



Australian Government
Anti-Dumping Review Panel

ADRP REPORT No. 31

**ROD IN COILS EXPORTED FROM THE
REPUBLIC OF INDONESIA AND
TAIWAN**

19 January 2016

Review of a decision of the Parliamentary Secretary to the then Minister for Industry and Science to publish a dumping duty notice in relation to Rod in Coils exported from the Republic of Indonesia and Taiwan.

Table of Contents

ADRP REPORT No. 31	0
Abbreviations	2
Introduction	3
Background	3
Conduct of the review	4
Grounds for review	5
OneSteel Manufacturing Pty Ltd	5
PT Gunung Rajapaksi	7
Consideration of Grounds	7
OneSteel	7
All other exporters' normal values, export prices and dumping margins	7
Gunung	9
Did the dumped exports cause material injury?	10
ADC findings in REP 240	11
ADC Re-investigation Report 318	13
Assessment	14
Volume of exports	14
Pricing impact	16
Positive evidence and analysis	18
Recommendations/Conclusion	19

Abbreviations

ACBPS	Australian Customs and Border Protection Service
The Act	<i>Customs Act 1901</i>
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AUD	Australian Dollars
The Commissioner	the Commissioner of the Anti-Dumping Commission
Diler	Diler Demir Celik Sanayi ve Ticaret A.S.
FIS	Free into Store
FOB	Free on Board
Gunung	PT Gunung Rajapaksi
Habas	Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.
Indonesia	Republic of Indonesia
the investigation period	1 January 2013 — 31 December 2013
the injury period	1 January 2010 — 31 December 2013
IPP	import parity price
Ispat	PT Ispat Indo
OneSteel	OneSteel Manufacturing Pty Ltd
Quintain	Quintain Steel Co. Ltd
Reinvestigation report	Reinvestigation report No 318
REP 240	Report No 240
RIC	Rod in Coil
SEF 240	Statement of Essential Facts No 240
TER 240	Termination Report No 240
Turkey	Republic of Turkey
WTO	World Trade Organisation

Introduction

1. The following Applicants have applied, pursuant to section 269ZZC of the *Customs Act 1901* (the Act), for a review of a decision of the Parliamentary Secretary to the then Minister for Industry and Science (the Parliamentary Secretary) to publish a dumping duty notice in respect of Rod in Coils (RIC) exported from the Republic of Indonesia (Indonesia) and Taiwan:

OneSteel Manufacturing Pty Ltd (OneSteel)
PT Gunung Rajapaksi (Gunung).

2. The applications for review were accepted and notice of the proposed review as required by section 269ZZI was published on 21 August 2015. The Senior Member of the Panel has directed in writing pursuant to section 269ZYA that the Panel for the purpose of this review be constituted by me.

Background

3. On 24 February 2014, OneSteel lodged an application, under section 269TB of the Act, requesting that a dumping duty notice be published with respect to RIC exported from Indonesia, Taiwan and Turkey. This application was accepted and on 10 April 2014 an investigation was initiated by the Commissioner of the Anti-Dumping Commission (the ADC). On 2 March 2015 the ADC made a Preliminary Affirmative Decision (PAD) in respect of RIC exported from Indonesia (except by PT Ispat Indo (Ispat)) and Taiwan.¹ In addition, on 2 March 2015 the Statement of Essential Facts No 240 (SEF 240) was published by the Commissioner indicating that he proposed to terminate part of the investigation in respect to all exporters from Turkey, and by Ispat from Indonesia, and recommend to the Parliamentary Secretary that a dumping duty notice be published in respect of RIC exported to Australia from Indonesia (except by Ispat) and Taiwan.²
4. A Termination Report 240 (TER 240) was published on 14 May 2015, which terminated part of the investigation in respect of RIC exported by Ispat from Indonesia and from Turkey. The final report on RIC to the Parliamentary Secretary was made by the ADC in June 2015 (REP 240).³ The ADC recommended to the Parliamentary Secretary that a dumping duty notice be published in respect of RIC exported to Australia from Indonesia (except by Ispat) and Taiwan. The Parliamentary Secretary accepted this recommendation and a dumping duty notice was published on 17 June 2015 (the Dumping Duty Notice).⁴

¹ Preliminary Affirmative Determination Report 240 dated 2 March 2015 and ADN 2015/23 refers

² Statement of Essential Facts Report No. 240 dated 2 March 2015

³ ADC Report No. 240 published 17 June 2015

⁴ Public Notice dated 3 June 2015 and published on 17 June 2015

Conduct of the review

5. In accordance with section 269ZZK(1) of the Act, the Panel must recommend that the Minister (in this case, the Parliamentary Secretary) either affirm the decision under review or revoke it and substitute a new specified decision. In undertaking the review, section 269ZZ requires the Panel to determine a matter required to be determined by the Minister in like manner as if it was the Minister, having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
6. In carrying out its function the Panel is not to have regard to any information other than to “relevant information” as that expression is defined in section 269ZZK(6)(a), that is, information to which the ADC had, or was required to have, regard in reporting to the Minister.⁵ In addition to relevant information, the Panel is only to have regard to conclusions based on relevant information that is contained in the application for review and any submissions received under section 269ZZJ.⁶
7. Unless otherwise indicated in conducting this review I have had regard to the applications (including documents submitted with the applications) and to the submission received pursuant to section 269ZZJ insofar as it contained conclusions based on relevant information. I have also had regard to REP 240 (and information relevant to the review which was referenced in REP 240) and to SEF 240 (and to documents referenced in SEF 240).
8. After the applications for review of the Parliamentary Secretary’s decision were accepted by the Panel, the ADC was asked to provide comments on the grounds raised in the applications for review.⁷ The response from the ADC was received on 11 September 2015.⁸ Both the request to the ADC and the response were made publicly available. I have had regard to the response only to the extent that the ADC has identified information to which it had regard in making its recommendation to the Parliamentary Secretary and which it considered responsive to the claims made by the Applicants.
9. The following submissions were received pursuant to section 269ZZJ:
 - Submission from J. Bracic and Associates made on behalf of Gunung dated 20 September 2015.⁹
 - Submission from OneSteel dated 18 September 2015.

