



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 19 February 2020 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for 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

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 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 completing the withdrawal form on the ADRP website.

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

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

Contact

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: Millcon Steel Public Company Limited
Address: 52 Thaniya Plaza Building 29th Floor, Silom Road, Suriyawongse, Bangrak, Bangkok 10500, Thailand
Type of entity (trade union, corporation, government etc.): Millcon is a publicly listed company.

2. Contact person for applicant

Full name: Miss. Ratana Totrakarntrakul
Position: Assistant Vice President of International Trade
Email address: ratana@millconsteel.com
Telephone number: +66-2-652-3333 ext 602

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

Millcon is the producer and exporter of the subject 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.

****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

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

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

The goods subject of the reviewable decision are:

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

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

Rebar is classified using the tariff sub-headings and associated statistical codes of Schedule 3 to the Customs Tariff Act 1995 (Tariff Act) below:

Tariff subheading	Statistical code
7213.10.00	42
7214.20.00	47
7227.90.10	69
7227.90.90	01, 02, 04
7228.30.90	40
7228.30.10	70
7228.60.10	72

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: **2020/072**

Date ADN was published: **28 July 2020**

****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 application 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.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

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: ☒

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

Refer to Attachment B.

- 10. 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 9:**

Refer to Attachment B.

- 11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:**

Refer to Attachment B.

- 12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:**

Refer to Attachment B.

- 13. Please list all attachments provided in support of this application:**

Attachment A: Anti-Dumping Notice
Attachment B: Ground of appeal

PART D: DECLARATION

The applicant's authorised representative 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; and
- 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: 26 / 08 / 2020

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 3026, Manuka ACT 2603
Email address: john@jbracic.com.au
Telephone number: +61 (0)499 056 729

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.

Name: **Miss Ratana Totrakarntrakul**

Position: **Assistant Vice President of International Trade**

Signature:



Organisation: **Millcon Steel Public Company Limited**

Date: **26 / 08 / 2020**



J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

PO Box 3026
Manuka, ACT 2603
Mobile: +61 499 056 729
Email: john@jbracic.com.au
Web: www.jbracic.com.au

27 August 2020

Anti-Dumping Review Panel
c/o Legal, Audit and Assurance Branch
GPO Box 2013
Canberra, ACT 2601

**Review of a Ministerial decision – Review of measures applying to
steel reinforcing bars exported from Thailand by
Millcon Steel Public Company Limited.**

1. INTRODUCTION

On 3 July 2019, following an application for review of measures lodged by Millcon Steel Public Company Limited (“Millcon”), the Anti-Dumping Commission (“the Commission”) initiated a review into steel reinforcing bars exported from Thailand by Millcon.

On 21 October 2019, 13 February 2020 and again on 7 April 2020, the Commission requested extensions to the deadline for publishing the preliminary findings in Statement of Essential Facts Report No. 518 (“SEF 518”).

On 6 May 2020, the Commission published its preliminary findings in SEF 518, and on 28 July 2020, the final report containing the basis and reasons for the Minister’s decision was published.

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

Millcon seeks a review of a following finding and conclusion which led to the decision by the Minister to ascertain variable factors:

Ground 1: The Minister made incorrect assessments and determinations with respect to Millcon’s exports, pursuant to subsection 269TAB(2A).

2.1 Ground 2: The Minister made incorrect assessments and determinations with respect to Millcon's exports, pursuant to subsection 269TAB(2A).

