



Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

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

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

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

Time

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

Conferences

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

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

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

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 0, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

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

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

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: OneSteel Manufacturing Pty Ltd (Administrators Appointed)

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

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

2. Contact person for applicant

Full name: [REDACTED]

Position: [REDACTED]

Email address: [REDACTED]

Telephone number: [REDACTED]

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

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

4. Is the applicant represented?

~~Yes~~ No

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

Not applicable.

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

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

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

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

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

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

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

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

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

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

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

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

The goods the subject of the reviewable decision were:

“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.”

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

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

- 7213.91.00 (statistical code 44);
- 7227.90.90 (statistical code 42) – operative until 31 December 2014; and
- 7227.90.90 (statistical code 02) – operative since 1 January 2015.

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

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

Anti-Dumping Notice (ADN) No. 2016/47

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

22 April 2016

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

A copy of the notice of the reviewable decision is attached as *Appendix A* to this application.

PART C: GROUNDS FOR THE APPLICATION

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

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

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

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

10.1 The Parliamentary Secretary has erred in her selection of prices based on export market conditions as an appropriate benchmark for competitive market costs

The applicant for review stated in the submission dated 3 March 2016³ that it was unable to reconcile the Commission's selection in SEF 301 of regional export market prices as a suitable benchmark for domestic Chinese costs. The Commission has since selected a different external benchmark for use in the construction of cooperating exporters' normal values and dumping margin calculations for Report 301. The selected benchmark is the *Platts Latin American Billet FOB export price*.

WTO jurisprudence currently supports the view that when comparing domestic prices to a price benchmark (in the context of the related matter of alternative benchmark selection to test adequacy of remuneration claims under Article 14(d) of the *Subsidies and Countervailing Measures Agreement*), then competitive price benchmark should be based on domestic market conditions.

Therefore in *US- Softwood Lumber IV*⁴, the United States' approach in constructing an alternative benchmark based on prices of stumpage in bordering states of the northern United States, was not overturned. Similarly in *US – Anti-Dumping and Countervailing Duties (China)*⁵, the United States' reference to published domestic price information for hot rolled structural steel inputs was not overturned. Similarly, the Commission's approach in recent matters concerning the selection of a suitable competitive external benchmark prices for steel inputs have been based on domestic values.

³ EPR Folio 301/033 p. 7 refers

⁴ Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 19 January 2004

⁵ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011

- **Hot rolled plate steel exported from China et Ors (REP 198):** The Commission determined that an appropriate benchmark for HRC [hot rolled coil] costs in China is the weighted average domestic HRC price paid by cooperating exporters of galvanised steel and aluminium zinc coated steel from Korea and Taiwan, at comparable terms of trade and conditions of purchase to those observed in China.⁶

- **Hollow structural sections exported from China et Ors (REP 177):**
 - the weighted average of verified domestic black HRC costs incurred by exporters cooperating with the investigation into HSS from Korea, Malaysia and Taiwan to arrive at a black HRC price; and
 - the weighted average of verified data of domestic pre-galvanised HRC costs incurred by cooperating exporters from Korea and Taiwan to arrive at a pre-galvanised HRC price.⁷

- **Zinc coated (Galvanised) steel and aluminium zinc coated steel exported from China et Ors (REP 190):**

The benchmark for hot rolled coil was established by reference to domestic production costs of exporters from Korea and Taiwan.⁸

Therefore, the Australian industry submits that it is not consistent with WTO best-practice or even the Commission's policy and practice to base an external competitive benchmark for market costs on an export price index. Instead, the use of other country domestic price information as a suitable external benchmark is consistent with the principle of trying to achieve parity between the market conditions for the supply of goods to the producer in the country of export, with the other, benchmark country. This is not so easily achieved through an export price benchmark which reflects market conditions that cannot be accounted for through adjustments if required.

In the absence of verified, reliable domestic price information available concerning other countries, the applicant for review referred the Commission to the published price information available from MEPS (International) Ltd ("MEPS"). It was noted that the Commission considers MEPS "a reputable provider of steel price data"⁹, having purchased MEPS data for use in *Dumping and Subsidy Investigation No. 177* and *Review of Anti-Dumping Measures No. 285*. MEPS publishes monthly domestic EXW billet prices, denominated in US\$/tonne for standard commercial quality steel billet for a number of domestic markets. MEPS steel price data is also endorsed on the Australian Steel

⁶ EPR Folio No. 198/179 at pg. 67

⁷ EPR Folio No. 177/410 at pg. 258

⁸ EPR Folio No. 190/142 at pg. 55

⁹ EPR Folio No. 285/022 at p. 2

Association's (ASA) website¹⁰, a significant endorsement as the ASA is the peak membership association for steel trading companies and stockists/distributors of imported steel products. OneSteel urged the Commission to obtain a MEPS report prior to concluding the Final Report 301, as it has previously done for other competitive cost benchmarking studies.

