



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.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: OneSteel Manufacturing Pty Limited

Address: 42 004 651 325

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

2. Contact person for applicant

Full name:

Position:

Email address:

Telephone number:

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 applies for review to the ADRP under section 269ZZO in its capacity as the person who made the application for the dumping duty notice.

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.****

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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 described as:

Hot rolled rods in coils of steel, whether or not containing alloys, that have maximum cross sections that are less than 14 mm.

The goods covered by this application include all steel rods meeting the above description of the goods regardless of the particular grade or alloy content.

Goods excluded from this application include hot-rolled deformed steel reinforcing bar in coil form, commonly identified as rebar or debar, and stainless steel in coils.²

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

The goods are subject to the following tariff classification, in accordance with schedule 3 of the *Customs Tariff Act 1995*.

- 7213.91.00 (statistical code 44)
- 7227.90.90 (statistical codes 02, 04)

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. 2018/53

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

26 March 2018

****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.

² 'Anti-dumping Commission', *Anti-dumping Notice No. 2017/79*, p. 2.

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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

- A. The reviewable decision was not the correct or preferable decision because the Commissioner's determination of the normal value for exporters from Vietnam under s 269TAC(1) of the Act, which formed the basis of the decision to terminate Investigation 416 because of allegedly negligible dumping margins, was not authorised by the terms of s 269TAC(2)(a)(ii) because the situation in Vietnam is such that sales in that market are not suitable for use in determining a price under s 269TAC(1).
- B. Further, the Commissioner's determination of the dumping margin under s 269TACB(2)(aa) for Hoa Phat One Member Company was not the correct or preferable decision, and should properly have been determined under s 269TACB(2)(a).
- C. Alternatively, even if the Commissioner did correctly determine the allegedly negligible dumping margins for exporters from Vietnam, his assessment of the price effects and causation of injury caused by dumped goods exported by exporters from Indonesia (except PT Ispat Indo) and South Korea was incorrect because he failed to properly assess the impact of the dumped goods on the prices of the Australian industry and this failure prevented a proper calculation of the degrees of injury that would have demonstrated that injury to the Australian industry caused by dumped goods was not negligible.
- D. Alternatively, to the extent (if any) that the Commissioner's claim that a significant portion of injury experienced by Liberty OneSteel resulted from factors other than dumping formed part of his decision to terminate the investigation, it was not authorised by the terms of s 269TAE(2B).

Elaboration of these grounds can be found at [Appendix B](#) attached.

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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 to find that:

- the normal value for the exporter from Vietnam, Hoa Phat, be determined under s 269TAC(2)(c);
- the dumping margin for the exporter from Vietnam, Hoa Phat, be determined under s 269TACB(2)(a);
- injury to the Australian industry caused by exports of dumped goods was not negligible;
- injury, if any, experienced by Liberty OneSteel as a result of factors other than dumped imports did not constitute a significant portion of the total injury experienced by the company; and
- alternatively, injury is threatened to the Australian industry by the dumped goods, and that injury is foreseeable and imminent unless the dumping measures are imposed.

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: [Manager Trade Development](#)

Organisation: [Onesteel Manufacturing Pty Limited](#)

Date: [24 April 2018](#)

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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: / /

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APPENDIX B

PART C: GROUNDS FOR YOUR APPLICATION

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

A. INTRODUCTION

1 In reaching his decision to terminate *Dumping Investigation No. 416 (INV 416)* the Commissioner has found that:

(a) the dumping margin for the exporter from Vietnam, Hoa Phat One Member Company (**Hoa Phat**), and all other exporters from Vietnam, was negative;

(b) the dumping margin for the exporter from Indonesia, PT Ispat Indo (**Ispat**) was negligible; and

(c) the injury, if any, to the Australian industry caused by dumped goods was negligible.

2 Liberty OneSteel disputes the Commission's finding with respect to the dumping margin determined for Hoa Phat and all other exporters from Vietnam. Specifically, Liberty OneSteel contends that the use of prices paid in respect of Vietnam domestic sales of steel rod in coils (**RIC**) for assessing normal value under s 269TAC(1)¹ was not the correct or preferable decision. Liberty OneSteel further contends that the Commission's determination of a dumping margin for Hoa Phat under s 269TACB(2)(aa) was not the correct or preferable decision.

