



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 454

**CONSIDERATION OF AN APPLICATION FOR
REVIEW OF ANTI-DUMPING MEASURES**

**HOT ROLLED COIL EXPORTED TO AUSTRALIA FROM JAPAN,
THE REPUBLIC OF KOREA, MALAYSIA AND TAIWAN**

November 2017

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ABBREVIATIONS

ACBPS	Australian Customs and Border Protection Service
the Act	the <i>Customs Act 1901</i>
BlueScope, or the applicant	BlueScope Steel Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods to which the current dumping duty notice applies
HRC	hot rolled coil
Korea	the Republic of Korea
MEPS	MEPS International Limited
mm	millimetres
most recent 12 month period	1 October 2016 to 30 September 2017
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 188	<i>International Trade Remedies Branch Report No. 188</i>

1 SUMMARY AND RECOMMENDATION

1.1 Background

This report outlines the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by BlueScope Steel Limited (BlueScope, or the applicant) for a review of the anti-dumping measures (in the form of a dumping duty notice) applying to hot rolled coil (HRC) steel exported to Australia from Japan, the Republic of Korea (Korea), Malaysia and Taiwan.

The applicant considers that it is appropriate to review the anti-dumping measures, as they affect exporters of those goods generally, because all of the variable factors relevant to the taking of the anti-dumping measures have changed.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)¹ sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in dealing with an application for a 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 an application, he is required to publish a notice indicating that he is proposing to review the anti-dumping measures covered by the application.

1.3 Findings and conclusions

Based on the findings outlined in this report, the Commission is satisfied that:

- the application complies with subsections 269ZB(1) and (2); and
- there appear to be reasonable grounds for asserting that at least one of the variable factors relevant to the taking of anti-dumping measures have changed.

1.4 Recommendation

The Commission recommends that the Commissioner not reject the application for the reasons outlined in Section 3 of this report, and that he initiate a review of the anti-dumping measures as they affect exporters of those goods generally.

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

2 BACKGROUND

2.1 History of the existing anti-dumping measures

2.1.1 Original investigation

On 15 June 2012, a dumping investigation into HRC exported to Australia from Japan, Korea, Malaysia and Taiwan was initiated following an application by BlueScope and BlueScope Steel (AIS) Pty Ltd.

As outlined in *International Trade Remedies Branch Report No. 188* (REP 188), the dumping investigation found that:

- HRC exported to Australia from Japan, Korea, Malaysia and Taiwan was dumped, with margins ranging from 2.6 per cent to 15.4 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.

On 20 December 2012, following consideration of REP 188, the then Minister for Home Affairs published a dumping duty notice applying to HRC exported to Australia by all exporters from Japan, Korea, Malaysia and Taiwan.

The anti-dumping measures in respect of HRC were outlined in Australian Customs Dumping Notice No. 2012/66.

2.1.2 Reinvestigation No. 209

Following a reinvestigation into certain findings made in REP 188, the then Australian Customs and Border Protection Service (ACBPS) found that:

- there were sufficient grounds to revise the dumping margin for Hyundai Co., Ltd from Korea to correct errors that were identified within evidence gathered during the investigation;
- there were sufficient grounds to warrant setting the measures by reference to prices other than those within the investigation period; however, the methodology for calculating the relevant variable factors should be revised;
- it was not appropriate to structure the conditions attached to the imposition of dumping duties such that imports of the goods to the automotive industry (that were not found to be causing injury during the investigation period) are not liable for duty under the dumping duty notice; and
- a lesser duty should only apply to Japanese exports of pickled and oiled HRC, and not to exports of pickled and oiled HRC from other countries.

The then Minister for Home Affairs considered, and accepted, the recommendations of the ACBPS, the reasons for those recommendations, and the material findings of fact or law on which the recommendations were based, as detailed in *International Trade Remedies Branch Report No. 209*.

Notice of that decision was published in *The Australian* on 17 July 2013, with effect from the date that the new notice was published.

2.1.3 Continuation No. 400

On 9 March 2017, BlueScope lodged an application for continuation of the current anti-dumping measures. These measures are due to expire on 20 December 2017. Following consideration of that application, the application was not rejected and a public notice was published on 4 April 2017 (Anti-Dumping Notice No. 2017/45 refers), which is available at www.adcommission.gov.au.

The Commissioner provided a final recommendation to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)² in relation to the continuation inquiry on 17 November 2017. The Parliamentary Secretary has 30 days to approve or reject this recommendation, or such longer period as he considers appropriate. A decision must be made before the measures expire on 20 December 2017.

The Commission notes that this decision may impact the particular exporters and/or countries that are subject to measures in relation to HRC exported to Australia from the nominated countries, and therefore impact the scope of this review of measures.

2.2 The current application

On 1 November 2017, the Commissioner received an application for a review of the anti-dumping measures applying to HRC exported to Australia from Japan, Korea, Malaysia and Taiwan. The applicant claims there has been a change in all the variable factors relevant to the taking of the anti-dumping measures (i.e. export price, normal value and non-injurious price) in relation to exporters generally.

