



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 380

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
STEEL REINFORCING BAR**

**EXPORTED FROM SPAIN BY COMPAÑIA ESPAÑOLA
DE LAMINACION (CELSA BARCELONA)**

30 January 2017

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Celsa Barcelona	Compañía Española de Laminación, S.L
Nervacero	Nervacero S.A
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
INV 264 or 'original investigation'	<i>Anti-Dumping Investigation No. 264</i>
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
NIP	non-injurious price
OCOT	ordinary course of trade
OneSteel	OneSteel Manufacturing Pty Ltd (Administrators appointed)
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the then Parliamentary Secretary	the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
SEF	statement of essential facts
USP	unsuppressed selling price

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) in relation to a review of the anti-dumping measures applying to certain steel reinforcing bar (rebar) (also referred to as the goods) exported to Australia from Spain.^{1, 2}

This review was initiated on 13 October 2016 after a request was made by the Parliamentary Secretary that the Commissioner review the anti-dumping measures as they affect exports of the goods to Australia from Spain by Compañía Española de Laminación, S.L (Celsa Barcelona).³

The request for review is based on a change in the variable factors relevant to the taking of the anti-dumping measures in relation to Celsa Barcelona.⁴ The Parliamentary Secretary's request followed the publication of a notice on 14 July 2016 by the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary). The then Parliamentary Secretary decided, following a review by the Anti-Dumping Review Panel (ADRP), to revoke the original dumping duty notice as it applied to another exporter of the goods from Spain, Nervacero S.A (Nervacero).

The then Parliamentary Secretary's decision followed a finding in *ADRP Report No.34* that the original dumping duty notice should not have applied to exports of the goods by Nervacero. Given that the exports of the goods by Nervacero are now excluded from the dumping duty notice, and Celsa Barcelona's dumping margin was in the original investigation determined with reference to (amongst other things) Nervacero's export price and normal value, the variable factors ascertained for Celsa Barcelona have changed.

¹ 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. For the purposes of this decision the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

² Refer to section 3.3 of this report for a full description of the goods.

³ ADN 2016/106 refers.

⁴ The variable factors for a review of measures are set out in subsection 269T(4E) and are the normal value, export price and non-injurious price.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act) sets out, among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures.⁵

Subsection 269ZA(3) states that the Minister may, by notice in writing, request the Commissioner to undertake a review of anti-dumping measures if:

- (a) anti-dumping measures have been taken in respect of the goods; and
- (b) the Minister considers (either as a result of a recommendation from the Commissioner under subsection 269ZC(4) or on his or her own initiative) that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:
 - i. one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed; or
 - ii. the anti-dumping measures are no longer warranted.

If the Commissioner is requested by the Minister to undertake a review of anti-dumping measures, either as a result of a recommendation made to the Minister under subsection 269ZC(4) or otherwise, the Commissioner must publish a notice on the Anti-Dumping Commission's (the Commission) website indicating that it is proposed to review the measures covered by the request.⁶

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.⁷

1.3 Findings

The Commissioner finds that, in relation to rebar exported to Australia from Spain by Celsa Barcelona during the review period (1 July 2013 to 30 June 2014):

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the non-injurious price (NIP) has changed.

⁵ 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.

⁶ Subsection 269ZC(5).

⁷ Subsection 269ZD(1).

1.4 Proposed recommendation

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

2 BACKGROUND

2.1 Initiation

Following a request by the Parliamentary Secretary under subsection 269ZA(3), the Commissioner initiated a review of measures applying to the goods exported to Australia from Spain in so far as the anti-dumping measures affect Celsa Barcelona. The relevant dumping duty notice that imposed the anti-dumping measures was published on 19 November 2015.⁸ This notice was revoked and substituted following an ADRP review, for the reasons explained below in section 2.2.

Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2016/106, which was published on the Commission's website on 13 October 2016.

