



Australian Government
Anti-Dumping Review Panel

ADRP Report No. 127

Steel Reinforcing Bar exported from the Kingdom of Thailand

October 2020

<https://www.adreviewpanel.gov.au>

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Abbreviations

Term	Meaning
ABF	Australian Border Force
Act	<i>Customs Act 1901</i>
ADA	Anti-Dumping Agreement
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
AUD	Australian Dollar
BBV	BBV Systems Co., Ltd, an exporter
Commissioner	The Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Elements of s.269TAB(2A)(b)	Three elements: (i) previous volumes of exports of those goods to Australia by the exporter; (ii) patterns of trade of like goods; and (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.
EPR	ADC Electronic Public Record
ExMo	Explanatory Memorandum to the <i>Customs Amendment (Anti-Dumping Measures) Bill 2017</i> .
FOB	Free on board
Goods	Steel Reinforcing Bar as described in the report
IDD	Interim dumping duty
IDE	International Drilling Equipment Pty Ltd, an importer
InfraBuild	InfraBuild (Newcastle) Pty Ltd, previously known as Liberty OneSteel (Newcastle) Pty Ltd, a member of the Australian industry producing like goods

IP	Intervening Period 1 April 2017 to 31 March 2018: securities imposed in November 2017 and anti-dumping measures imposed March 2018
Manual	Dumping and Subsidy Manual November 2018
Millcon	Millcon Steel Public Company Limited, the applicant and an exporter
Minister	Minister for Industry, Science and Technology
OIP	Original Investigation Period: 1 April 2016 to 31 March 2017
POR	Period of Review: 1 April 2018 to 31 March 2019
Rebar	Steel Reinforcing Bar as described as goods in this report
REP 418	The report published by the ADC in relation to the investigation into alleged dumping of Steel Reinforcing Bar exported to Australia by from Greece, Indonesia, Spain, Taiwan, Thailand dated 22 January 2018
REP 518	The report published by the ADC in relation to the Review of Anti-Dumping Measures applying to Steel Reinforcing Bar exported to Australia from The Kingdom of Thailand by Millcon Steel Public Company Limited dated 10 July 2020
REQ	Response to Exporter Questionnaire
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister for Industry, Science and Technology published on the ADC website on 27 July 2020 (ADN 2020/72 refers)
SEF 518	Statement of Essential Facts Report No. 518
Thailand	The Kingdom of Thailand
WTO	The World Trade Organization

Summary

1. This is a review of the decision of the Minister for Industry, Science and Technology (Minister) following a review of anti-dumping measures in respect of Steel Reinforcing Bar (Rebar) exported from the Kingdom of Thailand (Thailand) (the Reviewable Decision). The applicant for the review is Millcon Steel Public Company Limited (Millcon).
2. One ground was accepted as a reviewable ground by the Anti-Dumping Review Panel (Review Panel). This ground related to the determination of the export price, one of the variable factors. The Reviewable Decision in relation to exports from Thailand was found to be not correct. The dumping margin applicable to exports by Millcon as a result of the Reviewable Decision was 15.6 per cent.
3. For the reasons set out in this report, I recommend that the Reviewable Decision be revoked, and a new specified decision be substituted. I recommend that the export price be determined pursuant to s.269TAB(1)(a) of the *Customs Act 1901* (the Act). This has the effect of modifying this variable factor which impacts the dumping margin. The recommended new dumping margin is negative 0.7 per cent.

Introduction

4. Millcon applied under s.269ZZC of the Act for a review of the decision of the Minister following a review of anti-dumping measures pursuant to s.269ZDB(1) of the Act in respect of Rebar exported from Thailand.
5. The application was accepted and notice of the proposed review, as required by s.269ZZI, was published on 31 August 2020.
6. Pursuant to s.269ZZK of the Act, a report must be provided no later than 60 days following the publication of the notice of intention to conduct a review, unless a reinvestigation report is required under s.269ZZL(1).¹
7. The Senior Member of the Review Panel directed in writing that the Review Panel be constituted by me in accordance with s.269ZYA of the Act.

¹ Pursuant to s.269ZZK(3) of the Act.

Background

8. On 3 July 2019, the Anti-Dumping Commission (ADC) initiated a review of anti-dumping measures in relation to exports of Rebar exported from Thailand by Millcon.² Consideration Report 518 provides the relevant details as to the ADC's acceptance of the application.
9. The period of review (POR) was stated as 1 April 2018 to 31 March 2019.
10. The goods to which this application relates 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 mm, containing indentations, ribs, grooves or other deformations produced during the rolling process.

The goods covered by the measures include all steel reinforcing bar meeting the above description regardless of the particular grade or alloy content or coating.

Goods excluded from the measures are plain round bar, stainless steel and reinforcing mesh.

11. On 6 May 2020, the Statement of Essential Facts (SEF 518) was published by the ADC. It was noted that the SEF had been subject to a number of delays. Details of the reasons for these delays are included in the Report (REP 518) to the Minister.³ REP 518 was provided to the Minister on 10 July 2020.
12. The ADC provided a summary in REP 518 of the history of the anti-dumping measures relating to Rebar.⁴ Outlined at Attachment One is a summary of the relevant history of Rebar subject to anti-dumping measures or investigation in recent years.

² ADN 2019/88 published on the ADC website.

³ REP 518 Review of Anti-Dumping Measures applying to Steel Reinforcing Bar exported to Australia from the Kingdom of Thailand by Millcon Steel Public Company Limited.

⁴ REP 518 Section 2.2 page 4.

