



Australian Government
Anti-Dumping Review Panel

**APPLICATION FOR REVIEW
OF A DECISION BY THE MINISTER
WHETHER TO PUBLISH
A DUMPING DUTY NOTICE OR
A COUNTERVAILING DUTY NOTICE**

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City
ACT 2601
P: +61 2 6275 5868
F: + 61 2 6275 6784
E: ADRP_support@customs.gov.au

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Australian Customs and Border Protection Service (ACBPS), or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice;
- not to publish a countervailing duty notice;

Review inquiries, including decisions

- to alter or revoke a dumping duty notice following a review inquiry;
- to alter or revoke a countervailing duty notice following a review inquiry;
- not to alter a dumping duty notice following a review inquiry;
- not to alter a countervailing duty notice following a review inquiry;
- that the terms of an undertaking are to remain unaltered;
- that the terms of an undertaking are to be varied;
- that an investigation is to be resumed;
- that a person is to be released from the terms of an undertaking;

Continuation inquiries:

- to secure the continuation of dumping measures following a continuation inquiry;
- to secure the continuation of countervailing measures following a continuation inquiry;

- not to secure the continuation of dumping measures following a continuation inquiry;
- not to secure the continuation of countervailing measures following a continuation inquiry;

Anti-circumvention inquiries:

- to alter a dumping duty notice following an anti-circumvention inquiry;
- to alter a countervailing duty notice following an anti-circumvention inquiry;
- not to alter a dumping duty notice following an anti-circumvention inquiry; and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations** to the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or an application that was lodged late.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for ADRP review of a decision of the Minister whether to publish a dumping duty notice or countervailing duty notice (or both). It is approved by the Commissioner pursuant to s 269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A MINISTERIAL DECISION?

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An “interested party” may be:

- if an application was made which led to the reviewable decision, the applicant;
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision;
- a person directly concerned with the importation or exportation to Australia of the goods;
- a person directly concerned with the production or manufacture of the goods;
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia; or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of “interested party” in s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision was first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister’s decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant’s reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and **must** take account only of information which was before the Minister when the Minister made the reviewable decision (s269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- at least 30 days after the public notification of the review;
- but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- Minister affirm the reviewable decision (s 269ZZK(1)(a)); or
- Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- affirm his/her original decision; or
- revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA**

- OR emailed to:

ADRP_support@customs.gov.au

- OR sent by facsimile to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
+61 2 6275 6784**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA

Telephone: +61 2 6275 5868
Facsimile: +61 2 6275 5784

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – this equates to \$3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision to publish a dumping duty notice or countervailing duty notice.

**APPLICATION FOR REVIEW OF
DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY
NOTICE OR COUNTERVAILING DUTY NOTICE**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

to publish : ☒ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

OR

not to publish : ☐ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

- ☒ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- ☒ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- ☒ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- ☒ Full description of the imported goods to which the application relates.
- ☒ The tariff classification/statistical code of the imported goods.
- ☒ A copy of the reviewable decision.
- ☒ Date of notification of the reviewable decision and the method of the notification.
- ☒ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

- ☒ [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:.....

Name:.....

Position:.....

Applicant Company/Entity:

.....

Date: 19 / 12 / 2014

19th December 2014

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601

Email: ADRP_support@customs.gov.au

Dear Sir/Madam

Request for Review of a Decision – Hot Rolled Structural Sections exported from Japan, the Republic of Korea, Taiwan and the Kingdom of Thailand

On 23 August 2013 OneSteel Manufacturing Pty Ltd ("OneSteel") made an application for the imposition of anti-dumping measures on hot rolled structural sections ("HRS") exported from Japan, the Republic of Korea ("Korea"), Taiwan and the Kingdom of Thailand ("Thailand").

On 20 November 2014 a notice announcing the decision of the Parliamentary Secretary to impose measures on HRS exported from Japan, Korea, Taiwan and Thailand was published in *The Australian* newspaper. The announcement follows an investigation by the Anti-Dumping Commission ("the Commission") into OneSteel's allegations that the Australian industry manufacturing HRS had suffered material injury from dumping from the exporting countries.

The Commission's recommendations as accepted by the Parliamentary Secretary are included in Report No. 223.