3 Liberty OneSteel further disputes the Commission's finding that the injury, if any, to the Australian industry caused by the dumped goods was negligible. Liberty OneSteel contends that in so concluding the Commissioner has not reached the correct or preferable decision for two reasons. Firstly, his price effects and causation analysis is flawed. Secondly, he has failed to consider whether any changes in circumstance would make the threat of injury to the Australian industry imminent or foreseeable unless dumping measures were imposed under the terms of s 269TAE(2B).

¹ Unless otherwise specified all legislative references are to the *Customs Act 1901*.

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B. EXISTENCE OF PARTICULAR MARKET SITUATION IN VIETNAM

4 In *Anti-Dumping Notice 2017/079* of 7 June 2017 the Commissioner announced the initiation of an investigation following receipt of an application from Liberty OneSteel alleging dumping of, and material injury caused by, exports of RIC from Indonesia, South Korea and Vietnam. With respect to the sale of like goods in the Vietnamese domestic market, Liberty OneSteel's application claimed that, during the proposed investigation period, domestic prices for the goods within Vietnam were unsuitable for determining normal values under s 269TAC(1) because of a distortion of prices for key inputs used to produce the goods, namely iron ore, coking coal, coke and scrap steel. Liberty OneSteel further alleged that the particular market situation extended to Vietnamese government influence in the price of electricity and preferential taxation treatment.² In *Consideration Report No. 416* the Commission concluded that based on the assessment of the information provided in the application, the Commission considered it appropriate to examine Liberty OneSteel's market situation claims during the course of the investigation.³

5 In *Termination Report No. 416 (TER 416)* the Commission concluded that:

Vietnam domestic RIC prices are being inflated. Accordingly, the Commission considers that the weight of the evidence indicates that domestic RIC prices in Vietnam are suitable for the purpose of calculating normal value under subsection 269TAC(1).⁴

6 The Commission's reasons for concluding that "*domestic RIC prices in Vietnam are suitable for the purpose of calculating normal value under subsection 269TAC(1)*" are unsound and not supported by the evidence. The Commission appears to rely on three key conclusions to support its view that the "*Vietnam domestic RIC prices are being inflated*", and in so doing, has focused its entire economic analysis on attempting to point to factors which it contends counteract the price effects of Vietnamese government policies and interventions. In performing its analysis, the Commission has asked the wrong question and looked at wholly irrelevant facts to displace the impact of the Vietnamese government's policies, specifically, its differential export tax policies, intervention in electricity pricing and preferential taxation treatment. It is Liberty OneSteel's contention that the question is not whether "*Vietnam domestic RIC prices are being inflated*", but rather whether, *if not for the market situation*

² *EPR Folio No. 416/014*.

³ CON 416 – Rod in Coil – Indonesia, Korea and Vietnam, p. 17.

⁴ TER 416 – Steel rod in coils – Indonesia, Korea and Vietnam, p. 42.

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would Vietnam domestic RIC prices be higher than they currently are? The Commission has failed to answer this question, pointing to three conditions it says has “inflated” Vietnam domestic RIC prices, specifically:

- supply and demand conditions for RIC;⁵
- application of safeguard measures;⁶ and
- Vietnam RIC prices compared to other price indices.⁷

7 In its response to *Statement of Essential Facts No. 416 (SEF 416)*, Liberty OneSteel disputed the facts and assumptions underlying the first two conditions relied upon by the Commission:

Rather than accepting the impact of the reduction of material costs on the supply-curve for the finished products (rod in coil), the Commission instead appears to suggest that supply conditions are so-tight, that the supply-curve for the finished goods (rod in coil) are almost ‘perfectly inelastic’. In order to reasonably hold this view, you would need to satisfy the conditions of perfect inelasticity of supply to discount the downstream impact of the Vietnam government’s differential tax policies on material inputs. The only evidence to support this conclusion appears to be the continued presence of imports in the domestic Vietnamese market and the claimed near full-capacity utilisation of Hoa Phat, as the Commission appears to suggest:

“The volume of imports which persists despite the imposition of the safeguard measures demonstrates that there is ongoing strong demand, and when coupled with the capacity utilisation demonstrated by Hoa Phat and the market circumstances presented in Figure 6, it is apparent that the Vietnam producers are unable to service the market solely from their own production.”^[original fn 14]

Even if the applicant industry accepts the unverified market data of the Vietnamese government concerning its domestic rod in coil conditions, and that Hoa Phat’s capacity utilisation is representative of the entire domestic Vietnamese rod in coil industry, then again under supply-side economic theorem, supply conditions would have been greater if not for the reduction in material costs, and domestic prices for the finished goods are therefore less than they would otherwise have been by operation of the intersection of demand/supply equilibrium, given the expanded supply-curve.

