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24 November 2017

The Director
Operations 1
Anti-Dumping Commission

EMAIL investigations1@adcommission.gov.au

Dear Director,

***Dumping Investigation No. 416* concerning *steel rod in coils exported from Indonesia, Korea and Vietnam:* Submission of an Australian industry member to *Statement of Essential Facts No. 416* (SEF No. 416)**

OneSteel Manufacturing Pty Ltd, now trading as *Liberty OneSteel*,[1] refers to SEF No. 416[2] placed by the Commissioner on the electronic public record on 27 October 2017, and responds as follows. References to headings and sub-headings correspond with those contained in SEF No. 416.

SUMMARY

Certain findings and conclusions of the Commissioner contained in SEF No. 416 are unsound and should be overturned. Specifically, the Commissioner has:

- relied on flawed economic analysis, incorrect facts and assumptions concerning the impact of safeguard measures and failure to consider relevant facts and policy to erroneously conclude that a particular market situation does not exist such that domestic sales in Vietnam are not suitable for use in determining a price under s 269TAC(1)[3];
- erred in his calculation of the correct dumping margin with respect to an exporter from Indonesia (PT Ispat Indo), such that it would no longer constitute a *de minimis* rate (> 2 per cent). The errors relate to unresolved issues concerning the date of sale, the inclusion and quantification of certain adjustments to the normal value and the conduct and sufficiency of the model matching exercise;
- erred in his calculation of the correct dumping margin with respect to an exporter from Vietnam (Hoa Phat), such that it would no longer constitute a *de minimis* rate (> 2 per cent). Irrespective of whether or not the Commissioner does in fact find the existence of a particular market situation, errors persist with the Commissioner's determination of the export price, the identity of the exporter, the comparison of models exported to Australia and sold domestically, conclusions under s 43(2) of the *Customs (International Obligations) Regulation 2015 (the **Regulation**),* and the inclusion and quantification of certain adjustments to the normal value;
- failed to perform an accurate or meaningful assessment of volume effects injury;

[1] On 1 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] EPR Folio No. 384/047
[3] References to statutory provisions shall be references to provisions of the *Customs Act 1901*, unless specified.

- performed a flawed causative analysis based on supposition and assertion rather than the available evidence;
- erred in law by ignoring his conclusions regarding the cumulation of export volumes and discounting the dumped exports from Korea; and
- incorrectly concluded that the dumped imports will continue in the future and that they will not cause injury to industry.

ISSUES CONCERNING PROCEDURAL FAIRNESS: EXCEPTION-BASED REPORTING

Before addressing the numerous substantive errors of fact and law contained in SEF No. 416, the industry applicant makes an overall observation that the Commission's use of exception-based reporting in this investigation, has put at risk the Commissioner's general obligation to provide procedural fairness, and the qualities in his decision making (which if absent) constitute specific grounds for review of administrative decisions set out in the *Administrative Decisions Judicial Review Act 1977*. Although the applicant industry has consistently expressed its frustration with the short-comings of the exception-based reporting practice in other cases, the lack of substance, transparency and timeliness demonstrated by the exception-based reports (eventually) published by the Commission in this investigation (No. 416) have been particularly problematic - as can be gleaned from the number of requests for clarification and further particulars of verification visit reports made by the applicant industry to the Commission.[4]

The assault on procedural fairness resulting from the implementation of the practice of exception-based verification reporting (adopted by the Commission after the publication on 24 March 2016 of ADN 2016/30 (**ADN**)) flows from its failure to reflect the principle mandated in Article 6.2 of the *Anti-Dumping Agreement* that "…all interested parties shall have a full opportunity for the defence of their interests …", and its implicit false assumption that a verification report is purely a matter between the Commission and the interested party that is the subject of the verification process. The exception-based reports published in this investigation have resulted in situations in which third parties, such as the industry applicant, are unable to determine whether or not there are errors of law or fact, and as such whether they have interests that need to be defended.

SUBSTANTIVE ISSUES OF OBJECTION

5. Particular Market Situation

On the issue of price distortion as a measure of whether a market situation exists the Commission concludes that:

> *"There is no evidence before the Commission which would indicate that domestic Vietnam RIC prices are distorted to such a degree that they are unsuitable for the purposes of determining normal value under subsection 269TAC(1)".*[5]

[4] EPR Folio No. 416/018 and 019.
[5] SEF No. 416, p. 33.

However, this key conclusion occurs in an analysis that provides no statement of the facts in relation to pricing but instead relies on suppositions derived from economic theorems, some of which are misinterpreted. Specifically, the applicant industry responds substantively to the Commissioner's conclusions.

5.5.1 Difference between import and export taxes

The Commission makes the following finding of facts:

- Hoa Phat operates both a BOF and EAF to manufacture steel billets used to produce RIC;
- a BOF will operate using iron ore and coal as raw material inputs;
- an EAF uses scrap metal as the raw material input and is powered by electricity;
- Hoa Phat sources all of its coke and coking coal domestically;
- Hoa Phat purchases most of its iron ore and scrap metal domestically, with some supplementation from imports;
- Governments generally impose high export tax rates and export quotas to restrict the exports of a particular commodity that it considers scarce, and vice versa. Restricting exports leads to an increase in the supply of those goods in the domestic market. This eventually leads to over-supply, exerting a downward pressure on the prices of those goods.

Note: The industry applicant would like to point out that the statement "a BOF will operate using iron ore and coal as raw material inputs" is incorrect. A Basic Oxygen Furnace (BOF) operates using scrap and liquid iron produced by a Blast Furnace (which uses iron ore and coke, made from coal) as its raw material inputs.

But then with no explanation, the Commission moves from an analysis of the price effects of material input costs, to the market for the finished goods (i.e. rod in coil), without reaching any conclusion with regards to the price effects on material costs in the market:

> *"Typically in instances where there is an oversupply of the domestic goods, particularly of a commodity where there is a high degree of substitutability, the level of imports are low as the market is already oversupplied. If there is a substantial presence of imported goods, it is unlikely that the* ***domestic market is materially affected by the difference in taxes as the demand already outstrips the ability of the domestic industry to supply the goods.****"*[6] [**emphasis** added]

The basis for this statement is made on Vietnam government supplied data for the finished goods market (rod in coil) not the material costs market, and yet, the Commission confusingly draws the analysis of "difference in taxes" to domestic conditions for the finished goods. The Commission has completely confused its analysis by having regard to an irrelevant consideration – relying on analysis of demand and supply in the finished goods market to invalidate the price effects of differential taxation in an upstream materials market is misguided.

The Commission then continues to produce evidence of demand and supply conditions in the finished goods market (rod in coil), but not the material input markets to which the Vietnam government's tax differentiation policies relate (refer Figures 6 & 7, SEF No. 416, p. 30).

[6] SEF No. 416, p. 29.

The Commission further proceeds to introduce evidence of the imposition of safeguard duties on steel billet and the finished goods (refer Table 4, SEF No. 416, p. 31). However, the following statement best demonstrates the Commission's confusion concerning the alleged market distortion caused by the differential export tax/import tariff policies, where the Commissioner proceeds to take into account a critical error of fact:

> *"The **imposition of safeguards has a reverse effect to the imposition of export taxes**, being that the demand increases while supply contracts, as international sources are less competitive."*[7] [**emphasis** added]

The safeguard duties do not apply to the raw materials and inputs the subject of the Vietnam government's differential tax policies (i.e. scrap, iron ore, coking coal, coke and electricity), but instead apply to intermediate and finished goods (i.e. billet, steel bar and rod in coil).

