

10 January 2018

The Director  
Operations 2  
Anti-Dumping Commission

**BY EMAIL** [operations2@adcommission.gov.au](mailto:operations2@adcommission.gov.au)

Dear Director,

**Review Inquiry Nos. 413 and 414 (steel rod in coil exported from China by Jiangsu Shagang Group Co., Ltd. and Hunan Valin Xiangtan Iron & Steel Co., Ltd.): Australian industry's response to Statement of Essential Facts**

OneSteel Manufacturing Pty Ltd, trading as *Liberty OneSteel*, has reviewed the *Statement of Essential Facts No. 413 and 414 (the SEF)* and makes the following observations in response to the corresponding headings and sub-headings of the SEF.

**SUMMARY**

Liberty OneSteel considers the Commissioner's proposed use of s 269TAB(2B) of the Act<sup>1</sup> to determine export prices for the review applicants as a correct and preferable use of the new legislative provisions. Further, the use of the review applicant's export prices determined under s 269TAB(1) in the original investigation is also supported. However, the Australian industry disagrees with the Commissioner's calculation of the timing adjustment under s 269TAB(2G)(a), as it does not apply the best information available to the Commissioner. Liberty OneSteel proposes and alternative calculation methodology based on accurate and verified export price information directly relevant to the Australian market.

Liberty OneSteel supports the Commissioner's proposed use of verified costs of production from competitive market sources for use in the determination of the normal values for the review applicants. However, two issues are highlighted which warrant greater attention: (i) ensuring costs of production, not billet buy-in prices are used; and (ii) excluding Vietnamese exporter and manufacturers costs of production given the Commissioner's conclusions concerning non-market conditions for electricity prices.

The Commissioner's proposed recommendation concerning the form of measures (i.e. combination method) is supported.

Finally, Liberty OneSteel submits that the Commissioner should recommend in his report to the Parliamentary Secretary that in any notices made under s 269ZDB(1) declaring that different variable factors in respect of each of the exporters, relevant to the determination of duty, then such variable factors should have effect from the date notice under s 269ZC(4) was published with of initiation of each of the reviews.

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<sup>1</sup> References to statutory provisions are references to the *Customs Act 1901*, unless otherwise expressly stated.

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## SUBSTANTIVE SUBMISSIONS

### 4.3 Export Price

Liberty OneSteel agrees with the Commissioner's assessment that the export prices for Jiangsu Shagang Group Co., Ltd. (**Shagang**) and Hunan Valin Xiangtan Iron & Steel Co., Ltd. (**Hunan Valin**) should properly be determined by the Parliamentary Secretary in accordance with s 269TAB(2B). The circumstances of these reviews of anti-dumping

measures under Division 5 are clear examples of where there is insufficient or unreliable information to ascertain the export prices of the review applicants due to an absence or low volume of exports of those goods to Australia.

Liberty OneSteel has considered the options available to the Parliamentary Secretary under s 269TAB(2B) to determine the export prices and agrees with the Commissioner's assessment that the paragraph (a) presents both the correct and preferable approach, that is to say that it most closely reflects an export price based on identical goods to those originally exported by the respective review applicants (given that it represents the ascertained export price of the review applicants following a decision to publish a notice under s 269TG(1) and (2)).

Given that the export price to be determined under s 269TAB(2b)(a) is based on identical goods to those originally exported to Australia by the respective review applicants, it only remains for a timing adjustment to be made under s 269TAB(2G)(a) to reflect what the export price would have been had there not been an absence or low volume of exports.

Liberty OneSteel observes that the Commissioner has recommended a timing adjustment based on the average movement published steel pricing data from Platts, specifically the percentage by which the average price of goods (purported RIC) exported from China (to any market in the world) has changed between the original investigation period when compared to the average price of the same for the review period.<sup>2</sup> Applied here, the Commissioner calculated the average Platts' published price fell by 1.6 per cent of the review period when compared to the original investigation period.