However, the industry applicant contends that it is not reasonable or relevant for the Commission to refer to the sustained imports into the Vietnamese domestic market following the imposition of safeguards as indicative of ‘perfect inelasticity’ of supply by domestic producers. Broad, unsubstantiated statements such as “*the presence of ongoing imports despite the imposition of safeguards demonstrates that demand outstrips the ability of local manufacturers to supply the goods*”^[original fn 15] are unsound. There are many reasons why imports may continue to flow into the Vietnamese domestic market; most notably the exclusion of a key tariff code in the safeguard provisions; none of which the Commission has tested or verified. However, the observation that the Vietnamese domestic rod in coil industry cannot supply the entire Vietnamese domestic market is

⁵ TER 416 *op. cit.*, pp. 34 – 35 at [5.5.2.1].

⁶ TER 416 *op. cit.*, pp. 35 – 37 at [5.5.2.2].

⁷ TER 416 *op. cit.*, pp. 37 – 38 at [5.5.2.3].

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completely irrelevant. It is absurd to suggest that it can, as there are very few markets globally, where domestic producers, can or want to, supply the entire domestic market.

Notwithstanding this, the Commission then points to the allegedly near-full capacity utilisation of the only verified Vietnamese exporter – Hoa Phat. The Commission has unreasonably extrapolated from this observation, that Hoa Phat is somehow representative of the entire Vietnamese industry. In fact, in its 2016 Annual Report, Hoa Phat estimates its market share of the Vietnamese domestic construction steel market at 22.2%.^[original fn 16] Indeed, specifically referring to RIC, Hoa Phat admits its supply exceeds domestic demand, with the surplus being exported:

“With the strategy of diversifying products, Hoa Phat has promoted the production of some high quality steel (wire rod steel, filler wire steel) for the domestic market and export with high grade products like H08A, SAE1006 - 1012, C12D, ... In 2016, the Complex [Hoa Phat Group] manufactured more than 53,000 tons of high quality steel, more than half of this serving domestic demand and the remains were exported to Australia, Malaysia, and Singapore.”^[original fn 17]

With domestic Vietnamese demand being satisfied with “more than half” of Hoa Phat’s domestic production, it stands to reason that Australia would be the prime export market for the surplus production [redacted] tonnes in 2016^[original fn 18] or [redacted] % of production). In any event, as late as December 2016, media reports were citing at least “18 steel enterprises are ‘crying for help’ because wire rod steel is massively entering Vietnam”.^[original fn 19] 8

- 8 The Commission has attempted to benchmark Vietnam domestic RIC prices against export prices.⁹ The Commission has equated an FOB export price from a number of international sources with a domestic Vietnam RIC price. Putting to one side the Commission’s use of Chinese export prices; given the Commission’s recent finding of market distortions in INV 301; a comparison of domestic Vietnam RIC prices to international FOB (i.e. unlanded) export prices is a flawed and meaningless comparison, given that in order to interact in the Vietnam domestic RIC market, the price of any international benchmarks would need to be upwardly adjusted for post-FOB (i.e. CFR) and clearance expenses into the Vietnam domestic market. Indeed, when Figure 9¹⁰ is re-calibrated to account for CFR and other post-FOB export expenses, the international benchmark prices presented by the Commission as indicative of ‘market conditions’, demonstrate that the ‘Hoa Phat Domestic Price’ would likely trade at a significant discount to RIC prices (imported and cleared) from Turkey, Latin America and Black Sea sources.
- 9 The Commission has failed to assess the impact of the Vietnam government’s export tax differentiation policies on upstream raw material prices, and has completely ignored the expansionary supply impact of suppressed electricity prices to the Vietnam domestic RIC

⁸ EPR Folio No. 416/027 and CONFIDENTIAL ATTACHMENT A, pp. 6 - 7.

⁹ TER 416 *op. cit.*, pp. 37 -38.

¹⁰ TER 416 *op. cit.*, p. 38.

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industry – which the Commission’s own analysis has found trade at a 76 per cent discount¹¹ to a comparable market benchmark.