In the submission dated 16 March 2016¹¹, OneSteel provided the Commission with domestic billet price data obtained through purchasing a subscription to MEPS Semi-Finished Steel Review for the period August 2014 to October 2015. The express written permission from the publisher for the information to be used was also included as a confidential attachment to the submission.

It remains OneSteel's view that the Commissioner has committed an error of fact in relying on an external competitive price benchmark that was based on export market conditions. The correct and preferable decision would have been for the Commissioner to select a competitive price benchmark that was reflective of domestic market conditions.

10.2 The Parliamentary Secretary has further erred in subtracting a rate of profit from the selected external benchmark.

In SEF 301, the Commission:¹²

"substituted the cooperating exporters' fully absorbed steel billet cost to make (CTM) with the corresponding East Asia CFR import billet price for the month, minus a verified average amount of profit that Chinese billet manufacturers earn on their billet sales based on the best available information, which is a verified weighted average profit figure from billet sales in China over the investigation period as found in case 300."

The requirement for a downward adjustment for billet profit was questioned by OneSteel in response to SEF 301.

In Report 301, the Commission changed the selection of billet benchmark to the Latin American Billet FOB Export price as supplied by Platts and again subtracted a rate of profit, stating that:

"The Commission considers it reasonable to deduct the verified average profit rate realised by Chinese exporters from sales of steel billets in order to calculate the competitive market costs for steel billets. This is consistent with the Commissioner's approach to utilising actual verified domestic profit rates in domestic sales of like goods when constructing normal values."

¹⁰ Cited in EPR Folio No. 300/061 as <http://www.steelaus.com.au/global-steel-prices/>

¹¹ CONFIDENTIAL ATTACHMENT 3

¹² EPR Folio No. 301/

The applicant for review considers the Commission's comparison completely flawed. Applying verified profit from Chinese domestic sales of like goods to the constructed normal value for Chinese exporters ought not to be considered equivalent to applying profit achieved for Chinese billet sales to Latin American export billet sales. If the Commission elects to apply an amount for profit, then it must be the actual data pertaining to profit within the benchmark market, assuming any profit is in fact earned on those sales. The Commission has not made any reference to an assessment of profit on export sales of billet from Latin America in Report 301 (or Report 300).

In response to the downward adjustment made in SEF 301 for the average rate of profit for billet sales, OneSteel's submission¹³ outlined the reasons why a reversal of the adjustment was required and these reasons remain unchanged.

OneSteel fails to understand why the Commissioner has reduced the non-Chinese (Latin American FOB export) benchmark competitive billet cost by an amount of profit relevant to Chinese producers of billet sold into the Chinese domestic market. With respect, the rate of profit earned by Chinese producers of billet that is not the subject of the competitive benchmark is not the question. If a downward adjustment to the competitive benchmark billet cost is to be made, then it should be the verified profit of the non-Chinese seller of the billet the subject of the competitive benchmark. Otherwise, to follow the Commission's approach would be to apply a wholly irrelevant rate of profit applicable in one market (i.e. Chinese domestic market subject to a particular market situation) to a sale into a wholly unrelated market (i.e. domestic competitive markets, or the Commission's selected Latin American export market).

The requirement of a verified profit margin relevant to the underlying goods the subject of the sale is necessary as a result of the WTO jurisprudence concerning the related question of determination of an amount for profit under Article 2.2.2 of the *Anti-Dumping Agreement*. In that case, the WTO Disputes Settlements bodies have consistently interpreted the requirement of determining an amount for profit based on "actual data pertaining to production and sales of the like product when determining amounts for SG&A and profits"¹⁴. Applied here, the Commission's approach fails the most basic precept of this rule, insofar it seeks to apply completely irrelevant amount for profit to non-Chinese sales of steel billet.

Separately, even if it is accepted that the Commission's approach to calculating the amount for profit earned on Chinese sales of billet is a sound one (which is not accepted, but expressly refuted), then it has all but overlooked the concerns expressed by the Commission in relation to the accuracy of the so-called, "verified" cost to make information of the exporters in *Investigation No. 300* (the co-operating

¹³ EPR Folio 301/033, pg 15-16

¹⁴ Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R, adopted on 22 July 2003 at [97], [98] and [101]

exporters from which the alleged amount of profit for domestic sales of billet were derived). For example, in the case of Shandong Iron and Steel Company Limited, Laiwu Company:

“The verification team explained that it was not comfortable with the calculated CTM spreadsheet and advised that it would use the cost of production and billet costs from the accounting system records in its calculations.”¹⁵

In relation to the profit margins determined during the verification visit for Laiwu:

*“At the verification visit, the verification team noted that Laiwu’s domestic CTMS in its exporter questionnaire response did not reconcile with Laiwu’s accounting records. Consequently, **the Commission could not calculate Laiwu’s domestic profit rate from the sale of like goods** [emphasis added]. Instead, the Commission added to the normal value a profit rate based on the weighted average of the actual amounts realised by other exporters from the sale of the goods in the domestic market in China as per Regulation 45(3)(b).”*

In the case of the other cooperating exporter for whom an in-country verification visit was conducted ie. Shandong Shiheng Special Steel Group:

“Shiheng’s cost of steel billet was found to not reasonably reflect a competitive market cost and a benchmark steel billet cost was used in the constructed normal value.”

Importantly, although Report 300 references a benchmark billet profit adjustment based on “verified average profit rate realised by Chinese exporters from sales of steel billets”, neither of the verification visit reports published for Laiwu or Shiheng (the two cooperating exporters for whom in-country verification was conducted) **contain any mention of verification being undertaken on billet sales for either of the exporters**. This is a fundamentally critical point to understanding the extent of the factual error to which the Commissioner’s recommendation has been subjected – indeed, at best, the Commissioner has had regard to unreliable information, at worst (in a judicial review sense), the Commissioner has had regard to irrelevant information. The only OCOT tests and profit determinations referred to are in relation to sales of “like goods” ie. rebar. In light of this it is unclear whether profit levels determined from sales from rebar in the Chinese market have been assumed to be equivalent to profit realised on Chinese billet sales.

The applicant maintains the view that it is not open to the Commission to reduce the value of the benchmark steel billet by an amount for profit not relevant to those goods or the market from which those goods are supplied. If the Commission elects to apply an amount for profit, then it must be the actual data pertaining to profit

¹⁵ EPR Folio 300/042 at p. 22

realised for the given product within the benchmark market, assuming any profit is earned on those sales.

10.3 The Parliamentary Secretary has erred in failing to apply an alloying adjustment to the selected external billet benchmark.

In the submission dated 3 March 2016,¹⁶ OneSteel brought to the Commission's attention that a physical adjustment for alloying deemed necessary by the Commission during the verification of the exporter, Hunan Valin Xiangtan Iron & Steel Group Co., Ltd (Hunan Valin), had not been carried through to the SEF.

The verification visit report for Hunan Valin states:

"The visit team consider that an upwards adjustment for differences in alloy contents, namely boron and titanium, is required to ensure fair comparison to the export price. The visit team applied a weighted average over the investigation period adjustment to specific models for boron and titanium based on verified actual alloy costs observed in the CTMS data."¹⁷

It was further asserted by OneSteel¹⁸ that in the case of Jiangsu Shagang Group Ltd. (Shagang), the Commission appeared to have overlooked the issue of whether or not physical adjustments to the constructed normal value were required given the addition of alloy to the GUC. The following commentary in the verification visit report for Shagang was provided as reference:

"Furthermore Shagang stated that for the model [redacted] that is exported to Australia, [redacted] which is generally not used in domestic like goods."

along with independent third-party evidence clearly pointing to the addition of chromium to exports of Shagang's rod in coils product:

"BEIJING Asian Metal 4 Jun 15 – Jiangsu Province-based Shagang Group Co., Ltd Shagang Steel is one of Chinese long steel manufacturers. The mill currently holds wire rod export price unchanged and has no plan to overhaul its production lines in the near future. A source from Shagang Steel's export department reports that the current offer for chrome added low-carbon wire rod SAE1008 6.5mm is USD..."¹⁹

In the final Report 301 the Commission notes that:

"the alloy information is not readily available based on the selected benchmark, which is restricted to A36 grade steel. The Commission reviewed the standard in question, and found the standard does not require or restrict the use of certain alloys. As such, the Commissioner does not

¹⁶ EPR Folio No. 301/033 refers

¹⁷ EPR Folio No. 301/025 pg 35, Section 8.1.3

¹⁸ EPR Folio No. 301/033 pg 14

¹⁹ NON-CONFIDENTIAL ATTACHMENT 1

consider that it is appropriate to add an alloy adjustment to the benchmark value when it is possible that the benchmark billet sales are alloyed and comply with the steel grade required."²⁰

The applicant for review respectfully disagrees with the Commission's reasoning as the American Standard ASTM A36 is the Standard Specification for Carbon Structural Steel.

Even if the benchmark billet prices had included some products that were alloyed, the Commission had access to Platts (SBB) Methodology and Specifications Guide which details their "normalisation process" to align specific prices to a base standard.

"Because of the complex nature of the physical markets, data typically must be aligned with standard definitions to allow for a fully representative final published assessment. Platts aligns data collected through an analysis of the physical steel/scrap markets with its standard assessment specifications through a process called normalization.

Normalization is an essential price adjustment technique applied by Platts, to align reported market information to reflect the economic relationship between specific reported activity and the base standard reflected in Platts price assessments".

and

*"By surveying markets and observing the economic impact of variance from the base standard reflected in Platts assessments, Platts regularly normalizes disparate information from the diverse physical commodity markets back to the standard reflected in Platts price assessments. This is done by analyzing freight rates (for locational differences), **quality differentials (for quality differences)**, the movements of all markets through time (for time differences) and other differentials associated with the size of trades and delivery terms."²¹*

It is therefore evident that the benchmark billet price based on grade A36 will not include the additional alloy price components.

The alloys referenced by the Commission requiring adjustment to the normal value based on verification of Hunan Valin were boron and titanium. In order for Chinese mills to be eligible for the VAT rebate for export of alloyed steel, the requirements for one or more of the "other alloy" chemical additions would have to be met. For boron and titanium, a deliberate ferroalloy addition would be required (with additional costs incurred) to achieve a chemical composition of 0.0008% or more of boron and/or 0.05% or more of titanium respectively in the steel.

²⁰ EPR Folio No. 301/038 pg 17

²¹ CONFIDENTIAL ATTACHMENT 2, refer pp. 4-5.

The Commission is well aware that the VAT rebate for alloyed steel exports provides a considerable incentive for Chinese steel mills to ensure that export steels meet the “other alloy” requirements. The additional cost of the ferroalloy additions is less than the benefit received via the rebate and this remains a driver for China’s exports of alloyed steel.

It remains OneSteel’s view that an upward adjustment commensurate with the cost of the alloy additions must be made to the billet benchmark in order to ensure fair comparison to the export price.

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 and preferable decision would be for the Parliamentary Secretary:

- 11.1 in calculating normal values pursuant to subsection 269TAC(2)(c), ought to base constructed costs using benchmark steel billet prices indicative of domestic market sales conditions, specifically, Mexican, Canadian or United States domestic billet prices available from MEPS (International) Ltd;
- 11.2 in calculating normal values pursuant to subsection 269TAC(2)(c) based on constructed costs using benchmark steel billet prices, ought not to make deduction for an unrelated rate of profit derived from Chinese domestic sales of steel billet; and
- 11.3 ought to make further adjustment to maintain price comparability pursuant to subsection 269TAC(9) in terms of adding the costs of alloying the goods exported to Australia during the investigation period, to ensure the comparability of normal values to export prices, noting that normal values were ascertained under subsection 269TAC(2)(c).

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

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

The proposed decisions outlined in response to question 11, above, will materially alter the dumping margins for the cooperating Chinese exporters of rebar. In turn this will alter the dumping duty rates contained within the published *Dumping Duty Notice*.

To demonstrate the materiality of the changes, the applicant for review, has identified the impacts of the proposed decisions. For example, where it is proposed that the Parliamentary Secretary:

12.1 ought to base constructed costs using benchmark steel billet prices indicative of domestic market sales conditions, specifically, Mexican, Canadian or United States domestic billet prices available from MEPS (International) Ltd

This will materially change the amount of the normal value, and will affect the dumping margin rates. If accepted, it will have the effect of increasing the normal values applicable to all exporters, and increasing their respective dumping margin rates.

12.2 ought not to make deduction to the benchmark steel billet prices for an unrelated rate of profit

This will materially change the amount of the normal value, and will affect the dumping margin rates. If accepted, it will have the effect of increasing the normal values applicable to all exporters, and increasing their respective dumping margin rates.

12.3 ought to make further adjustment to maintain price comparability pursuant to subsection 269TAC(9) in terms of adding the costs of alloying the goods exported to Australia during the investigation period

This will materially change the amount of the normal value, and will affect the dumping margin rates. If accepted, it will have the effect of increasing the normal values applicable to all exporters, and increasing their respective dumping margin rates.

PART D: DECLARATION

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

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

Signature:



Name:



Position:



Organisation: OneSteel Manufacturing Pty Ltd (Administrators appointed)

Date: 19 May 2016

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: / /