A series of unsubstantiated assumptions are then made that are designed to support the conclusion of *"an increase in price in the domestic market"* – implicitly in the finished goods market (rod in coil). Although no analysis of price is in fact made, the assumptions are rather based on a supposition arising from the Commission's understanding of the *"theory of the economics of supply"*.[8]

The Commission then continues to draw a number of conclusions based on the perceived impact of the imposition of safeguard duties, specifically that:

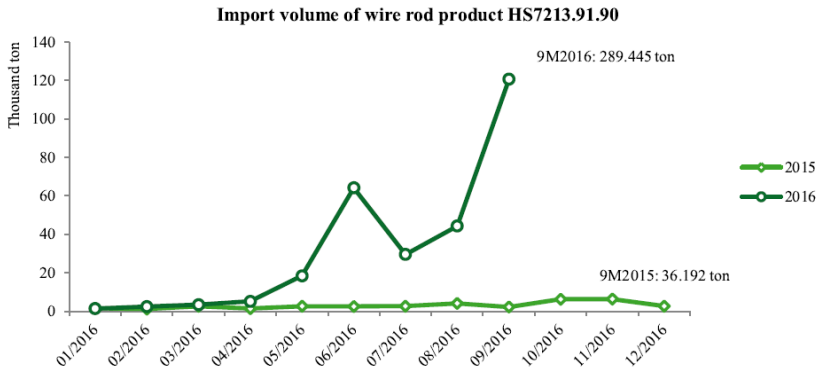
- *"The presence of ongoing imports despite the imposition of safeguards demonstrates that demand outstrips the ability of local manufacturers to supply the goods"*;
- *"the imposition of safeguards at the end of quarter 1, 2016 resulted in a drastic reduction in the imports of the goods which had previously been rapidly growing"*; and
- *"This contraction of supply would be expected to drive prices up"*. [9]

However, the evidence does not support the Commission's conclusions regarding the effect of the imposition of the safeguards in relation to rod in coil. For example, the relevant tariff codes to which the Vietnam Ministry of Industry and Commerce (Safeguards) Decision 2698[10] relates, contains a significant omission, specifically HS code 7213.91.90 has not been included. The effect of this omission has been a convenient avenue for circumvention of the safeguard duties by Vietnamese rod importers. In fact, a December 2016 Report states[11]:

> *"VSA suggests Ministry of Industry and Commerce should impose safeguard tariff on imported HS-7213.91.90 wire rod. In accordance with steel bar, wire rod is also a main steel product line in Vietnam. However, the Decision 2968 cannot cover all the wire rod product, **making a room for importer to cheat by coding their product as HS 7213.91.90 to avoid tariff**. Currently this kind of product is enjoy 3% tariff rate, which is much*

[7] SEF No. 416, p. 31.
[8] SEF No. 416, p. 28.
[9] SEF No. 416, p. 31.
[10] Vietnam Ministry of Industry and Commerce Decision 2698 at: http://hethongphapluatvietnam.com/decision-no-2968-qd-bct-dated-july-18-2016-on-application-of-safeguard-measures.html
[11] NON-CONFIDENTIAL ATTACHMENT 5.5.2, pp. 18 -19.

lower than 15% on HS 7227.90.00 product and 30%-35% on HS 7213.10.00. ***Therefore, in 9M2016, the imported volume of this product rocketed****."*



Source: VSA

Therefore, the need remains for the Commissioner to analyse the price effects of differential taxation on raw materials and inputs. Instead the Commission has conflated demand/supply conditions in downstream markets as somehow conclusive of the impact of upstream market conditions – this approach is completely unsound even under the Commission's selective use of economic theorem, for the following reasons:

Firstly, it appears that the Commission agrees that the differential taxation policies forming the basis of the applicant industry's market situation claims has the effect of reducing the price of material inputs:

> *"The Commission is of the view that the differences in the import and export taxes demonstrated by OneSteel may have the effect of restricting the exportation of the raw materials. This could result in an artificially inflated supply of raw materials on the domestic market, which could decrease the cost of the raw materials used to make the goods under consideration"*[12]

However, what the Commission fails to then do, is to test its supply-side economic theorem with respect to the impact of the "decrease in the cost of raw materials" on the supply-curve for the finished goods (rod in coil). Supply-side economic theorem accepts that a reduction in input costs increases supply thereby reducing price (assuming demand remains constant). In other words, the Vietnam government's tax policies would result in a reduction in the domestic price for the finished goods (rod in coil). At best, the Commission's analysis purports to invalidate that conclusion by pointing to changes in the theoretical demand curve, so the Commission appears to reason:

> *"However, the Commission notes that the imposition of safeguards on imports of both billet and the goods under consideration* ***would raise domestic prices*** *of the goods under consideration."*[13]

However, even if this is true (which does not appear to be the case given the ineffectiveness of the safeguard duties application to rod in coil), it nevertheless stands that supply-side economics would suggest that prices would rise by

[12] SEF No. 416, p. 31.
[13] SEF No. 416, p. 32.

more if not for the export tax policies of the Vietnam government, which have shifted the supply curve for the finished goods to the right of the market-equilibrium graph.

Rather than accepting the impact of the reduction of material costs on the supply-curve for the finished products (rod in coil), the Commission instead appears to suggest that supply conditions are so-tight, that the supply-curve for the finished goods (rod in coil) are almost 'perfectly inelastic'. In order to reasonably hold this view, you would need to satisfy the conditions of perfect inelasticity of supply to discount the downstream impact of the Vietnam government's differential tax policies on material inputs. The only evidence to support this conclusion appears to be the continued presence of imports in the domestic Vietnamese market and the claimed near full-capacity utilisation of Hoa Phat, as the Commission appears to suggest:

> *"The volume of imports which persists despite the imposition of the safeguard measures demonstrates that there is ongoing strong demand, and when coupled with the capacity utilisation demonstrated by Hoa Phat and the market circumstances presented in Figure 6, it is apparent that the Vietnam producers are unable to service the market solely from their own production."*[14]

Even if the applicant industry accepts the unverified market data of the Vietnamese government concerning its domestic rod in coil conditions, and that Hoa Phat's capacity utilisation is representative of the entire domestic Vietnamese rod in coil industry, then again under supply-side economic theorem, supply conditions would have been greater if not for the reduction in material costs, and domestic prices for the finished goods are therefore less than they would otherwise have been by operation of the intersection of demand/supply equilibrium, given the expanded supply-curve.

However, the industry applicant contends that it is not reasonable or relevant for the Commission to refer to the sustained imports into the Vietnamese domestic market following the imposition of safeguards as indicative of 'perfect inelasticity' of supply by domestic producers. Broad, unsubstantiated statements such as *"the presence of ongoing imports despite the imposition of safeguards demonstrates that demand outstrips the ability of local manufacturers to supply the goods"*[15] are unsound. There are many reasons why imports may continue to flow into the Vietnamese domestic market; most notably the exclusion of a key tariff code in the safeguard provisions; none of which the Commission has tested or verified. However, the observation that the Vietnamese domestic rod in coil industry cannot supply the entire Vietnamese domestic market is completely irrelevant. It is absurd to suggest that it can, as there are very few markets globally, where domestic producers, can or want to, supply the entire domestic market.

Notwithstanding this, the Commission then points to the allegedly near-full capacity utilisation of the only verified Vietnamese exporter – Hoa Phat. The Commission has unreasonably extrapolated from this observation, that Hoa Phat is somehow representative of the entire Vietnamese industry. In fact, in its 2016 Annual Report, Hoa Phat estimates its market share of the Vietnamese domestic construction steel market at 22.2%.[16] Indeed, specifically referring to RIC, Hoa Phat admits its supply exceeds domestic demand, with the surplus being exported:

[14] SEF No. 416, p. 32.
[15] SEF No. 416, p. 31.
[16] NON-CONFIDENTIAL ATTACHMENT 5.5.1 at p. 36.

> *"With the strategy of diversifying products, Hoa Phat has promoted the production of some high quality steel (wire rod steel, filler wire steel) for the domestic market and export with high grade products like H08A, SAE1006 - 1012, C12D, ... In 2016, the Complex [Hoa Phat Group] manufactured more than 53,000 tons of high quality steel, more than half of this serving domestic demand and the remains were exported to Australia, Malaysia, and Singapore."*[17]

With domestic Vietnamese demand being satisfied with "more than half" of Hoa Phat's domestic production, it stands to reason that Australia would be the prime export market for the surplus production ([redacted] tonnes in 2016[18] or [redacted]% of production). In any event, as late as December 2016, media reports were citing at least *"18 steel enterprises are 'crying for help' because wire rod steel is massively entering Vietnam"*.[19]

The Commission's reliance on the near full-capacity observation as a means to imply perfect inelasticity of supply so as to negate the price effects of export tax differentiation to material input markets on downstream finished goods production, is further eroded by the following verified observations – at best, Hoa Phat exports goods to Australia at 0.7% less than the FOB equivalent value it sells like goods into the domestic Vietnamese market in the ordinary course of trade. If the issue of near full-capacity utilisation is so critical to supply tightness within the Vietnamese domestic market, then it is counter-intuitive for Hoa Phat to export to Australia at effectively a 0.7% discount to the domestic market – clearly, there is greater discretion of supply and elasticity than the Commission has erroneously concluded.