Liberty OneSteel does not consider the Platts' published prices upon which the adjustment factor (1.6 per cent) is calculated to represent the best available information. In fact, superior, verified information is available to the Commissioner courtesy of the verification of exports prices ascertained in *Dumping Investigation 416* and access to the Australian Border Force (ABF) import database.

The key weakness of the Platts' published price is that it may not reflect the movement in prices to the Australian market, but rather global export prices on a FOB China-port basis, irrespective of destination. As such the Platts published price may not reflect the market conditions for goods exported to Australia unless it was the lowest in the Australian market, effectively setting the import benchmark price. If however, the Australian market was already more competitive than the average of the Chinese exports markets, then in order for Chinese exported rod in coils to compete in the Australian market in commercial quantities (i.e. not in low-volumes), the Chinese exporters would have to sell at lower prices commensurate with other sources of rod in coils exported to Australia (not in low volumes).

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<sup>2</sup> SEF No. 413 and 414, pp. 15 & 18.

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Therefore, an adjustment factor based on Australian market conditions may in fact necessary. This is reflected in the language of s 269TAB(2G):

*If the export price of goods exported to Australia has been ascertained under subsection (2B), the export price may be subject to such adjustments that the Minister determines are **necessary to reflect what the export price would have been had there not been an absence or low volume of exports...***

Clearly, the provision requires an adjustment that would permit the exporter to sell the goods into the Australian market, i.e. to reflect what the export price would have been had there not been an absence of exports. An adjustment which does not take into account the contemporary competitive market conditions for supply into the Australian market cannot be said to reflect an export price that reverses the “absence... of exports”.

On the other hand, a comparison of weighted average export prices of the goods during the original investigation period (including exports by the review applicants), and the weighted average export prices of the like goods during the review period (absent the review applicants), provide a more accurate view of conditions in the Australian market, such that if applied as an adjustment factor to the export prices determined under s 269TAB(2B)(a), would more closely reflect the changes necessary in the review applicants’ export prices to again return to the Australian market, and reverse their “absence of exports”.

Table 1 below provides a revised adjustment factor based on the weighted average export prices across the two periods for all exports of RIC to Australia. Although calculated from Liberty OneSteel’s original Appendix A2 forming part of its application under s 269TB, it is expected that the Commissioner’s values will differ following the conclusion of Dumping Investigation No. 416, and as such represents the best available information:

Original investigation period (INV 301)					
	1 Jul to 30 Sep 2014	1 Oct to 31 Dec 2014	1 Jan to 31 Mar 2015	1 Apr to 30 Jun 2015	Total
Volume (t)					
Export Price (FOB, AUD/t)					
<b>WAV Export Price</b>				(AUD/t)	

  

Review period (REV 413 & 414)					
	1 Apr to 30 Jun 2016	1 Jul to 30 Sep 2016	1 Oct to 30 Dec 2016	1 Jan to 31 Mar 2017	Total
Volume (t)					
Export Price (FOB, AUD/t)					
<b>WAV Export Price</b>				(AUD/t)	
				<b>Adjustment factor</b>	<b>-13.8 %</b>

**TABLE 1** Summary of total sales of imports of RIC to Australia (Source appendix A2)

Therefore, on the basis of Liberty OneSteel’s available import volume and value information, it considers that the adjustment factor under s 269TAB(2G) would likely be greater than the 1.6 per cent proposed by the Commissioner.

**4.4 Normal Value**

Liberty OneSteel considers that the Commissioner is correct to recommend the determination of the review applicants’ normal values under s 269TAC(2)(c). Further, Liberty OneSteel considers that the Commissioner’s assessment of the costs of production based on billet costs obtained from cooperating exporters and

manufacturers in *Dumping Investigation Nos. 416 and 418*, preferable and more accurate than the approach applied in the original Investigation No. 301 – monthly Latin American FOB level steel billet export prices published by Platts minus an average rate of profit realised by the Chinese exporters for the sale of billets in their domestic market.

