



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

***CUSTOMS ACT 1901 - PART XVB***

# **STATEMENT OF ESSENTIAL FACTS NO. 345**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO  
CERTAIN HOT ROLLED STRUCTURAL STEEL SECTIONS  
EXPORTED FROM TAIWAN  
BY  
TUNG HO STEEL ENTERPRISE CORPORATION**

**8 August 2016**

**CONTENTS**

**CONTENTS..... 2**

**ABBREVIATIONS..... 3**

**1 SUMMARY ..... 4**

1.1 INTRODUCTION ..... 4

1.2 LEGISLATIVE BACKGROUND..... 4

1.3 PRELIMINARY FINDINGS..... 5

1.4 PROPOSED RECOMMENDATION ..... 5

**2 BACKGROUND..... 6**

2.1 APPLICATION AND INITIATION ..... 6

2.2 EXISTING MEASURES ..... 6

2.3 CONCURRENT REVIEW OF MEASURES RELATING TO HRS ..... 7

2.4 REVIEW PROCESS ..... 7

2.5 RESPONDING TO THIS SEF..... 9

**3 THE GOODS AND LIKE GOODS..... 11**

3.1 PRELIMINARY FINDINGS..... 11

3.2 LEGISLATIVE FRAMEWORK ..... 11

3.3 THE GOODS SUBJECT TO THE ANTI-DUMPING MEASURES ..... 11

3.4 TARIFF CLASSIFICATION..... 12

3.5 LIKE GOODS PRODUCED BY THE AUSTRALIAN INDUSTRY ..... 12

3.6 LIKE GOODS PRODUCED AND SOLD IN TAIWAN BY TUNG HO STEEL ..... 12

**4 EXPORTER INFORMATION..... 13**

4.1 FINDINGS..... 13

4.2 EXPORTER QUESTIONNAIRE ..... 13

4.3 ACCURACY, RELEVANCE AND COMPLETENESS OF INFORMATION SUPPLIED BY TUNG HO STEEL..... 13

4.4 AUSTRALIAN BORDER FORCE DATABASE ..... 13

**5 INFORMATION PROVIDED BY AUSTRALIAN INDUSTRY..... 14**

5.1 SUBMISSION REGARDING MODEL MATCHING..... 14

5.2 THE COMMISSION’S APPROACH TO MODEL MATCHING ..... 14

5.3 SUBMISSION REGARDING FORM OF MEASURES ..... 14

5.4 THE COMMISSION’S APPROACH TO FORM OF DUTY ..... 15

**6 VARIABLE FACTORS – DUMPING DUTY NOTICE..... 17**

6.1 FINDINGS..... 17

6.2 EXPORT PRICE ..... 17

6.3 NORMAL VALUE ..... 17

6.4 DUMPING MARGIN..... 18

**7 NON-INJURIOUS PRICE..... 19**

7.1 GENERAL ..... 19

7.2 ORIGINAL INVESTIGATION ..... 19

7.3 ASSESSMENT OF THE NIP..... 19

**8 FINDINGS AND PROPOSED RECOMMENDATIONS ..... 20**

8.1 FINDINGS..... 20

8.2 PROPOSED RECOMMENDATION ..... 20

8.3 EFFECT OF THE REVIEW..... 20

**9 LIST OF APPENDICES AND ATTACHMENTS..... 21**

**ABBREVIATIONS**

ABF	Australian Border Force
the Act	The <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Tung Ho Steel Enterprise Corporation or Tung Ho Steel
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to manufacture
CTMS	Cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Dumping Duty Regulation	<i>Customs Tariff (Anti- Dumping) Regulation 2013</i>
EPR	Electronic Public Record
the goods	the goods the subject of the application (also referred to as the goods under consideration)
HRS	Hot rolled structural steel sections
NIP	Non-injurious price
the Parliamentary Secretary	The Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 223	Anti-Dumping Commission Report No. 223
Review period	1 January 2015 to 31 December 2015
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative costs

# 1 SUMMARY

## 1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)<sup>1</sup> in relation to a review of the anti-dumping measures applying to certain hot rolled structural steel sections<sup>2</sup> (HRS) exported to Australia from Taiwan.

