



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

¹ By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: [Ursine Steel Co., Ltd](#)

Address: [No.36, Bengong W. Rd. Gangshan Dist., Kaohsiung City 82059 Taiwan\(R.O.C\)](#)

Type of entity (trade union, corporation, government etc.): [Corporation](#)

2. Contact person for applicant

Full name: [Mr. Nan-Hsiung Chen](#)

Position: [Vice President](#)

Email address: ursine.ue@msa.hinet.net

Telephone number: [+886 912 809 021](#)

3. Set out the basis on which the applicant considers it is an interested party

[Ursine Steel \("Ursine Steel"\)](#) is a producer and exporter of hollow structural sections from Taiwan.

4. Is the applicant represented?

[Yes](#)

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The description of certain hollow structural sections (HSS) exported from China, Korea, Malaysia and Taiwan that are subject to:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections. Normally referred to as either CHS (circular or oval hollow sections) or RHS (rectangular or square hollow sections) collectively referred to as hollow structural sections (HSS).

Finish Types include:

- Galvanised (including in-line galvanised, pre-galvanised or hot-dipped galvanised); or
- Non-galvanised (including, but not restricted to, painted, black, lacquered or oiled finishes).

Sizes include:

- Circular products with an outside diameter exceeding 21 mm up to and including 165.1 mm; or
- Oval, square and rectangular products with a perimeter up to and including 1277.3 mm.

The following categories of HSS are excluded from the application:

- Conveyor tube made for high speed idler rolls on conveyor systems with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation;
- Precision RHS with a nominal thickness of less than 1.6 mm; and
- Air heater tubes to AS 2556.

7. Provide the tariff classifications/statistical codes of the imported goods

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37)
- 7306.61.00 (statistical codes 21, 22, 25)
- 7306.69.00 (statistical code 10)

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

Anti-Dumping Notice 2017/70 is attached at **Attachment A**.

9. Provide the date the notice of the reviewable decision was published

The attached ADN 2017/70 was published on 26 June 2017.

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

- 10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**

Please refer to **Attachment B**.

- 11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.**

Please refer to **Attachment B**.

- 12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Please refer to **Attachment B**.

PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name: JOHN BRACIC

Position: DIRECTOR

Organisation: J.BRACIC & ASSOCIATES PTY LTD

Date: 26th July 2017

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative: [Mr John Bracic](#)

Organisation: [J.Bracic & Associates Pty Ltd](#)

Address: [PO Box 6203, Manuka, ACT 2603](#)

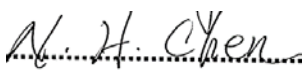
Email address: john@jbracic.com.au

Telephone number: [+61-0499056729](tel:+61-0499056729)

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature: 

(Applicant's authorised officer)

Name: [Mr. Nan-Hsiung Chen](#)

Position: [Vice President](#)

Organisation: [Ursine Steel Co., Ltd](#)

Date: [26 / 07 / 2017](#)



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26 July 2017

Anti-Dumping Review Panel
c/o Legal, Audit and Assurance Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601

Review of a decision by the Minister in relation to the continuation of anti-dumping measures – hollow structural sections exported by Ursine Steel Co., Ltd

1. REASONS FOR BELIEVING THAT THE REVIEWABLE DECISION IS NOT THE CORRECT OR PREFERABLE DECISION.

Ursine Steel seeks a review of a following findings and conclusions which led to the decision by the Assistant Minister:

- Finding 1: The Commission erred in determining normal values on the basis of domestic sales pursuant to subsection 269TAC(1) of the Act;
- Finding 2: In determining normal value on the basis of domestic sales of like goods, the Commission erred in excluding certain domestic sales which were also considered to be like goods.

1.1 Finding 1: The Commission erred in determining normal values on the basis of domestic sales pursuant to subsection 269TAC(1) of the Act.

In determining the appropriate model or category of like goods for comparison with the exported goods, the Commission stated³:

For the purpose of model matching specific to Ursine, the verification team used the following criteria and hierarchy:

- *Grade (C350 to STKR 490)*
- *Finish (pre-galvanised)*
- *Shape (rectangular)*

- *Size (RHS Width: 2mm)*

The key characteristic considered by the Commission to affect price comparability was grade. It is worth noting that Ursine Steel and Austube Mills Pty Ltd, the local Australian producer of HSS, both agreed and supported the Commission's finding that domestic sales of grade STKR 490 were the most comparable to the export sales of grade C350. Therefore, there appears to be no dispute between any of the interested parties and the Commission that the technical specifications of STKR 490 as per the relevant Japanese standard, were most like the technical specifications of C350 as per the Australian standard.

In concluding then that domestic sales of STKR 490 were the most like and most comparable, Ursine Steel submits that the Commission was obliged to establish normal values pursuant to section 269TAC of the *Customs Act 1901* (the Act) on the basis of such like goods.