⁵ s269ZZK(6) of the Act

⁶ S269ZZK(4) of the Act. I note that section 269ZZK(4) was amended by *Customs Amendment (Anti-Dumping Measures) Bill (No 1) 2015*. These amendments came into force on 2 November 2015 and apply only to Reviewable Decisions made on or after that date. Accordingly, they do not apply to the present review and I have not applied them.

⁷ Letter from the Anti-Dumping Review Panel to the ADC dated 21 August 2015

⁸ Letter and attachments from ADC dated 11 September and received by email on 11 September 2015

⁹ Letter from J. Bracic and Associates dated 20 September 2015

10. The submission made by OneSteel was received by the Panel on 9 October 2015 having been emailed on 18 September 2015 to the incorrect, but previously correct, email address for the Anti-Dumping Review Panel (ADRP) Secretariat.¹⁰ Section 269TN provides the Panel with discretion to do all things necessary or convenient with the performance of its functions. I have decided to accept this submission under this provision.

11. I required the ADC to re-investigate the finding that RIC exported from Indonesia (except by Ispat) had caused material injury to the Australian industry producing like goods.¹¹ I requested the ADC to consider:

- (a) the impact of the local price premium in the degree of undercutting during the investigation period;
- (b) the volume and price impact of un-dumped imports on injury; and
- (c) the impact of the dumping margin on pricing in the Australian market during the investigation period.

In particular, the re-investigation was asked to pay attention to the levels and trends relating to prices and volumes between dumped and un-dumped exports. The ADC sought and was granted an extension to undertake the re-investigation.

12. A re-investigation report was provided to me on 22 December 2015.¹² A copy of this report is at Attachment A. Pursuant to section 269ZZK(4A) of the Act, I have had regard to the re-investigation report.

Grounds for review

OneSteel Manufacturing Pty Ltd

13. The grounds upon which OneSteel argued that the decision of the Minister was not the correct or preferable decision were:

- (a) The form of the anti-dumping measures applicable to Indonesia and Taiwan had been applied on the basis of an *ad valorem* method; and
- (b) The decision to determine normal values for “uncooperative exporters” for Indonesia and Taiwan. OneSteel contends that “uncooperative exporters” should not be assigned the same normal values, exports prices and dumping margins as cooperative exporters. In particular, that the normal value assigned to such exporters should not include the same adjustments under section 269TAC(8) as those granted to cooperative exporters.

Ad valorem method

14. An issue arises with the first ground outlined in OneSteel’s application. The Ministerial decisions which can be reviewed by the Panel are limited to those

¹⁰ Letter from OneSteel dated 18 September 2015 emailed to the ADRP Secretariat on 9 October 2015

¹¹ Letter to the ADC dated 16 October 2015

¹² Re-investigation Report 318 dated 22 December 2015

decisions set out in section 269ZZA of the Act. In this case, the review is of a decision of the Parliamentary Secretary to issue a dumping duty notice under sections 269TG(1) and (2) of the Act. The preliminary issue is whether or not the decision made with respect to the form of the anti-dumping measures is part of the reviewable decision, namely the decision to issue the Dumping Duty Notice. OneSteel has provided confidential independent legal advice which suggests that the consideration of the form of measures is within the jurisdiction of the reviewable decision that the ADRP can consider.

15. OneSteel contends that instead of using the *ad valorem* method for the imposition of dumping duties on exports from Indonesia (except by Ispat) and Taiwan, the ADC should have recommended that the measures be applied to such exports using the combination method.
16. OneSteel noted that the ADC commented in REP 240 Section 11.3.,
*In determining the form of measures ... The Commission notes that the RIC displayed considerable price volatility over the investigation period ... The Commission anticipates that the RIC market will continue to demonstrate price volatility, and is satisfied that an ad valorem duty is the most appropriate form of duty ... The Commission is of the view that a combination method is not appropriate in this environment as it become less effective when a market experiences rising prices and punitive when the market experiences falling prices. The ad valorem method avoids these effective rate impacts.*¹³
17. OneSteel contends that the *ad valorem* type of measure is easily susceptible to circumvention and provides its rationale for this view. Further, it suggests that “*the intended effect of anti-dumping measures is to ensure export prices are non-injurious to the effected [sic] Australian industry*”.¹⁴
18. An extract from ADRP Report No 16¹⁵ dealing with the issue of whether the Panel has power to review the decision about the form of anti-dumping measures states,
“... the various methods by which the dumping duties can be imposed are set out in the Customs Tariff (Anti-Dumping) Regulation 2013. A decision as to which of those methods are to be applied is made by the Minister pursuant to section 8(5) of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act). Thus the decision with respect to the use of the ad valorem method was one made under section 8(5) of the Dumping Duty Act and not under section 269TG (1) or (2) of the Act. As a result, the decision is not part of the reviewable decision and the Panel has no power to review it.”
19. I have found no reason to disagree with the conclusions reached in relation to this issue in ADRP Reports No 16 and 20. Accordingly, I find that the Panel has no power to review the decision to use the *ad valorem* method to calculate the dumping duty, since it is not part of the Reviewable Decision.

¹³ ADC Report No 240 published 17 June 2015 p 65

¹⁴ OneSteel review application pp 5–6

¹⁵ ADRP Report No 16 paragraph 43

PT Gunung Rajapaksi

20. The grounds upon which Gunung argue that the decision of the Minister was not correct and preferable are:

- (a) Lack of positive evidence demonstrating a link between dumped exports and injury suffered by the Australian industry;
- (b) Failure to properly isolate and distinguish factors other than the dumped exports;
- (c) Failure to ensure that injury caused by other factors are not attributed to the dumped exports; and
- (d) Lack of evidence demonstrating that injury attributable to the dumped exports is material.