This review of measures is in response to an application from Tung Ho Steel Enterprise Corporation (referred to as the applicant or Tung Ho Steel) for a review of the anti-dumping measures (in the form of a dumping duty notice) applying to HRS exported to Australia from Taiwan in so far as the anti-dumping measures affect the applicant.

The application for review is based on a change in the variable factors<sup>3</sup> relevant to the taking of the anti-dumping measures in relation to the applicant. The applicant claims that its normal value and export price of the goods have changed from the time when the original investigation was conducted.

## 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>4</sup> sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the measures covered by the application.<sup>5</sup>

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Parliamentary Secretary allows, place on the public record a statement of the essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary in relation to the review of measures.<sup>6</sup>

---

<sup>1</sup> The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

<sup>2</sup> Refer to section 3.3 of this report for a full description of the goods.

<sup>3</sup> Subsection 269T(4E).

<sup>4</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

<sup>5</sup> Subsection 269ZC(4).

<sup>6</sup> Subsection 269ZD(1).

### **1.3 Preliminary Findings**

The Commissioner finds that, in relation to exports of HRS to Australia from Taiwan by Tung Ho Steel during the review period (1 January 2015 to 31 December 2015):

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- HRS exported to Australia by Tung Ho Steel was not dumped.

### **1.4 Proposed recommendation**

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Tung Ho Steel as if different variable factors had been ascertained.

## **2 BACKGROUND**

### **2.1 Application and initiation**

On 21 March 2016, Tung Ho Steel lodged an application requesting a review of the anti-dumping measures as they apply to its exports of HRS to Australia from Taiwan. In its application, Tung Ho Steel claimed that the variable factors relevant to the taking of the anti-dumping measures have changed.

Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to HRS exported to Australia from Taiwan in so far as the anti-dumping measures affect the applicant. Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2016/43, which was published on the Anti-Dumping Commission's (the Commission's) website on 18 April 2016.

Consideration Report No. 345 (CON 345) was published on the Commission's website detailing the reasons for not rejecting the application.

### **2.2 Existing measures**

On 24 October 2013, the Commissioner initiated a dumping investigation into HRS exported to Australia from Japan, the Republic of Korea (Korea), Taiwan and the Kingdom of Thailand (Thailand) following an application lodged by OneSteel Manufacturing Pty Ltd (OneSteel), a manufacturer of HRS in Australia.

In that investigation (Investigation 223), and as outlined in Report No. 223 (REP 223),<sup>7</sup> it was found that:

- the goods exported to Australia from Japan, Korea, Taiwan and Thailand were dumped, with margins ranging from 2.20 to 19.48 per cent;
- 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 for each of the exporters, and the effective rates of duty for that investigation, are set out in the following table:

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
	Uncooperative Exporters	12.23%	Ad valorem	
Korea	Hyundai Steel Company	2.52%	Ad valorem	
	Uncooperative Exporters	3.24%	Ad valorem	

<sup>7</sup> Electronic Public Record (EPR), document number 2213/098 refers.

## PUBLIC RECORD

Taiwan	TS Steel Co Ltd	4.68%	Ad valorem	investigation period in terms of s.269TACB(2)(a) of the <i>Customs Act 1901</i> .
	Tung Ho Steel Enterprise Corporation	2.20%	Ad valorem	
	Uncooperative Exporters	7.89%	Ad valorem	
Thailand	Siam Yamato Steel Co Ltd	18.00% <sup>8</sup>	Ad valorem	
	Uncooperative Exporters	19.48%	Ad valorem	

Figure 1 – dumping margins

The findings and recommendations in REP 223 were provided to the then Parliamentary Secretary to the Minister for Industry (the then Parliamentary Secretary), recommending the publication of a dumping duty notice in respect of the goods. Notice of the then Parliamentary Secretary's decision to accept the recommendations in REP 223 was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette*. Interested parties were also advised of this outcome in Anti-Dumping Notice No. 2014/127 on 20 November 2014.<sup>9</sup>

For the purposes of this review, the current notice is the dumping duty notice published on 20 November 2014.