5.5.2 (Electricity pricing) and 5.5.3 (Preferential taxation treatment)

The Commission reaches two additional conclusions that are very relevant to the determination of conditions relevant to the existence of a particular market situation:

1. *"… the level of control exercised by the GoV on electricity prices has artificially supressed the price of electricity in Vietnam."*[20]
2. *"the taxation arrangements in Vietnam would not apply to manufacturers of RIC. As such, the only effect that could have occurred would be upstream distortions to the price of billet when purchased by the exporter; there will be no effect when an exporter of RIC produces its own billet."*[21]

With respect to the second conclusion (taxation arrangements and upstream distortions), the Commission has answered the wrong question. The question is not whether the exporter (or even the "manufacturers of RIC") have specifically received the benefit of the "preferential taxation treatment", but rather whether the preferential taxation treatment has distorted overall market conditions for the finished goods (rod in coil). Applied here, according to the Commission's own evidence, there were "upstream distortions to the price of billet". As the Vietnamese domestic market for rod in coil is larger than just Hoa Phat, there is evidence that other producers of rod in coil purchase billet – specifically, two wire rod producers that purchase imported billet, namely SSE Steel and

[17] NON-CONFIDENTIAL ATTACHMENT 5.5.1 at p. 37.
[18] CONFIDENTIAL APPENDIX A2.
[19] http://viet-news.net/18-steel-enterprises-need-help/ (accessed 2 November 2017)
[20] SEF No. 416, p. 32.
[21] SEF No. 416, p. 33.

Pomina Steel Corporation.[22] If the price of billet is distorted, as the Commission concedes, then again based on supply-side economics theorem, this would have the effect of reducing the costs of rod in coil production, thereby increasing the supply of rod in coil in the Vietnamese market and shifting the supply-curve to the right, and reducing the price of the finished goods down from 'P1' to 'P2' (to use the Commission's model at Figure 5 of SEF No. 416). Therefore, the Commission cannot reasonably conclude that the preferential taxation treatment does not create the existence of a particular market situation.

In spite of the three conditions generating downward price effects on the Vietnamese domestic market price for the finished goods (rod in coil), the Commission has instead relied on its unsubstantiated and unsound assumptions concerning "domestic undercapacity and undersupply of the goods, and as a result there is significant competition from imports, and these imports are subject to extensive safeguard duties".[23] The Commission cannot simply displace the economic impacts of the three market conditions imposed by the Vietnamese government – differential export tax treatment of steel-making materials, government control of electricity pricing and preferential taxation treatment of steel billet producers. In fact, evidence that Hoa Phat in particular has benefited from these preferential taxation arrangements is outlined in the Prospectus of the Hoa Phat Group.

> *"Furthermore, thanks to the Vietnamese Government's investment incentive policies, a great number of plants and projects of Hoa Phat Group have been granted various incentives such as land rent exemption, corporate income tax exemption or reduction or lower corporate tax rates (detailed figures are provided in Part V.10 of this Prospectus)."*[24]

The Commission's finding that *"in the investigation period, all companies were subject to a 20 per cent rate of income tax"* is at odds with information contained in the Prospectus for Hoa Phat Group. This was presented by Liberty OneSteel in the briefing prior to the exporter visit:

> *"In order not to depend on imported steel billets and to ensure stable input supply, Hoa Phat Steel Joint stock Company decided to invest in constructing a Steel Billet Plant in Pho Noi A Industrial Zone in Hung Yen Province."*[25]

The Hoa Phat Prospectus shows the preferential rate of corporate income tax applying to "Pho Noi A Industrial Zone Management and Operation Company" which is part of "Hoa Phat Urban Construction and Development Joint stock Company" for the period 2009-2016 to be 5% (compared to the 10% Corporate tax rate applicable).

Even in relation to the newly announced Quang Ngai steel project, the Hoa Phat Group appears set to benefit from significant GoV incentives.

> *"Due to the large scale of the project local authorities have proposed offering incentives, including a tax rate of 10 per cent for 30 years in order to increase the competitiveness of the investor. Land tax exemptions for a maximum of 18 years have also been proposed."* [26]

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[22] NON-CONFIDENTIAL ATTACHMENT 5.5.2, p. 10. Which reports "POM[INA STEEL CORP] is capable of making billet, but it has changed to import from abroad.
[23] SEF No. 416, p. 33.
[24] NON-CONFIDENTIAL ATTACHMENT 5.5.2.1, p. 12.
[25] NON-CONFIDENTIAL ATTACHMENT 5.5.2.1, p. 12.

Furthermore, the Commission has drawn irrelevant parallels to the assessment of market situation in *Report 198* (concerning *hot rolled plate steel exported from China et Ors*). The Commission has specifically relied on an erroneous factor to distinguish the present case from the former, namely, *"the absence of a value added tax (VAT) rebate [and] significant investment programs funded by a number of China government authorities"*. With respect, there is nothing in the provisions of the domestic legislation or the Commission's own *Dumping and Subsidy Manual*, that prescribes the existence of differential VAT rebate arrangement or interaction of state invested enterprises as necessary for the existence of a market situation finding. To the extent that the Commission appears to suggest that it is so constrained, then it is taking an irrelevant consideration into account in the exercise of a power (potentially, the Commissioner's power to terminate an investigation under s 269TDA(1)). Further, the Commission perpetuates this error by making the existence (or absence) of "industry support" and "specific measures" relevant to the finished goods:

> *"Conversely, the situation in Vietnam is that there is no particular industry support, nor are there any specific measures in place which are relevant to the goods under consideration".*[27]

Furthermore, in its concluding paragraph, the Commission unilaterally imposes a threshold standard to a market situation finding contrary to the legislation and policy:

> *"There is no evidence before the Commission which would indicate that domestic Vietnam RIC prices are* ***distorted to such a degree*** *that they are unsuitable for the purposes of determining normal value under subsection 269TAC(1)."*[28]

Liberty OneSteel disagrees with the Commission's propositions for several reasons. Firstly it is evident that the Vietnamese government has a Master plan for the Development of the Steel Industry. This plan was outlined by the Deputy Director General of International Cooperation, within the Department Ministry of Industry and Trade of Vietnam, at the Meeting of the OECD Steel Committee in Paris, France, 1-2 July 2013[29]. Stated concrete goals include:

> To produce steel billet from pig iron and steel scraps:
> 2015: produce 12 million tons;
> 2020: produce 25 million tons;
> 2025: produce 40 million tons

The Vietnamese government policies relating to export taxes on iron, coking coal and scrap and low electricity prices are government instruments that enable these outcomes by lowering the costs of raw materials used to produce the billet. The lower cost of domestically produced billet increases its competitiveness increasing production.

The Commission is also aware from this and prior investigations that billet represents approximately 80% of the cost of producing RIC. By lowering the costs to produce RIC, it can be sold at prices lower (distorted) than it

[26] http://vneconomictimes.com/article/business/hoa-phat-group-launches-steel-mill-project-in-quang-ngai-provin (accessed 2 November 2017)
[27] SEF No. 416, p. 33.
[28] SEF No. 416, p. 33.
[29] NON-CONFIDENTIAL ATTACHMENT 5.5.3

otherwise would, again increasing competitiveness and subsequent volumes. This supports achieving the other government stated concrete goal of increasing production of finished products:

> *"2015: 13 million tons;*
> *2020: 23 million tons;*
> *2025: 38 million tons"*[30]

Should the Commissioner support the industry applicant's contention that a particular market situation does exist in the Vietnamese market for the like goods, then given that the Commission has previously found that it must conduct its assessment of competitive market costs at the steel billet level,[31] the applicant proposes that the Commission again do so. The aggregate of all inputs utilised in producing the steel billet in the competitive market should be substituted for those values for the unreliable Vietnamese costs to produce steel billet and adding the individual Vietnamese exporter/producer's conversion costs to convert the steel billet into the finished product (rod in coils) in order to calculate the finished product's cost to make in a manner consistent with his statutory obligations under s 43(8) of the *Regulation* to determine a normal value under s 269TAC(2)(c). The industry applicant considers that this should be based on the verified cost of billet produced by a non-Vietnamese producer/exporter. The industry applicant does not support the use of an export-price based benchmark, as this 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 – as has been found to exist in various Chinese domestic steel markets. OneSteel has consistently pointed to the need for the Commission to have regard to alternate domestic-based competitive markets for determining the cost of production.[32]

6.5 Dumping assessment – Ispat (Indonesia)

6.5.1 Export price

(a) Clarification of date of sale applied

A review of PT Ispat Indo's response to *Exporter Questionnaire*[33] (**EQR**) confirms that Ispat advocated for a date other than the invoice date, presumably the contract date, to be used to determine the date of sale for export sales of rod in coil (**RIC**) to Australia:

> "*the date at which the prices is set for export sales is the [CONFIDENTIAL TEXT DELETED – event],* ***rather than the invoice date.*** *On average there is a period of [CONFIDENTIAL TEXTDELETED – number] days between the [CONFIDENTIAL TEXT DELETED –event] and the invoice date. Accordingly, Ispat Indo has provided domestic sales information for the period [CONFIDENTIAL TEXT DELETED – period],* ***in addition to sales during the period of investigation****."* [emphasis added]

[30] NON-CONFIDENTIAL ATTACHMENT 5.5.3
[31] EPR Folio No. 301/038 at pp. 13 -14.
[32] Refer here to submissions of OneSteel in *Dumping Investigation No. 300* at EPR Folio No. 300/054, p. 4; see also submission in *Dumping Investigation No. 301* at EPR Folio No. 301/033, p. 7; and the application of OneSteel to the Anti-Dumping Review Panel concerning rod in coils exported from China (19 May 2016) at p. 6 [10.1]; and the application of the former related party, Moly-Cop, in *Dumping and Subsidy Investigation No. 316* at EPR 316/038, p. 2; and the application of Moly-Cop to the Anti-Dumping Review Panel concerning grinding balls exported from China (30 November 2016) at p. 6.
[33] EPR Folio No. 416/011, p. 25.