Conduct of the Review

13. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the Reviewable Decision, if satisfied that the decision is the correct or preferable one, or revoke it and substitute a new specified decision. In addition, s.269ZZK(1A) of the Act requires that, if the Review Panel is recommending a new specified decision, it must be materially different from the Reviewable Decision.
14. In undertaking the review, s.269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister in like manner as if it were the Minister having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
15. Subject to certain exceptions,⁵ the Review Panel is not to have regard to any information other than relevant information pursuant to s.269ZZK, i.e. information to which the ADC had regard or ought to have had regard when making its findings and recommendations to the Minister.
16. If a conference is held under s.269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information. Listed in the table below are the conferences held pursuant to s.269ZZHA of the Act:

Participants	Date	Regarding
ADC	18 September 2020	Clarification of Australian Border Force (ABF) import data relating to volumes and Free on board (FOB) prices
ADC	8 October 2020	Clarification of information relating to the

⁵ See s.269ZZK(4).

		'elements' considered for s.269TAB(2A) purposes, ABF import data and export price calculation
ADC and Millcon	21 October 2020	Information relating to ABF import data and determination of the export price

A non-confidential summary of the information obtained at the conferences was made publicly available in accordance with s.269ZZX(1) of the Act.

17. In conducting this review, I have had regard to:

- The application and documents submitted with the application.
- The submission received pursuant to s.269ZZJ of the Act, insofar as it contained conclusions based on relevant information.
- REP 518 and its confidential attachments. Information referenced in REP 518, including information created during the investigation, such as verification reports, submissions to investigation 518, SEF 518 and its confidential attachments, and source ABF import data.
- REP 418.
- Relevant information obtained at conferences and any conclusions reached at the conferences based on relevant information.
- EPR records EPR 495 and 546 to the extent that the applicant referred to particulars in these investigations.

18. I consider it worth repeating the words of the former Senior Panel Member (The Hon. Michael Moore) discussing the role and powers of the Review Panel, as outlined in the Report on Power Transformers:⁶

...Rather the Panel's role includes, by way of illustration, assessing whether there has been inappropriate reliance on particular data to the exclusion of other data, assessing whether relevant data has been ignored, assessing whether there has been miscalculations or the misconstruction or misapplication of the Act or relevant regulations. ...

Ground of Review

19. The ground of review relied upon by the applicant, Millcon, which the Review Panel accepted: the Minister made incorrect assessments and determinations with respect to Millcon's exports, pursuant to subsection 269TAB(2A) of the Act.

Consideration of the Reviewable Ground

Claims:

20. Millcon claims the Minister erred in her determination that Millcon should be considered a 'low volume exporter' by her incorrect assessment relating to:
- (i) previous volumes of exports by that exporter;
 - (ii) patterns of trade of like goods; and
 - (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

This led to the export price being determined pursuant to s.269TAB(2B) whereas Millcon proposes that the export price should have been determined under s.269TAB(1)(a) of the Act. It makes the following claims in relation to the specific matters the Minister is required to have regard to in exercising the discretion in

⁶ Extract from ADRP Report No. 24: Power Transformers – Former Senior Panel Member of the Anti-Dumping Review Panel, The Hon. Michael Moore.

s.269TAB(2A)(b). I have referred to these collectively as the ‘elements’ of s.269TAB(2A)(b).

Previous volumes of exports by that exporter:

21. Millcon claims that while ‘...average quarterly export volumes in the review period was significantly less than historical average export volumes’,⁷ its volumes are not low when compared with imports from other sources subject to anti-dumping measures. It suggests that since the introduction on anti-dumping measures, exports from all sources subject to measures have reduced. It also highlights that imports from Turkey have dramatically increased.
22. Millcon suggests that it has not ‘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’.

Patterns of Trade of Like Goods:

23. Millcon claims that the ADC has incorrectly assessed the ‘patterns of trade of like goods’ and its analysis is misleading. Millcon proposes that the ADC should have compared the quarterly export volumes between exporters subject to measures, and exporters not subject to measures. Furthermore, if all exporters subject to measures have similar reductions in volumes then this is consistent with an ‘overall decline and pattern of trade’, not related to a commercial decision by Millcon.
24. Millcon also suggests that Turkish exports (not subject to measures) should be separately identified in the analysis to ensure the impact of these exports are correctly assessed in terms of the overall Australian market. It refers the Review Panel to Paragraph 15 of the explanatory memorandum to the Customs Amendment (Anti-Dumping Measures) Bill 2017 (ExMo). Millcon proposes that the Minister may consider the patterns of trade in other ways and that low volume export patterns can be part of broader market trend rather than a deliberate strategy by an exporter.

⁷ REP 518 Section 5, page 16.

25. As evidence of changes in the pattern of trade, Millcon refers the Review Panel to the findings in ADC Continuation Inquiry (EPR 546).⁸ This information provides an overview of the market share held by the Australian industry, exports subject to measures related to the continuation inquiry (from Korea, Singapore, Spain and Taiwan) and exports not subject to measures (this included China, Thailand and Greece).⁹ Millcon does highlight that this information also has flaws as it includes in the 'countries not subject to measures' group, countries that are subject to anti-dumping measures.
26. Millcon concludes that the pattern of trade has been impacted by countries not subject to anti-dumping measures, particularly Turkish exports, and the ADC has not given sufficient weight to this fact in its assessment of the broader market trends in whether Millcon should be considered a 'low volume exporter'.

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

27. Millcon proposes that the following are key factors outside its control that impacted the pattern of trade of like goods and influenced its export sales volumes:
- the pricing of its competitors from other countries, including the price relativities (and pricing behaviours), noting there is a high level of 'price sensitivity and interchangeability of sources of supply' for Rebar;
 - the volume of Turkish exports at low and un-dumped prices which had a significant impact on the patterns of trade for Rebar in Australia.¹⁰ It notes that these imports have been increasing and had impacted other sources. It refers to the pricing analysis shown in EPR 495; and

⁸ EPR 546 Continuation Inquiry into exports of Steel Reinforcing Bar exported from Korea, Singapore, Spain (except by Nervacero S.A.) and Taiwan (except Power Steel) initiated on 3 March 2020. In particular, the market share information of the Australian industry verification report. This matter is currently underway and not a finalised decision of the Minister.