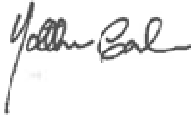
OneSteel does not consider that the decision of the Parliamentary Secretary concerning the form and level of the anti-dumping measures applied involves the correct or preferable decision. OneSteel is requesting the Anti-Dumping Review Panel ("ADRP") review the decision of the Parliamentary Secretary and recommend that the decision does not adequately address the level of dumping and injury experienced to the Australian industry.

OneSteel is requesting the ADRP to review the following matters:

- The relevant domestic grades of HRS that are suitable for fair comparison with export grades of HRS to Australia; and
- The method by which anti-dumping measures have been applied to HRS exported from Japan, Korea, Taiwan and Thailand as reflected in the *ad valorem* measures;

OneSteel's application details the grounds for review and why the decision of the Parliamentary Secretary is not the correct or preferable decision in relation to the exported goods from Japan, Korea, Taiwan and Thailand.

If you have any questions concerning this application for review, please do not hesitate to contact Mr Matt Condon on (02) 8424 9880 or OneSteel's representative Mr John O'Connor on (07) 3342 1921.



Matt Condon
Manager – Trade Development
OneSteel Manufacturing Pty Ltd

Application Particulars

1. Contact Details

1.1 Name, street and postal address, and form of business of the applicant

OneSteel Manufacturing Pty Ltd ("OneSteel") is the applicant company requesting a review of the decision of the Parliamentary Secretary to apply anti-dumping measures on hot rolled structural sections ("HRS") exported from Japan, Korea, Taiwan and Thailand.

OneSteel's postal address is:

Level 6
205 Pacific Highway
St Leonards NSW 2065
Tel: (02) 8424 9880
Fax: (02) 8424 9885

1.2 Name, title/position, telephone and facsimile numbers, and email address of contact within the organisation

The contact person at OneSteel concerning this application for review is:

Contact Name:	Mr Matt Condon
Company and position:	Manager Trade Development
Address:	Level 6 205 Pacific Highway St Leonards, 2065
Telephone:	(02) 8424 9880
Facsimile:	(02) 8424 9885
E-mail address:	matt.condon@onesteel.com.au

1.3 Name of consultant

OneSteel has engaged the following representative to assist with this application:

Name:	Mr John O'Connor
Representative's business name:	John O'Connor & Associates Pty Ltd
Address:	P.O. Box 329, Coorparoo Qld 4151
Telephone:	(07) 3342 1921
Facsimile:	(07) 3342 1931
E-mail:	jmoconnor@optusnet.com.au

A copy of OneSteel's signed authorization nominating Mr O'Connor as OneSteel's representative is included at Confidential Attachment 1.

1.4 Full Description of the Goods

The goods the subject of OneSteel's application for anti-dumping measures were as follows:

"Hot rolled structural steel sections in the following shapes and sizes, whether or not containing alloys:

- *universal beams (I sections), of a height greater than 130mm and less than 650mm;*
- *universal columns and universal bearing piles (H sections), of a height greater than 130mm and less than 650mm;*
- *channels (U sections and C sections) of a height greater than 130mm and less than 400mm; and*
- *equal and unequal angles (L sections), with a combined length of greater than 200mm.*

Sections and/or shapes in the dimensions described above, that have minimal processing, such as cutting, drilling, or painting do not exclude the goods from coverage of the application.

Excluded goods from this application are:

- *hot rolled 'T' shaped sections, sheet pile sections and hot rolled merchant bar shaped sections, such as rounds, squares, flats, hexagons, sleepers and rails; and*
- *sections manufactured from welded plate (e.g. welded beams and welded columns)."*

2. Tariff Classification

The HRS the subject of this application for review are classified as follows:

- 7216.31.00 statistical code 30 (channels – U and C sections);
- 7216.32.00 statistical code 31 (universal beams – I sections);
- 7216.33.00 statistical code 32 (universal column and universal bearing piles – H sections); and
- 7216.40.00 statistical code 33 (equal and unequal angles – L sections).

Goods identified as hot rolled other steel sections as per the above shapes and sizes, are classified to 7228.70.00.

3. A copy of the written advice from the Commissioner of the Parliamentary Secretary's decision

The Parliamentary Secretary's decision was published in The Australian newspaper on 20 November 2014 (Non-Confidential Attachment 2). Australian Dumping Notice No. 2014/127 was also published on 20 November 2014 (Please refer to Non-Confidential Attachment 3).

4. A detailed statement setting out the reasons for believing that the reviewable decision is not the correct or preferable decision.