2.2 History of anti-dumping measures

Anti-Dumping Investigation No. 264

On 17 October 2014, following an application lodged by OneSteel Manufacturing Pty Ltd (OneSteel)⁹ representing the Australian industry, the Commissioner initiated an investigation into alleged dumping in respect of rebar exported to Australia from Republic of Korea (Korea), Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey. The investigation in *Anti-Dumping Commission Report No.264* (REP 264) found that rebar was exported to Australia from Korea, Singapore, Spain and Taiwan (with the exception of Power Steel Co. Ltd) at dumped prices and recommended that a dumping duty notice be issued to that effect. The then Parliamentary Secretary decided to accept the Commissioner's recommendation and her decision was published on 19 November 2015.¹⁰ The Commissioner also terminated part of the investigation relating to rebar exported from Malaysia, Thailand, Turkey and Power Steel Co. Ltd from Taiwan.

In REP 264 the Commissioner found that Celsa Barcelona and Nervacero from Spain were part of the same corporate group and should be treated as one entity for the purpose of imposing anti-dumping measures. The dumping margin applicable to both entities was determined to be 3.0 per cent.

ADRP Review No.34

On 6 January 2016 the ADRP published a notice regarding its intention to conduct a review of the then Parliamentary Secretary's decision to publish a notice imposing anti-dumping measures on rebar. The ADRP's notice was in response to applications received from OneSteel, Best Bar Pty Ltd and Nervacero.

⁸ The dumping duty notice was published on the Commission's [website](#).

⁹ Administrators were subsequently appointed in April 2016.

¹⁰ ADN 2015/133 refers.

PUBLIC RECORD

In *ADRP Report No.34*, the ADRP found that the then Parliamentary Secretary's decision was not the correct or preferable decision in relation to Nervacero. The ADRP found that separate dumping margins should have been calculated for Nervacero and Celsa Barcelona. Following this, a separate dumping margin calculated for Nervacero resulted in the ADRP finding that the investigation should have been terminated so far as it applied to Nervacero.

The ADRP therefore recommended that the then Parliamentary Secretary revoke the reviewable decision and substitute another decision, namely to issue a dumping duty notice in the same terms as that issued on 11 November 2015 but amended so as to exclude from the notice exports of rebar from Spain by Nervacero.

On 14 July 2016 the then Parliamentary Secretary published a notice of her decision to accept the ADRP's recommendation and revoked the original dumping duty notice and substituted another dumping duty notice in the same terms as the original notice but amended to exclude exports of the goods from Spain by Nervacero.

A consequence of the ADRP's recommendation, regarding the treatment of Nervacero only, is that the dumping margin currently applicable to Celsa Barcelona continues to be based on the combined sales and cost data of Celsa Barcelona and Nervacero. The dumping margin currently applicable to Celsa Barcelona is therefore not a reflection of what its dumping margin would have been had its variable factors been calculated using its own data.

Other cases

Further investigations concerning rebar exports to Australia include *Anti-Dumping Investigation 300*, *Subsidy Investigation 322* and *ADRP Review No.39*.

2.3 Review Process

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

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.¹¹

¹¹ Subsection 269ZD(1).

PUBLIC RECORD

For this review, in making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:¹²

- the request for the 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 this 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.¹³

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:¹⁴

- remains unaltered; or
- have effect in relation to a particular exporter as if different variable factors had been ascertained.

Following the Parliamentary Secretary's decision, the Parliamentary Secretary must give notice of the decision.¹⁵

For this review of measures, the review period is 1 July 2013 to 30 June 2014.

2.4 Approach to assessment of Celsa Barcelona

As mentioned in section 2.2, as a consequence of the Parliamentary Secretary's decision to accept the ADRP's recommendations and revoke the notice as it applies to Nervacero, the dumping margin for Celsa Barcelona is erroneously based on data which also includes that of Nervacero.

Given the ADRP's finding that, when treated on its own, Nervacero's dumping margin was below 2 per cent, it is likely that Celsa Barcelona's dumping margin would also be different. As a result, the approach to reviewing Celsa Barcelona's variable factors in this review will use the cost and sales data it provided to the Commission in the original investigation.

Since the data provided to the Commission was subject to verification in the original investigation, references in this report regarding observations which rely on this data are a reference to the verification findings published during the original investigation.

¹² Subsection 269ZDA(3)(a).

¹³ Subsection 269ZDA(3)(b).

¹⁴ Subsection 269ZDA(1)(a).

¹⁵ Subsection 269ZDB(1).

