



Australian Government
Anti-Dumping Review Panel

Application for review of a Commissioner's decision

Customs Act 1901 s 269ZZQ

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 Commissioner of the Anti - Dumping Commission.

Section 269ZZO *Customs Act 1901* sets out who may make an application for review to the ADRP of a review of a decision of the Commissioner.

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 the applicant was notified of the reviewable decision.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel begins to conduct a review (by public notice in the case of termination decisions and by notice to the applicant and the Commissioner in the case of negative prima facie decisions, negative preliminary decisions and rejection decision). Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after the Panel begins to conduct a review. 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*.

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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 (s269ZZQA(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.

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PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: OneSteel Manufacturing Pty Ltd

Address: Level 6, 205 Pacific Highway, St Leonards NSW 2065

Type of entity (trade union, corporation, government etc.): Corporation member of the Australia industry producing like goods

2. Contact person for applicant

Full name: [REDACTED]

Position: [REDACTED]

Email address: [REDACTED]

Telephone number: [REDACTED]

3. Set out the basis on which the applicant considers it is entitled to apply for review to the ADRP under section 269ZZO

The applicant for review was the applicant in relation to an application under section 269TB of the *Customs Act 1901* that led to the making of the reviewable decision – being a member of the Australian industry producing like goods.

4. Is the applicant represented?

~~Yes~~ No

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.

Not applicable

****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.****

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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 269TC(1) or (2) – a negative *prima facie* decision
- Subsection 269TDA(1), (2), (3), (7), (13), or (14) – a termination decision
- Subsection 269X(6)(b) or (c) – a negative preliminary decision
- Subsection 269YA(2), (3), or (4) – a rejection decision
- Subsection 269ZDBEA(1) or (2) – an anti-circumvention inquiry termination decision

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

The goods the subject of the reviewable decision were:

Hot-rolled solid sections of 'alloy steel', having round or near-round cross-sectional dimensions of not less than 9.5 millimetres (mm) and not greater than 98.5 mm, not in coil.

For the purpose of the description of the goods the subject of this application, 'alloy steel' here means steel containing a chemical composition that at least meets or exceeds the minimum chemical element proportions specified in Note (f) "Other alloy steel" to Chapter 72 under Schedule 3 of the Customs Tariff Act 1995 ("the Tariff") as appearing on the date of this application.

Commonly identified as 'rod', 'round bar', 'engineering bar', 'spring steel', 'alloy bar', 'high alloy bar', 'silico-manganese bar', 'grinding rod' or 'bar used for the production of grinding media', the goods covered by this application include all round or near-round hot-rolled solid sections of alloy steel bar meeting the above description of the goods regardless of the particular grade, coating, or minor modification of bar-end finish (including but not limited to, painting or chamfering).

Goods excluded from this application are:

- *Round or near-round hot rolled solid steel sections composed of:*
 - *'stainless steel' as defined under Note (e) "Stainless steel" to the Tariff; or*
 - *'high-speed steel' as defined under Note (d) "High speed steel" to the Tariff;*
- *steel reinforcing bar containing indentations, ribs, grooves or other deformations produced during the rolling process;*
- *steel rod in coil;*
- *chromium plated steel; and*

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- *solid sections of steel which may be square, rectangular or hexagonal in cross-section.*

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

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

- 7228.20.10 (statistical code 44)
- 7228.20.90 (statistical code 47)
- 7228.30.10 (statistical code 70)
- 7228.30.90 (statistical code 41)
- 7228.60.10 (statistical code 72)
- 7228.60.90 (statistical code 55)

8. If applicable, 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 (ADN) No. 2017/152

9. Provide the date the applicant received notice of the reviewable decision

27 October 2017

****Attach a copy of the notice of the reviewable decision to the application****

A copy of the notice of the reviewable decision is attached as [Appendix A](#) to this application.

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PART C: GROUNDS FOR YOUR 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

The Commissioner's use of *Platts monthly Latin American Free on Board (FOB) steel billet prices (Platts Export Price)* in the construction of normal values for Jiangsu Yonggang Group Co. Ltd (*Yonggang*) under s 269TAC(2)(c) of the *Customs Act 1901*² was not the correct or preferable decision.

The Platts Export Price reflects a monthly subscription-based price report published by S&P Global Platts (a division of S&P Global), in their Steel Price Report, and officially titled 'Billet Latin America exports FOB Latin America port'.³ The underlying commodity of this price report reflects exports of bars conforming to A36/A36M (or equivalent) specification of 125 mm square sectional dimensions and 11,700 mm length.⁴

In its submission dated 14 August 2017,⁵ the applicant industry asserted that, the selection of an export-price based benchmark is *not* appropriate for use to arrive at 'the cost of production' for an exporter where a particular market situation has been found in the market of the country of origin – as has been found to exist in various Chinese domestic steel markets. The applicant industry pointed (as it has done consistently before) to the need for the Commission to have regard to alternate domestic-based competitive markets for determining the cost of production.⁶

It is now well settled in Australian domestic law and international WTO jurisprudence that there is nothing to preclude the Commission from relying on 'information from other representative

² References to statutory provisions shall be references to provisions of the *Customs Act 1901* unless otherwise specified

³ Platts Symbol: SB01037

⁴ <https://www.platts.com/IM.Platts.Content/MethodologyReferences/MethodologySpecs/steel.pdf> at p. 16 (accessed 19 November 2017)

⁵ EPR Folio 384/041.