I. Introduction

Trade Measures Report No. 223 ("Report No. 223") includes the findings and recommendations of the Commission to the Parliamentary Secretary following the investigation into the dumping of HRS from Japan, Korea, Taiwan and Thailand.

Included in the findings and recommendations accepted by the Parliamentary Secretary are relevant factors that influence the level of the normal values determined for exporters and the form of the anti-dumping duty applied by the Parliamentary Secretary.

OneSteel is aggrieved by the Parliamentary Secretary's acceptance of recommendations as they relate to:

- (i) the domestic grade of the Hot Rolled Structural ("HRS") accepted by the Commission in the exporter's home market as the appropriate model for normal value calculation; and
- (ii) the *ad valorem* form of anti-dumping duties that encourages the evasion or avoidance of measures and results in a recurrence of the injury that the measures were intended to prevent.

The grounds for review associated with each item are addressed hereunder.

II. Applicant's Grounds for Review

(a) Appropriate model for normal value calculation

OneSteel asserts that the Commission has not made the correct or preferable decision in its determination of a sufficiently similar subset of domestically sold goods for normal value purposes. In support of this proposition OneSteel refers to a number of findings contained in Final Report 223.

In its conclusion to section **6 Like goods (exporters' domestic markets) and subset of goods for normal value**, the Commission states;

The Commission considers that standards governing the production of HRS may be an influential factor in demonstrating physical comparability of the goods. Given the different circumstances in each exporter's domestic production and sales, the Commission took into account a number of model-matching factors and considered them on an exporter-by-exporter basis. The Commission is of the view that in this investigation, actual physical specifications of products are more determinative in establishing physical likeness for like goods and consequently, normal values.¹

The Commission's determination of *actual physical specifications* is based on a number of incorrect assessments as outlined below.

In section **6.4.2 Like Goods** Final Report 223 states:

In this investigation, the Commission does not accept that like goods can be determined in the narrow context of one physical characteristic, that being Standards. The Commission's view is that Standards are one relevant physical characteristic of HRS, as part of a broader range of physical characteristics to consider when assessing physical likeness. [emphasis added]

¹ Final Report 223 p35

The assessment that a Standard is only one physical characteristic reflects a fundamental error of fact. The relevant Australian and foreign Standards for HRS cover a broad range of important attributes, including but not limited to:

- Functional applications, eg structural welding and riveting;
- Dimensional and Manufacturing tolerances;
- Chemical properties;
- Mechanical Properties;
- Testing methodology; and
- Quality allowances.

From a commercial perspective, a buyer will select HRS based on the Standard to which it has been produced. The Standard forms the basis for goods selection as it encompasses the complete range functional and physical characteristics required to be met by the goods. The Standard provides a warranty that all of the requirements of the above have been met. Architects and engineers specify the Standard and the grade to which a product should be produced to. Lower grades cannot be substituted into structural steel applications that are designed to utilize higher grade material.

OneSteel provided numerous submissions during the investigation highlighting the differences in quality, performance and function between the various grades and Standards, including a report from an independent expert. OneSteel also provided evidence of the price premiums achieved by higher grade products in the exporter's domestic markets and price premiums between grade AS3679.1 -300 and JIS grades where they were sold to the same customer.

In section **6.4.3 Models used for normal value** the Commission makes a number of further incorrect assessments:

To accept OneSteel's contention, that is, establishing normal values primarily guided by a comparison of standards would be to disregard the evidence obtained during the course of exporter verification in the form of mill certificates. These certificates contain evidence of mechanical properties and chemical composition of the goods which establishes the actual physical specifications to which the goods are produced and sold²

The Commission's adoption of mill test certificates as being a more significant indicator of physical characteristics than the Standard the goods are produced to is neither the correct nor the preferable decision. A mill test certificate only records a subset of the attributes of the Standard, i.e. the chemical and mechanical properties and only references the test results of one particular batch of steel. The steel Standard defines the acceptable limits to which every batch of acceptable goods must comply. A like goods assessment by the Commission based on a select (and potentially small) sample of test certificates for individual steel batches is simply not sufficient:

The Commission examined a selection of test certificates, from several exporters³

As stated earlier in this submission, a comparison of Standards is a more appropriate assessment of the total physical and functional likeness between goods over the whole of the investigation period.