The application is not precluded by subsection 269ZA(2), which requires that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of the notice, or the publication of a notice declaring the outcome of the last review of the notice.³

Pursuant to subsection 269ZC(1), the Commissioner must, within 20 days after receiving an application, examine the application and decide whether to reject the application. As such, the decision whether to reject the application must be made by 21 November 2017.

² 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 the inquiry, the Minister was the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

³ A notice declaring the outcome of the original investigation was published on 20 December 2012. The dumping duty notice has not been reviewed since its original publication.

If the Commissioner is not satisfied, having regard to the application and to any other information that he considers relevant, of one or more matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

2.3 The goods subject to the anti-dumping measures

The goods to which the current dumping duty notice applies (the goods) are:

[h]ot rolled coil (including in sheet form), a flat rolled product of iron or non-alloy steel, not clad, plated or coated (other than oil coated).

Goods excluded from this application are hot rolled products that have patterns in relief (known as checker plate) and plate products.

There are a number of relevant international standards for HRC that cover the range of products via specific grade designations, including the recommended or guaranteed properties of each of these product grades. The relevant Australian Standard is AS/NZS 1594.

Hot rolled sheet that is 4.75 millimetres (mm) thick or more is considered to be plate, and is therefore not covered by the notice. Hot rolled sheet that is below 4.75mm thick is included within the goods description.

2.3.1 Tariff classification of the goods

Goods identified as HRC, as per the description above, are classified to the following tariff subheadings (and associated statistical codes) in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff subheading	Statistical codes
7208.25.00	32
7208.26.00	33
7208.27.00	34
7208.36.00	35
7208.37.00	36
7208.38.00	37
7208.39.00	38
7208.53.00	42
7208.54.00	43
7208.90.00	39
7211.14.00	40
7211.19.00	41

Figure 1 – relevant tariff subheadings and associated statistical codes

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative background

Subsection 269ZB(1) requires that an application for review be in writing, be in a form approved by the Commissioner for the purposes of section 269ZB, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Without otherwise limiting the matters that the form requires to be included, subsection 269ZB(2) provides that an application must include:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the measures taken that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount; and
- if the application is based on circumstances that in the applicant's view indicate that anti-dumping measures are no longer warranted, evidence (in accordance with the form) of the circumstances.

Subsection 269ZC(2) specifies the matters that the Commissioner must consider in making a decision whether to reject an application. These matters are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

3.2 Assessment of the application for a review of variable factors

3.2.1 Compliance with subsections 269ZB(1) and (2)

When considering the requirements of subsections 269ZB(1) and (2), the Commission notes that the application submitted:

- is in writing;
- is in the approved form (*Form B602 – application for a review of measures*), and contains such information as the form requires (including evidence to support the amount by which the different variable factors, where applicable, have changed since anti-dumping measures were last imposed, and information on the causes of the change and whether those causes are likely to persist);

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- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relate;
- provides a description of the anti-dumping measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the variable factors relevant to the taking of the anti-dumping measures that have changed, the amount by which each factor has changed, and the information that establishes that amount.

The Commission is satisfied that the applicant has satisfied the requirements of subsections 269ZB(1) and (2).

3.2.2 Variable factors

Further to Section 3.2.1, the Commission considers that to comply with section 269ZB the applicant must provide information to establish that, in the applicant's opinion, one or more of the variable factors have changed.

In its application, BlueScope claims there has been a material change in all the variable factors (i.e. export price, normal value and non-injurious price) since the measures were originally imposed, as well as subsequent changes to the variable factors that have been assessed for the continuation inquiry.

As the outcome of the continuation inquiry has not been declared (Section 2.1.3 refers), the variable factors ascertained in that inquiry are not known. The Commission has therefore considered whether there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of measures have changed since they were first imposed.

Finally, the Commission notes from the Federal Court of Australia judgment dated 4 September 2013 (after the current measures were imposed) that the Commissioner cannot apply different measures to the range of models exported by a cooperative exporter.⁴ On this basis, the variable factors established in the original investigation have inevitably changed.

All variable factors (including ascertained export price)

In its application, BlueScope has provided a graphical representation of trends in South East Asian HRC prices from July 2011 to September 2017, sourced from MEPS International Limited (MEPS).

⁴ *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870.

This information shows that HRC prices:

- decreased significantly between the end of the original investigation period⁵ and the start of the continuation inquiry period⁶ (there being a decade low at this time);
- increased significantly during the continuation inquiry period; and
- continued to increase (overall) from the end of the continuation inquiry period to September 2017.

BlueScope has claimed that each of the variable factors for exporters covered by the measures (being export price, normal value and non-injurious price) will follow these trends in reported pricing.