### 2.3 Concurrent review of measures relating to HRS

On 23 March 2016, the Commission received an application for a review of measures on HRS exported from the Kingdom of Thailand by Siam Yamato Steel Co. Ltd (SYS).<sup>10</sup> Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to HRS exported to Australia from Thailand in so far as the anti-dumping measures affect SYS (EPR 346 refers).

### 2.4 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,<sup>11</sup> or the Parliamentary Secretary may request that the Commissioner conduct,<sup>12</sup> a review of those measures if one or more of the variable factors has changed.

The Parliamentary Secretary may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the notice

---

<sup>8</sup> As varied by the then Parliamentary Secretary to the Minister for Industry and Science on 7 August 2015, following the recommendation of the Anti-Dumping Review Panel. See <http://www.adreviewpanel.gov.au/CurrentReviews/Documents/HRSSS%20Parliamentary%20Secretary%27s%20Decision.pdf>

<sup>9</sup> As advised in ADN 2014/121 the investigation as it related to HRS exported by Feng Hsin Iron & Steel Co Ltd from Taiwan (FHS) was terminated on 31 October 2014. As such the anti-dumping measures do not apply to HRS exported by FHS.

<sup>10</sup> Notice of the initiation of this review was made in Anti-Dumping Notice No. 2016/43.

<sup>11</sup> Subsection 269ZA(1).

<sup>12</sup> Subsection 269ZA(3).

## PUBLIC RECORD

imposing the original anti-dumping measures or the notice(s) declaring the outcome of the last review.<sup>13</sup>

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review and report to the Parliamentary Secretary on the review of the anti-dumping measures.<sup>14</sup>

During the course of a review, the Commissioner will examine whether the variable factors have changed.

Variable factors in this particular review are a reference to:

- the ascertained export price; and
- the ascertained normal value.

Within 110 days of the initiation of a review, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.<sup>15</sup>

For this review, in making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:<sup>16</sup>

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.<sup>17</sup>

At the conclusion of the review, in respect of the dumping duty notice, the Commissioner must provide a final report. In his final report he must make a recommendation to the Parliamentary Secretary that the dumping duty notice:<sup>18</sup>

---

<sup>13</sup> Subsection 269ZA(2)(a).

<sup>14</sup> Subsection 269ZDA(1).

<sup>15</sup> Subsection 269ZD(1).

<sup>16</sup> Subsection 269ZDA(3)(a).

<sup>17</sup> Subsection 269ZDA(3)(b).

<sup>18</sup> Subsection 269ZDA(1)(a).



## PUBLIC RECORD

- remains unaltered; or
- have effect as if different variable factors had been ascertained.

Following the Parliamentary Secretary's decision, the Parliamentary Secretary must give notice of the decision.<sup>19</sup>

### 2.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary.

The SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the dumping duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

Interested parties are invited to lodge written submissions in response to this SEF no later than the close of business on **29 August 2016**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.<sup>20</sup>

The Commissioner must report to the Parliamentary Secretary on or before 20 September 2016.

Submissions should preferably be emailed to [operations5@adcommission.gov.au](mailto:operations5@adcommission.gov.au).

Alternatively, submissions may be sent to fax number +61 3 8539 2499, or posted to:

The Director – Operations 5  
Anti-Dumping Commission  
GPO Box 1632  
Melbourne VIC 3001  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. The public record can be viewed online at [www.adcommission.gov.au](http://www.adcommission.gov.au).

---

<sup>19</sup> Subsection 269ZDB(1).

<sup>20</sup> Subsection 269ZDA(4).

## **PUBLIC RECORD**

Documents on the public record for this review (EPR 345) should be read in conjunction with this SEF.

## 3 THE GOODS AND LIKE GOODS

### 3.1 Preliminary Findings

The Commissioner finds that HRS manufactured by the Australian industry are 'like' goods as defined in subsection 269T(1) of the Act.

### 3.2 Legislative framework

The Commissioner must be satisfied that 'like' goods to the goods the subject of the anti-dumping measures are produced in Australia.

In making this assessment, the Commissioner must first determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) defines like goods as:

*"...means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration".*

Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with subsection 269T(3), for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia.