² Final report 223 - p32

³ Final Report 223 –p32

Another view formed by the Commission in 6.4.3 that is also not the correct or preferable decision is:

Additionally, in circumstances where the exported goods and a subset of domestic goods are produced and sold from the same semi-finished products (for example, blooms), it would be unreasonable for the Commission to conclude that there would be a more appropriate subset of like goods in the domestic market for normal value than those produced from the same semi-finished products as the exported goods. This finding considers the physical similarities, the interchangeable nature of the goods, and the production likeness (including production costs), and in the Commission's view is a much stronger indicator than a mere comparison of minimum production standards⁴.

Even in circumstances where both the exported goods and a subset of the domestic goods are produced from the same raw materials, does not necessarily mean that the finished products sold to an export market are the same model as those sold to the domestic market. There are many industries apart from steel that have grading processes to select products with higher quality attributes that are then sold at a premium into different market segments.

Leong Huat Hardware, an importer in this investigation openly stated in their response to *Export Questionnaire* that both Taiwan and Thailand steel mills charge a higher rate for goods exported to Australian Standard grade 300 than a range of other Asian Standards.

"AS3679.1 grade 300 requires more items to be stated in chemical compositions, physical/ chemical laboratory approval....both Taiwan and Thailand steel mills charge a higher rate for AS3679.1 grade 300 compared to EN10025, ASTM or JIS standard."⁵

In relation to **6.4.4 Costs (like goods and adjustments)** the Commission states:

OneSteel has correctly identified that the Commission has made adjustments for physical characteristic differences where the evidence supports the adjustment, as outlined above. However, in the absence of any evidence to support an adjustment, consistent with the Commission's policy and legislative requirements, no cost-based adjustment can be considered.⁶

OneSteel disagrees that there is an absence of evidence to support an adjustment consistent with the Commission's policy and legislative requirements.

Section 269TAC(8)(b) of the Customs Act allows in all the circumstances of this case to compare selling prices which is consistent with the Commission's policy:

*Adjustment is allowed for differences in physical characteristics where the differences can be quantified to ensure fair comparison. **Relevant differences include quality, chemical composition, structure, or design.***

*Evidence may be provided of different selling prices for products with different physical characteristics or quality. In such cases, **the size of the price difference may be used as the basis for any adjustment.*** [emphasis added]

⁴ Final Report 223 –p23

⁵ Leong Huat Exporter Questionnaire – p12

⁶ Final Report 223 – p33

⁷ Dumping and Subsidy Manual p61

During the investigation OneSteel provided a range of evidence to :

1. Demonstrate that goods produced to SM490 more closely resembled AS3679.1 –grade 300 than those produced to SS400.

These were summarised in OneSteel's submission dated the 5th August 2014 and included

- An independent assessment from a subject matter expert that confirms that grades SM490 (A,B,C) more closely resemble G300 than SS4002
 - Customs assessment in Report 79 stating "Customs found the specifications of the exported grade RL (AS3679.1-300) and domestic grade HK (SM490A) to be very similar, and considers the grade HK(SM490A) is the most appropriate for comparison with the exported grade RL. Customs calculated normal values using domestic sales of only grade HK (SM490A)3
 - A comparison of independent Standards that the products are certified to that allows an appropriate assessment of products based on a range of attributes that include Mechanical (yield and tensile strength) and Chemical requirements developed to ensure products meet the functionality requirements for market application(s) to which the given Standard pertains.
 - A comparison of the scopes of the Standards that demonstrates that G300 and SM grades includes welding criteria that SS grades such as SS400 don't.
 - Test certificates of goods exported to Australia as G300 that exceed the minimum requirements of SM490A.
2. Support the Commission making an adjustment based on the size of price differences.⁸
 - The Leong Huat admission that Thai and Taiwan mills charge a higher price for products produces to Australian Standard AS3679.1 than a range of Asian and American Standards
 - An extract from the Korean Steel Industries website that identified the price extras charged for the different grades sold in Korea.
 - Copies of emails indicating price premiums achieved for higher grade within a number of exporters domestic markets.

OneSteel maintains that where normal values are based upon domestic sales of SS400 grade, an upward adjustment to reflect price difference for the higher qualities of the Grade 300 HRS is required for fair comparison purposes.

⁸ OneSteel submission – 5th Aug 2014

OneSteel does not consider the Parliamentary Secretary's decision to determine normal values on domestic grades of SS400 without an adjustment to reflect the selling price differential for higher qualities associated with Grade 300 equivalent HRS for certain exporters is the correct or preferable decision.