10 The Commission acknowledges the existence of the tax differentiation policies of the Vietnam Government concerning upstream raw materials and alleges that the “volume of exports of these raw materials have not shown any correlation with the level of export tariffs, reflecting instead the international supply, demand and price movements for these commodities”¹². However, TER 416 appears to suggest that the Commission’s analysis of the supply-side effects of the tax differentiation policies focused on:

- “Vietnam’s domestic production and importation volumes of coking coal and coal are available at **Confidential Attachment 2**”¹³;
- “Vietnam’s import statistics for iron ore and scrap steel are available at **Confidential Attachment 2**”¹⁴; and
- “Vietnam’s steel billet production and consumption data is available at **Confidential Attachment 2**”¹⁵.

Liberty OneSteel fails to see how the Commission could reasonably make the observations and reach the conclusions that it did with respect to the non-correlation between the export tariffs and export volumes from the above analysis.

11 The Commission has also incorrectly and unreasonably dismissed the expansionary supply-side effects of the Vietnamese governments’ influence on electricity costs. After agreeing that “*the cost of electricity is significant to an EAF, with a material amount of the cost of making billet coming from the electricity cost*”¹⁶, and that electricity prices in Vietnam (as a result of government influence) trade at a 76 per cent¹⁷ discount to the market benchmark, the Commission nevertheless does not consider the expansionary effects of this policy on the supply of raw materials to the Vietnam domestic RIC market, which in turn has a suppressing effect on the price of RIC in Vietnam. By refusing to account for the impact of

¹¹ TER 416 *op. cit.*, p. 52.

¹² TER 416 *op. cit.*, p. 40.

¹³ TER 416 *op. cit.*, p. 39.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ TER 416 *op. cit.*, p. 40.

¹⁷ TER 416 *op. cit.*, p. 52.

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government influenced, discounted electricity prices, the Commission has performed a flawed economic analysis of the impact on the supply-curve in the Vietnam domestic RIC market, which in turn has led the Commission to not reach the correct or preferable decision concerning the determination of the normal value for Hoa Phat, and by extension, all other exporters from Vietnam.

- 12 Similarly, the Commission has ignored Liberty OneSteel's evidence that Vietnam domestic producers of RIC benefited from preferential tax arrangements:

In fact, evidence that Hoa Phat in particular has benefited from these preferential taxation arrangements is outlined in the Prospectus of the Hoa Phat Group.

"Furthermore, thanks to the Vietnamese Government's investment incentive policies, a great number of plants and projects of Hoa Phat Group have been granted various incentives such as land rent exemption, corporate income tax exemption or reduction or lower corporate tax rates (detailed figures are provided in Part V.10 of this Prospectus)."^[original fn 24]

The Commission's finding that "*in the investigation period, all companies were subject to a 20 per cent rate of income tax*" is at odds with information contained in the Prospectus for Hoa Phat Group. This was presented by Liberty OneSteel in the briefing prior to the exporter visit:

"In order not to depend on imported steel billets and to ensure stable input supply, Hoa Phat Steel Joint stock Company decided to invest in constructing a Steel Billet Plant in Pho Noi A Industrial Zone in Hung Yen Province."^[original fn 25]

The Hoa Phat Prospectus shows the preferential rate of corporate income tax applying to "Pho Noi A Industrial Zone Management and Operation Company" which is part of "Hoa Phat Urban Construction and Development Joint stock Company" for the period 2009-2016 to be 5% (compared to the 10% Corporate tax rate applicable).

Even in relation to the newly announced Quang Ngai steel project, the Hoa Phat Group appears set to benefit from significant GoV incentives.

"Due to the large scale of the project local authorities have proposed offering incentives, including a tax rate of 10 per cent for 30 years in order to increase the competitiveness of the investor. Land tax exemptions for a maximum of 18 years have also been proposed."^[original fn 26]¹⁸

- 13 In concluding that the "*weight of evidence indicates that domestic RIC prices in Vietnam are suitable for the purpose of calculating normal value under subsection 269TAC(1)*"¹⁹, the Commission states that unlike China, "*the situation in Vietnam is that there is no particular industry support, nor are there any specific measures in place which are relevant to the*

¹⁸ EPR Folio No. 416/027 and CONFIDENTIAL ATTACHMENT A, p. 8.

¹⁹ TER 416 *op. cit.*, p. 42.