2.5 Submissions received regarding initiation of the review

2.5.1 Celsa Barcelona

Celsa Barcelona's 21 November 2016 submission calls for a cessation of this review. Celsa Barcelona submits that:

- the review is not a variable factors review in 'the sense understood by the legislation', but that the Commission is seeking to re-open matters that have already been finalised;
- the Commissioner has disregarded the proper purpose and function of the review;
- the variable factors have not changed, and hence the Commission has improperly initiated this review;
- the review period for the determination of variable factors is based on a period of review which is the same as the original investigation period and is therefore not contemporary; and
- the review unfairly targets Celsa Barcelona and will cause hardship to the company.¹⁶

2.5.2 OneSteel

In its submission of 10 January 2017, OneSteel expresses its support for the review by reiterating the Parliamentary Secretary's reasons for requesting the Commissioner to conduct the review.¹⁷

OneSteel also outlines how, as a consequence of revoking the dumping duty notice as it related to Nervacero's exports, the weighted average export price and normal value originally ascertained for Celsa Barcelona has changed. OneSteel's position on this particular issue is largely based on the treatment of Celsa Barcelona and Nervacero as a collapsed entity for the purpose of the original investigation, which, as a result of the Parliamentary Secretary adopting the ADRP's recommendations in *ADRP Report No.34*, no longer applies.

Lastly, OneSteel highlight that Celsa Barcelona's claims that the review will cause hardship to Celsa Barcelona ignores the role of the duty assessment process in Australia's anti-dumping system.

¹⁶ Public Record Item No.2

¹⁷ Public Record Item No.3

2.5.3 Commission's response to submissions

The Act does not provide the Commissioner with a discretion to reject a request by the Parliamentary Secretary to conduct a review under section 269ZA(3). The Parliamentary Secretary set out his reasons for the request and provided an opinion as to the change that has occurred to the variable factors, and the Commissioner initiated this review of measures in order to ascertain whether the variable factors have indeed changed. A request to the Commissioner by the Parliamentary Secretary is in contrast to an application made to the Commissioner requesting a review under section 269ZA(1) which does allow the Commissioner to reject an application under section 269ZC(1).

Celsa Barcelona submits that the Commissioner's decision to initiate this review of measures be declared void *ab initio* and that the review cease. There is no power in Division 5 of Part XVB for the Commissioner to terminate the review of measures, and the submission does not identify any authority to support the view that the decision to initiate the review be declared void.

The Commission notes Celsa Barcelona's submission that the period of data collection for dumping investigations should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable. The submission refers to a recommendation of the World Trade Organization Committee on Anti-Dumping Practices, which was adopted in 2000. Celsa Barcelona seeks to contrast the recommendation with this review of measures, which relies on data collected for the review period of 1 July 2013 to 30 June 2014. This data was collected more than twelve months before the initiation of this review.

The Commission notes that this recommendation related to investigations rather than a review of measures, and that this recommendation was not incorporated into Australian law. Division 5 of Part XVB does not require data relevant to a review to be collected in a particular period, or for a review of measures to have a review period that commences six or twelve months prior to initiation of the review.

Celsa Barcelona claims that the Commissioner has disregarded the proper purpose and function of a review of measures in deciding to initiate this review. No authority for the proper purpose of a review of measures is identified in the submission, so the Commission has had regard to certain extrinsic material when considering the purpose of a review of measures.

The explanatory memorandum to the Customs Legislation (Anti-Dumping Amendments) Bill 1992 that introduced section 269ZA to the Act notes that "the Minister can review the rate of interim duty at **any** time ..." (emphasis added).¹⁸ This is consistent with the drafting of subsection 269ZA(3), which appears to give the Minister a broad discretion when deciding to make a request to the Commissioner.

¹⁸ Available from Austlii at http://www.austlii.edu.au/au/legis/cth/bill_em/clab1992461/memo_0.html.

PUBLIC RECORD

There is no requirement for the Minister to consult with certain parties before making a request to the Commissioner that will affect those parties, and neither is there a requirement for the Commissioner to consult with affected parties before initiating the review. Affected parties, such as Celsa Barcelona, have an opportunity to participate in the review by making submissions within certain statutory timeframes.