⁹ China, Thailand and Greece are subject to Dumping Duty Notices but not the same Notice to that of the countries subject to the Continuation Inquiry.

¹⁰ Millcon presents as evidence an extract from the Australian industry's application for dumping duties to be applied to Turkish exports dealing with price undercutting by such exports (Investigation 495). The original investigation period for this matter was 1 October 2017 to 30 September 2018, thus having some overlap with the POR in 518 (April 18 to March 2019).

- the increasing and substantial volumes from countries not subject to anti-dumping measures.

Millcon suggests the ADC did not give sufficient weight to the impact of these factors on the patterns of trade in its finding that there was 'insufficient or unreliable information to ascertain the price'. It notes that the competitive nature of the Turkish un-dumped prices had a significant impact on Millcon's ability to 'offer and make export sales at competitive and non-dumped prices'. It suggests that these factors impacted the patterns of trade and the Australian market and were factors outside Millcon's control.

ADC Findings:

28. The ADC concluded that for Millcon, there was 'unreliable information to calculate an export price due to a low volume of exports'. It relied on the following information (as stated in REP 518):

- *The average quarterly export volumes in the review period was significantly less than historical average quarterly volumes;*
- *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;*
- *Historical exports to Australia by Millcon were evidence of Millcon's capacity to export to Australia at a much higher volume; and*
- *With the exception of Millcon's claims in its submission of 26 May 2020, which are addressed section 5.5.1 of the report, the company did not identify any other factor that interrupted supply to Australia during the review period.¹¹*

29. On this basis, the ADC recommended that the Minister determine for Millcon that there was insufficient or unreliable information to 'ascertain the price' due to the low

¹¹ REP 518 Section 5.2, page 16.

volume of its exports and the export price should be determined under s.269TAB(2B) of the Act. The ADC made the following specific findings in relation to each of the 'elements' of s.269TAB(2A) of the Act:

Previous volumes

30. The ADC noted that Millcon had made a submission regarding the impact of the un-dumped exports from Turkey as well as its attempts to continue to export to Australia during the review period. In its response to the submission, the ADC commented that s.269TAB(2A) of the Act 'does not require evidence that an exporter adopted a low volume strategy in order to obtain a more favourable rate of duty'.¹² The ADC considered it must have regard to the words of the legislation rather than the ExMo. It noted that the Review Panel had agreed with this approach in ADRP Review No 2018/83.¹³
31. The ADC noted that s.269TAB(2A)(b)(i) does not rely on previous volumes of exports being much higher than in the POR. Rather it requires an assessment of the previous volumes of exports by that exporter. The ADC referred to the comments made by the Review Panel in ADRP Report No. 83 in this regard:

*the Explanatory Memorandum does not state that "much" higher volumes are the only circumstance where a strategy of low volume sales may be inferred or the only circumstance in which a difference in volumes may be relevant. More fundamentally, the Explanatory Memorandum is not the legislation... Section 269TAB(2A) does not refer to "high" volumes, at all. The legislation refers to "an absence or low volume of exports". The requirement that there be "low volumes" should not be further qualified...Of course, the size of the difference between volumes of exports in the review period and previous volumes may be relevant. The greater the difference, the stronger the inference which might be drawn.*¹⁴

Patterns of Trade for like goods

¹² REP 518, Section 5.5.1, page 18.

¹³ ADRP Report No 83 Steel Rod in Coils exported to Australia from the People's Republic of China.

¹⁴ REP 518, Section 5.5.1 page 18 refers to ADRP Report No. 83 Steel Rod in Coils exported to Australia from the People's Republic of China at paragraph 74.

32. The ADC provides analysis in Confidential Attachment One to REP 518 detailing the quarterly average volumes from Millcon in comparison to exports from all other sources from the original investigation period (OIP) through the intervening period (IP) to the POR. It concluded that Millcon's exports volumes were not consistent with the 'general demand for exports or patterns of trade for like goods'.

Factors affecting Millcon's patterns of trade

33. The ADC indicated it had reviewed the ABF data and did not consider that Millcon's claims that un-dumped imports from Turkey had replaced Millcon's exports was substantiated. The ADC drew this conclusion after [REDACTED]. The ADC found that Millcon's previous customers [REDACTED] (Confidential import and sales information).
34. The ADC therefore considered that the decline in Millcon's export volumes was likely the result of anti-dumping measures. It indicated that Millcon considered this factor had impacted the pattern of trade and was outside its control. However, the ADC considered the imposition of anti-dumping measures is within the control of exporters. It referred to the finding in ADRP Report No 83 which stated 'the imposition of dumping duties is not a matter which is relevantly beyond the control of exporters'.

The ADC concluded that Millcon's exports in the POR had [REDACTED]% whereas exports from other sources had [REDACTED].¹⁵ (Confidential import information).

35. The ADC indicated that all three elements of s.269TAB(2A)(b) must be considered and no one particular factor is decisive.

¹⁵ There was an error in the calculation in relation to the export volumes, the figure shown in this Report reflects the correct figures.