However, Liberty OneSteel makes two cautionary observations with the Commissioner’s proposed approach. Firstly, the Commissioner must ensure that costs of billet production obtained from the cooperating exporters and manufacturers are in fact their billet production costs, and not their purchase price for billet. As the review applicants are in fact fully integrated manufacturers of RIC,<sup>3</sup> it would not be appropriate to factor in buy-in costs of billet incurred by re-rollers. Particular care must here be taken of exporters from Indonesia and Vietnam.

Secondly, given the Commissioner’s conclusion in SEF No. 416, that with respect to Vietnam:

*The cost of electricity is significant to an EAF, with a material amount of the cost of making billet coming from the electricity cost. The verification visit undertaken to Hoa Phat confirmed that electricity is a significant cost component.*

...

*The Commission is therefore of the view that the level of control exercised by the [government of Vietnam] on electricity prices has artificially suppressed the price of electricity in Vietnam.<sup>4</sup>*

Liberty OneSteel therefore considers that irrespective of the Commissioner’s overall conclusions with respect to the existence or otherwise of a market situation in Vietnam for RIC, the use of cost of production information from Vietnamese exporters and manufacturers fails to satisfy the touchstone test under s 43(2) of the *Customs (International Obligations) Regulation 2015*, that costs of production when used in the construction of normal values under s 269TAC(2)(c) must reasonably reflect competitive market costs. Given the Commissioner’s conclusion in Investigation No. 416, the Commissioner must exclude the costs of production of Vietnamese exporters and manufacturers from his determination of normal values for the review applicants.

## **6.2 Proposed recommendations**

The industry respondent considers that the Commissioner’s proposed recommendations also include a recommendation that the Parliamentary Secretary’s declaration contained in the notice under s 269ZDB(1) take effect as from the date of notice of initiation of the reviews. For the avoidance of doubt, this means 24 May 2017.<sup>5</sup>

Liberty OneSteel considers that in this manner the most current variable factors may apply to any exports made by the respective review applicants, and the refund mechanism under s 269ZDB(3) may be applied to refund any excess IDD paid.

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<sup>3</sup> SEF Nos. 413 & 414, p. 21.

<sup>4</sup> SEF No. 416, p. 32.

<sup>5</sup> ADN 2017/076.

### **6.3 Proposed form of duty**

Liberty OneSteel welcomes the Commissioner's proposed recommendation to the Parliamentary Secretary that the form of measures applicable to the review applicants be changed to the combination duty method.

Although the Commissioner has framed this recommendation in terms of the magnitude of the dumping margin, Liberty OneSteel does not support the view that the effectiveness of measures are preserved in circumstances of higher dumping margins. Given the downward shift in export prices into the Australian market observed between the original investigation and the review period (-13.8 per cent), there is little comfort to be gained from an *ad valorem* rate of say 15 per cent or greater, as cited by the SEF as a possible 'effectiveness threshold'.

Therefore, Liberty OneSteel encourages the Commissioner to routinely recommend that the form of measures be applied as a combination of fixed and variable duty under s 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

### **CONCLUSIONS**

In light of the above submissions, the Commissioner is encouraged to revise his recommendations to the Parliamentary Secretary as follows:

- revise the timing adjustment factor applied to the export price determined under s 269TAB(2B);
- ensure the costs of production applied in the calculation of the normal values does not include billet purchase costs;
- exclude the costs of production of exporters and manufacturers from Vietnam from the calculation of the normal values; and
- recommend that the Parliamentary Secretary declare that the revised variable factors apply from the date of initiation of the respective reviews.

Should you have any questions concerning this submission, please do not hesitate to contact Liberty OneSteel.

FOR AND ON BEHALF OF THE AUSTRALIAN INDUSTRY

ONESTEEL MANUFACTURING PTY LTD (trading as 'LIBERTY ONESTEEL')