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goods under consideration"²⁰. In reaching this conclusion has failed to have regard to the evidence led by Liberty OneSteel to the contrary²¹:

The Commission has specifically relied on an erroneous factor to distinguish the present case from the former [INV 198], namely, *"the absence of a value added tax (VAT) rebate [and] significant investment programs funded by a number of China government authorities"*. With respect, there is nothing in the provisions of the domestic legislation or the Commission's own *Dumping and Subsidy Manual*, that prescribes the existence of differential VAT rebate arrangement or interaction of state invested enterprises as necessary for the existence of a market situation finding. To the extent that the Commission appears to suggest that it is so constrained, then it is taking an irrelevant consideration into account in the exercise of a power (potentially, the Commissioner's power to terminate an investigation under s 269TDA(1)). Further, the Commission perpetuates this error by making the existence (or absence) of "industry support" and "specific measures" relevant to the finished goods:

"Conversely, the situation in Vietnam is that there is no particular industry support, nor are there any specific measures in place which are relevant to the goods under consideration".^[original fn 27]

Furthermore, in its concluding paragraph, the Commission unilaterally imposes a threshold standard to a market situation finding contrary to the legislation and policy:

"There is no evidence before the Commission which would indicate that domestic Vietnam RIC prices are distorted to such a degree that they are unsuitable for the purposes of determining normal value under subsection 269TAC(1)".^[original fn 28]

Liberty OneSteel disagrees with the Commission's propositions for several reasons. Firstly it is evident that the Vietnamese government has a Master plan for the Development of the Steel Industry. This plan was outlined by the Deputy Director General of International Cooperation, within the Department Ministry of Industry and Trade of Vietnam, at the Meeting of the OECD Steel Committee in Paris, France, 1-2 July 2013^[original fn 29]. Stated concrete goals include:

To produce steel billet from pig iron and steel scraps:
2015: produce 12 million tons;
2020: produce 25 million tons;
2025: produce 40 million tons

The Vietnamese government policies relating to export taxes on iron, coking coal and scrap and low electricity prices are government instruments that enable these outcomes by lowering the costs of raw materials used to produce the billet. The lower cost of domestically produced billet increases its competitiveness increasing production.

The Commission is also aware from this and prior investigations that billet represents approximately 80% of the cost of producing RIC. By lowering the costs to produce RIC, it can be sold at prices lower (distorted) than it otherwise would, again increasing competitiveness and subsequent volumes. This supports achieving the other government stated concrete goal of increasing production of finished products:

"2015: 13 million tons;
2020: 23 million tons;
2025: 38 million tons"^[original fn 30]

- 14 The Commission correctly concludes that *"electricity price [in Vietnam] are suppressed"*. However, the Commission has failed to account for the expansionary effects of the Vietnam

²⁰ *Ibid.*

²¹ EPR Folio No. 416/027 and CONFIDENTIAL ATTACHMENT A, p. 9.

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government sanctioned price suppression of electricity as a key cost component in the domestic production of RIC. The Commission appears to have erred in not considering the supply-side effects of the government's influence and control of electricity pricing, by suggesting that the identification of non-competitive costs is a mutually exclusive exercise to the identification of a particular market situation:

The assessment of whether a particular market situation exists, however, is a separate and distinct task from assessing whether the costs recorded by an exporter reasonably reflect competitive market costs associated with the production or manufacture of like goods.²²

This is an entirely erroneous view, as the existence of non-competitive market costs where associated with the policies and influence of the government in the country of export, may in fact indicate the existence of a particular market situation in the supply and price of the goods under consideration. It appears that the Commission holds this erroneous view because they have failed to assess the expansionary effects on supply of RIC caused by the distortion (i.e. non-competitive market prices) of key inputs into the production of RIC.

- 15 Liberty OneSteel contends that the Commissioner ought to have been satisfied that the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under s 269TAC(1), and that the correct or preferable decision is to determine the normal value for Hoa Phat and all other exporters from Vietnam under s. 269TAC(2)(c).