The Commission established that Ursine Steel did possess domestic sales of like goods sold in the ordinary course of trade during the review period. In particular, the Commission verified that domestic sales of grade STKR 490 in a pre-galvanised finish had been made on the domestic market and that the total volume of that specific grade and finish was sufficient. However, by including the other minor characteristics of shape and size in defining the individual models, the Commission found that domestic sales of grade 490 was not sold in sufficient quantities to permit proper comparison. This is supported by the Commission's sufficiency test calculations at **Confidential Attachment C**.

The Commission correctly explains in Ursine Steel's visit report:

Subparagraph 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under subsection 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export. Low volume is defined by subsection 269TAC(14) as less than 5 per cent of the total volume of the goods under consideration that are exported to Australia.

On the basis then that the Commission's identified model groupings of " [REDACTED] " were found to be sold in low volume in the country of export as defined by subsection 269TAC(14) of the Act, subsection 269TAC(2)(a)(i) of the Act prevents the Minister from determining normal values under subsection 269TAC(1) of the Act on the basis of domestic sales. The Minister was required to consider determining normal values under one of the other alternative methods provided for under section 269TAC of the Act.

Ursine Steel contends that the Commission ought to have then constructed normal values using the cost of manufacture of the exported goods, plus amounts for selling, general and administration expenses incurred on domestic sales, plus an amount for profit based on domestic sales of like goods sold in the ordinary course of trade.

Rather than construct normal values as submitted by Ursine Steel, the Commission instead inexplicably determined normal values pursuant to subsection 269TAC(1) of the Act, using a different model category all together. The inconsistency of the Commission's approach to

establishing normal values is best highlighted in the following conclusion in the Ursine Steel visit report:

After applying the model matching criteria (discussed in section 2.3), the verification team found there was a sufficient volume of domestic sales made in OCOT for all of the models of HSS exported to Australia during the inquiry period. Where the models were not an identical match, a surrogate model was used based on the model matching criteria (see section 2.3). The verification team then applied a specification adjustment as outlined in section 6.4. [emphasis added]

As highlighted above, the model matching criteria identified by the Commission clearly showed STRK 490 as the matching grade to the exported C350. Therefore, it was domestic sales of this grade that was required to be compared with the export sales, and the domestic sales volume of STKR 490 compared with the export sales volume of C350 for assessing whether there existed a sufficient volume as defined by subsection 269TAC(14) of the Act.

As the Commission did not undertake any such sufficiency test, it is patently inaccurate for the Commission to conclude that ‘*there was a sufficient volume of domestic sales made in OCOT for all of the models of HSS exported to Australia during the inquiry period*’. As the “sufficiency” worksheet within the Commission’s ‘Appendix 3 – OCOT’ spreadsheet clearly shows, the domestic sales volume of like model “████████████████████” amounted to ██████ kgs, compared to the total export sales volume of ██████ kgs or ██████ kgs for the specific export model. In either case, the sales volume of like domestic models as per the Commission’s model matching criteria as section 2.3 of the verification report, reveals a low and insufficient volume for proper comparison.

Further, the Commission’s statement that “[w]here the models were not an identical match, a surrogate model was used based on the model matching criteria (see section 2.3)”, is particularly perplexing given that all of the models relied upon by the Commission were surrogate model grade STKR 440, and all of the sufficiency volume tests performed by the Commission was done so on the basis of those surrogate models.

In effect, the Commission appears to have identified the model matching criteria which all parties agreed with, but then sought to bypass the requirement for performing the sufficiency test on that same model matching criteria. As demonstrated, had the Commission performed the sufficiency test correctly using domestic sales of grade STKR 490, it would have established that the domestic sales volumes were low and insufficient for proper comparison. Accordingly, the Commission would have been prevented from determined normal values pursuant to subsection 269TAC(1) of the Act.

Therefore, Ursine Steel submits that the Commission erred by determining normal values pursuant to subsection 269TAC(1) of the Act, as the low volume of domestic like models as per the Commission’s model matching criteria, required normal values to be determined under one of the alternative methods.

1.2 Finding 2: In determining normal value on the basis of domestic sales of like goods, the Commission erred in excluding certain domestic sales which were also considered to be like goods.

Notwithstanding the Commission’s error in determining normal values on the basis of domestic sales pursuant to subsection 26TAC(1) of the Act, Ursine Steel contends that the

Commission then overlooked and ignored domestic sales of like goods which were suitable and allowed for a proper comparison with corresponding export sales.

Ursine Steel submits that all domestic sales of pre-galvanised HSS complying with the domestic grade STKR (being [REDACTED]) ought to have been used in determining normal values. Ursine Steel had demonstrated and the Commission had verified that Ursine Steel purchased a primary structural grade of galvanised coil which was specifically used in the manufacture of HSS products to be used in structural applications. The mechanical properties of this structural grade of galvanised coil ([REDACTED]) ensures that it complies with the minimum yield strength required by each of the domestic and export structural HSS grades. That is, the yield strength of the galvanised coils purchased by Ursine Steel exceeded 350 Mpa which ensured that the coil was able to be used in the manufacture of all structural HSS grades including [REDACTED], STKR 490 and C350.