The explanatory memorandum further notes that the “purpose of the review is to ensure that the rate of interim duty in force is an accurate reflection of the level of duty necessary to combat the identified dumping or subsidy”.¹⁹ The Commission notes that the ADRP review of the dumping duty notice and the Parliamentary Secretary’s subsequent decision to accept the ADRP’s recommendation cast doubt on the accuracy of the rate of interim duty that had been ascertained for Celsa Barcelona in relation to the dumping duty notice. Celsa Barcelona’s variable factors and resulting dumping margin had been worked out with reference to those of Nervacero in *Anti-Dumping Investigation No 264 (INV 264)*, which the ADRP did not think was the correct or preferable decision.

In the Commission’s view, carrying out a review of measures in these circumstances would come within the purpose of the review of measures that is stated in the explanatory memorandum, because it will ensure that the level of duty collected on the goods exported by Celsa Barcelona is an accurate reflection of the level of duty necessary to address the dumping that has occurred. The Commissioner’s finding in this SEF is that Celsa Barcelona’s variable factors have changed from how they were last ascertained following INV 264.

OneSteel’s submission highlights that the exclusion of Nervacero’s export price and normal value data used to calculate the variable factors determined in REP 264 would change the variable factors that currently apply to Celsa Barcelona. The Commission agrees that a review that is specific to Celsa Barcelona would likely bring about a change to the variable factors currently applying to it. This is shown by the dumping margin established in section 5.6 of this SEF, which differs to the dumping margin ascertained for Celsa Barcelona’s exports of rebar to Australia from Spain following INV 264. This outcome is counter to Celsa Barcelona’s submission that the variable factors have not changed.

Celsa Barcelona’s claims that it will suffer significant hardship as a result of the review relates to the period of time during which it will be precluded from being able to apply for another review. The Commission agrees with Celsa Barcelona’s summation of the legislative barriers to seeking a review of measures following the publication of a notice declaring the outcome of this review. However, the Commission notes, as does OneSteel in its submission, that the duty assessment process will be available to parties who import rebar purchased from Celsa Barcelona. In a duty assessment, the amount of interim dumping duty paid can be compared to the amount of duty that should have been payable for a particular importation period. If excess duty was paid, that excess may be refunded. The duty assessment process, available over the duration of the measures, allows a reconciliation of duty as the data relied on to impose or review those measures becomes less contemporaneous.

¹⁹ *ibid*, at page 14.

2.6 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.

This SEF represents an important stage in the review. 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.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final report to the Parliamentary Secretary.

Responses to this SEF should be received by the Commissioner no later than **20 February 2017**. 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 final report to the Parliamentary Secretary.

The Commissioner must report to the Parliamentary Secretary by 17 March 2017.

Submissions should preferably be emailed to operations3@adcommission.gov.au. Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director Operations 3
Anti-Dumping Commission
Level 35
55 Collins Street
MELBOURNE VIC 3000
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 at the Commission's web site www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties and other publicly available documents. It is available by request in hard copy in Melbourne (phone (02) 6275 6547 to make an appointment), or online at www.adcommission.gov.au

Documents on the Public Record should be read in conjunction with this SEF.

3 THE GOODS

3.1 The goods subject to the anti-dumping measures

The goods, as specified in the dumping duty notice, are:

Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.

The goods covered by this application include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.

Goods excluded from this application are plain round bar, stainless steel and reinforcing mesh.

3.2 Tariff classification

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

- 7214.20.00 (statistical code 47);
- 7228.30.90 (statistical code 40);
- 7213.10.00 (statistical code 42);
- 7227.90.90 (statistical codes 01, 02 and 04);
- 7228.30.10 (statistical code 70); and
- 7228.60.10 (statistical code 72);

Goods imported from Spain under the above tariff subheadings are subject to a general rate of duty of 5 per cent.

4 EXPORTER INFORMATION

4.1 Finding

The Commission is satisfied that the information provided by Celsa Barcelona in the original investigation is accurate, relevant and complete. Further examination of Celsa Barcelona's data is not warranted in this review.

4.2 Exporter questionnaire

This review of measures has relied on the data provided by Celsa Barcelona in its exporter questionnaire response for INV 264. The Commission considers that the information provided by Celsa Barcelona in INV 264 is relevant to this review, given that it related to the same period of time as the review period, and was collected during an investigation into the same commodity.