⁶ Refer here to submissions of OneSteel in *Dumping Investigation No. 300* at EPR Folio No. 300/054, p. 4; see also submission in *Dumping Investigation No. 301* at EPR Folio No. 301/033, p. 7; and the application of OneSteel to the Anti-Dumping Review Panel concerning rod in coils exported from China (19 May 2016) at p. 6 [10.1]; and the application of the former related party, Moly-Cop, in *Dumping and Subsidy Investigation No. 316* at EPR 316/038, p. 2; and the application of Moly-Cop to the Anti-Dumping Review Panel concerning grinding balls exported from China (30 November 2016) at p. 6.

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markets'.⁷ However, the applicant industry has consistently and repeatedly pointed to the importance of selecting comparable competitive markets, and adapting that information to reflect the costs of production in the country of origin, in a manner consistent with Article 2.2 of the *Anti-dumping Agreement*.⁸

The applicant industry has always asserted that the only competitive market costs of steel billets capable of being adapted to reflect the costs of production in the country of origin are those based on domestic competitive markets. The problem with a competitive cost benchmark based on export market values is that the distortionary effects of Chinese prices are directly introduced to the value of the benchmark, by virtue of the interaction between non-Chinese and Chinese prices in export markets.

Indeed, the Commission was cognisant of the risk of a competitive cost benchmark being affected by Chinese prices. Accordingly, in *Dumping Investigation No. 301* the Commission justified its selection of Latin American export billet prices in FOB terms as representative of the best available information on competitive market costs of steel billets for the following reasons:

“The Commission considers that the Latin American benchmark is a competitive benchmark that has not been identified as being affected by Chinese prices due to the following factors:

- *geographic distance from Asia limiting the distortionary effects of the GoC on the iron and steel industry;*
- *significant production levels generating a ‘deep’ trade market and a relatively high level of competition; and*
- *the existence of anti-dumping and trade remedy cases from Latin America on Chinese steel products.”⁹*

Paradoxically, the Commission considered the correct issues, but reached the wrong conclusion - that is that Latin American billet export prices were not affected by Chinese prices.

For example, the ‘*geographic distance from Asia*’ of a benchmark market may indeed be relevant to **domestic** market conditions, but is irrelevant when considering **export-market** prices, especially where such prices are quoted on FOB terms (as the Latin American billet price benchmark in fact is). As the quote is exclusive of sea freight, it is designed to compete on a head-to-head basis with other price quotes from anywhere in the world, including a sea-port in China.

Similarly, the Commission’s reference to ‘*significant production levels*’, generating a ‘deep’ trade market, are all relevant to prevailing **domestic** Latin American market conditions, but do nothing to deflect the impact of the market distortions inherent in Chinese prices on the **export-market** based price quotes/trades.

Furthermore, the Commission’s regard to ‘*the existence of anti-dumping and trade remedy cases*’ in Latin American countries on “Chinese steel products” is again very relevant to the resistance of Latin American **domestic** markets to Chinese prices, but as the Commission no

⁷ See *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309 at para. 111; and *EU – Biodiesel (Argentina)* at [6.71] – [6.74].

⁸ *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*

⁹ Report No. 301, *Dumping – Rod in Coils exported from China* [EPR Folio No. 301/038] at p. 17

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doubt understands, is completely irrelevant to the setting of *export-market* prices on FOB terms. In other words, the Commission has effectively identified all the reasons why export-based markets do not offer a suitable competitive cost benchmark unaffected by Chinese prices.

It is submitted that the issue of adapting the information of competitive cost benchmarks may be addressed in part by the selection of benchmark domestic prices from countries that are economically comparable (in terms of their levels of economic development) to China. Other administrations have addressed this inquiry by reference to the per capita gross national income (**GNI**) data as reported by the World Bank.¹⁰

Once an economically comparable market is identified, the Commissioner is then able to substitute the exporter/producer's billet costs with the costs of inputs utilised in producing the finished goods (billet costs) in the comparable market under s 43(8) of the *Customs (International Obligations) Regulations 2015 (the Regulations)* to determine a normal value under s 269TAC(2)(c).

