measures

The commission's response to the effects of the pandemic is outlined in section 6.1.8 of this report.

In terms of the forms of measures, the commission notes that the ADRP report⁹³ cited by InfraBuild addresses the issue of whether or not exports from CELSA would resume in the absence of measures. The commission notes that producers choosing to produce goods from a production facility with the lowest dumping duties applicable to it is not a form of circumvention as defined in the Act⁹⁴.

In addressing CELSA's submission that a floor price duty method is more appropriate, the commission notes that CELSA did not export rebar during Inquiry 546 and its interim dumping duty was calculated using the floor price duty being equal to the ascertained

⁹⁰ EPR 486, item no. 14, EPR 489, item no. 19 and EPR 546, item nos. 27 and 29.

⁹¹ EPR 489, item no. 25.

⁹² EPR 452, item no. 16.

⁹³ ADRP Report No. 130, p. 33.

⁹⁴ Section 269ZDBB.

normal value. CELSA has exported rebar during this review period and the commission has therefore been able to rely on contemporaneous information in respect of dumping. The commission has therefore been able to calculate the dumping margin by comparing the weighted average export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period in line with section 269TACB(2)(a).

The duty guidelines note that a floor price can quickly become out of date. In a rising market it can become ineffective, and in a falling market it can become punitive. The commission usually considers it appropriate to apply a floor price in a review where an exporter is found to have not dumped during the review period. The commission has found that CELSA dumped during the review period and therefore an alternative form of measures may be more appropriate to prevent further injury to the Australian industry.

The duty guidelines outline that the combination duty method may not suit situations where there are many models or types of goods with different prices. The commission has not found evidence of significantly different prices for different rebar products (rebar coils and rebar straights), noting that CELSA did not export rebar straights to Australia during the review period however, is capable of exporting these in the future. The duty guidelines outline that, in a falling market, the combination duty method may be considered inappropriate, as it may be considered punitive due to the operation of the fixed element. The commission has observed a rising rebar market since July 2019 and considers that the combination duty method is appropriate in the circumstances. The commission's assessment of Australian market imported rebar prices is at **Confidential Attachment 12**.

The combination duty method is also consistent with the form of measures applying to exporters found to have dumped rebar in recent cases and to the recommended duty method for other exporters in this review.

8.3.6 Submissions from InfraBuild relating to date of effect of measures

InfraBuild submit⁹⁵ that the measures take effect from the date the verification reports were published, being 23 April 2021 for Daehan and exporters from the ROK generally and 22 September 2021 for CELSA and exporters from Spain generally (except Nervacero SA). InfraBuild argued that export volumes from the ROK increased to historically high levels following the initiation of this review on 10 September 2020 and in the intervening months preceding the publication of Daehan's verification report on 23 April 2021. To support its submission, InfraBuild provided evidence of export volumes from the ROK.

8.3.7 Commission's response to submission relating to date of effect of measures

The commission notes that the publication of a verification report and a SEF represents the commission's preliminary dumping margins. As a case evolves, further revisions, potentially upwards or downwards, may be made and therefore the dumping margins published in a verification report or SEF are not definitive of future duty liabilities. Given this potential for revision, the commission disagrees that preliminary dumping margins provide 'constructive notice of their future duty liability' to interested parties. A change to

⁹⁵ EPR 566, item no. 24.

the notice with effect from the date of the Minister's decision provides certainty to interested parties conducting business while a review is underway.

The commission examined import volumes using data from the ABF import database. This analysis compared monthly import volumes during 2020 with 2021 and found that import volumes of rebar sourced from Spain had not increased. The commission notes however that the difference in time between publication of the verification report and this report is not significant enough for a change in import behaviour to be evident. The commission notes that import volumes of rebar exported from the ROK had increased between the period of publishing the verification report and this report. The commission has examined the history of importation from 2017 for importers that had imported from the ROK during the review period. The majority of importers sourcing the goods from the ROK did not change their import behaviour following the publication of Daehan's verification report and frequently imported from other countries in larger volumes than it imported from the ROK. The commission further notes that the verification reports proposed dumping margins for the relevant exporters which are higher than those in Inquiry 546.