Consideration of Grounds

OneSteel

21. As noted above, the Panel does not have the power to review decisions under section 8(5) of the Dumping Duty Act. This matter has not been further considered. Outlined below is the second of the grounds submitted by OneSteel.

All other exporters' normal values, export prices and dumping margins

22. OneSteel submits that the dumping margins applied to "uncooperative exporters" from Indonesia (other than Ispat) and Taiwan are not correct or preferable and should be amended to not include section 269TAC(8) adjustments. OneSteel considers it is an error to use the same dumping margins for cooperative as uncooperative exporters. Particulars for the dumping margins established for RIC exported from Indonesia (other than by Ispat) and Taiwan¹⁶ are as follows:

Country	Exporter/Manufacturer	Dumping Margin and Effective Rate of Duty
Indonesia	PT Gunung Rajapaksi	10.1%
Indonesia	All other exporters	10.1%
Taiwan	Quintain Steel Co Ltd	2.7%
Taiwan	All other exporters	2.7%

23. OneSteel submits that the correct or preferable decision should be to establish the normal value for "uncooperative exporters" excluding section 269TAC(8) adjustments, thereby increasing the normal values and consequential dumping margins.

¹⁶ ADN 2015/76

24. In REP 240 the ADC indicated it had found two exporters from Indonesia and one exporter from Taiwan during the investigation period. As previously mentioned, one exporter (Ispat) from Indonesia was found to be not dumping.¹⁷
25. The ADC determined that after having regard to all relevant information, the export prices would be established under section 269TAB(3) and the normal values would be established under section 269TAC(6). Specifically, the amounts for all other exporters were established as the same amounts as for Gunung in Indonesia and Quintain in Taiwan. The ADC in its report noted that the only exporters identified during the investigation period for both Indonesia and Taiwan were cooperative, so there were no uncooperative exporters identified.
26. The ADC reiterated in its letter dated 11 September 2015 that there were no uncooperative exporters and that it may set the “all other exporters” rate at a level it considers reasonable in the circumstances of this particular case.¹⁸
27. As indicated in REP 240 and in the ADC letter dated 11 September 2015 referred to above, there were no uncooperative exporters. Accordingly, OneSteel’s contention that the same dumping margins should not be used for uncooperative as cooperative exporters is not applicable in this case. For this reason, it is also unnecessary to consider whether section 269TAC(8) adjustments should be made for uncooperative exporters. However, it would appear that OneSteel are seeking to have the “all other exporters” dumping margins for Indonesia and Taiwan treated as if there were uncooperative exporters. I have addressed this issue below.
28. The provisions relating to different categories of exporters are relevant in giving legislative context. Section 269TACAB of the Act specifically deals with the Dumping Duty Notice for different categories of exporters and provides that uncooperative exporters’ export price and normal value are to be assessed under sections 269TAB(3) and 269TAC(6) respectively. Residual exporters are dealt with under section 269TACAB(2), which provides, subject to certain conditions, that the export price and normal value cannot be less than in the case of the export price the weighted average of export prices of cooperative exporters, and in the case of the normal value cannot exceed the weighted average of cooperative exporter normal values. This does, however, reflect, through section 269TACAA, that sampling has been undertaken of a number of exporters.
29. The decision in *GM Holden Ltd v Anti-Dumping Commission* [2014]¹⁹ deals with, inter alia, the issue of residual exporters. While the issue being considered is different and the legislation has been amended since then, the reasoning regarding what is an uncooperative exporter and a residual exporter is useful in considering this ground. It is clear that there is a particular behaviour by uncooperative exporters that places their treatment under the legislation quite separate to “other exporters” as part of the investigation and decision process.

¹⁷ ADC Report 240 pp 35–38

¹⁸ ADC Letter dated 11 September 2015

¹⁹ *GM Holden Ltd v Commission of Anti-Dumping* [2014] FCA 708 4 July 2014 Federal Court 225 FCR 222 paras 189–225

30. I am also mindful that the ADC needs to consider all relevant information in assessing the dumping margins (and export prices and normal values) while ensuring an efficient and effective investigation process. Again, the use of the information of Gunung and Quintain meets this requirement.
31. OneSteel also raised the issue of whether adjustments under section 269TAC(8) should be allowed to establish the normal value for uncooperative exporters. As mentioned above, this case does not involve uncooperative exporters. It could equally be argued that given the situation of "all other exporters" that adjustments should be made in order to ensure that the comparison of export price and normal value is at the correct level. I think it appropriate to make adjustments to the normal value to ensure the comparison is of "like with like" and as previously stated, this is permissible when assessing normal value under section 269TAC(6).
32. Accordingly, I consider it reasonable for the ADC to have used the dumping margins (and export prices and normal values) established for Gunung and Quintain as the basis for "all other exporters" for Indonesia (other than for Ispat) and Taiwan. For this reason I do not consider the ground put forward by OneSteel has established that the decision of the Parliamentary Secretary was not the correct or preferable decision.