C. DETERMINATION OF DUMPING MARGIN UNDER s 269TACB(2)(aa) FOR HOA PHAT

- 16 The Commission has provided no explanation or reason why it has departed from its standard practice of determining the exporter's dumping margin under s 269TACB(2)(a) by using the weighted average method over the investigation period for Hoa Phat.
- 17 The Commission purports to have determined the dumping margin for Hoa Phat under s 269TACB(2)(aa) by taking shorter periods for comparison. The Commission has provided no justification for why this departure is required on fair comparison grounds. Liberty OneSteel can see no reason for the determination of Hoa Phat's dumping margin under s 269TACB(2)(aa), as there appear to have been many sales across the investigation period. Therefore, the Commission has not made the correct or preferable decision.

²² TER 416 *op. cit.*, pp. 33 -34.

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D. CONCLUSION ON PRICE EFFECTS AND CAUSATION UNSOUND

- 18 The Commission has relied on two charts in TER 416 (Figure 17²³ and Figure 18²⁴, erroneously identified as Figures 127 and 138) to conclude that *“there is little correlation between movements in the OneSteel Price and the prices of dumped goods”*.²⁵
- 19 The Commission has conceded that it lacks verified FIS import price information, and has made an unsound judgment that the goods were delivered to Australian customers “one month after the day of importation”²⁶. This is an unsound assumption for several reasons. Firstly, importers do not have the warehousing or stockholding facilities following importation. Secondly it assumes that all exporter/importer supply timelines are consistent between each other and that there are never any production or shipping delays that will distort the data. (i.e. if the goods arrive in Australia in a certain month they all relate to the same exact month of offer).
- 20 Furthermore, the Commission is assuming complete market transparency and real-time price setting. This is also an unsound assumption. If the Commission was unable to obtain verified FIS price information from importer verification visits then the Commission should have used Liberty OneSteel’s verified market intelligence information, which demonstrates the responsiveness of Liberty OneSteel’s pricing model to price offers from importers sourcing Indonesian (other than Ispat) and South Korean goods. In support of this analysis, Liberty OneSteel, led the following evidence in its response to SEF 416²⁷:

What Figure 16 of SEF No. 416^[original fn 78] does demonstrate (albeit on the Commission’s flawed FIS price model), is that OneSteel has reduced its prices to meet importer offers into the market.

Notwithstanding the Commission’s analysis at Figure 16^[original fn 79] - which clearly shows the presence of dumped goods from Indonesia (excluding PT Ispat) and Korea across the investigation period - the Commission then seeks to ignore this analysis, and conclude that on the basis of the domestic industry’s view of price offers that there were:

“no offers from dumped sources in five of the twelve months”^[original fn 80]

This finding cannot be substantiated by the evidence available and is completely at odds with the analysis at Figure 16. Simply because the Commission chose to exclude from their analysis offers from “Indonesia” and “Asia” does not mean that any of these offers were not dumped. It is even

²³ TER 416 *op. cit.*, p. 70.

²⁴ TER 416 *op. cit.*, p. 71.

²⁵ *Ibid.*

²⁶ TER 416 *op. cit.*, p. 70.

²⁷ EPR Folio No. 416/027 and CONFIDENTIAL ATTACHMENT A, pp. 24 - 25.

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more bizarre an assertion given that the Commission has found dumping against Gunung which is within both "Indonesia" and "Asia" and POSCO which is within "Asia".

Even if the Commission's preliminary assessments of dumping margins survive challenge, the suggestion that the Australian industry's view of price offers (which the Commission considers "incomplete") now is determinative of causation is unsound:

"In addition to this, for ten of the twelve months of the investigation period the offers from undumped sources were either the same price as, or cheaper than, the offers from dumped sources. It was only in two months of the investigation period that there were dumped goods in the market at prices which undercut OneSteel and all dumped offers". [p. 54]

This statement needs to be placed into context. Firstly, it is the Commission's summary of the Australian industry's "incomplete" view of price offers [Confidential Attachment 5 relates to "approximately 50 sales"]. If any relevance is to be placed on this consideration, then it is the evidence of actual prices obtained by importers into the market that should be regarded – not the Australian industry's "incomplete" view.

The Commission's assessment of the price effects is further flawed as it appears based on the assumption that import offers only compete against the industry applicant's products and not against other imported goods from either within the country of export (e.g. Ispat versus Gunung) or external to it (e.g. Ispat versus POSCO):

"As demonstrated in Chapter 7, the prices of the Australian industry are led by the import pricing offers received by importers and end users. These offers can then be lowered in response to the Australian industry's pricing." ^[original fn 81]

The Commission is aware that it is common knowledge within the rod in coil industry that Liberty OneSteel sets its prices relative to imported products (at the time they will arrive in the market, i.e. [REDACTED]) and aims to obtain a small premium above that based on the benefits that result from shorter lead times etc. If exporters only competed against Australian product, there would be no need for exporters to negotiate prices with the importers. However the exporters (even those currently deemed not be dumping) acknowledge that their export pricing is not based on a price list, but is the outcome of negotiations.

