PUBLIC FILE VERSION

6 September 2017

The Director
Operations 1
Anti-Dumping Commission

EMAIL operations1@adcommission.gov.au

Dear Director,

***Dumping Investigation No. 416* concerning *steel rod in coils exported from Indonesia, Korea and Vietnam:* Submission of the Australian industry**

OneSteel Manufacturing Pty Ltd, now trading as *Liberty OneSteel*,[1] is the applicant domestic industry producing like goods to the goods the subject of this investigation.

The applicant alleged in its application that a particular market situation affects the exporters' cost of production of rod in coil in Vietnam. Specifically, the applicant alleged that the Vietnam government uses import and export policies designed to place a downward effect on the price of raw material inputs into the production of rod in coils. Since making its application, the applicant understands that the Vietnam government also controls input electricity cost prices to such an extent that home market prices cannot be considered to be competitively set.

Particular market situation and competitive market costs

In considering whether sales are not suitable for use in determining a normal value under s 269TAC(1)[2] because of the situation in the market of the country of export, the Commission may have regard to factors such as whether the prices are "artificially low".

Government influence on prices or costs could be one cause of "artificially low pricing". In investigating whether a market situation exists due to government influence, it is necessary to determine whether the impact of the foreign government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are "artificially low" or "not substantially the same as they would be if they were determined in a competitive market".

In this case, the applicant alleges that rod in coil prices are "artificially low or lower than they would otherwise be in a competitive market" due to government influence and distortion of the costs of inputs, specifically:

- coking coal;
- coke;
- iron ore;
- scrap steel; and
- electricity.

[1] On 1st September 2017, GFG Alliance acquired the former Arrium Steel businesses, including OneSteel Manufacturing Pty Ltd. To reflect this change, the former 'OneSteel' businesses are re-branded as 'Liberty OneSteel'.
[2] Unless otherwise expressly stated, references to statutory provisions are references to provisions of the *Customs Act 1901*.

Taken together, the applicant asserts that the Vietnam government's influence on the costs of inputs affect the domestic prices for the like goods. This is because these inputs represent 71% of the cost of rod in coil production in Vietnam.[3] Indeed, electricity costs represent at least 10% of the total average costs of steel making (i.e. billet production only).[4] Therefore, distortions in the material input and electricity markets have a significant impact on production costs for rod in coil.

The impact of Vietnam government influence on competitive conditions for domestic electricity prices

Organisational structure of Vietnam's electricity sector

The management of the energy sector in Vietnam is mainly the responsibility of the Ministry of Industry and Trade (**MOIT**), both as line ministry and as ministry with oversight responsibility of state-owned energy enterprises.[5]

In 2012, the MOIT established the General Directorate of Energy (**GDE**) to better align the MOIT's departmental responsibilities in the energy sector. Its responsibilities include:

- overall energy planning and policy formulation;
- appraisal of power and energy development plans, and local and regional development plans; and
- management of build–operate– transfer (BOT) power projects.

The Electricity Regulatory Authority of Vietnam (**ERAV**) was set up in 2005 under the MOIT. The responsibilities of the ERAV include:

- developing regulations and directions to implement and regulate competitive power markets;
- developing technical codes and performance standards for power distribution and transmission, and for monitoring/certifying compliance;
- monitoring electricity tariff review and tariff setting;
- issuing reliability criteria for power supply, guiding and monitoring compliance;
- reviewing power demand forecast, conducting system studies, and recommending measures to achieve supply–demand balance; and
- monitoring implementation of power projects

Vietnam Electricity (**EVN**) was formed in 1995 as a vertically integrated, state-owned corporation responsible for Vietnam's electricity sector. Although, in mid-2006, EVN was transformed into a holding group, it remains the main actor in the electricity sector with wholly owned subsidiaries:

[3] Refer to CONFIDENTIAL ATTACHMENT A
[4] Refer to NON-CONFIDENTIAL ATTACHMENT B
[5] The Prime Minister of Vietnam is responsible for approving policies and regulations. MOIT's key responsibilities are to (i) develop policies, oversee planning, and implement strategies; (ii) prepare technical standards and monitor compliance; (iii) prepare technical and economic indicators; (iv) manage and regulate energy sector activities and use of energy; (v) set retail electricity prices, and mechanisms and policies on electricity prices; (vi) formulate legal and regulatory reforms to establish a competitive sector market; (vii) identify schemes to mobilize funds for the sector investments; and (viii) prepare programs to adopt modern technologies and strengthen domestic industry.