Gunung

33. Gunung seeks review on the basis that the findings of REP 240 did not demonstrate through positive evidence that the dumped exports caused material injury; and there was a failure to isolate injury from other factors and ensure that such factors were not attributed to the dumped exports.
34. Gunung correctly flags the relevant legislative provisions and also draws attention to the provisions in Article 3.1 of the World Trade Organisation (WTO) Anti-Dumping Agreement relating to positive evidence and an objective examination of the volume and prices.²⁰ Gunung also references a number of relevant WTO reports relating to injury and causal link in support of its position as follows:
- Appellate Body Finding in Mexico — Anti-Dumping Duties on Rice on the need for positive evidence;²¹
 - Appellate Body in US — Hot rolled steel on non-attribution of injury by other factors and assessing such factors separately and appropriately;²² and
 - Panel in EC — Salmon (Norway) the impact of a price premium.²³

²⁰ World Trade Organisation Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

²¹ Appellate Body Report, Mexico — Definitive Anti-Dumping Measures on Beef and Rice, WT/DS295/AB/R, para 204, p 69

²² Appellate Body Report, US — Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan, WT/DS184/AB/R, para 223, pp 74–75

²³ Panel report, European Communities—Anti-Dumping Measures on Farmed Salmon from Norway, WT/DS337/R, para 7.640 p 273

35. In its application, Gunung relies on sections 269TAE(2A) and 269TAE(2AA) dealing with injury caused by factors other than dumping not to be attributed to the dumped goods and material injury determination being based on facts and not merely on allegations, conjecture or remote possibility.
36. I have summarised the Gunung application grounds relating to whether dumped exports caused material injury into three themes, namely volume effect, price effect and positive evidence/other factors, though there are some overlaps between each of these themes. Outlined below are the reasons that I consider that the grounds put forward by Gunung demonstrate that the decision of the Parliamentary Secretary was not the correct or preferable decision.

Did the dumped exports cause material injury?

Volume effects

37. Gunung argue that its exports were only a small volume, approximately 1.1% of the total Australian market, in comparison to the other exports from Indonesia and in relation to all other non-dumped exports to Australia. In support of its argument it highlights that its exports decreased over the injury period, moved with the market trend and indeed decreased over the period that the Australian industry sales decreased. It claims that its exports have decreased by over █% since 2011, while the exports from Indonesia increased by over 500% during the injury period. It states that this means that its exports could not be causing injury.
38. It also flags that non-dumped exports represent over 88% of total imports, and suggests that in such circumstances it is reasonable to expect that in the absence of dumped exports by Gunung during the investigation period, these importers would likely have sourced RIC from existing or new non-dumped exports. It submits that the REP 240 assumes that the Australian industry's sales would have replaced sales made by Gunung and also suggests that in the absence of dumping by Gunung those export sales would have been replaced by alternative non-dumped export sources. Gunung considers this contradictory.
39. Gunung considers the ADC finding that dumped exports caused material injury in the form of lost sales and reduced market share is founded on the assumption that the Australian industry's sales would have replaced those by Gunung in a market unaffected by dumping and suggests that REP 240 provides no foundation for this assumption.

Price effects

40. Gunung contends that in relation to price effects, the ADC seemed to rely solely on its price undercutting analysis in establishing that the dumped exports caused material injury. Gunung is concerned that the ADC analysis is flawed and inadequate in isolating the impact from non-dumped sources and properly identifying the price effects attributable to dumped sources. It also suggests that there was inadequate analysis undertaken by the ADC of the local price premium as part of the price undercutting assessment in terms injury suffered by the Australian industry.

41. Gunung suggests that it was unreasonable for the ADC to expect that Gunung could achieve 10.1% higher prices given the availability of RIC available from non-dumped sources and likewise also expect the Australian industry would be able to achieve increases in its selling prices at least equal to the 10.1% dumping margin.

Positive evidence/Other factors

42. Gunung suggests that the ADC used the “but for” analysis based on the assumption that the Australian industry would have made the lost sales had imports not entered the Australian market at dumped prices without proper explanation.
43. Gunung contends throughout its application that there is a lack of positive evidence and analysis undertaken by the ADC in making its findings and in particular in relation to separately identifying the trends in pricing and volume as well as the impact of non-dumped imports and other factors on the injury analysis. It argues that although the ADC Report acknowledged that there was significant change and downturn in the market, it did not sufficiently analyse factors other than dumping in assessing material injury.

ADC findings in REP 240

44. The relevant findings by the ADC in REP 240 to support its findings regarding dumping causing material injury can be summarised as:
- The RIC is a highly price-sensitive market and relatively low volumes in price-sensitive markets can influence pricing and purchasing decisions.
 - OneSteel has lost sales volumes by which lower prices were successful in attracting customers and also in driving overall market prices lower during the negotiation phase of the RIC sales process.
 - Gunung’s monthly volumes were highest in the first half of the investigation period whereby its exports on a monthly basis accounted for up to 30% of all RIC imports into the Australian market. This was considered to be sufficient to impact on the market and its pricing.
 - There was sufficient evidence from the price undercutting analysis to show price undercutting by verified importers during the investigation period at an aggregate level. In particular, when individual sales on a price per unit were compared, it was found that there was undercutting of up to 17.85%.
 - In all comparisons of the weighted average selling prices by customer and by month at the customer level (customers purchasing from both OneSteel and importers), where comparisons are possible, the OneSteel price was undercut by importers for 21 of the 22 months with results ranging from -2 (not undercut) to 15.5 per cent.

- Those exporters found to be dumping consistently had lower price valuations than exporters found to be not dumping, with variances as high as -7.7 per cent.
- Price undercutting was consistently demonstrated for all customers and for all months over the investigation period.
- Price undercutting created a competitive benefit to importers of dumped goods and influenced pricing decisions for both dumping and non-dumping exporters and the Australian industry.
- OneSteel establishes its selling prices into the market on the basis of the price of imports.
- That factors other than dumping as required under section 269TAE(2A) had been considered by the ADC namely:
 - Un-dumped goods;
 - Effects of imports from other countries not subject to the investigation;
 - Competitiveness of the Australian industry;
 - Weakening demand;
 - Strengthening Australian dollar;
 - Initiation of the Carbon Tax; and
 - Efficiency of OneSteel operations,

and had not detracted from its assessment that dumping had caused material injury to the Australian industry. The ADC concluded that prices are lower than they may otherwise have been had RIC not been exported to Australia at dumped prices.