"[CONFIDENTIAL TEXT DELETED – customers] will contact Ispat Indo, seeking the supply of a particular type or types of rod in coil. Ispat Indo will provide quote price, to which the customer will usually counter-offer. This price negotiation process will either take place by phone or by email, and continues until such point as both parties can agree on a price for the rod in coil desired by them. Ispat Indo will only agree to a price that achieves a reasonable level of profit." ^[original fn 82]

Based on the facts before the Commission it is only reasonable to conclude therefore that the importers and exporters are competing against each other and that dumped prices are influencing the prices of the exporters that may be found to not be dumping. In *Final Report 240* the Commission correctly arrived at this conclusion:

"The Commission considers, however, that the price sensitivity of the market is such that the presence of dumped imports in the market would be impacting the pricing behaviour of all market participants, including Australian industry and those exporters found to have not sold dumped goods into the market.

"The Commission considers that in the absence of dumping, all other participants in the market would achieve higher selling prices." ^[original fn 83] **[emphasis added]**

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On the basis that the Commission found only 3-months within the entire investigation period in which dumped products were not in the market, then it is clear that dumped products were present and influencing price negotiations for 9-months of the investigation period.

- 21 Therefore, the Commission's price effects and causation analysis has led the Commission to not reach the correct or preferable decision.

E. FAILURE TO CONSIDER THREAT OF INJURY UNDER SUBSECTION 269TAE(2B)

- 22 Under the terms of s 269TAE(2B), the Commission is also required to give consideration to whether any changes in circumstance would make the threat of injury to the Australian industry imminent or foreseeable unless dumping measures were imposed.

- 23 In its response to SEF 416, Liberty OneSteel led evidence of the significant volumes of dumped exports from Indonesia (excluding Ispat) and South Korea:

Yet despite this observation there appears to be no attempt to quantify the extent of the injury caused by dumping to OneSteel in these two months to determine if it was material. A simple analysis demonstrates the materiality of injury caused by dumpers:

For example, if the undercutting was caused by POSCO and or Gunung (exporters found to be dumping by 20.9% and 10.6% respectively) and their prices were █████/t below the next lowest importer, the impact on Liberty OneSteel's price and profits across as the sales volume in May and June (█████ tonnes) is \$█████

Further if the two months (in which the exports from dumping undercut all other imported products in the market) were at the beginning of the investigation period, then it provides an even stronger causative link between the presence of dumped products and their influence on the pricing of non-dumped products for the balance of the investigation period. This competitive interplay between dumped and non-dumped imports is further evidenced by the fact that that the Commission found, for approximately seven (7) months ^[original fn 85] of the investigation period, that dumped and non-dumped imports were at similar prices.

- 24 Furthermore, the imminence and foreseeability of the threat of injury to the Australian from exports of the goods and like goods from Indonesia (except Ispat) and South Korea are heightened following the United States President's action under Section 232 of the Trade Expansion Act of 1962 on 8 March 2018. It is observed that TER 416 was not settled until 26 March 2018. In these circumstances, the Commission ought properly to have considered the impact of displaced tonnes of rod in coil, previously exported to the United States from Indonesia and South Korea. In relation to the latter, it is matter of public record that South Korean imports of steel products into the United States will be subject to a product-specific quota equivalent to 70% of the average annual import volume of such products during the period of 2015-17. This will result in a significant reduction in Korean steel shipments to the

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United States.²⁸ In the case of Indonesia, imports of RIC into the United States will be subject to a 25 per cent tariff.

- 25 The Commission has not reached the correct or preferable decision by failing to consider the imminent or foreseeable return of the dumped imports unless dumping measures are imposed against Indonesian (except Ispat) and South Korean exporters, especially given the size of their dumping margins (a valid consideration under s 269TAE(1)(aa)) and the impact of global trade flows following the United States President's action under Section 232 of the Trade Expansion Act of 1962 which was made prior to publication of TER 416.

²⁸ <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/new-us-trade-policy-and-national> (accessed 16 April 2018)