BlueScope attributes these trends to movements in the major raw material input costs (i.e. coking coal and iron ore). The Commission considers this is reasonable, given that coking coal and iron ore represent a significant proportion of the cost to make and sell HRC. BlueScope is of the view that current pricing levels for coking coal and iron ore are anticipated to remain at current levels 'for the short to near-term future'.

The Commission has compared the information submitted by BlueScope to similar pricing information from S&P Global Platts (Platts). The information from Platts shows that the average reported HRC price across 1 October 2016 to 30 September 2017 (referred to in this report as the most recent 12 month period) was significantly different to the average price for the original investigation period (upon which the current variable factors are based). This analysis is outlined at **Confidential Appendix 1**.

The Commission considers that this movement in South East Asian pricing since the original investigation, as well as the length of time since the variable factors were last ascertained, both support a finding that it is reasonable to assert that the variable factors relevant to the taking of measures will have changed.

Ascertained normal value

To further support claimed changes to ascertained normal values, BlueScope submitted additional information from MEPS pertaining to reported domestic selling prices of HRC sold in Japan, Korea and Taiwan during July 2011 to September 2017. This information shows that average domestic prices in the most recent 12 month period:

⁵ The Commission notes that the original investigation period referenced by BlueScope in its application is July 2011 to June 2012, when the period was actually April 2011 to March 2012.

⁶ 1 January to 31 December 2016.

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- in Japan, decreased compared to the original investigation period,⁷ and increased compared to the continuation inquiry period;
- in Korea, increased compared to both the original investigation period and the continuation inquiry period; and
- in Taiwan, were level with the original investigation period, and increased compared to the continuation inquiry period.

In the absence of any specific information being presented in relation to domestic prices in Malaysia, BlueScope states that it anticipates Malaysian HRC prices will have followed a similar trend to South East Asian prices.

The Commission has compared the information submitted by BlueScope in relation to Japan to reported Japanese pricing from Platts. The Commission did not have access to similar information relating to Korea, Taiwan or Malaysia. The Commission found that the average reported HRC price in Japan during the most recent 12 month period was significantly different to the average price during the original investigation period. The Commission also found that general trends in Japanese domestic pricing correlated to trends in South East Asian pricing. This analysis is outlined at **Confidential Appendix 1**.

Based on the above findings, the Commission considers that it is reasonable to rely on MEPS domestic sales information submitted by BlueScope for Korea in assessing changes to normal values. In relation to Malaysia and Taiwan,⁸ the Commission is satisfied that the observations made in relation to all variable factors (including export price), in particular the Federal Court of Australia judgment, are sufficient to show that it is reasonable to assert that normal values for those countries will have also changed.

Non-injurious price

As outlined above, BlueScope has submitted that each of the variable factors (including non-injurious price) will follow recent trends in South East Asian HRC pricing.

The Commission notes that REP 188 stated that the non-injurious price for each exporter should be equal to the respective normal value. However, in the case of pickled and oiled exports of HRC from Japan, it was considered appropriate to establish a non-injurious price using actual export prices found during the investigation period.

On this basis, the Commission considers that it is reasonable to conclude that any change in export prices and normal values since the imposition of measures in 2012 (as found above) will have a corresponding impact on non-injurious prices.

⁷ The Commission notes that the original investigation period referenced by BlueScope in its application is July 2011 to June 2012, when the period was actually April 2011 to March 2012.

⁸ No domestic sales information was available for Malaysia, and no change to normal values was evident from the MEPS data provided to support Taiwan.

3.2.3 Assessment of application – compliance with section 269ZC

Based on the Commission's analysis in Section 3.2.2, there appear to be reasonable grounds in respect of the application for asserting, under subsection 269ZC(2)(b)(i), that all of the variable factors relevant to the taking of anti-dumping measures have changed, being export price, normal value and non-injurious price.

Based on this assessment, the Commission recommends that the Commissioner not reject the application made in relation to a change in variable factors pursuant to subsection 269ZC(1), as it is satisfied of the matters referred to in subsection 269ZC(2) in respect of the application.

4 CONCLUSIONS AND RECOMMENDATIONS

The Commission has considered the application in accordance with sections 269ZB and 269ZC. On the basis of the information provided in this application, and other relevant information as detailed in this report, the Commission is satisfied, that:

- the application complies with section 269ZB; and
- there appear to be reasonable grounds for asserting that at least one of the variable factors relevant to the taking of the anti-dumping measures have changed.

The Commission recommends that:

- the Commissioner not reject the application for a review of the variable factors and initiate a review into the current anti-dumping measures, being the dumping duty notice as it affects exporters of the goods generally; and
- that the period from 1 October 2016 to 30 September 2017 be examined for the purpose of reviewing the variable factors.

At present, it is proposed to review the measures applying to all countries currently subject to the dumping duty notice. However, the Commission notes that the scope of this review may change depending on the outcome of the continuation inquiry (Section 2.1.3 refers).

5 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	The Commission's HRC price analysis
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