Celsa Barcelona provided detailed information and data in its exporter questionnaire response to INV 264, including data relating to its export sales and cost to make and sell (CTMS).

4.2.1 Accuracy, relevance and completeness of information supplied by Celsa Barcelona

The Commission conducted an on-site visit to Celsa Barcelona to verify the information and data provided in its exporter response to INV 264.

The Commission was satisfied as to the accuracy, relevance and completeness of the data provided by Celsa Barcelona during the verification visit. Since the data relied on for this review has already been subject to verification, no additional verification of the exporter's data is warranted.²⁰

²⁰ A copy of the verification visit report is available on the Commission's [website](#).

5 VARIABLE FACTORS – DUMPING DUTY NOTICE

5.1 Finding

The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to rebar exported to Australia by Celsa Barcelona have changed.

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

5.2 Determination of the exporter

The Act does not provide a definition of 'exporter'. The Commission will generally identify the exporter as:

- a principal in the transaction located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.²¹

The Commission does not find that further assessment of the identity of the exporter is warranted and relies on the findings contained in Section 5.5 of the Celsa Barcelona and Nervacero Visit Report published in relation to INV 264.

The Commission is therefore satisfied that Celsa Barcelona was the exporter of the goods subject to this review.²²

5.3 Determination of importer

Subsection 269T(1) defines the importer as the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed.

The Commission does not find that further assessment of the identity of the importer is warranted and relies on the findings contained in Section 5.6 of the Celsa Barcelona and Nervacero Visit Report published in relation to INV 264.

²¹ Dumping and Subsidy Manual, Chapter 6.2, p.27.

²² Item No.71, electronic public record for INV 264.

5.4 Export price

The circumstances of the exportations and the data relied on for the calculation of Celsa Barcelona's export price in this review were established in REP 264. However, as stated earlier in section 2.4, the export price which was found to be applicable to Celsa Barcelona was actually based on the combined export sales data reported by Celsa Barcelona and Nervacero. When examined individually, the export price for Celsa Barcelona is found to be changed.

For export sales to Australia by Celsa Barcelona, in the original investigation, the Commission found that for the goods exported by Celsa Barcelona only:

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

Consistent with the findings in the original investigation related to the above points, the Commission's assessment remains unchanged. Relying on Celsa Barcelona's export sales data only, the Commission has determined that export prices be established under subsection 269TAB(1)(a), using the invoiced price less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

The Commission's export price calculations are at **Confidential Attachment 1**

5.5 Normal Value

Subsection 269TAC(1) states that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

The circumstances of the domestic sales and the data relied on for the calculation of Celsa Barcelona's normal value in this review were established in REP 264. However, as stated earlier in section 2.4, the normal value which was found to be applicable to Celsa Barcelona was actually based on the combined domestic sales data reported by Celsa Barcelona and Nervacero. When examined individually, the normal value for Celsa Barcelona is found to be changed.

In this review, the Commission found sufficient volumes of domestic sales in OCOT of rebar in grades which were equivalent to the export models sold to Australian importers by Celsa Barcelona. The Commission is therefore satisfied that prices paid in respect of domestic sales of those models are suitable for assessing normal values under subsection 269TAC(1).

For the purpose of assessing whether the exporter's domestic sales were in OCOT, the cost to make and sell data provided by the exporter is at **Confidential Attachment 2**.

The Commission's assessment of the exporters domestic sales in OCOT are at **Confidential Attachment 3**.

PUBLIC RECORD

In using domestic sales as the basis for normal values, the Commission has applied certain adjustments, in accordance with subsection 269TAC(8), to ensure comparability of normal values with export prices. The adjustments are tabled below.

Adjustment type	Description
Domestic inland transport	Deduct downwards adjustment for actual domestic inland transport costs
Domestic credit terms	Deduct downwards adjustment for domestic credit costs
Domestic other financial expenses	Deduct a downwards adjustment for other financial expenses
Domestic SG&A expenses	Deduct a downwards adjustment to domestic sales for SG&A expenses.
Export inland transport, handling and other expenses	Add an upwards adjustment for export inland transport
Export letter of credit costs	Add an upwards adjustment for export letter of credit costs
Export commissions	Add an upwards adjustment export commission costs
Export other financial expenses	Add an upwards adjustment for other export financial expenses
Export selling, general and administrative expenses	Add an upwards adjustment to the export sales for selling, general and administrative expenses

The Commission's normal value calculations for the exporter are at **Confidential Attachment 4**.