Based on the commission's analysis, the commission is not satisfied that the date of effect of anti-dumping measures should be set to the date of the publication of the verification reports. The commission's assessment of Australian import patterns is at **Confidential Attachment 13**.

8.4 Conclusion and recommendations

Having regard to the dumping margins established in chapters 5 and 6 of this report, the commission found that all exporters from the ROK and Spain were dumping.

The commission observes that the number of export models of the goods exported from the ROK and Spain is not large nor is there a significant price disparity between models.

Daehan is currently subject to a combination duty following REP 546, which was based on the following reasons:

- The commission was not satisfied with the information presented by Daehan regarding the normal value. Therefore, the commission calculated the normal value based on all relevant information.
- The combination duty method was less reliant upon its normal value and therefore better reflected Daehan's verified export prices compared to the *ad valorem* duty method.
- There were no significant differences in Daehan's price between different models of rebar exported to Australia from the ROK that would render the combination duty method inappropriate.

The commission also applied a combination duty to uncooperative and all other exporters from the ROK in REP 546. In contrast to REP 546, for the purpose of this review the commission ascertained Daehan's normal value based on verified information from Daehan.

CELSA is currently subject to a floor price following REP 546, as it did not export the goods to Australia during that inquiry period. The commission found that CELSA exported the goods to Australia during the review period and that these exports were at dumped prices. Uncooperative and all other exporters from Spain are subject to a combination duty.

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The commission has found that all exporters from the ROK and Spain were dumping during the review period. Those dumped prices occurred in circumstances where all exporters from the ROK, and uncooperative and all other exporters from Spain, were subject to a combination duty.

The commission considers that the combination duty method is the most appropriate form of duty in the current circumstances for exporters from the ROK and Spain. As indicated in the duty guidelines, the combination duty method lends itself to these circumstances outlined above.

The commission notes that exports of rebar from other countries⁹⁶ are subject to a combination duty, which indicates that this is a reasonable duty method for rebar generally.

8.4.1 Recommendations

The Commissioner recommends to the Minister that the dumping duty notice in respect of rebar exported from the subject countries have effect as if different variable factors had been ascertained.

The Commissioner recommends that IDD be calculated using the combination duty method for all goods exported to Australia.⁹⁷

Table 16 sets out the dumping measures that will apply if these recommendations are accepted. The calculations are at **Confidential Attachment 14**.

Country	Exporter	Form of measures	Fixed component of IDD
ROK	Daehan	Combination	4.7%
	Uncooperative and all other exporters	Combination	8.5%
Spain	CELSA	Combination	9.4%
	Uncooperative and all other exporters (except Nervacero SA)	Combination	11.8%

Table 16: Form of measure and rate of interim duty applying to rebar from the subject countries

⁹⁶ The People's Republic of China, Greece, the Republic of Indonesia and the Kingdom of Thailand.

⁹⁷ Pursuant to section 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

9 FINDINGS AND RECOMMENDATIONS

9.1 Findings

The Commissioner has found that, in relation to rebar exported to Australia from the subject countries:

- the ascertained export price has changed;
- the ascertained normal value has changed;
- the non-injurious price has changed.

9.2 Recommendations

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

- in accordance with subsection 269ZDB(1)(a)(iii), with effect from the day after the publication of the notice declaring the outcome of the review, and for the purposes of the Act and the Dumping Duty Act, the dumping duty notice is taken to have effect in relation to exporters from the ROK and Spain (except Nervacero SA) as if different variable factors, as set out in **Confidential Attachments 3 and 9**, had been fixed relevant to the determination of duty.

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

- pursuant to section 269TAB(3), sufficient information has not been furnished, or is not available, to enable the export price of the goods exported to Australia from the ROK and Spain (except Nervacero SA) by the category of 'uncooperative and all other exporters' to be determined under subsection 269TAB(1), as set out in chapters 5 and 6 and **Confidential Attachments 3 and 9**; and
- pursuant to section 269TAC(6), sufficient information has not been furnished, or is not available, to enable the normal value of the goods exported to Australia from the ROK and Spain (except Nervacero SA) by the category of 'uncooperative and all other exporters' to be determined under subsection 269TAC(1), as set out in chapters 5 and 6 and **Confidential Attachments 3 and 9**.