Therefore, OneSteel considers the Commission has erred in not recommending the Minister exercise his direction under paragraph 269TAC(8)(b), and act in a manner consistent with policy, which allows in all the circumstances of this case to make an upward adjustment to the normal value based on selling price.

B. Form of measures

The Parliamentary Secretary has accepted the recommendations of the Commission to apply anti-dumping measures on exporters of HRS from Japan, Korea, Taiwan and Thailand using the *ad valorem* method.

In its response to SEF No. 223 OneSteel provided the Commission with its view as to the ineffective nature of *ad valorem* anti-dumping measures in deterring exporters from further reducing export prices to dumped and injurious levels. OneSteel was opposed to the application of *ad valorem* measures as proposed in SEF No. 223.

The Commission has justified the recommendation for *ad valorem* measures as follows:

"The Commission notes that the cyclical nature of the HRS market, which involves price fluctuations, lends itself to this form of duty, and that unlike other forms of duty, there is no 'effective rate' impact."

A further consideration for the Commission involved the non-injurious price ("NIP") being assessed at the normal value for each of the exporters.

OneSteel highlighted to the Commission its preference for anti-dumping measures to be based upon the "Combination" method that involves a fixed and variable component of measure that addresses reductions in export price (post imposition of measures).⁹

Report No. 223 does not reflect the reasons for the Commission's preference for *ad valorem* measures, other than the apparent fluctuation in prices (OneSteel does not agree with this simplistic suggestion). However, the Commission has stated its preference for *ad valorem* measures as reflected in its 'Guide to Measures' and in the earlier published Report No. 234 where the Commission stated that the *ad valorem* method¹⁰:

- *is suitable for goods with many different product levels of varying unit prices;*
- *is the simplest and easiest form of duty to administer when delivering the intended protective effect;*
- *may require less frequent reviews than other duty methods;*
- *is the most common form of duty in other main jurisdictions; and*

⁹ OneSteel Submissions 5th Aug 2014 & 17th Sept 2014

¹⁰ Report No. 234, P. 88-89.

- *eliminates negative effects on downstream industries in a falling market...."*

OneSteel does not consider that the selection of the most appropriate form of measure to be applied should be based upon how simple the measure is to administer, or its prevalence in other jurisdictions. Rather, the selection of the most appropriate form of measure should be based upon its effectiveness in removing the dumping and injury that the Australian industry has experienced.

Where there exists a very real prospect for further declines in export prices to dumped and injurious levels, it can be concluded that the measure will not be effective in removing the injury it was intended to prevent. For these reasons, OneSteel made written representations to the Commission that *ad valorem* measures were not sufficient to remove the injurious effects of the dumping on HRS exported from Japan, Korea, Taiwan and Thailand.

In Report No. 223 the Commission responded to OneSteel's claims about further injury through reduced export prices. The Commission stated (in the context of an investigation where arms' length prices had been verified):

"The Commission is of the view that that a claim stating that an exporter would seek to deliberately reduce its revenue by reducing its prices into the Australian market to avoid dumping duties is speculative. It is reasonable to conclude that this action would be contrary to expected normal commercial behaviour."

OneSteel strongly disagrees with the Commission's assessment of what is "*expected normal commercial behaviour*". The commercial reality is that industries with high fixed costs and excess capacity, (e.g. Steel) are willingly to sell excess capacity at prices below their full cost to make and sell, (i.e. dumping.) This is particularly the case where the dumped goods can be exported so that there is a contribution to the high fixed costs of the exporting industry without the risk of depressing prices in their own domestic market. In circumstances where companies continue to have excess capacity, they will continue to sell dumped products at reduced prices until either the prices go below their variable costs or they find more profitable markets.

OneSteel challenges the commercial reality of the Commission's following statement:

Furthermore, any action undertaken by importers to undervalue commercial invoices, causing a false or misleading statement being communicated to ACBPS and resulting in the loss of duty would be considered an offence under the Act"

The Commission's comments may serve as a warning to exporters and importers. However, the reduction in export prices does not necessarily involve a false or misleading statement. The exporter can elect to reduce the export price to ensure that it holds sales volumes and market share and, because of the *ad valorem* measure, it attracts a reduced level of measure by doing so. Unlike the effective combination method that addresses reductions in export price, there is no recourse for *ad valorem* measures for the loss of duty associated with a reduced export price.