45. The ADC commented in REP 240 that it had received submissions from Gunung after the publication of SEF 240 concerning both volume and price effects and had considered these issues in making its final report.²⁴

46. In its letter dated 11 September 2015 in response to this review, the ADC further commented:

- Gunung's exports make up approximately 1.1% of the total Australian market; however, they represent a significant portion of the trade exposed market;
- The ADC undertook a detailed analysis of the then Australian Customs and Border Protection Service (ACBPS) import database and established that Gunung was an exporter of shipments arriving in six of the 12 months of the investigation period, five of which were in the first half of the year;
- In the months where goods exported by Gunung arrived, those exports accounted for between 17 and 53 per cent of exports originating from Indonesia, and between 9 and 33 per cent of all goods imported regardless of origin;
- In the months where goods exported by Gunung arrived, the ACPBS data identified that Gunung export pricing was lower than the weighted average

²⁴ Report 240 pp 54–56

export pricing across all imports for the corresponding periods. Gunung's export pricing was lower than the Indonesian export pricing in several of the corresponding months, and on average was lower than Ispat's export prices over the investigation period;

- The dumped exports from Indonesia and Taiwan were cumulated for injury analysis purposes;
- Price undercutting analysis on a macro and micro level was undertaken and the ADC was satisfied that the presence of dumped goods in the market created a competitive benefit for the importers of those goods and influenced pricing decisions for exporters found not to be dumping as well as for the Australian industry; and
- Given the [REDACTED] IPP model, OneSteel would endeavour to protect its market share in the months where Gunung originated dumped goods of the volumes identified, by maintaining price competitiveness. Based on the monthly import volumes, any price undercutting would have a market pricing impact, both in terms of absolute price and price potential.

ADC Re-investigation Report 318

47. Following my request for re-investigation,²⁵ the ADC provided a re-investigation report and the following is an extract of the "Summary of Findings":²⁶

- "Based on the information available, it was not possible to accurately isolate and distinguish the impact of the local price premium on the undercutting found to exist during the investigation period. As a result, the impact of that premium on injury could not be determined (Section 4.2 refers);
- The overall reduction in volume and market share attributed to dumped goods from Indonesia and Taiwan during the investigation period was not consistent with a finding that OneSteel had suffered material injury due to dumping, particularly when taking into account that un-dumped imports from Indonesia and Turkey had significantly increased over that same period in a contracting market (Section 4.3.1 refers);
- There was insufficient evidence available to demonstrate that injury caused by the undercutting of OneSteel's prices from dumped imports, or the impact of those imports on OneSteel's IPP, was material (Section 4.3.2 refers); and
- Taking into account the price sensitivity of the Australian RIC market, the reduced demand for RIC and the impact of dumping margins on price, it could not be determined whether participants in the market would, in the absence of dumping, have achieved higher selling prices during the investigation period (Section 4.4 refers)."

²⁵ ADRP letter to the ADC dated 16 October 2015 seeking a re-investigation

²⁶ ADC Re-investigation report 318 dated 22 December 2015, p 3

Assessment

48. In presenting my assessment of the points raised by Gunung, I have dealt with each of the earlier mentioned themes.

Volume of exports

49. Gunung indicated that its exports had decreased between 2011 and 2013. This is correct. The ADC analysis in REP 240 correctly assessed the entire injury period which revealed that Gunung's exports had substantially increased between 2010 and 2013, albeit that the largest volume was in 2011. However, the Gunung volumes did decrease between 2011 and 2013, noting that the 2013 volumes were only significant when compared with 2010 volumes given the zero base of 2010.²⁷
50. The original investigation in REP 240 did note the reduced size of the Australian market, the significance of the trade-exposed market and the increase in un-dumped exports from Indonesia and Turkey. It also undertook specific analysis of market share during the investigation period and found that a not insubstantial amount of revenue was lost related to the sales by Gunung and Quintain (Taiwan).²⁸ It noted that dumped exports do not have to be the sole cause of injury but there must be clear evidence that material injury is caused by the dumped products.
51. However, REP 240 did not fully address the impact of the un-dumped volumes in the assessment of causal link. Accordingly, I requested a re-investigation of the volume impact during the investigation period in order to assess whether dumping had caused material injury.
52. The ADC in its re-investigation report found that during the investigation period, the Australian market for RIC had reduced by 4% and OneSteel's sales volumes had reduced by █%. The significant increase in volume in the investigation period related primarily to un-dumped exports from Indonesia (Ispat increased by █%), followed by dumped (but not subject to measures) and non-dumped exports from Turkey (increase of █%) and dumped exports from Taiwan (Quintain increased by █%).²⁹ However, Gunung's exports decreased by █% during this period. While the ADC correctly cumulated the exports from Gunung and Taiwan in REP 240, the issue of the significant volume of un-dumped and dumped (but not subject to measures) exports remained as an issue in my view in establishing a causal link between Gunung's dumped exports and material injury to OneSteel.