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

- pursuant to section 269TAB(1)(a), that the export price of certain goods exported to Australia from the ROK by Daehan is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in chapter 5 and **Confidential Attachment 3**;
- pursuant to section 269TAB(1)(c), that the export price of certain goods exported to Australia from the ROK by Daehan is the price having regard to all the circumstances of the exportation, as set out in chapter 5 and **Confidential Attachment 3**;
- pursuant to section 269TAB(1)(a), that the export price of certain goods exported to Australia from Spain by CELSA is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in chapter 6 and **Confidential Attachment 9**;
- pursuant to section 269TAB(3), that the export price of the goods exported to Australia from the ROK and Spain (except Nervacero SA) for 'uncooperative and

all other exporters' to be determined under subsection 269TAB(3), as set out in chapters 5 and 6 and **Confidential Attachments 3 and 9**;

- pursuant to section 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in the ROK in sales that are 'arms length' transactions by Daehan, that the normal value of the goods exported to Australia from the ROK by Daehan is the price paid or payable for like goods, as set out in chapter 5 and **Confidential Attachment 3**;
- pursuant to section 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Spain in sales that are 'arms length' transactions by CELSA, that the normal value of the goods exported to Australia from Spain by CELSA is the price paid or payable for like goods, as set out in chapter 6 and **Confidential Attachment 9**;
- pursuant to section 269TACB(2)(a) and in accordance with section 269TACB(1), the dumping margins for all exporters have been calculated using the weighted average of export prices and normal values over the entire review period, as set out in chapters 5 and 6 and **Confidential Attachments 3 and 9**; and
- in accordance with section 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of rebar exported to Australia from the ROK and Spain (except Nervacero SA) is an amount which will be worked out in accordance with the combination of fixed and variable duty method pursuant to sections 5(2) and 5(3) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

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

- in accordance with section 269TAC(8), as the normal value of the goods exported to Australia is the price paid or payable for like goods sold in the ROK and Spain (except Nervacero SA), the normal value for Daehan and CELSA be adjusted for specified differences between the like goods sold in the ROK and Spain (except Nervacero SA) and export sales, as set out in chapters 5 and 6 and **Confidential Attachments 3 and 9**.

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

- the non-injurious price of the goods exported to Australia from the ROK and Spain for the purposes of the dumping duty notice is as set out in chapter 7 and **Confidential Attachment 11**; and
- in accordance with sections 8(5) and 8(5BB) of the Dumping Duty Act, that the interim dumping duty payable on the goods exported to Australia by CELSA is an amount worked out in accordance with the combination duty method, where the fixed component is an amount equal to the percentage dumping margin applied to the higher of the AEP or the actual export price, as set out in chapter 8 and **Confidential Attachment 14**, in accordance with sections 5(2) and 5(3)(a) of the *Customs Tariff (Anti-Dumping) Regulation 2013*, with effect from the date of publication of the signed notice.

10 ATTACHMENTS

Confidential Attachment 1	Assessment of DITH
Confidential Attachment 2	Assessment of Sanwa
Confidential Attachment 3	Calculations for inquiry period of export price, normal value and dumping margin for Daehan
Confidential Attachment 4	ROK export price and volume assessment
Confidential Attachment 5	Uncooperative and All Other Exporters from the ROK, dumping margin calculations
Confidential Attachment 6	Assessment of CELSA MCC
Confidential Attachment 7	Assessment of CELSA date of sale
Confidential Attachment 8	Analysis of CELSA cost for specification adjustment
Confidential Attachment 9	Calculations for inquiry period of export price, normal value and dumping margin for CELSA
Confidential Attachment 10	Uncooperative and All Other Exporters from Spain, dumping margin calculations
Confidential Attachment 11	USP and NIP calculations
Confidential Attachment 12	Australian market prices
Confidential Attachment 13	Australian market import patterns
Confidential Attachment 14	Effective rate of duty calculations