This is a major flaw with *ad valorem* measures,

OneSteel contends that the Parliamentary Secretary has erred in accepting the Commission's recommendation on applying anti-dumping measures on HRS exported from Japan, Korea, Taiwan and Thailand in an *ad valorem* form. The correct and preferable decision involves anti-dumping measures that remove the injurious effects

of dumping (including any future threat thereof by reductions in export prices) as can be addressed by measures based upon the combination method.

OneSteel requests the ADRP to review the Parliamentary Secretary's decision to apply *ad valorem* measures.

III. Review Request

OneSteel is seeking the Anti-Dumping Review Panel to review the Parliamentary Secretary's decision to:

- (i) not make relevant adjustments (for fair comparison purposes) to account for the prices differences between differing grades of HRS sold domestically in the country of export and the goods exported to Australia; and
- (ii) apply anti-dumping measures on the *ad valorem* method that enables exporters and importers to evade and avoid measures on HRS by reducing export prices to injurious levels so that the measures do not adequately address the injury that they were intended to prevent.



Customs Act 1901 – Part XIVB
**HOT ROLLED STRUCTURAL STEEL SECTIONS
EXPORTED FROM JAPAN, THE REPUBLIC OF
KOREA, TAIWAN AND THE KINGDOM
OF THAILAND**

Findings in Relation to a Dumping Investigation¹
Public notice under subsections 269TG (1) and (2) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of hot rolled structural steel sections ("the goods" or "HRS"), exported to Australia from Japan, the Republic of Korea (Korea), Taiwan and the Kingdom of Thailand (Thailand).

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

- 7216.31.00 statistical code 30;
- 7216.32.00 statistical code 31;
- 7216.33.00 statistical code 32; and
- 7216.40.00 statistical code 33.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2013/75, which is available on the internet at www.adcommission.gov.au

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 223* (REP 223). REP 223 outlines how the Anti-Dumping Commission (the Commission) carried out the investigation and recommends the publication of a dumping duty notice in respect of the goods.

Notice of my decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 20 November 2014.

Particulars of the dumping margins established and an explanation of the methods used to compare export prices and normal values to establish the dumping margins are also set out in the table below.

Country	Manufacturer/ exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	JFE Bars and Shapes Corporation	12.15%	Ad valorem	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s.269TACB(2)(a) of the Customs Act 1901 (the Act).
	Uncooperative Exporters	12.23%	Ad valorem	
Korea	Hyundai Steel Company	2.52%	Ad valorem	
	Uncooperative Exporters	3.24%	Ad valorem	
	TS Steel Co Ltd	4.68%	Ad valorem	
Taiwan	Tung Ho Steel Enterprise Corporation	2.20%	Ad valorem	
	Uncooperative Exporters	7.89%	Ad valorem	
	Siam Yamato Steel Co Ltd	18.28%	Ad valorem	
Thailand	Uncooperative Exporters	19.48%	Ad valorem	

NB: Pursuant to s. 12 of the *Customs Tariff (Anti-Dumping) Act 1975* (the *Dumping Duty Act*), conversion of securities to interim duty will not exceed the level of security taken.

The above table lists the effective rate of duty which in this case are equal to the dumping margins found, as the lesser duty rule pursuant to s. 8(5B) of the *Dumping Duty Act* in this case does not come into effect.

The effective rate of duty has been calculated in accordance with the *ad valorem* duty method.

The investigation as it relates to Feng Hsin Iron and Steel Co Ltd has been terminated, and imports to Australia manufactured by Feng Hsin Iron and Steel Co Ltd are free of dumping duty.

I, ROBERT CHARLES BALDWIN, Parliamentary Secretary to the Minister for Industry, have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 223.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under s. 269TG(1) of the Act, I DECLARE that s. 8 of the Dumping Duty Act applies to:

(i) the goods; and

(ii) like goods that were exported to Australia after 14 March 2014 (when the Commissioner made a preliminary affirmative determination under s. 269TD of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before the publication of this notice.¹

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused or is being caused. Therefore under s. 269TG(2) of the Act, I DECLARE that s. 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from Japan, Korea, Taiwan (except for exports by Feng Hsin Iron and Steel Co Ltd) and Thailand.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on Australian industry prices and the consequent impact on the Australian industry including reduced revenues, price depression, price suppression, reduced profits and reduced profitability.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice. Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how anti-dumping measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at www.adcommission.gov.au.