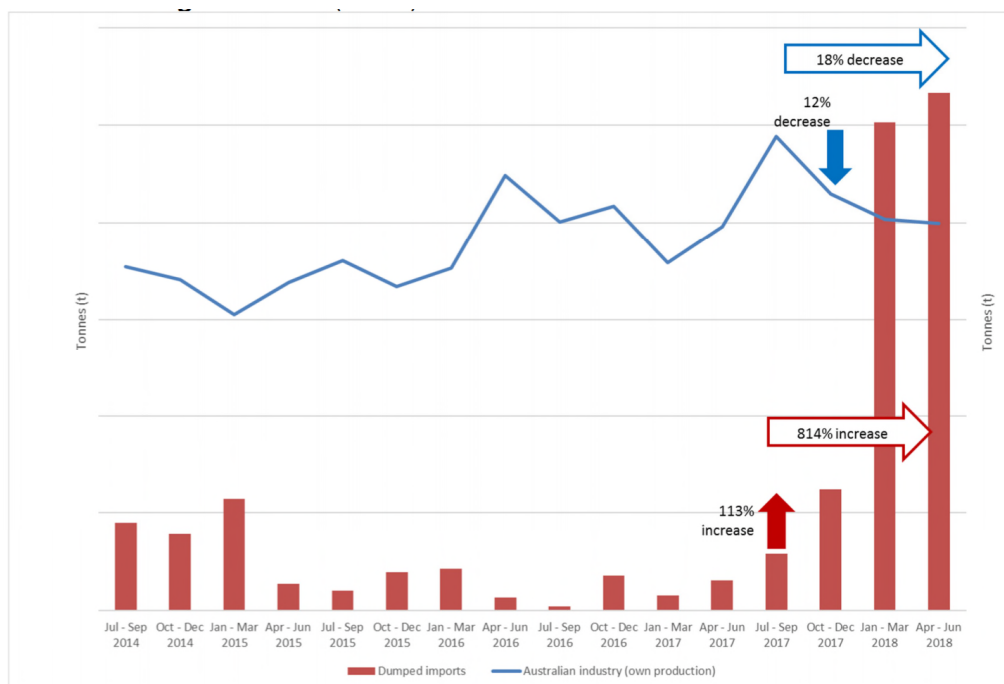
In accordance with subsection 269TAB(2A), the Minister must have regard to (i) previous volumes of exports by that exporter, (ii) patterns of trade for like goods, and (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter. Millcon contends that the Commission erred in each of its assessments and the determination that Millcon's circumstances met the conditions for be considered a 'low volume exporter'.

2.1.1 Previous volumes of exports by that exporter

In REP 518, the Commission notes that Millcon's '*... average quarterly export volume in the review period was significantly less than historical average quarterly export volumes*'. Whilst this may be correct, Millcon's volumes are not considered low relative to imports from other exporters subject to measures. That is, volumes from all exporting countries subject to measures have substantially reduced since the original imposition of measures. As such, the lower export volumes during the review period do not indicate '*that Millcon's low volume exports are most likely the result of commercial decisions*'.

Instead, the lower export volumes by Millcon and more broadly by exporters subject to measures, reflects the impact of the substantial competitive advantage that exporters from Turkey are currently experiencing in exports to Australia. This is evident by the Australian industry's own assessment highlighted in the chart below, taken from their dumping application against Turkish exports.

The Australian industry concludes that '*by the end of the proposed investigation period (when compared to the September 2017 quarter), quarterly dumped imports from Turkey increased by 814 per cent*'. It is worth noting that the largest increase in June quarter 2018 coincides with the start of the review period relevant to Millcon's review 518.



Therefore, it is not reasonable to conclude that Millcon's lower volumes were due to a commercial decision. In no way has Millcon engaged in an intended strategy to exploit the dumping framework, by selling lower volumes with the view to receiving a favourable outcome in the review.

2.1.2 Patterns of trade for like goods

In assessing the patterns of trade for like goods, the Commission simply concludes in REP 518 that:

the average quarterly export volumes in the review period for all exporters other than Millcon were not significantly less than the historical average quarterly export volumes such that Millcon's relatively low export volumes in the review period were not consistent with the general demand for exports or patterns of trade for like goods.

This conclusion is misleading as it does not compare and contrast quarterly export volumes between exporters subject to measures, and exporters not subject to measures, in particular exporters from Turkey. This is critical as the assessment is to consider whether the duties have impacted on export volumes. That is, if all exporters subject to measures have experienced similar relative reductions in export volumes, then it is reasonable to conclude that Millcon's fall in exports were consistent with the overall decline and pattern of trade.

Isolating Turkey from export countries subject to measures would also provide a meaningful understanding as to whether Turkish exports have more broadly impacted the Australian market. For example, Millcon's largest Australian customer during the original investigation is understood to be the largest importer of steel reinforcing bar from Turkey.

Separating Turkish exports from other countries subject to measures would allow for an understanding about the broader market trends indicated by the explanatory memorandum to the Customs Amendment (Anti-Dumping Measures) Bill 2017.

15. New paragraph 269TAB(2A)(b)(ii) requires consideration of the patterns of trade for those goods. For example, some goods are specialty or custom products that are consistently exported in low volumes. Considering patterns of trade may involve an examination of the previous patterns of trade for the Exporter in question, or the pattern of trade generally among Exporters of goods from the country of export. The Minister may also consider the pattern of trade in other ways. For example, if a decline in the pattern of trade from the Exporter reflects a similar decline in the pattern of trade from the country of export generally, during the period being examined by the review, this may demonstrate that low volumes are indicative of broader market trends, rather than a strategy of low volume exports in an attempt to exploit the unintended consequence of the review of measures to obtain a more favourable rate of duty. This may weigh in favour of the Minister determining that the information (if any) provided by the Exporter is sufficient and/or reliable for the purpose of determining an appropriate export price and that the specific methods prescribed under new subsection 269TAB(2B) should not be applied.