Submissions:

36. Infrabuild Steel (Newcastle) Pty Ltd (Infrabuild) made a submission in relation to the ground raised by the applicant, Millcon.¹⁶ Infrabuild deals with each of the issues claimed by Millcon. It agrees with the approach adopted by the ADC in REP 518 and refers to the approaches outlined in Review Panel Reports 83 and 84 dealing with the imposition of measures is within the control of the exporter. Additionally, in Review 84, the Review Panel dismissed the argument relating to whether price undercutting by exporters not subject to measures was preventing an exporter re-entering the Australian market and therefore a factor outside the exporter's control.¹⁷
37. Infrabuild indicates that the ADC has undertaken the appropriate analysis of the elements outlined in s.269TAB(2A) of the Act to conclude that there is 'insufficient or unreliable information' to ascertain the export price under s.269TAB(1). On this basis, Infrabuild supports the ADC's recommendation to the Minister to exercise her discretion pursuant to s.269TAB(2A).

Commentary:

38. Section 269TAB(2A) of the Act requires the Minister, when considering a review of measures under Division 5, to assess in circumstances where there are no exports, or low volumes of exports, whether the information available is insufficient or unreliable to ascertain a price for those exports. To make this decision, regard must be had to the following three 'elements':
- previous volumes of exports of those goods to Australia by that exporter.
 - patterns of trade for like goods.
 - factors affecting patterns of trade for like goods that are not within the control of the exporter.

¹⁶ Letter from Infrabuild dated 29 September 2020.

¹⁷ ADRP Report No 84, page 22.

An extract of the relevant legislation dealing with the determination of export price is shown at Attachment Two.

39. The ExMo explains why s.269TAB(2A) and associated subsections were introduced. It states the amendments were introduced to:

...limit exporters' ability to subvert the anti-dumping framework and benefit from inappropriately reduced rates of duty that do not remedy the injurious effects of dumping.¹⁸ ...

It enables the use of 'different methodologies' to establish an 'export price that is reasonably reflective of the export price that would have existed had the exporter made exports (or made exports of a greater volume)'.¹⁹

40. As outlined in s.269TAB(2B) of the Act there are 'different methodologies' to determine the export price when the Minister decides that s.269TAB(2A) applies.²⁰ The ExMo also indicates that notwithstanding that an exporter made no exports or low volume exports, the export price could still be established pursuant to s.269TAB(1) or (3) if it would not lead to a less effective (in terms of material injury caused by dumping) duty rate.
41. While there is no requirement to consider the intent or motivation of the exporter in the words of the legislation, the ExMo (as outlined in the above paragraphs above) provides the context of why the Act was amended to deal with particular circumstances of export price determination in reviews of measures. My colleague made comment on this aspect in ADRP Review No 83 and said:

*While the Explanatory Memorandum may help, it is not a substitute for the language of the Act itself. My task is not to apply the Explanatory Memorandum but to apply the language of s.269TAB, read, where necessary, with the benefit of the Explanatory Memorandum.*²¹

I agree and have adopted this approach.

¹⁸ ExMo Outline paragraph 1.

¹⁹ ExMo Outline paragraph 4.

²⁰ ExMo Outline paragraph 1.

²¹ ADRP Report No 83: Steel Rod in Coils exported to Australian from the People's Republic of China, paragraph 73.

42. I turn to each of the elements that must be considered by the Minister in determining whether the information is 'insufficient or unreliable' to ascertain the price due to the absence of exports or low volume of exports:

Previous volumes (s.269TAB(2A)(b)(i))

43. Millcon acknowledged in its application that the volumes to Australia had decreased since the OIP and provides reasons for this reduction: see paragraphs 21 to 22.
44. The ADC, correctly, points out that s.269TAB(2A)(b)(i) does not require evidence of intent. It merely requires a factual inquiry as to the previous volumes of the exporter. The ADC considered the OIP through to the POR and established that Millcon's export volumes had decreased since the OIP. The ADC's comparison referred to the quarterly average prior to the POR and during the POR.
45. I examined this information and considered it appropriate to segment this quarterly volume information into three annual periods, given the different milestone events that occurred in certain periods.²² The periods are: the OIP (1 April 2016 to 31 March 2017), the IP (1 April 2017 to 31 March 2018) and the POR (1 April 2018 to 31 March 2019). This information is summarised in Confidential Attachment Three.
46. Millcon's export volumes showed a great deal of variability during the three periods. Its exports ██████ in the IP (when compared with the OIP), noting that this is prior to the measures being imposed and then decreased once measures were imposed. The exports ██████% from the OIP to the POR (Confidential import data). As identified by the ADC it is a factual inquiry and no evidence of motivation is required.

Patterns of trade for like goods (s.269TAB(2A)(b)(ii))

47. Patterns of trade is not defined by the legislation, nor could I locate any relevant case law.²³ I have adopted the following definition (based on common usage) for the

²² Imposition of securities occurred in November 2017 and imposition of measures in March 2018, both are in the period I have called the intervening period.

²³ Most case law relating to patterns of trade relates to competition law and is not considered relevant in this context. It does refer to understanding the market and examining what is classed as normal.

purposes of this report: the general manner in which trade is carried on including an examination of the changes to the conduct of that trade.

48. As outlined in detail in paragraphs 23 to 26 above, Millcon proposes that the ADC should have conducted its analysis differently. It also refers the Review Panel to the market and volume analysis undertaken by the ADC in the Australian industry verification visit report in Continuation Review 546.²⁴
49. The ADC's analysis included an examination of Millcon's exports compared with all exports to Australia. It concluded that Millcon's volumes were not consistent with the 'general demand for exports or patterns of trade for like goods'. This is correct, but I agree with Millcon that the pattern of trade analysis should include a more detailed analysis of the different sources and the changes to those volumes in order to understand what has changed in relation to the pattern of trade in the POR.
50. A conference was held with the ADC²⁵ on 18 September 2020 to clarify the export volumes of:
- Thailand (Millcon and other exporters' volumes)²⁶;
 - Countries subject to anti-dumping measures (both from Investigation 418 (Greece, Indonesia, Spain (Nervacero S.A.), Taiwan (Power Steel Co. Ltd) and Thailand), Investigation 246 (Korea, Singapore, Spain (except for Nervacero S.A.) and Taiwan) and Investigation 300 (China);
 - Other non-dumped sources²⁷; and
 - detailed information regarding the average monthly Australian Dollar (AUD) FOB price for countries exporting to Australia during the POR.²⁸

²⁴ Continuation Inquiry 546 recently published a SEF (20 August 2020). This matter has not been finalised and therefore reliance on this information is limited.