### 3.3 The goods subject to the anti-dumping measures

The goods to which the current anti-dumping measures apply (the goods) are:

*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 leg 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 investigation.*

The measures do not apply to the following goods:

- *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*

## **PUBLIC RECORD**

- *sections manufactured from welded plate (e.g. welded beams and welded columns).*

### **3.4 Tariff classification**

Goods identified as hot rolled non-alloy steel sections (meeting the specified shapes and sizes set out above) are currently classified to the tariff subheading 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.

For the tariff subheadings outlined above, the general rate of duty is 5% for goods imported from Japan and imports from Korea, Taiwan and imports from Thailand are duty free.

Goods identified as hot rolled other alloy steel sections (meeting the specified shapes and sizes set out above) are classified to tariff subheading 7228.70.00 in Schedule 3 of the *Customs Tariff Act 1995*. The applicable duty rate for imports from Japan, Korea and Taiwan is 5%, and imports from Thailand are duty free.

### **3.5 Like goods produced by the Australian industry**

During the Investigation 223, the then Australian Customs and Border Protection Service found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods; and
- there was an Australian industry consisting of eight companies that produce like goods in Australia.

The Commission did not find any evidence to suggest that these findings had changed.

### **3.6 Like goods produced and sold in Taiwan by Tung Ho Steel**

Based on the information provided by Tung Ho Steel in its response to the exporter questionnaire and in the course of on-site verification, the Commission is satisfied that the HRS sold on the domestic market by Tung Ho Steel possess similar physical characteristics, has similar uses, and has similar manufacturing processes to the HRS subject to the dumping duty notice.

## **4 EXPORTER INFORMATION**

### **4.1 Findings**

The Commission is satisfied that the information provided by Tung Ho Steel for the purposes of this review is accurate, relevant and complete.

### **4.2 Exporter questionnaire**

The Commission provided Tung Ho Steel with an exporter questionnaire to complete.

Tung Ho Steel has provided detailed information and data in its response to the exporter questionnaire, including data relating to its export and domestic sales and cost to make and sell. Tung Ho Steel has also provided additional information when requested.

### **4.3 Accuracy, relevance and completeness of information supplied by Tung Ho Steel**

The Commission conducted an on-site verification of the information and data provided in Tung Ho Steel's response to the exporter questionnaire.

The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by Tung Ho Steel during this verification visit upon which the findings of this review are based.

The visit report contains further information on these matters. A copy of the visit report is available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

The Commission also compared the information provided by Tung Ho Steel in the review to information provided by it and verified in the original investigation and compared the data verified as part of two recent duty assessments covering over 10 months of the review period.

### **4.4 Australian Border Force Database**

The Commission compared Tung Ho Steel's export sales information to the data in the Australian Border force's (ABF's) import database. The Commission noted a small variance in the total quantity of shipments recorded in the information supplied by Tung Ho Steel with the data in the ABF database. The variance was considered to be immaterial.

## 5 INFORMATION PROVIDED BY AUSTRALIAN INDUSTRY

### 5.1 Submission regarding model matching

In respect of model matching, OneSteel submitted that, in relation to this review (and the concurrent review of measures of exports of HRS from SYS) that:

- the Commission should carefully reassess its model matching of steel grades; and
- If the Commission is to maintain a position to using test certificates rather than assessing the standards that goods are produced to then it is incumbent that the Commission compare all test certificates for domestic and export goods sold during the review period.

### 5.2 The Commission's approach to model matching

In Investigation 223, the Commission considered that standards governing the production of HRS may be an influential factor in demonstrating physical comparability of the goods. In order to take into account 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 considered that the actual physical specifications of products were more determinative in establishing physical likeness for like goods and consequently, normal values.<sup>21</sup> The Commission therefore relied on a sampling methodology of mill test certificates as part of the verification process.

For the purposes of this review and consistent with Investigation 223, the Commission has examined a number of mill test certificates pertaining to Tung Ho Steel's export and domestic sales. These certificates contain evidence of mechanical properties and chemical composition of the goods, which establish the actual physical specifications to which the goods are produced and sold. The Commission has also had regard to a number of other model-matching factors including production processes, in particular, whether goods were produced from the same semi-finished product, for example blooms and cost and selling price information.