5.6 Dumping Margin

The dumping margin has been assessed by comparing the weighted average Australian export prices of each model to the corresponding quarterly weighted average normal values for the review period.²³

The Commission has calculated a dumping margin in respect of rebar exported to Australia by Celsa Barcelona for the review period of **4.5 per cent**.

The Commission's dumping margin calculations are at **Confidential Attachment 5**.

²³ In accordance with subsection 269TACB(2)(a).

6 NON-INJURIOUS PRICE

6.1 Assessment of NIP

Consistent with the approach discussed in REP 264, the Commission recommends that the NIP relating to exports by Celsa Barcelona be determined by setting the unsuppressed selling price (USP) equal to the exporter's normal values.

6.2 General

Subsection 269TACA(a) 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. Free On Board).

6.3 Original Investigation

In REP 264, the Commission approached establishing a USP by observing the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry CTMS plus profit; or
- selling prices of un-dumped imports.

However, as outlined in REP 264, the Commission was not satisfied that a USP could be established using industry selling prices at a time unaffected by dumping or using constructed industry price. The Commission therefore adopted the view that in a market unaffected by dumping, it is reasonable to expect that the Australian industry 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 would be a price equal to the respective normal value.

6.4 Assessment of the NIP

Consistent with the approach adopted in the original investigation, the NIP has been assessed to be a price equal to the normal value determined for Celsa Barcelona.

6.5 Lesser Duty Rule

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 subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, 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.

The Parliamentary Secretary is not required to have mandatory consideration of the lesser duty rule where the Parliamentary Secretary is satisfied that certain circumstances exist. However, if considered appropriate, the Parliamentary Secretary is not prevented from considering and applying the lesser duty rule where these circumstances exist.

These circumstances are where:

- the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- the Australian industry in respect of like goods consists of at least two small-medium enterprises; or
- the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period.

As the NIP in this review is set at the same price as the normal value and is not less than the normal value, the Parliamentary Secretary is not required to have mandatory consideration of the lesser duty rule.

7 FINDINGS AND PROPOSED RECOMMENDATIONS

7.1 Findings

The Commissioner finds that, in relation to exports to Australia of rebar from Spain by Celsa Barcelona during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the ascertained NIP has changed.

7.2 Proposed recommendations

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Celsa Barcelona as if different variable factors had been ascertained.²⁴

The Commissioner proposes to recommend that the ascertained normal values for rebar exported to Australia by Celsa Barcelona be set in accordance with the respective weighted average normal values used to calculate the dumping margin for the review.

The Commissioner also proposes to recommend that the ascertained export prices for rebar exported by Celsa Barcelona be set in accordance with the weighted average export price calculated for the purposes of this review.

The Commissioner also proposes to recommend that the ascertained NIP be determined such that it is equal to the ascertained normal value.

A summary of the variable factors as they apply to Celsa Barcelona is at **Confidential Appendix 6**.

7.3 Form of measures

The current form of measures applicable to rebar from Spain is an amount which will be worked out in accordance with the *ad valorem* method pursuant to subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. The *ad valorem* method expresses the dumping margin as a proportion of the export price of the goods to obtain the interim dumping duty payable on the goods. There is no change to the form of measures as a result of this review.

7.4 Effect of the review

The result of this recommendation is that Celsa Barcelona's exports of rebar will attract an amount of interim duty which is equal to the dumping margin (i.e. the difference between the export price and the normal value of the goods), expressed as a proportion of the export price.

²⁴ Subsection 269ZDA(1)(a)(iii).

8 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Celsa Barcelona Australian Export Sales
Confidential Attachment 2	Celsa Barcelona CTMS
Confidential Attachment 3	Celsa Barcelona Domestic Sales
Confidential Attachment 4	Celsa Barcelona Normal Value
Confidential Attachment 5	Celsa Barcelona Dumping Margin