Attempting to understand what occurred at verification, one is left with the exception-based report of the Commission. Only two exceptions were reported at verification in relation to "ocean freight for export sales" and "inland freight" suggest that the export costs were provided based on sales order system estimates, not actual costs invoiced at export.

> "*the verification team were unable to reconcile the ocean freight figures from the Australian sales listing provided. Ispat advised that the figures provided in the sales listing were* ***estimates*** *derived from the accounting system* ***at the time of sales order****.* " [34] [**emphasis** added]

AND

> "*The verification team noted that the* ***contract rate from the sales order system*** *was used to prepare the domestic sales listing. However, this did not match the relevant general ledger code.*
> *As such, Ispat submitted revised inland freight charges which were used to reconcile the inland freight costs reported in the domestic sales listing."* [35]

Given that Ispat appears (from its response to exporter questionnaire) to have presented its export and domestic sales data on the basis of the contract date, and not the invoice date, and that the Commission did not record this as an exception, leads the industry applicant to believe that the Commission has inadvertently treated the contract date as the date of sale. This is in breach of the Commission's own policy on this issue:

> *"in establishing the date of sale, the Commission will normally use the date of invoice as it best reflects the material terms of sale… [and that in instances where a claim is made that] a date other than the date of invoice better reflects the date of sale, the Commission will examine the evidence provided."*[36]

The Commission's *Dumping and Subsidy Manual* further clarifies that:

> *"for such a claim to succeed it would first be necessary to demonstrate that the material terms of sale were, in fact, established by this other date. In doing so, the evidence would have to address whether price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date."*[37]

The *Dumping and Subsidy Manual* goes on to stipulate that:

> *"Any claim for an adjustment would need to substantively address:*
> - *whether, why, and to what degree, the considerations in determining price differed between export and domestic sales;*
> - *whether the materials cost differs at the time of subsequent invoicing of that export sale (compared to domestic sale invoices in the same invoice month of that export sale) having regard to factors such as the production schedules for domestic and export; and lead times for purchasing main input materials;*

[34] EPR Folio No. 416/023, p. 6 [3.2.1].
[35] EPR Folio No. 416/023 at 5.2.1 pg 9
[36] Anti-dumping Commission, *Dumping and Subsidy Manual* (April 2017), p. 62.
[37] *Dumping and Subsidy Manual*, p. 62.

- *whether contracts were entered into for the materials purchases, and materials inventory valuation."*[38]

The *Dumping and Subsidy Manual* provides a typical example where deviation from invoice date for export sale is most likely to have justifiable application:

> *"Using the contract date for export sale is most likely to have application in situations where the production process takes a long time—for example, manufacturing items of heavy capital equipment causing delivery to occur well after the sale has taken place."*[39]

Applied here, the Commission has not referred to any evidence to support these alternate conditions. Therefore, if the Commission has in fact taken the contract date to be the date of sale, then the Commission has acted in error and without regard to the evidence.

(b) Ocean freight costs

There is also a concern as to whether or not the Commission had regard to reliable evidence on the issue of the "ocean freight" costs.

It is unclear why Ispat "*submitted revised ocean freight figures to the verification team using rates at the time of actual freight booking"* and not actual freight costs as these were likely to eliminate the "*minor variances identified in the revised figures provided arising from differences in exchange rates when freight was calculated and booked."*

It is also unclear whether the verification team reset the date of sale to match the invoice date and aligned all costs accordingly or whether ocean freight and inland freight were the only two costs where adjustments were made.

6.5.2 Normal value

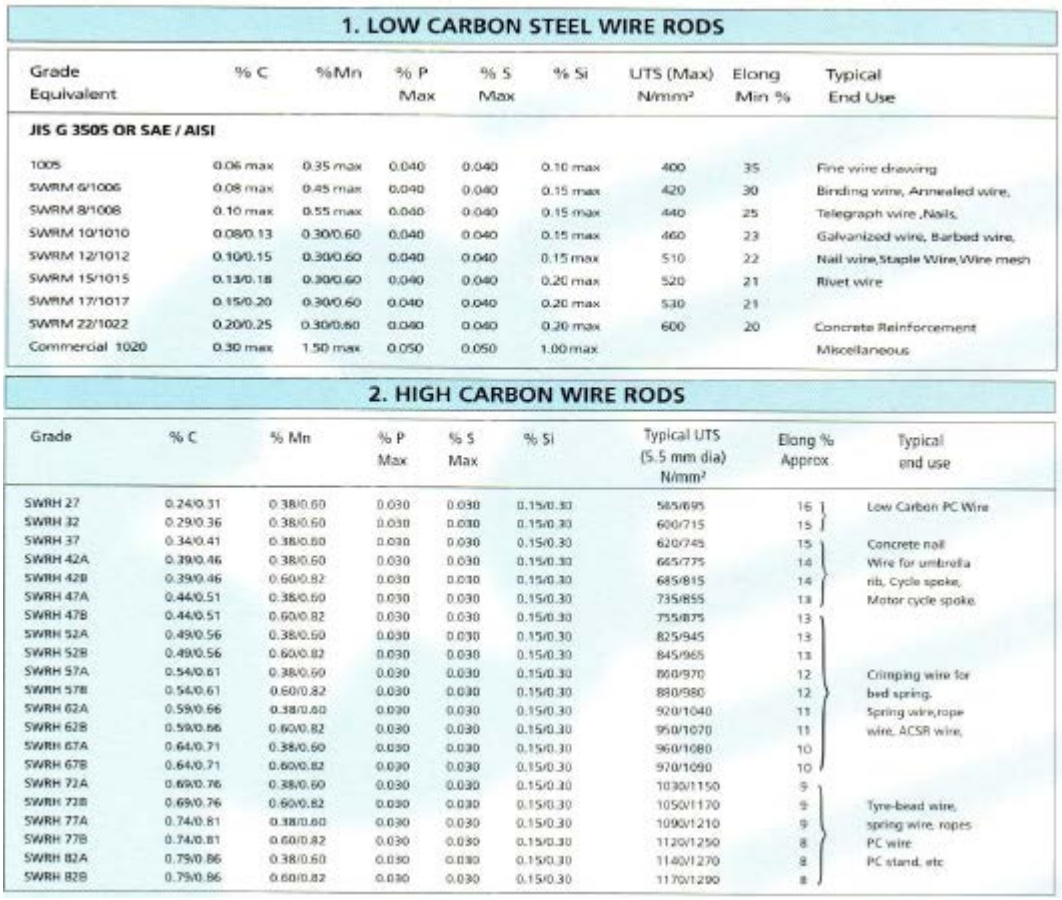
(a) Model matching

The Commission concluded that it found:

> *"two models of RIC [sold] to Australian and the verification team has compared these sales to Australia with domestic sales of identical grades and models"*[40]

In other words, the Commission was able to perform an exact model match between domestic and export sales. Ispat provided a technical product brochure as "Attachment 12" to their EQR. In the brochure, a number of different grades are grouped into the categories "Low Carbon Steel Wire Rods" and "High Carbon Wire Rods" as per below extract:

[38] *Dumping and Subsidy Manual*, p. 62.
[39] *Dumping and Subsidy Manual*, p. 63.
[40] Rod in Coil – PT Ispat Indo – Exporter verification report (September 2017) at [2.3]