REP 223 and other documents included in the public record may be examined at the Commission's office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 9244 8270, fax number +61 3 9244 8902 or email at operations3@adcommission.gov.au.

Dated this 7th day of November 2014

ROBERT CHARLES BALDWIN

Parliamentary Secretary to the Minister for Industry

¹ Within the time limitations of section 45 of the Act.



ANTI-DUMPING NOTICE NO. 2014/127

Hot Rolled Structural Steel Sections

Exported from Japan, the Republic of Korea, Taiwan and the Kingdom of Thailand

Findings in relation to a dumping investigation

Customs Act 1901 – Part XVB

I, Dale Seymour, Commissioner of the Anti-Dumping Commission (“the Commission”) have completed the investigation, which commenced on 24 October 2013, into the alleged dumping of hot rolled structural steel sections (“the goods” or “HRS”), exported to Australia from Japan, the Republic of Korea, Taiwan and the Kingdom of Thailand.

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

- 7216.31.00 statistical code 30;
- 7216.32.00 statistical code 31;
- 7216.33.00 statistical code 32; and
- 7216.40.00 statistical code 33.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2013/75. This ADN is available on the internet at www.adcommission.gov.au

The Commissioner reported his findings and recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in *Anti-Dumping Commission Report No. 223* (REP 223), in which it outlines the investigation carried out by the Commission and recommends the publication of a dumping duty notice in respect of the goods.

The Parliamentary Secretary has considered REP 223 and has accepted the Commissioner’s recommendations and reasons for the recommendations, including all material findings of fact or law on which the Commissioner’s recommendations were based, and particulars of the evidence relied on to support the findings.

Notice of the Parliamentary Secretary’s decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 20 November 2014.

In REP 223, it was found that:

- HRS exported to Australia was dumped with margins ranging from 2.2% to 19.48%;

- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Particulars of the dumping margins established and an explanation of the methods used to compare export prices and normal values to establish the dumping margins are also set out in the table below.

Country	Manufacturer/ exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	JFE Bars and Shapes Corporation	12.15%	Ad valorem	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s.269TACB(2)(a) of the <i>Customs Act 1901</i> .
	Uncooperative Exporters	12.23%	Ad valorem	
Korea	Hyundai Steel Company	2.52%	Ad valorem	
	Uncooperative Exporters	3.24%	Ad valorem	
Taiwan	TS Steel Co Ltd	4.68%	Ad valorem	
	Tung Ho Steel Enterprise Corporation	2.20%	Ad valorem	
	Uncooperative Exporters	7.89%	Ad valorem	
Thailand	Siam Yamato Steel Co Ltd	18.28%	Ad valorem	
	Uncooperative Exporters	19.48%	Ad valorem	

Measures apply to goods that are exported to Australia after publication of the Parliamentary Secretary's notice.

The effective rate of duty that has been determined is an amount worked out in accordance with the ad valorem duty method, as detailed in the table above. The investigation as it relates to Feng Hsin Iron and Steel Co Ltd was terminated on 31 October 2014 and no dumping duty is payable on imports to Australia manufactured by Feng Hsin Iron and Steel Co Ltd.

Affected parties should contact the Commission on 1300 884 159 or +61 2 6275 6066 (outside Australia) or at clientsupport@adcommission.gov.au for further information regarding the actual duty liability calculation in their particular circumstance.

Any dumping securities that have been taken on and from 14 March 2014 will be converted to interim dumping duty.¹ Pursuant to section 12 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), conversion of securities to interim duty will not exceed the level of security taken. Importers will be contacted by the Regional Securities Officer in their respective capital city detailing the required conversion action for each security taken.

To preserve confidentiality, the export price, normal value and non-injurious price applicable to the goods will not be published. Bona fide importers of the goods can obtain details of the rates from the Dumping Liaison Officer in their respective capital city.

¹ Within the time limitations of section 45 of the *Customs Act 1901*

Clarification about how measures securities are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at the Commission's website.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel in accordance with the requirements in Division 9 of Part XVB of the Act within 30 days of the publication of the Parliamentary Secretary's notice.

REP 223 has been placed on the Commission's public record, which may be examined at the Commission's office by contacting the Case Manager on the details provided below. Alternatively, the public record is available online at www.adcommission.gov.au.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 9244 8270, fax number +61 3 9244 8902 or operations3@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

20 November 2014