²⁵ Non-confidential conference summary dated 18 September 2020.

²⁶ During this process, the ADC identified a small error in the volumes recorded for Millcon (from the original investigation). This error was immaterial and had no impact but was corrected for the purposes of this review.

²⁷ A further error was located in relation to export volumes. This was corrected. It did not relate to the POR.

²⁸ The ADC had undertaken some analysis of pricing in Confidential Attachment One to REP 518 at Figures 3 and 4.

The ADC provided the requested information. A summary of this information is included in Confidential Attachment Three.

51. This information reveals that countries and exporters not subject to measures in the POR comprised approximately [REDACTED] of volume and countries subject to measures comprised approximately [REDACTED] relate to the countries subject to the same dumping duty notice as Thailand (Confidential import volumes).
52. The information was segmented in the manner proposed by Millcon as follows:
- Of the countries and exporters subject to measures imposed as a result of Investigation 418, all had [REDACTED] [REDACTED] between the OIP and the POR, that is, [REDACTED] [REDACTED] The volumes from the other major Thai exporter [REDACTED] [REDACTED];²⁹ (Confidential export volume information);
 - Other countries and exporters subject to measures but imposed as a result of other anti-dumping investigations had variable results. This cohort also experienced changed export volumes in the POR. Overall, their volumes remained [REDACTED] [REDACTED]. However, countries within this group had inconsistent trends. For example, [REDACTED] [REDACTED] (Confidential export volume information).
 - Imports from countries and exporters not subject to anti-dumping measures increased by approximately [REDACTED] between the OIP and POR, with [REDACTED] largest export source. This cohort appears to have had the major impact on the pattern of trade in the POR.

²⁹ Another exporter from Thailand is BBV Systems Co. Ltd. BBV did not supply an exporter questionnaire but the ADC established through the importer, IDE, that some of these sales should be considered exports of the goods by Millcon refer to REP 518 Section 4.2.1.1, page 14. The ADC disregarded all sales by Millcon to BBV for establishing the normal value, export price and dumping margins.

53. I considered Turkey's exports in some detail given the comments by Millcon. Turkey's export volumes in the POR represent [REDACTED] of all import volumes. In the OIP it exported [REDACTED] increased [REDACTED] in the POR (Confidential export volumes). In such circumstances it is not unreasonable to conclude that Turkish exports in conjunction with other low-priced sources had a significant impact on the pattern of trade of Rebar in the POR.³⁰
54. Overall, the volume information shows a great deal of variability in export sources and export volumes between the OIP, the IP and the POR. The overall demand for Rebar from imported sources remained strong in the POR as noted by the ADC. There was, however, a high level of interchangeability with countries and exporters not subject to anti-dumping measures becoming the dominant sources of Rebar in the POR.
55. Millcon suggested that its export volumes in the POR were consistent with other exports subject to the same Dumping Duty Notice, and thus reflected a broad market trend. While I agree that there are similar trends, I do not agree that this reflects a 'broad market trend' but rather would characterise it as a consistent response to the imposition of anti-dumping measures.
56. Generally, supply and demand theory indicate that when prices increase, volumes decrease. From a pattern of trade perspective with all other things being equal, it is relatively normal once additional duties are imposed, for volumes to decrease. However, what is noteworthy during the POR, is the degree of volumes and sources change in the POR and why this occurred. The emergence of 'new' export sources was significant, noting that overall demand for Rebar imports remained strong. There was a significant pattern of trade change in the POR.

³⁰ Generally, it is necessary to exercise caution when analysing information about sources not subject to anti-dumping measures. However, in this case Turkey was recently found to have negligible or nil dumping margins. ADN 2020/64 published on 25 June 2020 advises of the Commissioner's decision to terminate the investigation into dumping of Rebar from Turkey.

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

57. Millcon proposes that there were three key factors outside its control that impacted the pattern of trade and influenced its export sales volumes. These are outlined in detail at paragraph 27. Millcon suggests the ADC did not give sufficient weight to the impact of these factors on the patterns of trade, particularly its export volumes, in its finding that there was 'insufficient or unreliable information to ascertain the price'.
58. As outlined at paragraph 34 the ADC did not consider the 'other factors' cited by Millcon as being substantiated to any degree. The ADC concluded that the decline in Millcon's exports volumes was likely the result of the imposition of anti-dumping measures given this would have increased Millcon's prices in Australia by at least the level of the dumping margin. It referred to the finding in ADRP Report No 83 which stated 'the imposition of dumping duties is not a matter which is relevantly beyond the control of exporters'.
59. The ADC concluded that Millcon's exports had [REDACTED] [REDACTED] the general pattern of trade for like goods (Confidential export volume information). On this basis, the ADC did not consider the loss of sales related to factors outside of Millcon's control but rather related to the price increase which it considered within Millcon's control. Its analysis of the factors outside of Millcon's control focused on whether Millcon had lost customers to Turkish exporters.
60. Infrabuild's submission indicated its agreement with the approach adopted by the ADC and also referred the Review Panel to the comments in ADRP Report No 84, which dismissed the argument relating to whether price undercutting by exporters not subject to measures was preventing an exporter re-entering the Australian market and therefore a factor outside the exporter's control.³¹
61. While my colleague in ADRP Review No 84 dismissed the ground related to factors outside the control of the exporter, and indicated he was not persuaded by the applicant's arguments. He made no specific comment on price undercutting. The

³¹ ADRP Report No 84, page 22.

circumstances in this case are somewhat different to that matter relating to the differences in volumes, timing and changes in the patterns of trade.