Given then that all structural domestic grades ([REDACTED] and 490), along with export grade C350 are produced from the same type of galvanised coil feed material, it was reasonable and appropriate for the Commission to find that all of the structural domestic grades had identical or characteristics closely resembling the exported goods, and therefore suitable for establishing normal values. That is, the identical structural grade of coil can be used in the manufacture of any of the structural domestic and/or export grades.

In these circumstances it was appropriate for the Commission to apply a consistent approach undertaken in similar circumstances with respect to hot rolled structural sections⁴. In that previous investigation, the Commission also found that *'exporters commonly produce versatile HRS capable of satisfying multiple standards at the semi-finished product level (for example, blooms suitable for rolling HRS to several standards) and finished product level (for example, dual grade SS/SM400 in the Thai market) across markets.*

In those circumstances, the Commission found that:

...in circumstances where the exported goods and a subset of domestic goods are produced and sold from the same semi-finished products (for example, blooms), it would be unreasonable for the Commission to conclude that there would be a more appropriate subset of like goods in the domestic market for normal value than those produced from the same semi-finished products as the exported goods. This finding considers the physical similarities, the interchangeable nature of the goods, and the production likeness (including production costs), and in the Commission's view is a much stronger indicator than a mere comparison of minimum production standards.

The Commission ultimately concluded on the issue of like goods:

... the Commission does not accept that like goods can be determined in the narrow context of one physical characteristic, that being standards. The Commission's view is that standards are one relevant physical characteristic of HRS, as part of a broader range

⁴ EPR 223 – Record no. 096; Final Report 223

of physical characteristics to consider when assessing physical likeness. In its determination of like goods for the purposes of s.269T(1), the Commission has established like goods with due consideration to all relevant characteristics of physical likeness, combined with other key attributes such as functional, commercial and production likeness.

Ursine Steel considers that the Commission's assessment and reasoning in REP 223 to be directly relevant and applicable, and agrees with the Commission's view in that case that it is unreasonable to isolate a subset of like goods for determining normal values from the whole population of like goods produced from the same raw material input.

Likewise, after defining the model matching criteria and finding that suitable domestic sales do not exist on the basis of that criteria, whether due to the operation of subsection 269TAC(14) of the Act or not, if the Commission's view was that it was open to it to reconsider a surrogate or broader category of like models for determining normal values, then it was not correct or preferable to define those like goods '*in the narrow context of one physical characteristic*'. Especially, where all of the relevant structural grades sold domestically and exported to Australia are produced from the identical grade of pre-galvanised coil.

Therefore, Ursine Steel contends that the Commission's finding was not correct or preferable as it excluded domestic sales of like goods which were produced from the same grade of pre-galvanised coil used in the production of all structural HSS grades.

2. THE PROPOSED CORRECT AND PREFERABLE DECISIONS

Finding 1: The Commission erred in determining normal values on the basis of domestic sales pursuant to subsection 269TAC(1) of the Act.

The proposed correct and preferable decision relevant to finding 1 is that the domestic sales of like goods based on the Commission's model matching criteria, were of a low and insufficient volume as defined in subsection 269TAC(14) of the Act. As such, subsection 269TAC(2)(a)(i) of the Act precluded the Minister from determining normal values pursuant to subsection 269TAC(1) of the Act.

Ursine Steel proposes that the correct and preferable decision was to construct normal values pursuant to subsection 269TAC(2)(c) of the Act.

Finding 2: In determining normal value on the basis of domestic sales of like goods, the Commission erred in excluding certain domestic sales which were also considered to be like goods.

The proposed correct and preferable decision relevant to finding 2 is that in opting to using surrogate domestic like models, the Commission should have included all domestic sales of like goods which had identical or closely resembling characteristics to the exported goods. As domestic grades ██████████, STKR 490 and exported grade C350 are all able to be produced

from the identical grade of pre-galvanised coil raw material, it was reasonable and appropriate to include all domestic structural grades in determining normal value pursuant to subsection 269TAC(1) of the Act.

3. REASONS WHY THE PROPOSED DECISION IS MATERIALLY DIFFERENT FROM THE REVIEWABLE DECISION

Finding 1: The Commission erred in determining normal values on the basis of domestic sales pursuant to subsection 269TAC(1) of the Act.

The proposed decision to construct normal values pursuant to subsection 269TAC(2)(c) of the Act would result in a lower normal value and a corresponding reduction in Ursine Steel's dumping margin. Ursine Steel estimates that the proposed dumping margin would have been negative and as a consequence, no fixed duty would apply to Ursine Steel's future exportations.

Finding 2: In determining normal value on the basis of domestic sales of like goods, the Commission erred in excluding certain domestic sales which were also considered to be like goods.

The proposed decision to include all domestic structural grade sales of like goods (ie. [REDACTED] and STKR 490) in determining normal values pursuant to subsection 269TAC(1) of the Act would result in a lower normal value and a corresponding reduction in Ursine Steel's dumping margin. Ursine Steel estimates that the proposed dumping margin would have been negative and as a consequence, no fixed duty would apply to Ursine Steel's future exportations.