²⁷ ADC Report 240 section 8.5 pp 48–49

²⁸ REP 240 section 8.5.1 pp 48–49

²⁹ ADC Re-investigation report 318 p13

53. In terms of market share, the re-investigation report identified that, during the investigation period, OneSteel's market share in absolute terms reduced by ■■■%³⁰, while:
- Un-dumped imports from Ispat gained ■■■%;
 - Un-dumped imports and dumped imports from Turkey (but not subject to measures) gained ■■■%;
 - Dumped imports by Quintain gained ■■■%;
 - Dumped imports by Gunung reduced by ■■■%; and
 - All other imports reduced by ■■■%.
54. REP 240 also noted that there was significant loss of market share to other imports and in particular New Zealand product.³¹ The re-investigation report does not specifically deal with this, except to note that in absolute terms "all other imports" also lost significant market share.
55. Gunung considers that the ADC has assumed that the OneSteel sales would have replaced the Gunung dumped exports. The re-investigation report correctly, in my view, focused on the volume impact from the dumped exports during the investigation period. In so doing, it concluded that the overall reduction in volume and market share by dumped exports when contrasted with the significant increase of un-dumped exports by Ispat, and to a lesser extent from Turkey, made it difficult to conclude that the material injury suffered by OneSteel in the form of reduced market share was due to dumping.³²
56. REP 240 also compared the volume of Gunung's imports in the month of their arrival with other imports (as high as ■■■% of all imports) and found that in each month Gunung's volumes were a large proportion of imports and its export prices were lower than the weighted average export prices across all imports. However, the re-investigation report notes that dumped exports exported to Australia during the investigation period only occurred in six months and five of those were in the first half of the year. In ten of the twelve months, the volume of un-dumped goods from Indonesia, and Turkey, as well as dumped goods from Turkey (not subject to measures), was greater than from the dumped goods from Indonesia and Taiwan.³³ In such circumstances, it is difficult to conclude that the dumped exports from Gunung were causing material injury.
57. I agree with the findings in the re-investigation report that the overall reduction in volume and market share attributed to dumped exports from Indonesia and Taiwan is not consistent with a finding that OneSteel suffered material injury due to dumping but rather from the significant volume of un-dumped exports from Indonesia and un-dumped and dumped (but not subject to measures) exports from Turkey.

³⁰ ADC Re-investigation report 318 para 4.3.1

³¹ ADC Report 240 p 43

³² ADC RE-investigation Report p 15

³³ ADC Re-investigation Report p 14

Pricing impact

58. Gunung consider that the ADC relied solely on the price undercutting aspect to establish its assessment of material injury. Given the importance of the price undercutting analysis and pricing more generally to the finding of causation, I spent some time reviewing the analysis conducted by the ADC as well as the information provided on pricing included in the Australian industry verification report and subsequently the re-investigation report.
59. It has not been disputed that the RIC market is highly price sensitive. It is also evident from the analysis undertaken in REP 240³⁴ that OneSteel has suffered injury during the injury period, notwithstanding its cost saving initiatives implemented during this period.
60. The ADC in REP 240 correctly, in my view, states that it is possible to have a finding that relatively low volumes can influence pricing and purchasing decisions and cause material injury. The ADC highlighted the conclusions it had drawn in relation to the highly price sensitive nature of the RIC market in Australia³⁵ and the ADC also accepted that OneSteel established its prices on the basis of import parity.³⁶ There is substantial information in REP 240 regarding the RIC market in Australia and the pricing impact associated with imported goods.
61. While I agreed with the ADC finding that falling import prices can directly cause price injury resulting in lost revenue and profits and that the price of imports is the key determinant of OneSteel's selling price,³⁷ the key issue is whether the dumped exports caused material injury.
62. The ADC also found in REP 240 that the weighted average quarterly selling price per tonne for imported goods was between 4 and 10% below the OneSteel weighted average selling price and that the level of undercutting was highest in relation to dumped products. The ADC also compared some individual sales on a price per unit basis and found that there was undercutting of up to 17.85%. While there was substantial information provided in REP 240 regarding the price impact on OneSteel and the Australian RIC market, the causal link analysis was not sufficiently comprehensive regarding the exclusion of the impact of the non-dumped imports.
63. On this basis, I required a re-investigation to be undertaken to consider the:
- impact of the local price premium on undercutting;
 - volume and price impact of un-dumped exports on injury; and
 - impact of the dumping margin on pricing during the investigation period.

³⁴ ADC Report 240 Section 7.4 pp 44–46)

³⁵ ADC Report 240 Section 8.6.3 p 50

³⁶ ADC Report 240 Section 8.6.1

³⁷ ADC Report 240 Section 8.6.1 p 49

Local price premium

64. Gunung submits that the ADC price undercutting analysis is inadequate as it contains no specific consideration of the local price premium. It highlights the reference to the Panel in EC — Salmon (Norway).³⁸ The re-investigation report undertook additional analysis of this aspect. The ADC found that the higher price negotiated by OneSteel was part of its normal market pricing and [REDACTED] It was [REDACTED] ³⁹ **CONFIDENTIAL CUSTOMER PRICING DETAILS** in the price undercutting analysis. The ADC considers these circumstances are distinguishable from the Farmed Salmon Panel Report as in that case the domestic product was known to obtain a clear and identifiable premium of 12%.

65. The explanation provided by the ADC is reasonable and I agree with its finding that the premium is not a specific margin but part of OneSteel [REDACTED]. **CONFIDENTIAL PRICING DETAILS** In these circumstances, the explanation provided deals with the issue that Gunung has identified, that is, its impact has already been assessed in the price undercutting analysis. This has no further significance given my other conclusions regarding price impact.

Price impact of dumped and un-dumped imports

66. The re-investigation report reconsidered the price undercutting analysis of dumped and non-dumped goods during the investigation period, noting that sales by Quintain (Taiwan) were excluded, [REDACTED] and sales of un-dumped products by Habas (Turkey) [REDACTED].⁴⁰ **CONFIDENTIAL IMPORT DETAILS**

67. The comparison of aggregate weighted average FIS prices revealed that while Gunung exports were sold in Australia at prices that undercut OneSteel prices by between [REDACTED]% to [REDACTED]% for three months of the investigation period, un-dumped Ispat products were sold in Australia at prices that undercut OneSteel by between [REDACTED]% and [REDACTED]% for 11 months of the investigation period. In addition, dumped Diler products (not subject to measures) undercut OneSteel by between [REDACTED] and [REDACTED]% for two months of the investigation period.⁴¹