- three power generation corporations (**GENCOs**);
- the National Power Transmission Corporation (**NPT**) responsible for power transmission;
- five power corporations (Hanoi Power Corporation, Northern Power Corporation, Central Power Corporation, Southern Power Corporation, and Ho Chi Minh City Power Corporation) responsible for power distribution;
- the National Load Dispatch Center, which serves as the system and market operator (**SMO**); and
- strategic power plants, including multipurpose hydropower plants (**HPPs**); the Electric Power Trading Company (**EPTC**).

EVN is the majority shareholder of partially privatised power plants in the Vietnam Competitive Generation Market (**VCGM**).

Price control: electricity tariff

The Vietnam government has embarked on tariff reforms in 2009 through *Prime Minister's Decision No. 21/2009/QD-TTg*. Critically, the Vietnam government still controls the price through the following mechanisms:

(i) *Decision No. 24/2011/QD-TTg* dated 15 April 2011 requires electricity retail tariffs be revised reflecting fuel cost, exchange rate fluctuation and generation capacity charge;

(ii) *Decision No. 2165/QD-TTg* dated 11 November 2013 sets the average electricity retail tariffs for 2013–2015 at a minimum of D1,437/kWh and a maximum of D1,835/kWh, any adjustment of the given average electricity retail tariff bracket because of cost fluctuations will be decided by the MOIT and the Ministry of Finance; and

(iii) *Decision No. 69/2013/QD-TTg* dated 19 December 2013 stipulates that cost increases less than 7% can be recovered by EVN in the next tariff adjustment; cost increases from 7% to 10%, and within the approved ceiling, can be approved by the MOIT; and cost increases over 10% and/or beyond the set ceiling require the prime minister's approval. In addition, there is a mandatory one-year wait for cost recovery of any increase over 7%.

Accordingly, the Vietnam government has not allowed the state utility, EVN, to raise power prices:

- In early-2014, the Government rejected EVN's request to increase electricity prices;[6]
- In July 2014, the Government again reject EVN's request to increase electricity prices in order to cover cost overruns of USD330 million due to higher input costs;[7]
- In May 2016, the Government approved an increase to the 'maximum' electricity tariff from 1,135 VND to 1,200 VND per kWh, and an increase to the 'minimum' (wholesale) tariff between 1,066 VND and 1,119 VND per kWh;[8] and

[6] Tuoitrenews.vn, 'Vietnam Electricity asks to increase power prices to cover $470mn loss', 10 July 2014 (NON-CONFIDENTIAL ATTACHMENT C)
[7] *Ibid.*

- In June 2017, the Government rejected EVN's request to raise electricity prices.[9]

Status of market reforms

Vietnam's power subsector reform process dates back to 1995, although notably the 2004 *Electricity Law*,[10] provided the legal basis for the reform, which was ostensibly scheduled to be developed according to three levels:

- Level 1 (2005 – 2014), the introduction of the Competitive Market for the Generation of Electricity (**CMFGOE**) with power generators permitted to enter the market and sell electricity to EVN at competitive prices;
- Level 2 (2015 – 2022), the creation of the Vietnam Wholesale Electricity Market (VWEM), in which power generators and wholesale power distributors enter the market, with the latter joining EVN; and
- Level 3 (post-2022), with power generators, wholesale distributors and retail consumers all entering the market.

At the end of 2016, it was reported that *"Vietnam's competitive electricity market was still at Level 1; far behind the schedule set out by the government"*.[11]

In fact level 1 (2005 – 2014) was not even initiated until 1 July 2012 – seven years behind the planned schedule.[12] Further, it is reported that:

> *"The impact of CMFGOE , at least at present, is marginal. Large EVN-power plants do not participate in CMFGOE. In fact, only a small amount of the power currently generated involves CMFGOE. Although the law requires all power plants with a capacity of more than 30MW (with a few exceptions) to participate in CMFGOE, to date only 29 power plants with a total capacity of 9,035MW do so.*
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> *"At present, only about 5% -10% of the total power generation of these 29 plants (less than 1,000 MW) is subject to the competitive bid regime. The remaining production of these plants (95% - 90%) sells at the price set out in the plants' existing power purchase agreements with EVN."*[13]

Since 2012, the precedent for success of growth in power generation capacity in CMFGOE is not strong. For example, in late-2014, "Norway's SN power cancelled plans to add generation capacity in Vietnam because EVN and the Vietnamese government were unwilling to increase PPA [power purchase agreement] rates above

[8] Vietnam Energy Online, 'Wholesale electricity prices to increase by 2- 5 percent', 20 May 2016 (NON-CONFIDENTIAL ATTACHMENT D)
[9] Vietnam Economic Times, 'MoIT: No plan in place to raise electricity prices', 5 June 2017 (NON-CONFIDENTIAL ATTACHMENT E)
[10] Government of Vietnam, Electricity Law 28/2004/QH11 (3 December 2004)
[11] Vietnam Economic Times (5 June 2017)
[12] (NON-CONFIDENTIAL ATTACHMENT F)
[13] *Ibid.*

$0.07/kWh".[14] This supports the conclusion that competitive market conditions continue to not apply to electricity in Vietnam.