1. LOW CARBON STEEL WIRE RODS

Grade Equivalent	% C	%Mn	% P Max	% S Max	% Si	UTS (Max) N/mm²	Elong Min %	Typical End Use
JIS G 3505 OR SAE / AISI								
1005	0.06 max	0.35 max	0.040	0.040	0.10 max	400	35	Fine wire drawing
SWRM 6/1006	0.08 max	0.45 max	0.040	0.040	0.15 max	420	30	Binding wire, Annealed wire,
SWRM 8/1008	0.10 max	0.55 max	0.040	0.040	0.15 max	440	25	Telegraph wire ,Nails,
SWRM 10/1010	0.08/0.13	0.30/0.60	0.040	0.040	0.15 max	460	23	Galvanized wire, Barbed wire,
SWRM 12/1012	0.10/0.15	0.30/0.60	0.040	0.040	0.15 max	510	22	Nail wire,Staple Wire,Wire mesh
SWRM 15/1015	0.13/0.18	0.30/0.60	0.040	0.040	0.20 max	520	21	Rivet wire
SWRM 17/1017	0.15/0.20	0.30/0.60	0.040	0.040	0.20 max	530	21	
SWRM 22/1022	0.20/0.25	0.30/0.60	0.040	0.040	0.20 max	600	20	Concrete Reinforcement
Commercial 1020	0.30 max	1.50 max	0.050	0.050	1.00 max			Miscellaneous

2. HIGH CARBON WIRE RODS

Grade	% C	% Mn	% P Max	% S Max	% Si	Typical UTS (5.5 mm dia) N/mm²	Elong % Approx	Typical end use
SWRH 27	0.24/0.31	0.38/0.60	0.030	0.030	0.15/0.30	585/695	16	Low Carbon PC Wire
SWRH 32	0.29/0.36	0.38/0.60	0.030	0.030	0.15/0.30	600/715	15	
SWRH 37	0.34/0.41	0.38/0.60	0.030	0.030	0.15/0.30	620/745	15	Concrete nail
SWRH 42A	0.39/0.46	0.38/0.60	0.030	0.030	0.15/0.30	665/775	14	Wire for umbrella
SWRH 42B	0.39/0.46	0.60/0.82	0.030	0.030	0.15/0.30	685/815	14	rib, Cycle spoke,
SWRH 47A	0.44/0.51	0.38/0.60	0.030	0.030	0.15/0.30	735/855	13	Motor cycle spoke
SWRH 47B	0.44/0.51	0.60/0.82	0.030	0.030	0.15/0.30	755/875	13	
SWRH 52A	0.49/0.56	0.38/0.60	0.030	0.030	0.15/0.30	825/945	13	
SWRH 52B	0.49/0.56	0.60/0.82	0.030	0.030	0.15/0.30	845/965	13	
SWRH 57A	0.54/0.61	0.38/0.60	0.030	0.030	0.15/0.30	860/970	12	Crimping wire for
SWRH 57B	0.54/0.61	0.60/0.82	0.030	0.030	0.15/0.30	880/980	12	bed spring,
SWRH 62A	0.59/0.66	0.38/0.60	0.030	0.030	0.15/0.30	920/1040	11	Spring wire,rope
SWRH 62B	0.59/0.66	0.60/0.82	0.030	0.030	0.15/0.30	950/1070	11	wire, ACSR wire,
SWRH 67A	0.64/0.71	0.38/0.60	0.030	0.030	0.15/0.30	960/1080	10	
SWRH 67B	0.64/0.71	0.60/0.82	0.030	0.030	0.15/0.30	970/1090	10	
SWRH 72A	0.69/0.76	0.38/0.60	0.030	0.030	0.15/0.30	1030/1150	9	
SWRH 72B	0.69/0.76	0.60/0.82	0.030	0.030	0.15/0.30	1050/1170	9	Tyre-bead wire,
SWRH 77A	0.74/0.81	0.38/0.60	0.030	0.030	0.15/0.30	1090/1210	9	spring wire, ropes
SWRH 77B	0.74/0.81	0.60/0.82	0.030	0.030	0.15/0.30	1120/1250	8	PC wire
SWRH 82A	0.79/0.86	0.38/0.60	0.030	0.030	0.15/0.30	1140/1270	8	PC stand, etc
SWRH 82B	0.79/0.86	0.60/0.82	0.030	0.030	0.15/0.30	1170/1290	8	

The verification report states the following in relation to model matching:

> *"Models exported to Australia were described as IQ (low carbon RIC) or special (high carbon RIC). Models sold domestically were described as IQ, special and non-prime.* ***Of these IQ and special grades, Ispat sold two models of RIC to Australia and the verification team has compared these sales to Australia with domestic sales of identical grades and models****."*[41] [**emphasis** added]

AND

> *"Domestic models that had different chemistries to grades exported to Australia were not compared to export models."*[42]

The industry applicant believes that the model-match was too narrowly cast - two models out of the above list of 30 models where an identical match was found. This approach to like goods is too narrow given that, particularly in relation to the low carbon rod grades, the functional likeness does not change by reason of slight variations in chemistry. For example, an SAE 1008 grade and an SAE 1015 grade can and are used to produce wire rod for use in

[41] EPR Folio 416/023 at p. 4 [2.3].
[42] EPR Folio 416/023 at p. 4 [2.2]

reinforcing mesh. In any event, it is not clear whether the Commission tested the identical nature of the chemistries between the two-models matched – were the chemistry requirements as per steelmaking specification or Standard used for comparison?

(b) Potential low volume domestic sales

In testing the sufficiency of domestic sales, the verification report goes on to state:

> "*The verification team found there was a sufficient volume of domestic sales of like goods made in the OCOT* ***of the models exported to Australia*** *sold on the domestic market during the investigation period.*
>
> *"As such, normal values have been determined under subsection 269TAC(1)* ***for all export models****."*[43]

What this does not answer is the degree of "sufficiency" and whether or not the domestic sales were made to a small number of customers.

6.5.2.1 Adjustments to normal value

(a) Bank charges

The Commission made a downward adjustment to the normal value on account of domestic bank charges. However, in the verification report, the "*verification team noted that details of domestic bank charges were unable to be reconciled to the samples selected*".[44]

Ispat then "*recalculated the average bank charges based on the average rate for selected shipments*" and *"this was verified and accepted by the verification team"*.

It appears that the bank charges in spite of the amendment were based on an average rate calculated for a selected sample, not all sales. This suggests that the evidentiary threshold required before making an adjustment was not met.[45]

(b) Domestic freight

The Commission made a downward adjustment to the normal value on account of domestic inland freight expenses.

Ispat's domestic sales of like good were made on FIS and EXW terms – "franco" or "loco" as per Ispat's questionnaire response in Investigation 240[46]. Accordingly, a downward domestic freight adjustment should be made on FIS sales only. In this case, the industry applicant is concerned that the downward adjustment has been made to all domestic sales irrespective of delivery terms.

[43] EPR Folio 416/023 at 5.6 pg 10
[44] EPR Folio 416/023 at p. 9 [5.2.2]
[45] Dumping and Subsidy Manual, p. 61 [14.3]
[46] EPR Folio 240/020, p. 21 [D-1]]

(c) Containerisation

The Commission has failed to make an upward adjustment to the normal value on account of the containerisation expenses for export sales. It is not clear whether these have been included in the "export handling fees" adjustment?

6.7 Dumping assessment – Hoa Phat (Vietnam)

6.7.1 Export price

In SEF No. 416, the Commissioner has adopted the confused reasoning of the verification team, which appears to have inadvertently collapsed the Hoa Phat entities[47] by selecting Hoa Phat One Member Company Ltd (**Hoa Phat OM**) as the exporter, even though Hoa Phat Joint Stock Company (**Hoa Phat JSC**) was identified as the producer of the goods:

> "*Following initiation of the investigation, a search of the Australian Border Force import database indicated that **a number of companies associated with the broader Hoa Phat Group exported certain steel rod in coil to Australia** from Vietnam during the period 1 April 2016 to 31 March 2017".*
>
> and
>
> *"Hoa Phat Group's Exporter Questionnaire Response identified Hoa Phat One Member Company Limited (Hoa Phat OM) as the exporter of rod in coil to Australia **and** Hoa Phat Joint Stock Company (Hoa Phat JSC) as the producer of the goods exported to Australia."* [48] [emphasis added]

In the preliminary assessment of 'Like goods', the report further states[49]:

> "*The verification team considers that **rod in coil produced by both Hoa Phat OM and Hoa Phat JSC** for domestic sale have characteristics closely resembling those of the goods exported to Australia*." [emphasis added]

The only insights offered in the report as to how the verification team narrowed the exporter to only "Hoa Phat OM" in spite of the Australian Border Force import data base indicating a number of companies associated with the broader Hoa Phat Group had exported rod in coil during the POI is to be found in the following statement:

> "*Based on its analysis of the terms under which Hoa Phat OM's Australian export sales of the goods were made during the investigation period, the verification team considers Hoa Phat OM to be the exporter of the goods*." [50]

The verification of export sales to Australia appears to have been conducted solely on Hoa Phat OM's Australian sales with the verification team assessing completeness and relevance by reconciling to Hoa Phat OM's audited financial statements. It is not clear whether consideration was given to Hoa Phat JSC and the other Hoa Phat Group exporting entities identified in the Australian Border Force import database for the POI. It is not clear

[47] In spite of ADRP Report No. 34 at [62].
[48] EPR Folio No. 416/020 at pg 3.
[49] EPR Folio No. 416/020 at 2.4 pg 4.
[50] EPR Folio No. 416/020 at 3.3 pg 5.

whether the total Australian sales listing for Hoa Phat OM reconciled to the ABF volume of imports associated with the Hoa Phat Group for the POI. It is also not clear where the verification visit was conducted ie. at the production premises of Hoa Phat OM or Hoa Phat JSC.