62. My colleague in ADRP Report No 83³² observed that other exporters' pricing may influence volumes and have an impact on the patterns of trade:

'94. The application of s.269TAB(2A)(b)(iii) is essentially a factual inquiry. **"Market dynamics" might influence the volume of exports to Australia in ways that are beyond the control of exporters to Australia.** If, for example, the export price of goods exported from a country other than China **fell substantially, that might influence volumes of exports to Australia** from China. Of course, exporters are not helpless in the face of market dynamics and make commercial pricing decisions. However, Parliament would not have intended that exporters would be required to export goods to Australia at prices which are below cost or, more relevantly, below the normal value of the goods, in order to escape the operation of s.269TAB(2A) of the Act. The effect, and explanatory power, of "market dynamics" depends on the particular circumstances'.....(emphasis added)

97. Finally, in the last paragraph of the passage quoted, the Report concludes that the behaviour of other exporters 'in no way prevents the applicant from exporting the goods to Australia'. This language is not expressed in language which reflects the language of s.269TAB(2A)(b)(iii). That paragraph refers to "factors affecting patterns of trade that are not within the control of the exporter". The effect which a factor has on the pattern of trade does not need to be such as to completely prevent the exporter exporting to Australian. A factor may fall within s.269TAB(2A)(b)(iii) even if its effect is less decisive than "preventing".'

63. There are clear differences in the facts present in this review compared to ADRP Reviews 83 and 84. However, there are relevant principles that I have adopted:

- The imposition of measures is a factor within the control of an exporter given its pricing behaviour has led to a finding of dumping.

³² ADRP Report No 83 Steel rod in Coils exported to Australia from the People's Republic of China, paragraphs 94 and 97.

- 'Market dynamics' may influence volumes and patterns of trade and may be outside the control of an exporter.
 - A factual inquiry of the particular circumstances of the market dynamics.
 - The decision to be determined is in the words of the legislation as to whether the price information is unreliable or insufficient due to an absence or low volume or exports by having regard to the 'elements'.
64. Ultimately, the Minister must be satisfied that the price could not be determined as there was insufficient or unreliable information due to the absence of exports or low volumes. It requires a judgement based on the analysis of the facts of a particular matter. In other words, there must be a nexus between the low volume of exports (or absence) and the unreliability (or insufficiency) of information based on the analysis of the exporter's volumes and patterns of trade (the specified elements) in broad terms to determine that s.269TAB(2A) applied.
65. In this review, the evidence suggests there has been a major change of volumes impacting the pattern of trade in the POR.
66. The factors proposed by Millcon centre on the significant volume impact that the lower priced and non-dumped exports from Turkey and other sources had on the pattern of trade and its own ability to continue to export in these circumstances.
67. Outlined in earlier paragraphs, is the information relating to the volumes impacts on the pattern of trade. Given the fact that the pattern of trade has changed it is appropriate to consider further the underlying reasons for the changes, the so-called 'market dynamics' (volumes and prices) as referred to by my colleague in ADRP Report No 83.
68. As referred to in paragraph 50 above, I requested additional information from the ADC regarding FOB prices from export sources to assist with the examination of market dynamics.
69. With respect to the weighted average monthly FOB price analysis during the POR, it is apparent that there is a wide range of import prices offered in the Australian market and these fluctuated throughout the period. In general, countries subject to anti-dumping measures (including Millcon) were consistently sold [REDACTED]

[REDACTED] during the POR. While countries not subject to measures were sold [REDACTED] [REDACTED] throughout the POR (Confidential import volume and pricing information).

70. Millcon's weighted average monthly FOB prices, noting that [REDACTED] [REDACTED] of the price range of export sources. The highest prices in the market were exports from [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

71. Of the other countries subject to the same notice as Thailand:

- Taiwan's prices were [REDACTED] [REDACTED] [REDACTED]
- Spain's prices were [REDACTED] [REDACTED]³³
- Indonesia's prices (noting that these exports were from exporters found not to be dumping) [REDACTED] [REDACTED]
- Greece [REDACTED] (Confidential import price and volume information).

72. The FOB price analysis suggests that there is strong price competition in the Rebar market as observed by Millcon. It also suggests that pricing by non-dumped and low-cost sources is having a significant impact on the pattern of trade in the form of pricing levels, volume changes and interchangeability of sources. These 'market dynamics' demonstrate the responsiveness of volume changes to price. Both are impacting the pattern of trade.

³³ Spain's exports related to the anti-dumping notices as a result of Reports 264 and 418.

73. This supports Millcon's claim that factors outside its control, that is, the pricing and volumes from a number of sources has changed the pattern of trade during the POR and in all likelihood impacted Millcon's volumes. The evidence presented by Millcon regarding its loss of customers to various sources is illustrative of the pattern of trade impact. While the ADC noted the claim of loss of customers to Turkish exports as unsubstantiated, it is apparent that Millcon lost customers to a variety of sources not only Turkish exporters.
74. While Millcon may establish its own prices based on its commercial situation whether it makes sales will be dependent on the 'market dynamics' through the interplay of pricing levels and volumes in the market. Accordingly, given the extent of the 'market dynamics' in this case, it appears to be a factor outside Millcon's control. I note that this might not be the situation in all cases given it depends on the particular market dynamics at play. I agree with Millcon that there is a pattern of trade change created by the penetration of low cost and non-dumped exports in both price and volume terms.