### 5.3 Submission regarding form of measures

OneSteel has submitted that:

- the internal controls put in place by Tung Ho Steel to ensure that the export price remains above the domestic price for like goods demonstrates that the measures have been important and effective in preventing the injurious effects of dumping previously caused;
- the fact that Tung Ho Steel only implemented these internal controls after measures were imposed demonstrates the need for ongoing measures to apply; and

---

<sup>21</sup> REP 223, page 35.

- if the Commission determines a *de minimis* dumping margin, it must impose a variable rate of duty based on the ascertained export price of the goods used to calculate the *de minimis* dumping margin.

#### **5.4 The Commission's approach to form of duty**

The forms of duty available to the Parliamentary Secretary when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti- Dumping) Regulation 2013* (the Dumping Duty Regulation) and are as follows:

- combination of fixed and variable duty method ('combination duty');
- fixed duty method;
- floor price duty method; and
- ad valorem duty method.<sup>22</sup>

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others.

In considering which form of duty to recommend to the Parliamentary Secretary, the Commission has had regard to its published *Guidelines on the Application of Forms of Dumping Duty November 2013*<sup>23</sup> (the Guidelines), relevant factors in the HRS market and the particular circumstances of this review.

The fixed and ad valorem duty methods are operative where the ascertained export price and ascertained normal value result in a positive dumping margin calculation. As the Commission has preliminarily determined that the weighted average dumping margin for HRS exported to Australia by Tung Ho Steel in the review period was less than zero (a negative dumping calculation), the Commission views these forms of duty to be inappropriate in the present circumstances as they are unable to be implemented effectively.<sup>24</sup>

The Commission notes OneSteel's submission that, if Tung Ho Steel is found to have a *de minimis* dumping margin, a variable rate of duty be imposed based on the ascertained export price of the goods.

The combination duty method comprises two elements: the "fixed" duty element and the "variable" duty element. The variable component of the combination duty is set by reference to the ascertained export price. However, it would be inappropriate to impose a

---

<sup>22</sup> Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013*.

<sup>23</sup> Available at <http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsdumpingduty-November2013.pdf>

<sup>24</sup> In order to impose a fixed or ad valorem duty method, a positive dumping margin must be determined.

## PUBLIC RECORD

duty for exports that fall below the ascertained export price where the ascertained normal value is less than the ascertained export price (a situation of no dumping). To do so would lead to a situation where duties would be collected on exports that are not dumped. Furthermore, as the non-injurious price is set at the ascertained normal value, the lesser duty rule would prevent the imposition of measures above the non-injurious price.<sup>25</sup>

The floor price duty method sets a 'floor' – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the non-injurious price, whichever becomes applicable under the duty collection system. This duty method does not use an ascertained export price as a 'floor price'.<sup>26</sup>

---

<sup>25</sup> See section 7.1 below.

<sup>26</sup> See section 5(4) and 5(5) of the Customs Tariff (Anti-Dumping) Regulation 2013.



## 6 VARIABLE FACTORS – DUMPING DUTY NOTICE

### 6.1 Findings

The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to HRS exported to Australia by Tung Ho Steel have changed.

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Tung Ho Steel as if different variable factors, the export price and the normal value, had been ascertained.

### 6.2 Export price

The Commission followed the same methodology to ensure a consistent approach to ascertaining the variable factors.

The Commission considers that:

- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter; and
- the purchases of the goods by the importer were arms length transactions.

As such, export prices were established pursuant to subsection 269TAB(1)(a), using Tung Ho Steel's export invoice prices, excluding any part of that price that related to post-exportation charges.

The resulting ascertained export price for HRS exported by Tung Ho Steel has changed since the original investigation.

Details of export price calculations for HRS are at **Confidential Appendix 1.**

### 6.3 Normal value

Normal values were established in accordance with subsection 269TAC(1), using Tung Ho Steel's domestic invoice prices for like goods, by grade, shape and size, sold in the ordinary course of trade in arms length transactions.

As one model exported to Australia did not have enough domestic sales volume to meet the sufficiency test,<sup>27</sup> the visit team used the normal value of a model of similar size and shape with a very similar CTMS.