A similar pattern of decline or trend between that of Millcon's volumes and from other exporters subject to measures, may suggest a broader market trend rather than an

attempt by Millcon to reduce its export volumes to obtain a more favourable measure. As noted earlier, the export volume from Turkey was known to have increased sharply, and the sharp increase coincided with the Millcon's review period.

This importance of this issue is highlighted from the Commission's verification of the Australian industry's data in the current expiry review 546, into steel reinforcing bar exported from Korea, Singapore, Spain and Taiwan. Figure 2 of the verification report included below shows that exports from Korea, Singapore, Spain and Taiwan reduced their total share of the Australian market substantially between 2018 to 2019.

8.4.2 Market share

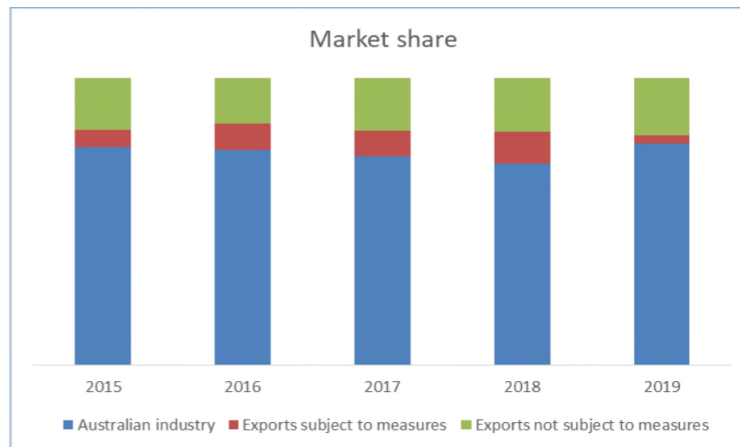


Figure 2: Market share

It is worth noting that the market share denoted by the green shaded area refers to the "Exports not subject to measures" but in fact includes exports from countries subject to measures including China, Greece, Indonesia and Thailand, along with exports from Turkey which are actually not subject to measures. This is confirmed by the Commission where it states that '*exports not subject to measures relate to exports that are not subject to these dumping duties however, include exports that are subject to dumping duties under separate anti-dumping notices*'.

Therefore, the chart above is misleading as it does not accurately show the relative change between exports from countries subject to measures (being China, Greece, Indonesia, Korea, Singapore, Spain, Taiwan and Thailand), and exports from countries such as Turkey which substantially dominated the market with a sharp increase in volumes from 2018 to 2019.

Millcon contends that its pattern of trade to Australia is consistent with the trend from exporters subject to measures, which has been substantially impacted by export volumes from Turkey, which are not subject to any measures. As such, the Commission ought to have given weight to these facts and determined that Millcon is not a low volume exporter as defined, and recommended that subsection 269TAB(2B) of the Act should not be applied.

2.1.3 Factors affecting patterns of trade for like goods that are not within the control of the exporter.

With regard to factors affecting patterns of trade, Millcon submits that there was relevant information available to the Commission from the concurrent dumping investigation into

steel reinforcing bars exported from Turkey, and its findings in that investigation with regards to dumping (REP 495). The period of investigation for that investigation overlapped that of review 518 and therefore the Commission's findings from REP 495 are considered relevant and pertinent to understanding the factors affecting the Australian market and the consequential impact on Millcon's pattern of trade.

It is noted that the Commission did not outline its price undercutting analysis in its termination report 295A, as the grounds for termination were due to negligible dumping. Despite this, it is common knowledge that exports from Turkey have been the lowest price in the Australian market since 2018, and the level of price undercutting has driven the growth in its export volumes.

The degree of undercutting is noted in the application for dumping duties by the Australian industry, and shown below. It clearly shows that exports from Turkey significantly undercut both local and other import prices, including those of Millcon.

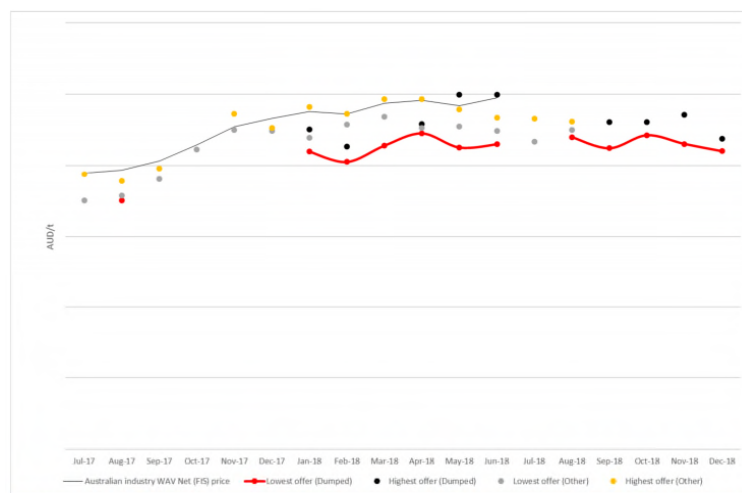


Figure A-9.2.1.4 Pricing over investigation period and 2018 calendar year – DBIL (Sources: appendix A6.1 and CONFIDENTIAL ATTACHMENT A-9.2.1)