Millcon's prices: Other considerations

75. Section 269TAB(2A) requires consideration of the 'elements' regarding volumes and the pattern of trade to determine if the low volumes have caused price information to be unreliable or insufficient. It does not specifically refer to the consideration of the prices by the exporter, except to the extent that these are considered unreliable or insufficient through the consideration of the 'elements'.
76. My colleague commented that '...Parliament would not have intended that exporters would be required to export goods to Australia at prices which are below cost or, more relevantly, below the normal value of the goods to escape the operation of s.269TAB(2A) of the Act.'³⁴ This is an interesting observation when applied to this case. While Millcon's prices are not a factor outside its control, it is apparent that prices play a part of the 'market dynamics' and as such can impact volumes in the pattern of trade evaluation. For this reason, I considered Millcon's price in more detail.

³⁴ ADRP Report No 83, page 28.

77. Millcon's application for review of measures was lodged on the basis that there had been increase in the average steel billet prices (the major raw material in the manufacture of Rebar) which impacted its export and domestic prices.
78. The ADC obtained published Southeast Asian billet prices and confirmed there had been a significant increase in these prices.³⁵ The ADC concluded that it was likely that the normal values would have increased due to this raw material price change. The ADC also observed that there had been a price increase of exports during the POR when compared with the export prices of the original investigation (REP 518). There is information in the confidential version of Millcon's verification report that demonstrates that prices change, as manufacturing costs change.
79. Millcon sold to [REDACTED] Australian importers during the POR. Prices to these importers were [REDACTED] [REDACTED] in the same period (Confidential price information and importer information). The ADC found Millcon's export sales during the POR to be arms length transactions.³⁶ These prices were higher than in the original investigation from which anti-dumping measures were imposed.

In summary: s.269TAB(2A)(b):

80. The ADC having considered the three elements of s.269TAB(2A)(b) found that there was unreliable information to ascertain an export price due to the low volume of exports to Australia in the POR.
81. For the following reasons, I do not agree with the ADC that the low volume of exports by Millcon led to the price information being unreliable (or insufficient) as outlined below:
- (i) Millcon's export volumes showed a great deal of variability during the three periods examined. Its exports were significantly lower in the POR when compared to previous volumes.

³⁵ Consideration report 518 published by the ADC, page 10.

³⁶ ADC Exporter Verification Report, EPR 518 document #12.

(ii) There was a substantial change during the POR to the pattern of trade for imported Rebar with countries/exporters not subject to measures becoming the major supply source, against a background of continuing strong demand.

(iii) The following factors affecting pattern of trade during the POR and are considered outside Millcon's control:

- Goods from countries subject to anti-dumping measures were consistently sold [REDACTED] during the POR;
- Goods from countries not subject to measures were sold [REDACTED] Turkish exports [REDACTED] throughout the POR;
- Non-dumped and lower priced Rebar was offered by a variety of export sources;
- Weighted average monthly FOB prices during the POR showed a wide range, with fluctuations apparent throughout the period;

These factors reveal that the pattern of trade changed significantly in the POR. Accordingly, I have concluded that market dynamics associated with the increased volume of low cost and non-dumped Rebar has impacted the pattern of trade and Millcon's export volumes.

82. In relation to Millcon's prices, it did not have [REDACTED] of the POR (Confidential import pricing information). Millcon made sales to a number of importers and its prices were [REDACTED] of the market. However, there was no evidence that suggested that these were other than arms length transactions.
83. Against this background of Millcon's increased cost to make and sell, the price behaviour appears consistent with the trends of other export sources subject to the same Dumping Duty notice as Millcon. Accordingly, it would appear commercial considerations related to its costs and the dumping duty imposed impacted Millcon's prices. I note again my colleague's comments in ADRP Report No 83 that '...Parliament would not have intended that exporters would be required to export

goods to Australia at prices which are below cost or, more relevantly, below the normal value of the goods, in order to escape the operation of s.269TAB(2A)....'.³⁷

84. In my view, Millcon's volumes appear to have been impacted by both Turkish as well as other low-cost sources. The intent of the legislation is to ensure an effective dumping duty system is maintained. The question to be addressed is whether Millcon has established its price to benefit from an inappropriately reduced rate of dumping duty or whether the impact of other factors in the market has impacted its volumes. The evidence does not suggest the prices are unreliable as there are legitimate reasons for its pricing and that the low volumes resulted from other factors. There are other mechanisms through the 'form of dumping duty' applied that can discourage 'unexpected reductions in the export price' should exporters attempt to 'subvert the system'.
85. For these reasons, I do not agree that there is unreliable or insufficient information due to the low volumes of Millcon's exports to prevent the export price being based on those prices for the goods sold to Australia during the POR. On this basis, I do not consider export price should be determined by the Minister pursuant to s.269TAB(2B). I recommend that the export price be determined based on the price paid or payable by the importer pursuant to s.269TAB(1)(a) of the Act.
86. A conference was held with the ADC on 8 October 2020 to enable the preparation of the calculations of the export price pursuant to s.269TAB(1)(a). I subsequently convened a conference with Millcon and the ADC on 21 October 2020 to enable Millcon to review the ADC calculations of the export price assessed pursuant to s.269TAB(1)(a).³⁸ Millcon confirmed the accuracy of the calculations.
87. On this basis, Millcon has established that the Reviewable Decision is not correct or preferable.

³⁷ ADRP Report No 83, paragraph 94.

³⁸ At the conference held with the ADC on 8 October 2020 I also requested the calculation of export price.