Adjustments to the normal value were made under subsection 269TAC(8) to ensure fair comparison with the export price. Adjustments made for the review of measures were consistent with the approach undertaken in respect of Tung Ho Steel at the time of the original dumping investigation.

---

<sup>27</sup> As per subsection 269TAC(14) of the Customs Act.

## **PUBLIC RECORD**

The resulting ascertained normal value for HRS exported by Tung Ho Steel has changed since the original investigation.

Details of normal value calculations for HRS are at **Confidential Appendix 2.**

### **6.4 Dumping margin**

The Commission compared the quarterly weighted average of export prices over the whole of the review period with the quarterly weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a) of the Act.

The Commission finds that HRS exported to Australia by Tung Ho Steel in the review period was not dumped.

Details of dumping margin calculations for HRS are at **Confidential Appendix 3.**

## 7 NON-INJURIOUS PRICE

### 7.1 General

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause material injury to an Australian industry producing like goods. The level of dumping duty imposed cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

Under section 8 of the *Customs Tariff (Anti-Dumping) Act 1975*,<sup>28</sup> the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury or a recurrence of the injury. Subsection 269TACA(a) of the Act identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to derive a NIP that is expressed in similar delivery terms to export price and normal value (e.g. FOB).

Where the NIP is lower than the normal value, the duty is calculated with respect to the difference between export price and NIP, thereby giving effect to the lesser duty rule.

### 7.2 Original investigation

In Investigation 223, the Commission considered that as there was no suitable method of determining the USP and so considered an alternative approach to establishing the NIP.

The Commission expressed the view that in a market unaffected by dumping, it is reasonable to expect that OneSteel would continue to set its prices with regard to benchmarked import prices. As the price of imports would be higher at least by the dumping margins found, it would be expected that OneSteel's prices would also be higher at least by the percentage of the dumping margin's found.

It was on this basis that the Commission considered that the NIP for each exporter, including Tung Ho Steel, would be a price equal to the respective normal value. As such, the lesser duty rule did not come into effect.

### 7.3 Assessment of the NIP

Industry and the applicant have not made submissions on the NIP during the course of the current review inquiry.

The Commission considers that the approach to determining the NIP in REP 223 remains valid for the purpose of this review.

---

<sup>28</sup> Subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*.

## 8 FINDINGS AND PROPOSED RECOMMENDATIONS

### 8.1 Findings

The Commissioner finds that, in relation to exports of HRS to Australia from Taiwan by Tung Ho Steel during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- HRS exported to Australia by Tung Ho Steel was not dumped.

### 8.2 Proposed recommendation

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Tung Ho Steel as if different variable factors had been ascertained.<sup>29</sup>

The Commissioner proposes to recommend that the ascertained normal values for HRS exported to Australia by Tung Ho Steel be set in accordance with the respective weighted average normal values used to calculate the dumping margin for the purposes of this review.

The Commissioner also proposes to recommend that the ascertained export prices and ascertained NIP for HRS exported by Tung Ho Steel be set in accordance with the weighted average normal values calculated for the purposes of this review.

Based on the information available at this stage of the review, the Commissioner proposes to recommend to the Parliamentary Secretary that the interim dumping duty payable is an amount which will be worked out in accordance with the floor price method pursuant to subsection 5(4) of the Dumping Duty Regulation. The dumping duty rate will be a specified (confidential) amount per tonne.

### 8.3 Effect of the review

The result of this recommendation is that Tung Ho Steel's exports of HRS will not attract interim duty as long as its export prices are at or above the floor price established by reference to the ascertained normal value during the review period. The interim dumping duty will be payable if the actual export price falls below the ascertained normal value.

A summary of the variable factors as they apply to Tung Ho Steel is at **Confidential Appendix 4**.

---

<sup>29</sup> Subsection 269ZDA(1)(a)(iii).

**9 LIST OF APPENDICES AND ATTACHMENTS**

Confidential Appendix 1	Export price calculation
Confidential Appendix 2	Normal value calculation
Confidential Appendix 3	Dumping margin calculation
Confidential Appendix 4	Summary of variable factors