68. Further comparison of weighted average FIS prices for selected customers in a manner similar to that undertaken in the original investigation in REP 240 but with certain sales excluded due to being outside the investigation period revealed that:

- Dumped Gunung products undercut OneSteel by [REDACTED]% in one month and [REDACTED]% in one other month, with the volume of goods attributed to these transactions accounting for 2% of total imports; and

³⁸ Panel Report EC — Anti-Dumping Measures on Farmed Salmon from Norway WT/DS337/R para7.640 p 273, ('the Farmed Salmon Panel Report')

³⁹ ADC Re-investigation Report 318 section 4.2, p 12

⁴⁰ ADC Re-investigation Report 318 p 15

⁴¹ ADC Re-investigation Report 318 p 16

- Ispat products undercut OneSteel prices by between ■% to ■%, in nine months of the investigation period, with volumes attributed to these transactions found to be 17% of total imports.⁴²

69. As stated previously, while the dumping does not need to be the sole cause of injury, it is necessary to have caused material injury. In the circumstances of the longer term instances of un-dumped Ispat products with rates of price undercutting at ■% **CONFIDENTIAL PRICING INFORMATION** to Gunung's and Gunung's price undercutting only occurring for a relatively short period in the investigation period, it is difficult to conclude that the Gunung dumped exports have caused material injury over the investigation period.

70. I requested that the ADC re-investigate the impact of the dumping margin on pricing. The ADC found that if the monthly prices for dumped Gunung exports (Indonesia) and Quintain (Taiwan) had been increased by the full amount of the dumping margin, prices of Gunung would have been ■%–■% greater than the corresponding prices of the un-dumped Ispat products and prices of Quintain (Taiwan) would have been up to ■% higher, or up to ■% lower, than the corresponding prices of Ispat un-dumped products. The ADC finding is that it is inconclusive whether, in the absence of dumping, the prices offered by exporters that were not dumping, that is, Ispat, would have also risen, thereby enabling OneSteel to increase its prices and reduce the injury it experienced.⁴³

71. This is clearly different to the original finding in REP 240 that indicated that the ADC was of the view that in the absence of dumping, prices achieved in the market, including OneSteel's, would have been higher by at least the dumping margin.⁴⁴

72. I agree with the Gunung contention that it is difficult to conclude that the Australian industry would have been able to achieve higher prices given the availability of non-dumped imports from Indonesia. Accordingly, I find that there is insufficient evidence to conclude that the price impact from dumped Gunung exports caused material injury to OneSteel.

Positive evidence and analysis

73. The earlier findings mentioned above in this report make it unnecessary to deal with the remaining grounds submitted by Gunung. However, I would note that I do not agree with Gunung's contention that the ADC used the "but for" approach in its analysis in REP 240.

74. Gunung also focuses on the requirement to have positive evidence and objective examination of whether the dumping caused material injury. It contends that insufficient analysis was undertaken in REP 240. It cites the requirements in Article 3.1 of the Anti-Dumping Agreement and the guidance on the meaning of positive

⁴² ADC Re-investigation Report 318 p 16

⁴³ ADC Re-investigation Report 318, p 19

⁴⁴ ADC Report 240 Section 8.6.3 p 50

evidence and objective examination provided in Appellate Body Report on US — Hot Rolled Steel.⁴⁵

75. The ADC re-investigation report has fine-tuned the analysis and I have dealt with the issues of whether the dumped exports caused material injury above.
76. Suffice to say that the ADC in REP 240 recognised its obligation to consider whether any injury to the Australian industry was being caused by factors other than the export of goods at dumped prices and not to attribute any such injury to the exportation of those goods. There was detailed description of a number of factors.⁴⁶ However, there was, in my view, insufficient analysis of the volume and price impacts of the un-dumped exports.
77. The further analysis undertaken in the re-investigation report found there was insufficient evidence to find that the price undercutting was caused by dumping and that the overall reduction in volume and market share attributed to dumped goods from Indonesia and Taiwan during the investigation period was inconsistent with a finding that OneSteel suffered material injury due to dumping.
78. In such circumstances, I agree with the grounds submitted by Gunung regarding the need to have clear and distinguishable evidence that the dumping caused material injury. It is clearly not an easy task, particularly in light of the highly price-sensitive nature of the market, the dynamic Australian market situation of RIC, the OneSteel IPP model, the nature of the trade exposed market of OneSteel and the level of un-dumped exports. However, this is the standard that must be obtained to demonstrate that dumping has caused material injury to the Australian industry. Therefore, I accept Gunung's grounds that material injury is unlikely to have been caused by its dumped exports.

Recommendations/Conclusion

79. Outlined above are the reasons that I am satisfied that the dumped exports of Rod in Coils from the Republic of Indonesia did not cause material injury to the Australian industry during the investigation period identified by the ADC. The applicant, PT Gunung Rajapaksi, has established that the decision of the Minister was not the correct or preferable decision.
80. In relation to the grounds raised by OneSteel,
- (a) The Panel does not have power to consider the form of measures used to calculate the dumping margin and effective rate of dumping duty, for the reasons set out paragraphs [14] to [19] above; and
 - (b) I reject OneSteel's contention that the Parliamentary Secretary erred in assigning 'all other exporters' the same normal value, export price and dumping margin as

⁴⁵ Appellate Body Report US — Hot Rolled Steel Panel (2001) p 192

⁴⁶ ADC Report 240 Section 8.9.4 pp 52–54

was assigned to cooperative exporters in Indonesia and Taiwan, for the reasons set out at paragraphs [22] to [32] above.