The *Hoa Phat Group Annual Report for 2016* (at p. 20) lists among the principal business activities of both Hoa Phat Steel JSC and 'Hoa Phat Steel One Member Co., Ltd' as "producing steel and iron" and "wholesale of metals and metal ores".

As of 2 March 2017, the Hoa Phat Group had 12 subsidiaries

No	Subsidiaries	Address	Principal business activities	Contributed charter capital (VND billion)	% of equity owned by HPG
1	An Thong Mining Investment JSC	415 Tran Phu, Ha Giang City, Ha Giang Province, Vietnam	Explore, exploit, prepare and make, process, purchase and sell, export and import minerals, primarily iron ores.	500	99.96%
2	Hoa Phat Steel JSC	Hiep Son Commune, Kinh Mon District, Hai Duong Province, Vietnam	Producing steel and iron, exploiting iron ores, exploiting and collecting lignite; wholesale of metals and metal ores; producing and trading coke coal.	3,500	99.99%
3	Hoa Phat Dung Quat Steel JSC	Dung Quat Economic zone, Binh Dong Commune, Binh Son District, Quang Ngai Province, Vietnam	Producing steel and iron. Generate, transmit and distribute electricity. Trade solid, liquid and gas fuel and related products. Transport goods by coastal and inland waterways…	3,003.2	98%
4	Hoa Phat Steel One Member Co., Ltd.	Pho Noi A Industrial Zone, Giai Pham Commune, Yen My District, Hung Yen Province, Vietnam	Producing steel, iron, wholesaling metals and metal ores.	600	100%

The exporter questionnaire response for Hoa Phat states that "*the rod in coils under consideration have been manufactured by PRODUCER*[51]" as defined by Hoa Phat Group to be Hoa Phat JSC yet the verification team "*verified the completeness and relevance of* ***Hoa Phat OM and Hoa Phat JSC's cost to make and sell spreadsheets***". [emphasis added]

As matters currently stand, the Commissioner's determination of the export price is confusing and cannot stand as determined under s 269TAB(1)(a).

6.7.2. Normal value

(a) Identity of producer/exporter and OCOT

[51] EPR No. 416/006 at p. 7 [A-3.7]

The visit report is so unclear about the roles of the various members of the Hoa Phat group of companies that it casts into doubt the completeness of the CTMS of the domestic goods used for OCOT purposes. Ultimately, the Commission determined the normal value under s 269TAC(1), as sales by an "other seller" which was related to the producer, but the question of determination of costs of manufacture used for OCOT by the "other seller" appear confused. So the Commission explains their approach as follows:

> "*According to Hoa Phat's response to the Exporter Questionnaire, sales were made to domestic related parties during the investigation period as transfers to the selling arms of the company before being sold to unrelated customers.*
>
> *"The verification team considers that these sales to unrelated customers are suitable for normal value purposes as the price does not appear to have been influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller*[52]*."*

For the purposes of s 43(2) of the *Customs (International Obligations) Regulations 2015 (**Regulations**)*, it is not clear, firstly, whose *"cost of production or manufacture of like goods in a country of export"* were taken, as the identity of the producer is unclear. It would not be open to the Commissioner to take the 'transfer value' of the goods to the *"selling arms of the company"* as the *"cost of production of manufacture"* as these could not possibly be found to be "reasonably reflective of competitive market costs" under s 43(2)(b)(ii) of the Regulations, being by definition of their transfer value, completely non-competitive market oriented.

(b) Clarification of model matching

In determining the suitability of domestic sales and profit, the verification team found:

> "*there was sufficient volume of domestic sales made in the ordinary course of trade **for all models***".

It is not clear if the Commission properly assessed whether sufficient sales made in OCOT were tested both at the aggregate level and individually for each model of like goods in OCOT. Even if, the particular model used to determine the normal value exceeded the 5% sufficiency of volume rule, it is not clear whether or not those domestic sales may still be considered low-volume for other reasons (large number of domestic sales made to a small number of customers).

Further, the visit report, suggests a potentially inaccurate approach to model matching where it makes the following, rather concerning, statement:

> "*The verification team discussed the **product code devised by Hoa Phat OM and Hoa Phat JSC for the purposes of the investigation**. It was agreed that as per OneSteel Manufacturing Limited recommendation model matching firstly be done upon rod diameter (or dimension) and then applicable metal standard (or grade).*" [53]

The Commission does not report on how it satisfied itself of the accuracy of the model matching assessment, for example, did it review a sample of test certificates selected for both domestic and export sales against the various

[52] EPR No. 416/020 at 5.3 pg 8.
[53] EPR No. 416/020 at 2.3 pg 4.

metal standard chemistry specifications to which the rod in coil was produced to ensure an appropriate model match was applied?

6.7.2.1 Adjustments to cost to make and sell

Requirement that the "costs of production… reasonably reflect competitive market costs"

(a) Vietnamese government intervention

Even if the Commission were to conclude that there is not a particular market situation in Vietnam which renders the domestic price for the goods to be unsuitable for determining the ascertained normal value, the Commissioner cannot reasonably recommend to the Minister that he accept the exporter's costs associated with the production or manufacture of like goods under s 43(2) of the *Regulations* because the Commissioner has concluded:

> *"The Commissioner is of the view that the domestic prices of raw materials and electricity may be distorted…"*[54]

The Commissioner quite correctly concludes that for the purpose of determining the cost of production or manufacture of like goods in a country of export used in testing for domestic sales in the ordinary course of trade:

> *"The Commission is of the view that the cost of electricity should be substituted with a relevant benchmark price, should such a benchmark be available."*[55]

However, the Commissioner has by that reasoning, erred in not also seeking to substitute the exporter's raw material costs with a relevant benchmark price. Unless the Commissioner recommends the Minister substitute material electricity costs with "competitive market costs" then he would be committing an error of law under s 43(2) of the *Regulation* which mandates that "the Minister must work out the amount by using the information set out in the records" where those records " (ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods". Therefore, the corollary to the proposition under the *Regulation* is that the Minister must not use those records where they do not "reasonably reflect competitive market costs" as concluded by the Commissioner.

Given the prescriptive language of s 43(2) of the Regulation, the Commissioner would be committing an error of law by using costs of manufacture or production that it knows not to "reasonably reflect competitive market costs":

> *"The Commission has been unable to identify an appropriate benchmark to use in the replacement of electricity costs."*[56]

To determine the most relevant competitive benchmark to use instead of Vietnam, the applicant industry considered economically comparable markets, most closely aligned in terms of economic development to Vietnam.

According to the World Bank's latest publication of *World Development Indicators*, Vietnam's gross domestic price per capita (USD currency) for 2016 was $2,186.[57]

[54] SEF No. 416, p. 33.
[55] SEF No. 416, p.38.
[56] SEF No. 416, p. 39.

Therefore, the closest comparable markets (in terms of 2016, GDP per capita) for which electricity tariff information is available is the Philippines ($2,951). Indonesia is significantly higher at $3,570.[58] The second factor that best indicates comparability relevant to electricity tariffs is the energy generation mix. According to the *World Development Indicators*, Vietnam's electricity generation mix is 42% hydropower and 25% coal-powered (in 2014). In terms of closest economic development comparators, the Philippines is next closest with 12% hydropower and 43% coal-powered in 2014. Indonesia generates only 7% hydropower and 53% coal-power in the same period.

The further problem with Indonesia as an electricity market benchmark is the State-owned and heavily subsidised nature of the Indonesian electricity market, with PLN (Perusahaan Listrik Negara's) being wholly owned by the Indonesian Government and subsidised to the degree of the shortfall between PLN's production costs and regulated tariffs to ensure it earns an allocated profit margin.[59] Therefore, Indonesia does not constitute a suitable competitive market benchmark for Vietnam electricity tariffs.