The price relativities between exporting countries is critical to understanding the impact that Turkish export prices have had on Millcon's ability to offer and make export sales at competitive and non-dumped prices. This is particular relevant considering the commodity nature of steel reinforcing bar and the willingness of customers to switch between import sources.

As Millcon cannot control the pricing of its competitors from other countries, the pricing behaviour of other exporters and price sensitivity and interchangeability of sources of supply prevented Millcon from achieving greater export sales to Australia. Based on the above, Millcon submits that the Commission erred in finding that it is a 'low volume exporter'.

3. THE CORRECT AND PREFERABLE DECISIONS

Millcon contends that the correct and preferable decisions to the challenged findings are to ascertain Millcon's export price in accordance with 269TAB(1)(a) of the Act, based on its actual arms length export prices during the review period. If it is accepted that subsection

269TAB(2B) of the Act was appropriate, Millcon contends that the correct and preferable decision was to ascertain its export price using its third country exports, which were contemporary, in sufficient volume and unaffected by the impact of Turkish exports.

4. REASONS WHY THE PROPOSED DECISIONS ARE MATERIALLY DIFFERENT FROM THE REVIEWABLE DECISION.

Ground 1: The proposed decision is materially different to the reviewable decision as a finding that Millcon was not a low volume exporter would have allowed the Minister to ascertain Millcon's export price under subsection 269TAB(1)(a) of the Act. The export prices would have been based on Millcon's actual export prices during the review period, and would have resulted in a finding of no dumping.

Likewise, depending on the third country considered most suitable for establishing export prices, Millcon contends that the dumping margin would have been negative or significantly reduced. This compares to the dumping margin of 15.4% recommended and accepted by the Minister.



ANTI-DUMPING NOTICE NO. 2020/072

Steel reinforcing bar

**Exported from the Kingdom of Thailand
by Millcon Steel Public Company Limited**

**Findings in Relation to Review of Anti-Dumping
Measures No 518**

Notice under subsection 269ZDB(1) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commission) has completed a review, which commenced on 3 July 2019, of the anti-dumping measures applying to steel reinforcing bar (the goods) exported to Australia from the Kingdom of Thailand (Thailand) by Millcon Steel Public Company Limited (Millcon).

Recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No. 518* (REP 518).

I, KAREN ANDREWS, the Minister for Industry, Science, and Technology have considered REP 518 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 518.

Under subsection 269ZDB(1)(a)(iii) of the *Customs Act 1901* (the Act), I declare that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), with effect from the date of publication of this notice, the dumping duty notice currently applying to the goods exported to Australia from Thailand is to be taken to have effect as if different variable factors in respect of Millcon had been fixed relevant to the determination of duty.

I determine that, pursuant to section 8(5) of the Dumping Duty Act, that the interim dumping duty (IDD) payable on the goods exported to Australia by Millcon is an amount that will be worked out in accordance with the combination duty method pursuant to sections 5(2) and (3) of the Customs Tariff (Anti-Dumping) Regulation 2013, with effect from the date of publication of the signed notice pursuant to section 269ZDB(1).

Particulars of the dumping margin established for Millcon and the effective rate of IDD is set out in the following table.

Country	Manufacturer/ exporter	Dumping margin	Effective fixed rate of interim dumping duty	Duty Method
Thailand	Millcon	15.6%	15.6%	Combination duty method

To preserve confidentiality, details of the revised variable factors being the ascertained export price, ascertained normal value and non-injurious price will not be published.

Affected parties should contact the Commission on 132 846 or +61 2 6213 6000 or at BusinessServices@adcommission.gov.au for further information regarding the actual duty liability calculation in their particular circumstance.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au) in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 518 has been placed on the Commission's public record. The public record may be examined at www.adcommission.gov.au. Alternatively, the public record may be examined at the Commission's office during business hours by contacting the case manager on the details provided below.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2518 or by email to investigations2@adcommission.gov.au.

Dated this 27th day of July 2020



KAREN ANDREWS
Minister for Industry, Science and Technology