Originally, the Commissioner considered in *Dumping Investigations Nos. 300 and 301* that "*Latin American export billet prices in FOB terms represent the best available information on competitive market costs of steel billets*" in those cases.¹¹ However, *Dumping Investigation No. 384* has an investigation period that coincides with at least six-months of the investigation periods of two other current dumping investigations – namely, *Investigation Nos. 416 and 418* – both of which concern the key feed material (steel billet) in competitive, and potentially comparative markets. The applicant industry considers that superior competitive cost benchmarks are now available to the Commission based on verifiable cost to make data for producers of billet in comparable markets.¹² The further advantage of utilising the verifiable cost information arising from *Investigations Nos. 416 and 418*, is that they will represent fully costed competitive benchmarks for billet inputs (exclusive of a profit margin). Indeed, the issue of subtracting the correct amount for profit on the SBB Latin American Billet price was considered imperfect by the Anti-Dumping Review Panel (**ADRP**) in *ADRP Report No. 40 concerning steel rod in coils exported from China*¹³:

"[117] I have concerns about the use of Chinese profit to convert the Latin American billet price to a cost, as expressed in the Reinvestigation Request and would have been open to consider the Latin American profit margin, if it was based on reliable data. However, it has become clear to me, for the reasons referred to above, that the Latin American profitability is extremely unreliable, possibly to the point of being meaningless, due to the fact that it's derived from broad, general and public information of a few selected companies, with a wide range of profit margins, and is in relation to a wide product base, rather than in respect of steel billet."

¹⁰ United States Department of Commerce, *Enforcement and Compliance Antidumping Manual*, 16 March 2015, Chapter 10 at p. 12.

¹¹ EPR Folio No.301/038 at p. 17

¹² The investigation periods for *Investigations No. 416 and 418* match the review periods (1 April 2016 to 31 March 2017).

¹³ Report of Member Blumberg dated 13 December 2016

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On the other hand, the industry applicant’s proposal has the advantage of not requiring any adjustment for profit, as it is based on the full cost of billet production in economically comparable markets, most closely aligned in terms of economic development to China.

In SEF No. 384, the Commissioner dismisses the applicant industry approach on the basis that there was only overlap between the investigation periods of the proposed benchmark investigations and the current investigation of six-months. The Commissioner considered that it was incumbent upon the industry applicant to also “*establish a reasonable method by which to extrapolate the data for the remaining 6 months of the investigation period. This is especially important given the fluctuations in steel prices from quarter to quarter*”.¹⁴

In the past, the Commission has indexed a previously benchmarked price in order to extrapolate future price movements. For example, following the finding of a market situation with respect to hollow structural sections of steel (**HSS**) in *Investigation No. 177*, the Commission indexed the benchmark price established in the original investigation through to the end of the review period in *Review No. 267* by utilising several independent and reputable sources of price information. A comparison showed the hot rolled coil price movements from the original investigation period to the review period exhibited a significant correlation to the movement in the ascertained normal value there found.¹⁵

Applied here, and given that Yonggang is reported to be a “major scrap consumer” in east China’s Jiangsu province¹⁶, the applicant industry submits that one option is for the Commission to apply scrap price movements from the first quarter of the commencement of the original investigation periods applicable to *Investigation Nos. 416 and 418* (i.e. 1 April to 30 June 2016) as the base for the index and then adjust the benchmark costs by the average quarterly movements in the scrap price for previous quarters for the term of the investigation period applicable to Investigation No. 384 (i.e. 1 October to 31 December 2015, and 1 January to 31 March 2016), below:

Quarter	Average scrap price (US\$/t)*	Index
1 April to 30 June 2016		100
1 January to 31 March 2016		74
1 October to 31 December 2015		69

*Source: [CONFIDENTIAL ATTACHMENT A](#)

Sources of economically comparable markets suitable for use and adaption to arrive at the ‘cost of production’

According to the World Bank’s latest publication of *World Development Indicators*, China’s gross national income per capita based on purchasing power parity (PPP, international dollars) for 2016 was \$15,500.¹⁷

¹⁴ SEF No. 384, p. 30 at [6.6.4]

¹⁵ Report No. 267, p. 14.

¹⁶ CONFIDENTIAL ATTACHMENT B

¹⁷ Source: <http://data.worldbank.org/data-catalog/world-development-indicators> (accessed, 1 July 2017)

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Therefore, the closest comparable markets (in terms of 2016, GNI per capita) for which verifiable billet cost information is available (following the initiation of *Investigation Nos. 416 and 418*) are Thailand (\$16,070) and Indonesia (\$11,220).¹⁸

¹⁸ *Ibid.*

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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

The correct or preferable decision would have been for the Commissioner not to terminate the investigation so far as it relates to Yonggang, but instead the correct or preferable decision would have been for the Commissioner to construct Yonggang's normal values using the aggregate of all inputs utilised in producing the steel billet in the competitive market (here proposed to be Thailand as verified in *Dumping Investigation No. 418*) and substituting those values for the unreliable Chinese costs to produce steel billet across the common investigation period (1 April to 30 June 2016), and then indexing those competitive market costs from 1 October 2015 to 31 March 2016 by reference to average quarterly movements in key raw material prices (for example, scrap metal given the relevance to Yonggang's steelmaking operation).

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

Only answer question 12 if this application is in relation to a reviewable decision made under subsection 269X(6)(b) or (c) of the Customs Act.

Not applicable.


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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* beginning 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: 

Position: 

Organisation: [OneSteel Manufacturing Pty Ltd](#)

Date: [26/11/2017](#)

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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:

Organisation:

Address:

Email address:

Telephone number:

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:

Position:

Organisation:

Date: / /