Given the economic comparability of the Philippines and the general consensus that:

> *"the Philippines' power market has evolved into a competitive landscape, similar to Singapore's, where energy prices are market-driven with no government subsidies"*,[60]

it is proposed that available electricity tariff rates for the Philippines be used as a competitive market cost benchmark.

The average retail tariff in the Philippines in 2015 was USD 0.18/kWh,[61] compared to USD 0.074/kWh in Vietnam, as previously disclosed to the Commission by the applicant industry.[62] This suggests that Vietnamese electricity tariff's trade at a 58.9% discount to a comparable competitive cost benchmark.

(b) Related party purchases of material costs

A further reason for not having regard to the costs associated with the production or manufacture of like goods for the purposes of testing OCOT is the number of related party transactions concerning the supply of raw materials. However, the verification team reported as follows:

> "*Based on the company's response to the Exporter Questionnaire and documentation supplied for the purpose of the verification visit, the verification team identify raw material suppliers related to Hoa Phat OM and Hoa Phat JSC.*
>
> *"The verification team observed that the input prices for these purchases were the fully absorbed cost to make from the relevant parties. The verification team consider the input costs for these materials appropriate."*[63]

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[57] NON-CONFIDENTIAL ATTACHMENT 6.7.2.1
[58] NON-CONFIDENTIAL ATTACHMENT 6.7.2.1
[59] NON-CONFIDENTIAL ATTACHMENT 6.7.2.1.1, p. 20.
[60] NON-CONFIDENTIAL ATTACHMENT 6.7.2.1.1, p. 29.
[61] NON-CONFIDENTIAL ATTACHMENT 6.7.2.1.1, p. 30.
[62] EPR Folio No. 416/013, p. 5.
[63] EPR No. 416/020.

Prior to the commencement of the verification visit, the industry applicant alerted the verification team to the role of related-party subsidiaries, An Thong Mineral Investment JSC and Hoa Phat Energy JSC, in the supply of iron ore, coke and electricity to the producer/exporter entities. There is no evidence how the Commissioner satisfied himself that the costs "reasonably reflect competitive market costs", but the supply from related parties is *ipso facto* non-competitive.

6.7.2.2 Adjustments to normal value

(a) "Warehouse rental"

The Commissioner has applied a downward adjustment to the normal value for "warehouse rental" expenses.

It is not clear how these expenses are unique between domestic and export sales and in fact how, if at all they affect price comparability between the domestic and export markets. It is also not clear how or if the Commission verified the proportion of space occupied by the GUC versus other goods or services within the warehouses.

The concept of 'warehouse rental' expenses appears to be a contortion of stockholding expenses, yet the Commission does not suggest that a comparison between the number of stockholding days of domestic sales or export sales was undertaken. It is difficult to see how the Commissioner can reasonably make this adjustment absent sufficient evidence.

(b) Containerisation costs for export sales

The report includes an upward adjustment to normal value for verified costs at port and general handling costs to FOB for export sales. It is unclear from the verification report whether these verified costs included the cost for containerisation.

7. Economic condition of the industry

7.4 Volume injury

The Commission appears to conclude that since *"the Australian industry has gained a significant volume since the start of the injury assessment period"*[64] it *"considers that there is no evidence that… the Australian industry has experienced injury in the form of lost sales volume…"*.[65] The Commission has asked the wrong question – it is not whether the industry has gained or lost sales volume when compared to the commencement of the injury analysis period, but rather, according to the *Ministerial Direction on Material Injury*,[66] the *"dumping or subsidisation has merely slowed the rate of the industry's growth, without causing it to contract"*.[67] This is quite obviously the case, in trend terms, when Figure 9 of SEF No. 416 is observed.

[64] SEF No. 416, p. 45.
[65] SEF No. 416, p.47.
[66] Minister for Home Affairs, *Ministerial Direction on Material Injury 2012*, 27 April 2012.
[67] *Ministerial Direction on Material Injury 2012*, p. 2.

Specifically, the Australian industry alleged that it had lost sales to specific customers. The Commission concluded that *"[w]ithout undertaking substantial verification of downstream sales of goods manufactured from RIC, the Commission… declined to use OneSteel's proposed method [to assess volume injury]"*.[68] However, again the Commission asked the wrong question. It is not a question of the sale of downstream goods manufactured from rod in coil, but rather the volume of goods sold by importers to customers of OneSteel. This evidence must be before the Commissioner, following conclusion of the importer verification process, which if he has ignored, suggests a failure to have regard to relevant considerations.

7.4.2 Market share

Again, the Commission has performed the wrong analysis with respect to the Australian industry's claimed loss of market share:

> *"OneSteel has gained significant market share since the start of the injury assessment period, although it has had a slight decline in market share during the investigation period."*[69]

The question is not whether or not the Australian industry gained or lost market share across the injury analysis period, but rather whether or not the Australian "industry suffers a loss of market share in a growing market…".[70] The Commission has in fact found that there was a "pool" of additional sales arising from *"demand previously serviced by dumped Chinese exporters [that were] instead serviced by sales from the subject countries, with OneSteel not gaining additional sales from this 'pool'"*.[71] The Commission reasons that this formerly dumped volume was not OneSteel's to gain:

> *"However, OneSteel has not lost sales volume to the imports, it has merely been unable to gain new market share in the absence of exports from a formerly competing source"*.[72]

This is extraordinary reasoning, and suggests that the Commissioner has failed to take a critically relevant consideration into account – specifically, that OneSteel competed against the subject countries for this volume on price, and lost the sales. This evidence would again be before the Commissioner from the importer verification visits, which if he has ignored, suggests a failure to have regard to relevant considerations.

8. Causation

8.3 Price undercutting

The Commission's approach to assessing price undercutting has numerous errors. Instead of taking relevant information available to it into account following importer verification, the Commission has constructed an FIS value based on timing of export, not the time that the customer receives the goods in Australia – this is an entirely

[68] SEF No. 416, p. 47.
[69] SEF No. 416, p.46
[70] *Ministerial Direction on Material Injury 2012*, p. 2.
[71] SEF No. 416, p.47.
[72] SEF No. 416, p. 47.

irrelevant and flawed analysis by the Commissioner. The FIS value, is the actual verified value offered by the importer into the market, not the theoretical value deduced by the Commission.

> *"To do so, the Commission has taken the price at FOB for all exporters and added the verified ocean freight for Cost, Insurance and Freight (CIF) / Cost and Freight (CFR) sales, or the weighted average ocean freight for FOB sales, and the lowest average post-exportation costs for any verified importer. In Figure 16 these prices for the dumped goods have been compared to the weighted average FIS prices for OneSteel in sales to unrelated parties over the investigation period."*[73]

This approach is at odds with the Commission's own policy on price comparison for undercutting analysis:

> *"The Commission normally examines the weighted average net realised prices, for example monthly, achieved by importers of the goods and Australian industry at equivalent levels of trade and any other necessary adjustments to ensure a meaningful comparison (see Chapter 14 Due Allowance). In some cases, where sales data for imports and local industry allows a more detailed analysis of prices to the same customer, the Commission can determine the amount of price undercutting per unit of quantity (this affords a more precise measure of the undercutting)."*[74]

The approach is also at odds with the approach adopted in *Dumping Investigation No. 240* concerning rod in coils:

> *"Causation – price effects*
> *As detailed in section 8.6 above, the Commission undertook a price undercutting analysis using verified sales data from two major importers and from OneSteel. These importers were responsible for 51 per cent of rod in coils imported during the investigation period. The undercutting analysis was conducted at an aggregate, grade and customer level."*[75]

The Commission must surely have this information available to it, as it purports to have performed verification visits to relevant importers. To the extent that the Commissioner has ignored this evidence he has failed to have regard to relevant considerations.

Even though the Commission accepts that the applicant industry takes the actual known FIS offers made to its customers into account when formulating its price to the market, not the constructed FIS (including "the lowest average post-exportation costs for any verified importer") approach applied by the Commission in its unsupported undercutting analysis model, the Commission then purports to conclude:

> *"It is clear that there is little correlation between movements in the OneSteel price and the prices of dumped goods in the above figure, with OneSteel's prices often rising when the export price is declining or vice versa".*[76]

[73] SEF No. 416, p. 53.
[74] *Dumping and Subsidy Manual*, p. 18.
[75] REP No. 240, p. 58.
[76] SEF No. 416, p. 54.

The Commission has failed to take into account relevant matters when assessing the impact of the dumped goods into the Australian market, that is, the price paid by customers to importers of the goods and the timing at which they do. The Commission's model as described fails to account for the transport time lag between date of export and delivery into the customer's store (which may be 3-4 weeks) And as such further distorts its assumptions, and render's the Commission's model meaningless.

Even if the Commissioner's reasoning is accepted, then the Commission has placed extraordinary weight on the movements in the rate of undercutting. The Commission appears to assume a fully transparent market, and as such fully transparent prices. To see exact correlation in the movements of prices, as the Commission appears to suggest imposes a burden of proof in undercutting analysis that assumes full transparency between offer and timing. However, the Commission concedes that OneSteel "relies on incomplete information"[77].

What Figure 16 of SEF No. 416[78] does demonstrate (albeit on the Commission's flawed FIS price model), is that OneSteel has reduced its prices to meet importer offers into the market.

Notwithstanding the Commission's analysis at Figure 16[79] - which clearly shows the presence of dumped goods from Indonesia (excluding PT Ispat) and Korea across the investigation period - the Commission then seeks to ignore this analysis, and conclude that on the basis of the domestic industry's view of price offers that there were:

> *"no offers from dumped sources in five of the twelve months"*[80]

This finding cannot be substantiated by the evidence available and is completely at odds with the analysis at Figure 16. Simply because the Commission chose to exclude from their analysis offers from "Indonesia" and "Asia" does not mean that any of these offers were not dumped. It is even more bizarre an assertion given that the Commission has found dumping against Gunung which is within both "Indonesia" and "Asia" and POSCO which is within "Asia".

Even if the Commission's preliminary assessments of dumping margins survive challenge, the suggestion that the Australian industry's view of price offers (which the Commission considers "incomplete") now is determinative of causation is unsound:

> *"In addition to this, for ten of the twelve months of the investigation period the offers from undumped sources were either the same price as, or cheaper than, the offers from dumped sources. It was only in two months of the investigation period that there were dumped goods in the market at prices which undercut OneSteel and all dumped offers"*. [p. 54]

This statement needs to be placed into context. Firstly, it is the Commission's summary of the Australian industry's "incomplete" view of price offers [Confidential Attachment 5 relates to "approximately 50 sales"]. If any relevance is to be placed on this consideration, then it is the evidence of actual prices obtained by importers into the market that should be regarded – not the Australian industry's "incomplete" view.

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[77] SEF No. 416, p. 53.
[78] SEF No. 416, p. 54.
[79] SEF No. 416, p. 54.
[80] SEF No. 416, p. 54.

The Commission's assessment of the price effects is further flawed as it appears based on the assumption that import offers only compete against the industry applicant's products and not against other imported goods from either within the country of export (e.g. Ispat versus Gunung) or external to it (e.g. Ispat versus POSCO):

> "*As demonstrated in Chapter 7, the prices of the Australian industry are led by the import pricing offers received by importers and end users. These offers can then be lowered in response to the Australian industry's pricing*."[81]

The Commission is aware that it is common knowledge within the rod in coil industry that Liberty OneSteel sets its prices relative to imported products (at the time they will arrive in the market, i.e. XXXXXXXXXX) and aims to obtain a small premium above that based on the benefits that result from shorter lead times etc. If exporters only competed against Australian product, there would be no need for exporters to negotiate prices with the importers. However the exporters (even those currently deemed not be dumping) acknowledge that their export pricing is not based on a price list, but is the outcome of negotiations.

> *"[CONFIDENTIAL TEXT DELETED – customers] will contact Ispat Indo, seeking the supply of a particular type or types of rod in coil. Ispat Indo will provide quote price, to which the customer will usually counter-offer. This price negotiation process will either take place by phone or by email, and continues until such point as both parties can agree on a price for the rod in coil desired by them. Ispat Indo will only agree to a price that achieves a reasonable level of profit."*[82]

Based on the facts before the Commission it is only reasonable to conclude therefore that the importers and exporters are competing against each other and that dumped prices are influencing the prices of the exporters that may be found to not be dumping. In *Final Report 240* the Commission correctly arrived at this conclusion:

> *"The Commission considers, however, that the price sensitivity of the market is such that the presence of dumped imports in the market would be impacting the pricing behaviour of all market participants, including Australian industry and those exporters found to have not sold dumped goods into the market.*
> *The Commission considers that in the absence of dumping, all other participants in the market would achieve higher selling prices."*[83] [emphasis added]

On the basis that the Commission found only 3-months within the entire investigation period in which dumped products were not in the market, then it is clear that dumped products were present and influencing price negotiations for 9-months of the investigation period.

The Commission further acknowledges that:

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[81] SEF No. 416, p. 54 [8.4]
[82] EPR Folio No. 416/011, p. 14. (PT Ispat Indo, *Response to Exporter Questionnaire*, 2 August 2017)
[83] EPR Folio No. 240/073, p 51 (Dumping Investigation concerning rod in coils exported from Indonesia, Taiwan and Turkey, *Final Report No. 240*, 13 May 2015)

> *"in two months of the investigation period that there were dumped goods in the market at prices which undercut OneSteel and all dumped offers."*[84]

Yet despite this observation there appears to be no attempt to quantify the extent of the injury caused by dumping to OneSteel in these two months to determine if it was material. A simple analysis demonstrates the materiality of injury caused by dumpers:

> For example, if the undercutting was caused by POSCO and or Gunung (exporters found to be dumping by 20.9% and 10.6% respectively) and their prices were [redacted]/t below the next lowest importer, the impact on Liberty OneSteel's price and profits across as the sales volume in May and June ([redacted] tonnes) is $[redacted].

Further if the two months (in which the exports from dumping undercut all other imported products in the market) were at the beginning of the investigation period, then it provides an even stronger causative link between the presence of dumped products and their influence on the pricing of non-dumped products for the balance of the investigation period. This competitive interplay between dumped and non-dumped imports is further evidenced by the fact that that the Commission found, for approximately seven (7) months[85] of the investigation period, that dumped and non-dumped imports were at similar prices.

The only way that the Commission can be entirely confident that dumped prices are not causing injury to the Australian Industry is to impose measures on the exporters found to be dumping and allow, not only the applicant to compete on a level playing field, but any exporter not found to be dumping to compete on the same level playing field.

8.5 Volume effects

At section 8.2 of SEF No. 416, the Commission has answered the question, concerning the cumulation effects of exportation, in the positive. The Commission is therefore having regard to a statutorily irrelevant consideration at section 8.5, where it says that:

> *"In 2016 the volume of goods sourced from dumped sources is less than that from countries not subject to this application, and is less than 2 per cent of the total Australian market."*[86]

Not only is the Commission asking the wrong question (i.e. the issue is not what percentage of the dumped imports relate to the overall market, rather the percentage of all imports which is significantly higher and estimated to be approximately 25%), but also, the Commission has confused the causative impact of the dumped volume of imports across an irrelevant period – specifically, calendar year 2016, and not the investigation period, across which the dumping assessment relates.

[84] SEF No. 416, pp. 54-55 [8.4].
[85] 10 months *minus* the 3 months (of no dumped import sales).
[86] SEF No. 416, p. 55.

The Commission has not had regard to relevant considerations, namely the presence of the dumped exports from Korea in the market, which according to its own analysis (at Figure 16, SEF No. 416) undercut the Australian industry in May 2016, June 2016 and October 2016. Furthermore, the volumes of dumped exports from Korea were material and the second largest source of export volume in that quarter, after Indonesian suppliers. The fact is that the dumped exports from Korea (specifically POSCO) were known to the Australian industry, were disclosed to the Commission as evidence and constituted the identification of no less than [redacted] import price offers. The fact further that the Australian industry responded to these price offers by reducing [redacted] its price offer is also known to the Commission. Therefore, the Commission has failed to take into account relevant considerations that support the conclusion of material injury caused by POSCO to the applicant industry.

The applicant brings to the Commissioner's attention that on 25 October 2017, the US Department of Commerce issued a preliminary finding that POSCO had been dumping (10.09 per cent) wire rod into the United States and that the volume of the exports to the United States in 2016 was 92,504 tonnes.[87] It is a reasonable conclusion that if final measures are imposed in the United States and are not imposed in Australia, that a significant proportion of those goods will return to the Australian market and cause material injury. For context, 92,504 tonnes represents approximately double the amount of imports to Australia from the total of all other countries combined.

CONCLUSION

Therefore, by reason of the numerous substantive errors contained in SEF No. 416, the Commissioner's proposal to terminate the whole of the investigation is not the correct or preferable decision and must not be made.

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

FOR AND ON BEHALF OF THE AUSTRALIAN INDUSTRY APPLICANT

ONESTEEL MANUFACTURING PTY LTD (trading as LIBERTY ONESTEEL)

[87] NON-CONFIDENTIAL ATTACHMENT 9.3.1.1

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