81. The findings in the Commissioner's reinvestigation report (REP318) concluded that "the overall reduction in volume and market share attributed to dumped goods from Indonesia **and Taiwan** during the investigation period was not consistent with a finding that OneSteel had suffered material injury due to dumping...." (REP318, p3) [bold emphasis added].
82. The issue of volume and market share was raised only in Gunung's application, and only in relation to goods exported from Indonesia. There is no application before me in relation to goods exported from Taiwan. For reasons as set out below I do not consider it is within the scope of my review to consider the issues relevant to the exports from Taiwan.
83. In an earlier report of the Panel,⁴⁷ the then Senior Member of the Panel made remarks about the task of the Panel in conducting a review with which I agree. I have repeated some of those remarks below as they are relevant to my approach in this current review:
11. *The Act does not set out in a comprehensive way what the task of the Panel is in conducting a review. Nicholas J comparatively recently considered the role of the Trade Measures Review Officer (TMRO) under an earlier statutory scheme for the review of Anti-Dumping and other decisions under the Act: Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs of the Commonwealth of Australia [2012] FCA 1192. His Honour noted at [32] there are authorities (indeed many) that the word "review" is not a precise term. What a review entails is to be ascertained by reference to the statutory framework creating the review process: see, as a recent example, The Pilbara Infrastructure Pty v Australian Competition Tribunal Ltd [2012] HCA 36.*
 12. *The Act does contain provisions that identify what the Panel can or should do in a review in certain respects. The first point to be noted, in relation to the review of a Ministerial decision (and I will confine the following remarks to such a review) is that the review has been preceded by what is likely to have been an extensive process of investigation and reporting by the Commissioner under Part XVB which, as to a similar earlier statutory scheme, has been described as a "detailed prescriptive regime": Pilkington (Australia) v Minister of State for Justice & Customs [2002] FCAFC 423 at [123].*
 13. *The Panel does not undertake its own investigation in the sense of gathering fresh information and is confined, as a broad generalisation, to the information that had been before the Commissioner: s.269ZZK(4) and (6). The Panel must, in the ordinary course, report to the Minister within 60 days of the public notification of the review (unless the time is extended by the Minister or reinvestigation has been requested under s.269ZZL). The practical effect of this time limit, having regard to the right of interested parties to make submissions within 30 days of the public notification, is that the Panel may well have only 30 days to undertake the review with the benefit of submissions. While the practice of interested parties cannot inform the proper construction of these provisions, the Panel's experience to date is that mostly submissions are in fact made on the thirtieth day after the public notification or shortly before. Presumably interested parties do this in order to avoid responsive (and probably critical) submissions by other interested parties.*
 14. *It seems to me that having regard to the fact that the Panel will ordinarily have to undertake a review in a comparatively short time frame against a background where the Commissioner will*

⁴⁷ Power Transformers exported from the Republic of Indonesia, Taiwan, The Kingdom of Thailand and the Socialist Republic of Vietnam (ADRP Report No 24).

have ordinarily undertaken an extensive process of investigation and reporting, and also having regard to the fact that the Panel can require the Commissioner to reinvestigate, the Panel's role in a review does not entail full reinvestigation of matters considered by the Commissioner and raised by interested parties in the application for review. The investigation by the Commissioner will often entail the evaluation by the Commissioner of material gathered in the investigation both from overseas and domestically. That evaluation may involve subsidiary conclusions or decisions involving assessment and judgement. I do not see the Panel's role as involving this type of evaluation afresh. Rather the Panel's role includes, by way of illustration, assessing whether there has been inappropriate reliance on particular data to the exclusion of other data, assessing whether relevant data has been ignored, assessing whether there has been miscalculations or the misconstruction or misapplication of the Act or relevant regulations.

84. In addition to the above remarks, in considering the scope of the Panel's review power it is relevant to consider that subdivision B of Division 9 of the Act prescribes a process for public notification of the review (section 269ZZI), and applications and submissions in relation to the review (section 269ZZX). The latter may be made by interested parties, certain relevant trade unions and persons using the relevant goods in manufacturing persons within 30 days of the publication of the notice of the review (section 269ZZJ). These provisions are directed to afford procedural fairness to parties who may be affected by the review recommendations. Applications are required to set out the grounds of review, a statement of what the applicant considers is the correct or preferable decision and a statement setting out how the grounds support the making of the proposed decision. The public notice of the review is required to set out the grounds in relation to which the review is to be conducted (section 269ZZI(2)(c)) and invite submissions from interested parties 'concerning the application' (section 269ZZI(2)(c)). There is no other provision in the Act (as it applies to this review) allowing the Panel to give further opportunity for submissions from interested parties once the 30 day submission period has passed. This prescriptive process for affording procedural fairness to parties possibly affected by the review would be frustrated if the Panel could of its own motion, without notification to the applicant or interested parties, consider grounds for review of the Reviewable Decision other than those set out in the applications before it.⁴⁸
85. Therefore I consider that my power of review in this matter extends to a consideration of the matters relevant to the grounds of review set out in the application before me; that is, matters relevant to the grounds raised in applications by Gunung and OneSteel. Further, in accordance with section 269ZZK(4) of the Act, I have had regard in this review only to information which was relevant information as defined in section 269ZZK(6). I have considered the grounds and information set out in the application made by the applicant subject to the constraints in sections 269ZZK(4) and (6).
86. As such, although REP318 makes findings in relation to the price and volume of goods exported from both Indonesia and Taiwan, my power of review does not extend to making recommendations about the Minister's decision as it relates to goods exported from Taiwan.

⁴⁸ A new s 269ZZHA allowing for the ADRP to hold conferences applies in relation to reviewable decisions made on or after 2 November 2015. That provision does not apply to this review and so I haven't considered any implication it might have for my views on the power of the ADRP to afford procedural fairness.

87. Pursuant to section 269ZZK(1), I recommend to the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science that she revoke the reviewable decision and substitute a new decision not to publish a dumping duty notice in respect of exports for Rod in Coils from the Republic of Indonesia.



Jaclyne Fisher
Member
Anti-Dumping Review Panel

19 January 2016