Recommendations

88. Pursuant to s.269ZZK(1) of the Act and for the reasons given above, I consider that the Reviewable Decision was not the correct or preferable decision.
89. I note that s.269ZZK(1A) of the Act requires the Review Panel to only make a recommendation to the Minister pursuant to s.269ZZK(1)(b) if the specified new decision is materially different to the Reviewable Decision. This recommendation will make a material difference to the Reviewable Decision as the dumping margin will change from 15.6 per cent³⁹ to negative 0.7 per cent.
90. I recommend that the Minister:
- revoke the Reviewable Decision pursuant to s.269ZDB(1) of the Act and substitute a new decision; and
 - fix a different export price pursuant to s.269TAB(1)(a) of the Act relevant to the determination of duty.

This has the effect of adjusting the dumping margin to negative 0.7 per cent.



Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel
30 October 2020

³⁹ Published in ADN 2020/072 dated 27 July 2020.

Attachment One

Table summarising recent Anti-Dumping Activity relating to Rebar

Case or Report No	Decision Date	Country of export	Outcome	Current Status
REP 264	19 Nov 2015	Korea, Singapore, Spain (except for Nervacero S.A.) and Taiwan	Measures imposed	Continuation Investigation currently being conducted by ADC: SEF 546 published 20 August 2020 and a review of measures initiated on 10 Sept 2020. Recent review of Korea and Taiwan conducted (486 and 489)
REP 300	12 April 2016	China	Measures imposed	Continuation investigation underway by ADC, EPR 560 refers and SEF due on 28 October 2020; a review of measures also underway (EPR 563)
REP 418	7 March 2018	Greece, Indonesia, Spain (Nervacero S.A.), Taiwan (Power Steel Co. Ltd) and Thailand	Measures imposed	Current Review of Measures relating to Thailand: REP 518

EPR 495	25 June 2020	Turkey	Case terminated:	Negligible or no dumping
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Relevant legislation:

269TAB Export price

(1) *For the purposes of this Part, the export price of any goods exported to Australia is:*

(a) *where:*

(i) *the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and*

(ii) *the purchase of the goods by the importer was an arms length transaction;*

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 the transport of the goods after exportation or in respect of any other matter arising after exportation; or

(b) *where:*

(i) *the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and*

(ii) *the purchase of the goods by the importer was not an arms length transaction; and*

(iii) *the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;*

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

(c) *in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.*

(2) *A reference in paragraph (1)(b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:*

(a) *any duties of Customs or sales tax paid or payable on the goods; and*

(b) *any costs, charges or expenses arising in relation to the goods after exportation; and*

(c) *the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.*

(2A) *If an export price of goods exported to Australia is being ascertained for the purposes of conducting a review of anti-dumping measures under Division 5, the price may, despite subsection (1), be determined by the Minister in accordance with subsection (2B) if:*

(a) *the price is being ascertained in relation to an exporter of those goods (whether the review is of the measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally); and*

(b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia by that exporter having regard to the following:

- (i) previous volumes of exports of those goods to Australia by that exporter;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

Note: If there is an absence of exports of those goods to Australia by that exporter, the Minister may deem such exports to have taken place for the purposes of ascertaining an export price: see subsection (2C).

(2B) For the purposes of subsection (2A), the export price of those goods is the price determined by the Minister to be the export price, having regard to any of the following:

- (a) the export price for the goods exported to Australia by the exporter established in accordance with subsection (1) of this section for a decision of a kind mentioned in subsection (2D);
- (b) the price paid or payable for like goods sold by the exporter in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country;
- (c) the export price for like goods exported to Australia from the country of export by another exporter or exporters established in accordance with subsection (1) of this section for a decision mentioned in subsection (2D).

(2C) For the purposes of conducting the review of anti-dumping measures under Division 5, if there is an absence of exports of those goods to Australia by the exporter, the Minister may deem such exports to have occurred for the purposes of applying subsections (2A) and (2B) of this section.

(2D) For the purposes of paragraphs (2B)(a) and (c), the decisions are the following:

- (a) deciding to publish a notice under any of the following provisions:
 - (i) subsection 269TG(1) or (2) (dumping duties);
 - (ii) subsection 269TJ(1) or (2) (countervailing duties);
 - (iii) subsection 269ZDB(1) (reviews of anti-dumping measures);
 - (iv) subsection 269ZDBH(1) (anti-circumvention inquiries);
 - (v) subsection 269ZG(3) (accelerated review);
 - (vi) subsection 269ZHG(1) (continuation of anti-dumping measures);
- (b) any other decision under this Act of a kind prescribed by the regulations.

(2E) For the purposes of paragraph (2B)(c), the decision must be a decision made during the period:

- (a) beginning 2 years before the day the Commissioner published notice of the review under subsection 269ZC(4), (5) or (6); and
- (b) ending on the day notice of the review is published under subsection 269ZDB(1).

(2F) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2B)(b), the Minister may have regard to the following matters:

- (a) whether the volume of trade from the country of export to the third country is similar to the volume of trade from the country of export to Australia;*
- (b) whether the nature of the trade in goods concerned between the country of export and the third country is similar to the nature of trade between the country of export and Australia.*

(2G) If the export price of goods exported to Australia has been ascertained under subsection (2B), the export price may be subject to such adjustments that the Minister determines are necessary to reflect what the export price would have been had there not been an absence or low volume of exports, including:

- (a) adjustments due to exports (on which the export price is based) relating to earlier times; or*
- (b) adjustments due to exports (on which the export price is based) relating to not identical goods.*

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

(6) For the purposes of paragraphs (1)(a) and (2B)(b), the reference in those paragraphs to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction