



# Application for review of a Ministerial decision

## *Customs Act 1901 s 269ZZE*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 20 May 2019 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party<sup>2</sup> 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**

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

### **Further application information**

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

### **Withdrawal**

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

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

<sup>2</sup> As defined in section 269ZX *Customs Act 1901*.

**Contact**

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

**PART A: APPLICANT INFORMATION****1. Applicant's details**

Applicant's name: Liberty OneSteel (Newcastle) Pty Ltd
Address: Level 28, 88 Phillip Street, SYDNEY NSW 2000
Type of entity (trade union, corporation, government etc.): Corporation

**2. Contact person for applicant**

Full name: [REDACTED]
Position: Senior Trade Measures Manager
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 subsection 269ZA(1) of the *Customs Act 1901*<sup>3</sup> that led to the making of the reviewable decision – being a member of the Australian industry producing like goods.

**4. Is the applicant represented?**

Yes ☒ No ☐

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

***\*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.\****

<sup>3</sup> All legislative references in this application are to the *Customs Act 1901*, unless otherwise stated.

**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 are:

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

Goods excluded from the description of the goods the subject of the reviewable decision are:

- Plain round bar;
- Stainless steel; and
- Reinforcing mesh.

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

Goods identified as steel reinforcing bar, as described in section 6 (above), are classified to the following tariff subheadings in schedule 3 to the Customs Tariff Act 1995:

- 7213.10.00 statistical code 42;
- 7214.20.00 statistical code 47;
- 7227.90.10 statistical code 69;
- 7227.90.90 statistical code 01, 02 and 04;
- 7228.30.10 statistical code 70;

- 7228.30.90 statistical code 40;
- 7228.60.10 statistical code 72.

**8. Anti-Dumping Notice details:**

Anti-Dumping Notice (ADN) number:  
2019/054

Date ADN was published:  
31 May 2019

***\*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 application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

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

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

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

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

A. The reviewable decision was not the correct or preferable decision because the Minister's determination of the normal value for the exporter from Taiwan, Wei Chih Steel Industrial Co., Ltd (**Wei Chih**) under s.269TAC(2)(c) was not authorised by the terms of s.269TAC(2)(a)(i) because the Minister ought not to have been satisfied that there was an absence, or low volume, of sales of like goods by the exporter, Wei Chih, in the market of the country of export that would be relevant for the purpose of determining a price under s.269TAC(1).

- B. Further, the Minister's determination of the normal value for all other exporters of the goods exported to Australia from Taiwan (with the exception of Power Steel Co. Ltd) under s.269TAC(6) was not the correct or preferable decision to the extent that it relies on the normal value determined for Wei Chih, incorrectly under s.269TAC(2)(c).
- C. The Minister's decisions to accept *Anti-Dumping Commission Report No. 486 and 489 (the Report)* and its recommendations were not the correct decisions because the report given to the Minister does not consider, let alone analyse, the submission of the applicant for review made in response *Statement of Essential Facts No. 486 and 489 (the SEF)* that was received by the Commissioner within 20 days after placing of the SEF on the public record, in breach of the Commissioner's obligation to have regard to the applicant's submission under s.269ZDA(3)(a)(iv). Specifically, in deciding on the recommendations to be made to the Minister in the Report, the Commissioner did not have regard to the applicant for review's submissions that:
- (a) the making of an adjustment for the exporter from South Korea (**Korea**), Daehan Steel Co. Ltd (**Daehan**), for its alleged domestic credit costs is not supported by s.269TAC(8); and
  - (b) certain goods sold by Daehan in the market of the country of export were not like goods to the goods exported to Australia and were not suitable for the determination of that exporter's normal value under s.269TAC(1).
- D. Accordingly, the Minister's decision:
- (a) to direct that the normal value of the goods exported to Australia by Daehan be adjusted for differences in the exporters domestic credit costs is not supported by s.269TAC(8) and is therefore not the correct or preferable decision; and
  - (b) to determine the normal value of goods exported to Australia by Daehan by reference to the price paid for goods that were not like goods sold in the ordinary course of trade for home consumption in the country of export is not supported by s.269TAC(1) and is therefore not the correct or preferable decision.
- E. Further, the Minister's determination of the normal value for all other exporters of the goods exported to Australia from Korea under s.269TAC(6) was not the correct or preferable decision to the extent that it relies on the normal value determined for Daehan, incorrectly under s.269TAC(1).

**10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

The correct or preferable decision would have been for the Minister to find that:

- the normal value for the exporter from Taiwan, Wei Chih, be determined under s.269TAC(1);

- the normal value for 'uncooperative and all other exporters' from Taiwan be reascertained under s.269TAC(6);
- the normal value for the exporter from Korea, Daehan, not be adjusted by an amount constituting the alleged difference in credit costs between like goods sold in Korea by Daehan and Daehan's sales of the goods to Australia;
- the normal value for the exporter from Korea, Daehan, be ascertained with only like goods sold in the ordinary course of trade for home consumption in the country of export, or with such adjustment made under s.269TAC(8) as would reflect the price comparability between the like goods sold in the domestic market of the country of export and those goods exported to Australia; and
- the normal value for 'uncooperative and all other exporters' from Korea be reascertained under s.269TAC(6).

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

Elaboration of the grounds raised in question 9 can be found at [Appendix B](#), attached.

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

*Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.*

The correct or preferable decision provided in response to question 10 is materially different from the reviewable decision as follows:

- the determination of the normal value for the exporter from Taiwan, Wei Chih, under s.269TAC(1) will likely increase the normal value ascertained for both the exporter from Taiwan, Wei Chih, and for 'uncooperative and all other exporters' from Taiwan;
- the determination that an adjustment for the difference in credit costs between like goods sold in Korea by Daehan and Daehan's sales of the goods to Australia not be made will increase the normal value ascertained for both the exporter from Korea, Daehan, and for 'uncooperative and all other exporters' from Korea; and
- the determination of the normal value for the exporter from Korea, Daehan by reference to only like goods sold domestically in the country of export, or with a suitable specification adjustment for price comparability will likely increase the

normal value ascertained for both the exporter from Korea, Daehan, and for 'uncooperative and all other exporters' from Korea.

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

Appendix A : Anti-Dumping Notice (ADN) number 2019/054

Appendix B : Elaboration of the grounds raised in question 9.

CONFIDENTIAL ATTACHMENT 1 : Australian Industry Submission – Response to SEF (11 March 2019)



**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; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name:



Position: Senior Trade Measures Manager

Organisation: Liberty OneSteel (Manufacturing) Pty Ltd

Date: 28 / 06 / 2019

**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: [REDACTED]
Organisation: Liberty OneSteel Manufacturing Pty Ltd
Address: [REDACTED]
Email address: [REDACTED]
Telephone number: [REDACTED]

**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:

[REDACTED]

.....  
(Applicant's authorised officer)

Name:

[REDACTED]

Position: Secretary

Organisation: Liberty OneSteel (Newcastle) Pty Ltd

Date: 28 / 06 / 2019



Australian Government  
Department of Industry,  
Innovation and Science

Anti-Dumping  
Commission

## **ANTI-DUMPING NOTICE NO. 2019/54**

*Customs Act 1901 – Part XVB*

### **Steel reinforcing bar**

**Exported from the Republic of Korea and Taiwan (with the  
exception of Power Steel Co. Ltd)**

### **Findings in Relation to Reviews of Anti-Dumping Measures**

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

The Commissioner of the Anti-Dumping Commission has completed reviews, which commenced on 1 August 2018, of the anti-dumping measures applying to steel reinforcing bar (the goods) exported to Australia from the Republic of Korea (Korea) and Taiwan (with the exception of Power Steel Co. Ltd). The anti-dumping measures are in the form of a dumping duty notice.

Recommendations resulting from the review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No. 486/489* (REP 486/489).

I, Karen Andrews, the Minister for Industry, Science and Technology have considered REP 486/489 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 486/489.

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

The duty that has been determined is an amount worked out in accordance with the duty method as detailed in the table below.

Particulars of the dumping margin established for all exporters generally (with the exception of Power Steel Co. Ltd.) and the effective rate of duty is set out in the following table.

Country	Exporter	Dumping Margin	Duty Method
Korea	Daehan Steel Co., Ltd Daehan Integrated Steel Co., Ltd	3.9%	Ad valorem
Korea	All other exporters	4.0%	Ad valorem
Taiwan	Wei Chih Steel Industrial Co., Ltd	-0.4%	Floor price
Taiwan	All other exporters (excluding Power Steel Co., Ltd)	-0.4%	Floor price

The actual duty liability may be higher than the effective rate of duty due to a number of factors. Affected parties should contact the Anti-Dumping Commission (the Commission) business.gov.au on 13 28 46 or +61 2 6213 6000 or at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au) for further information regarding the actual duty liability calculation in their particular circumstance.

To preserve confidentiality, details of the revised variable factors being the Ascertained Export Price (AEP), Ascertained Normal Value (ANV), and non-injurious price (NIP) will not be published.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel ([www.adreviewpanel.gov.au](http://www.adreviewpanel.gov.au)) in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice. REP 486/489 has been placed on the Commission's public record. The public record may be examined at [www.adcommission.gov.au](http://www.adcommission.gov.au). Alternatively, the public record may be examined at the Commission's office during business hours by contacting the case manager on the details provided below.

Enquiries about this notice may be directed to the case manager on telephone number 03 9268 7969 fax number +61 3 8539 2499 (outside Australia) or email [investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au).

Dated this 29<sup>th</sup> day of May 2019



(signed)

KAREN ANDREWS

Minister for Industry, Science and Technology

APPENDIX B

Elaboration of the grounds raised in question 9

**A. Determination of the normal value for the exporter from Taiwan, Wei Chih, under s.269TAC(2)(c) was not the correct or preferable decision**

At *Section 7.2* of the Wei Chih Report,<sup>1</sup> the visit team found that one of the three models sold into the domestic Taiwanese market failed the ordinary course of trade (**OCOT**) test. Assuming that this was the Grade SD420W model, then presumably Grades SD280 and SD420 were sold in sufficient volumes in the Taiwanese domestic market.

Although the applicant for review was surprised by the reported absence of domestic sales of grade SD490 in the domestic market, it would consider, Grade SD490 to be the most directly comparable to the particular model exported to Australia (i.e. Grade 500N) in terms of chemistry control for weldability and minimum yield strength (the yield point is where plastic deformation starts to occur), the key specification requirements for high yield strength steel reinforcing bar. The applicant for review submitted in evidence in support of the contention that SD420W and SD420 may also be considered comparable goods to the export Grade 500N provided the necessary adjustments are made to ensure proper comparison between the models.

From the Report, it remains unclear why the Commission has concluded that it is unable to have regard to domestic sales of Grade SD420 or SD420W product as goods closely resembling the GUC with adjustments required to ensure a proper comparison in accordance with s.269TAC(8). The Report suggests that a reason for disregarding domestic sales was because...*domestic models include strengthening alloys whilst the export model is water quenched.*<sup>2</sup> This is clearly incorrect given that the verification report for Wei Chih shows the alloy addition of Niobium (Nb) for the export goods and the addition of Vanadium (V) for grade SD420W only. Niobium and Vanadium are both commonly used as microalloying strengthening agents for reinforcing bar.

The Australian industry contends that should no Grade SD490 product have been found to be sold domestically by the exporter, Wei Chih, then an upward specification adjustment to the comparable Grades SD420 or SD420W ought to have been made because of the price premium of USD [REDACTED]/t applied by a Taiwanese producer of rebar for grade SD490 over SD420. Evidence of this contention was made in the submission of the Australian industry dated 23 October 2018.<sup>3</sup> A copy of that evidence is again attached as CONFIDENTIAL ATTACHMENT 1. In the absence of high strength rebar grade SD490 sold by Wei Chih into the Taiwanese market, then the price differential between grades SD400W and SD500W (or SD400 and SD500) sold by Wei Chih into the Korean market ought to also provide the Commission with an indication of the price extra that high strength rebar commands over a

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<sup>1</sup> EPR Folio No. 489/012

<sup>2</sup> EPR Folio No. 489/025

<sup>3</sup> EPR Folio No. 489/006

lower strength grade. Wei Chih are reported to have been selling these grades into the Korean market since 2010.

Since 2010 the company started to develop a variety of straight steel bars and went into a new business stage with diverse variety of products. In 2010 it passed SD300 / 400 / 500 of KS D 3504 South Korean national product certification, the first eligible steel company in Taiwan to enter the Korean steel market.<sup>4</sup>

The correct or preferable decision is for the determination of the normal value under s.269TAC(1), using the exporter's domestic sales of Grades SD420 and SD420W together with an upward specification adjustment of the equivalent to USD [REDACTED]/t.

**B. Determination of the normal value for all other exporters of the goods was not the correct or preferable decision to the extent that it relies on the normal value determined for Wei Chih, incorrectly under s.269TAC(2)(c)**

In the event that the Review Panel recommends that the normal value for Wei Chih be determined under s.269TAC(1), then the Review Panel will further need to recommend that the determination of the normal value for all other exporters of the goods under s.269TAC(6) be again ascertained to take into account the new normal value determined for Wei Chih, to the extent necessary.

**C. The Report did not have regard to certain submissions made by the applicant for review in response to the SEF that were properly received by the Commissioner within 20 days after placing of the SEF on the public record**

On or about 14 March 2019, the Commissioner published a record of the submission of the applicant for review on the electronic public record, titled, *Australian Industry Submission – Response to SEF*, and dated 11 March 2019.<sup>5</sup> In that submission, the applicant for review challenged, *inter alia*, the Commissioner's conclusions, that:

- a domestic credit cost adjustment be made for the exporter from Korea, Daehan; and
- domestic sales in Korea of non-prequalified weldable grades be treated as like goods to the prequalified weldable grade goods exported to Australia by Daehan.

In the Report, the Commission did not address these submissions, leaving the applicant for review to conclude that in deciding on the recommendations to be made to the Minister in the report, the Commissioner did not have regard to these elements of its submission properly made under s.269ZDA(3)(iv).

**D. Errors in the determination of the normal value for the exporter from Korea, Daehan**

*(a) Adjustments to the normal value for domestic credit costs*

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<sup>4</sup> [https://www.emis.com/php/company-](https://www.emis.com/php/company-profile/TW/Wei_Chih_Steel_Industrial_Co_Ltd_%E5%A8%81%E8%87%B4%E9%92%A2%E9%93%81%E5%B7%A5%E4%B8%9A_en_1710474.html)

[profile/TW/Wei\\_Chih\\_Steel\\_Industrial\\_Co\\_Ltd\\_%E5%A8%81%E8%87%B4%E9%92%A2%E9%93%81%E5%B7%A5%E4%B8%9A\\_en\\_1710474.html](https://www.emis.com/php/company-profile/TW/Wei_Chih_Steel_Industrial_Co_Ltd_%E5%A8%81%E8%87%B4%E9%92%A2%E9%93%81%E5%B7%A5%E4%B8%9A_en_1710474.html)

<sup>5</sup> EPR Folio Nos. 486/013 and 489/018 (14 March 2019).

The Commission recommended the Minister make a downward adjustment to the normal value to account for “the cost of domestic credit”.

The applicant for review considers that the Commission ought to have considered whether any domestic credit costs do in fact affect price comparability between export and domestic sales.

Daehan’s distribution and marketing model is understood to be different to that of other Korean rebar producers. Daehan has sought to differentiate themselves by not only producing the like goods but also moving downstream and processing the rebar internally. As such Daehan have branded this as “Sta-z solution” or “Framework”.<sup>6</sup> Therefore, any claimed downward adjustments for the domestic credit costs should be resisted as they more accurately are associated with the selling and marketing of the downstream processed products and related construction solutions.<sup>7</sup>

Even if the Commission was satisfied that they only considered credit terms relevant to the like goods, then the exercise is one of determining whether or not there are in practice any credit term differences between domestic and exporter sales of the like goods and the GUC. Here, consideration of actual accounts receivable days (determined in the contract) is relevant and necessary to the Commission’s inquiry. It is observed pre-payment for the goods is not uncommon within the Korean domestic market. If this is in fact the case, then any downward credit terms adjustment may in fact need to be reversed to an upward adjustment to the normal value.

*(b) Non-prequalified weldable grades treated as like goods to the prequalified weldable grade goods exported to Australia by Daehan*

Following the publication of the Report, it remains unclear whether the pre-qualification for weldability evidenced by a maximum carbon equivalent value specification has been identified as a mandatory category within the MCC.

For reference, the Korean Standard KSD3504-2011 defines eight grades of ribbed bar, with only two grades having a “W” designation specifically intended for welding. As is the case for the export Grade 500N, Korean domestic grade SD500W requires chemistry specifications to be met with a maximum carbon equivalent value specified to ensure pre-qualification for welding. Grade SD500 has no carbon equivalent value specified (ie. it is not readily weldable) and as such cannot be considered a suitable match for export Grade 500N in terms of meeting the definition of like goods.

In its submission, the Australian industry sought clarification as to whether the model sold into the Korean domestic market treated as comparable to the GUC, was in fact pre-qualified for weldability (as is required for all sales of the GUC exported to Australia under the AS/NZS 4671:2001 Grade 500N).

If the Review Panel member finds that it has not been identified, or it is found that the model selected for normal value determination is not pre-qualified for weldability, then these goods ought to be removed from the category of like goods for the determination of the normal value under s.269TAC(1), or a further specification adjustment based be made under s.269TAC(8) for the observed price differences between domestically sold goods that are pre-qualified for welding (this may occur within any grade category e.g. SD400 versus SD400W or SD500 versus SD500W).

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<sup>6</sup> EPR Folio No. 452/006, p. 27.

<sup>7</sup> EPR Folio No. 452/006, p. 27.