Current electricity tariffs in Vietnam

> *"In accordance with Decision No 5107, the electricity generation price frameworks in 2017 are the ceiling level prices of electricity from coal-fired thermal power plants (TPPs) as 1568.70 dong/kWh and from hydropower plants as 1070 dong/kWh."*[15]
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> *"The weighted average retail electricity applied from March 16, 2015 is VND 1622.01/kWh (not including VAT, which is estimated at USD 0.074/kWh) according to Decision No. 2256/QD-BCT of March 12, 2015 [MOIT]"*[16]

Do competitive conditions exist for domestic electricity prices in Vietnam?

Given the intervention of the Vietnam government in the price-setting mechanism of that country's electricity sector, by suppressing price increases, it is the applicant's contention that competitive conditions do not exist for domestic electricity prices in Vietnam.

According to the *International Institute for Sustainable Development* (**IISD**), retail electricity tariffs in Vietnam are lower than other Southeast Asian country and other countries at the same level of development (refer Table A, below).

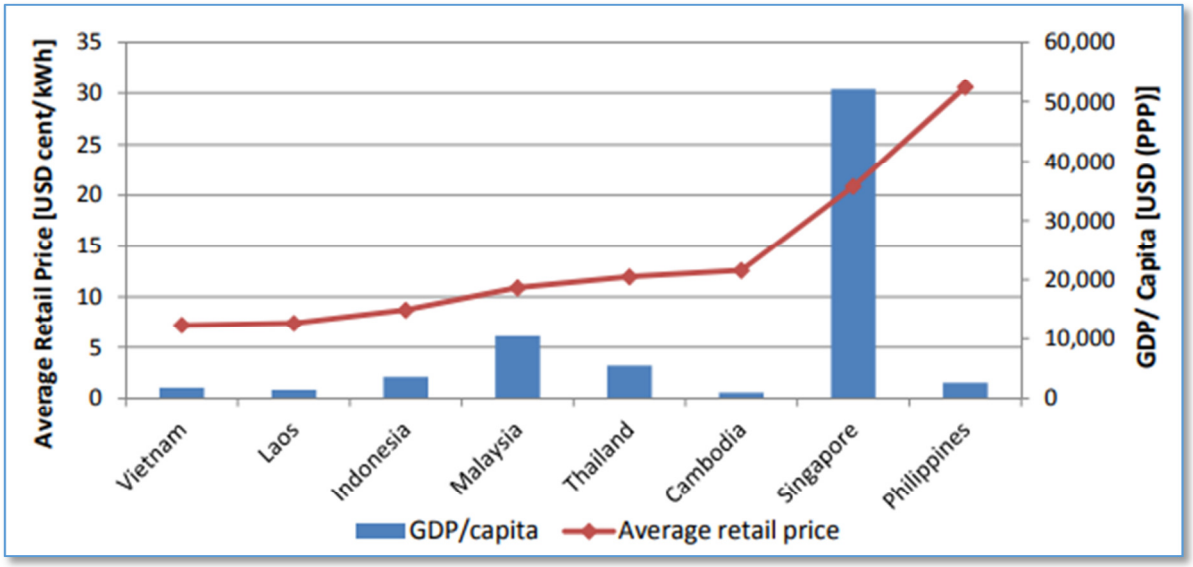

TABLE A: Extract from Leitl. (2014). Analysis of the Power System of Vietnam. Technische Universität München (TUM): **"Figure 3-7: Average retail prices and GDP per capita in ASEAN in 2013"** at p. 20.

[14] IISD Report to Government, 'Energy Pricing, Energy Supply and FDI Competitiveness in Viet Nam: An Assessment of Foreign Investor Sentiment (May 2015) (NON-CONFIDENTIAL ATTACHMENT G)at p. 8.
[15] Vietnam Energy Online (16 January 2017) (NON-CONFIDENTIAL ATTACHMENT H)
[16] IISD Report to Government (May 2015) at p. 1.

Although the Vietnam government has indicated a desire to increase electricity tariffs in order to address rapid increases in energy demand, enhance investment in electricity generation and minimise fiscal losses within the power sector, the IISD reports otherwise:

> *"in practice it has been reluctant to increase electricity prices for a number of political, social and economic reasons. One of the reasons for inaction on electricity price reform has been a concern that higher power prices will increase cost burdens for multinational firms and thereby undermine the competitiveness of Viet Nam as a destination for FDI [Foreign Direct Investment]."*[17]

Conclusion: Existence of a particular market situation for the like goods in Vietnam

Therefore, applied here, the applicant considers that a particular market situation exists because of the government of Vietnam's control over input electricity costs prices to such an extent that home market prices cannot be considered to be competitively set. Moreover, electricity in Vietnam functions as a tool of the government's industrial policy. Furthermore, the largest electricity supplier, EVN, is a government controlled entity. However, any determination of a particular market situation in this investigation is not based solely upon any support from the Vietnam government for electricity, but rather that when taken together, with Vietnam's preferential import tariff and export tax policies, leads to a conclusion that a particular market situation exists in Vietnam for the like goods. Irrespective, of whether or not the Commission finds that a particular market situation exists, then it must still find that the exporters' records of the cost of production or manufacture of like goods in a country of export do not reasonably reflect competitive market costs associated with the production or manufacture of like goods, specifically, that the exporters' records of electricity do not reflect competitive market costs within the meaning of s 43(2) of the *Customs (International Obligations) Regulations 2015*.

Selection of comparable competitive cost benchmark

The applicant has previously submitted that the selection of an export-price based benchmark is not appropriate for use to arrive at 'the cost of production' for an exporter where a particular market situation has been found in the market of the country of origin. The applicant has consistently pointed to the need for the Commission to have regard to alternate domestic-based competitive markets for determining the cost of production.

It is now well established in Australian domestic law and international WTO jurisprudence that there is nothing to preclude the Commission from relying on 'information from other representative markets'.[18] However, OneSteel has consistently and repeatedly pointed to the importance of selecting comparable competitive markets, and adapting that information to reflect the costs of production in the country of origin, in a manner consistent with Article 2.2 of the *Anti-dumping Agreement*.[19]

The applicant has always considered that the only competitive market costs of steel billets capable of being adapted to reflect the costs of production in the country of origin are those based on domestic competitive markets.

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[17] *Ibid.*

[18] See *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309 at para. 111; and *EU – Biodiesel (Argentina)* at [6.71] – [6.74].

[19] *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*

It is submitted that the issue of adapting the information of competitive cost benchmarks may be addressed in part by the selection of benchmark domestic prices from countries that are economically comparable (in terms of their levels of economic development) to Vietnam. Other administrations have addressed this inquiry by reference to the per capita gross national income (GNI) data as reported by the World Bank.[20]

Once an economically comparable market is identified, the Commissioner is then able to substitute the exporter/producer's billet costs with the costs of inputs utilised in producing the finished goods (billet costs) in the comparable market under s 43(8) of the *Customs (International Obligations) Regulations 2015* (**the Regulations**) to determine a normal value under s 269TAC(2)(c).

Source of economically comparable markets suitable for use and adaption to arrive at the 'cost of production'

According to the World Bank's latest publication of World Development Indicators, Vietnam's gross national income per capita based on purchasing power parity (PPP, international dollars) for 2016 was $6,050.[21]

Therefore, the closest comparable market (in terms of 2016, GNI per capita) for which verifiable billet cost information is available (following the initiation of Investigation Nos. 416 and 418) is Indonesia ($11,220).[22]

Given that the Commission has previously found that it must conduct its assessment of competitive market costs at the steel billet level, then once the Commission has selected a verifiable producer in a suitable economically comparable market, the Commission should substitute the aggregate of all inputs utilised in producing the steel billet in the competitive market and substitute those values for the unreliable Vietnamese costs to produce steel billet by adding the individual Vietnamese exporter/producer's conversion costs to convert the steel billet into the finished like goods (rod in coils) in order to calculate the finished product's cost to make.

Should the Commission seek to discuss any aspect of this submission, please do not hesitate to contact the applicant Australian industry.

FOR AND ON BEHALF OF THE AUSTRALIAN INDUSTRY APPLICANT

ONESTEEL MANUFACTURING PTY LTD (trading as LIBERTY ONESTEEL)

Encl.

[20] United States Department of Commerce, 'Enforcement and Compliance Antidumping Manual', 16 March 2015, Chapter 10 at p. 12.
[21] Source: http://data.worldbank.org/data-catalog/world-development-indicators (accessed, 4 September 2017)
[22] *Ibid.*