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Mr Jukka Mäntynen  
Acting Director, Operations 4  
Anti-dumping Commission

**By email:**        **operations4@adcommission.gov.au**

cc.        Mr Paul Sexton  
            General Manager, Operations

            Mr Dale Seymour  
            Commissioner

Dear Mr Mäntynen,

**Exporter visit program**

**Re.        *Dumping Investigation No. 300: Steel reinforcing bar exported from China***

I refer to the above investigation, and the ostensible cooperation of four exporters of the goods under consideration, specifically:

- Shandong Iron and Steel Company Limited, Laiwu Company (**Laiwu Company**);
- Shandong Shiheng Special Steel Group Co., Ltd. (**Shandong Shiheng**);
- Jiangsu Yonggang Group Co., Ltd (**Yonggang**); and
- Hunan Valin Xiangtan Iron & Steel Co., Ltd (**Hunan Valin**).

I also understand that the on-the-spot verification of exporter data will only occur with only two of the above four exporters, namely, Laiwu Company and Shandong Shiheng. It is my understanding that an assessment of the accuracy of the information provided by Yonggang and Hunan Valin will not occur by on-the-spot verification, but by other means.

At the outset I acknowledge that due to resource constraints it is not always possible for the Commission to conduct on-the-spot verification of all cooperative exporters. This continues to be an ongoing challenge for the Commission, and OneSteel welcomes the opportunity to participate in an ongoing dialogue in developing mutually acceptable solutions to this problem. However, the approach applied by the Commission to date (most recently in *Dumping Investigations No. 240 and 264*), does not represent a viable or acceptable solution.

***Alternative verification options***

In *Dumping Investigation No. 240* the Commission conducted one on-the-spot verification visit to one Taiwanese exporter. There were no on-the-spot verification visits conducted with any other exporters. Instead, the Commission accepted the results of a remote "verification" of the information of co-operative Indonesian and Turkish exporters. The Australian industry can understand that security concerns may from time to time preclude in-country verification. However, there are alternate approaches available to the Commission. One such option is to follow the United States Department of Commerce's approach which conducts on-the-spot verification of the exporter's information in neighbouring 'safe' third-countries.

A further option open to the Commission is the use of contracted auditors to conduct on-the-spot verification for and on behalf of the Commission. Such auditors may be domiciled in the country of export, or from a neighbouring country - provided they have relevant language skills and knowledge of the Generally Accepted Accounting Principles of the country of export. The Australian industry observes that Annex I of the *WTO Anti-Dumping Agreement* explicitly allows the use non-government experts in the verification team for visits to foreign producers/exporters:

- “2. *If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.*
- “3. *It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.”*

The Australian industry considers circumstances of the in-country security of its officers, and resource constraints as within the definition of “exceptional circumstances”.

It is noted from the decision of the WTO Dispute Settlement Panel in *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*<sup>1</sup> (**Panel Report, Guatemala – Cement II**), that such non-governmental experts must be impartial and objective. In that case, it was alleged that two of the three non-governmental experts (not qualified auditors) suffered a conflict of interest by reason of their participation in a US anti-dumping investigation against imports of cement from the investigated country of export (Mexico). The Panel decided that it was reasonable for Mexico to object to the use of non-governmental experts with a conflict of interest<sup>2</sup>.

Therefore, in *Panel Report, Guatemala – Cement II*, it was the alleged conflict of interest that permitted Mexico to reasonably object to the use of non-governmental experts.

However, where an impartial and objective non-governmental expert (which may include a qualified auditor) who suffers from no conflict of interest is used in the verification team for visits, then an objection by the producer/exporter would properly be regarded as “significantly impeding” the investigation within the meaning of Article 6.8 of the *WTO Anti-dumping Agreement*.

In the case of *Dumping Investigation No. 264*, the Australian industry recites the following treatment was applied by the Commission to exporters’ information:

- none of the three cooperative Malaysian exporters were subject to on-the-spot verification;
- one of the two Taiwanese exporters were subject to on-the-spot verification; and
- no on-the-spot verification of the cooperative Turkish exporter was conducted.

Again, we acknowledge that security concerns may not make in-country verification possible. Therefore, in those ‘exceptional circumstances’, the Australian industry would suggest two alternative approaches available to the Commission, namely, verification in a safe third-country or use of impartial and objective auditors to test the accuracy of the producer/exporters financial information.

<sup>1</sup> Report of the Panel, *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, WT/DS156/R, 24 October 2000.

<sup>2</sup> *Ibid.*, at para. 8.189.

Similarly, we consider resource constraints on the Commission's capacity to conduct in-country verification of all cooperative exporters a further class of 'exceptional circumstances' warranting the use of impartial and objective auditors. Indeed, according to *Panel Report, Guatemala – Cement II*, the decision to use non-governmental experts in verification visits is indeed an arbitrary one, with no positive obligation on the investigating country to inform the country of export of the 'exceptional circumstances' justifying the participation of the non-governmental experts in the verification team:

*"[the] logical conclusion from the structure [of Annex I, paragraph 2] is that the exporting Member need only be informed of the intention to include non-governmental experts in the investigating team. If the intention of the drafters had been to impose an obligation on authorities to inform exporting Members of the 'exceptional circumstances' at issue, presumably the first sentence of Annex I(2) would have been drafted in a manner that clearly provided for that obligation."*<sup>3</sup>  
**[emphasis added]**

In other words, the power to use impartial and objective non-governmental experts is a broad one on the basis of WTO jurisprudence of the Annex to the Agreement.

#### ***The use of the "sampling" methodology to address resource constraints***

A third - but not mutually exclusive - option for the Commission to apply in 'exceptional circumstances' where there is a large number of exporters, is to consider whether sampling is required to limit the investigation to a smaller number of the producer/exporters so that the investigation is manageable under section 269TACAA of the *Customs Act 1901 (Customs Act)*.

The Commission's sampling policy and practice is contained within the *Dumping and Subsidy Manual*<sup>4</sup>. It was therefore with some surprise that in *Dumping Investigation No. 264*, the sampling option was not used by the Commission with respect to Malaysian and Taiwanese exporters – where either no Malaysian producer/exporters were subjected to on-the-spot verification, or only one Taiwanese producer/exporter was subject to on-the-spot verification.

The Australian industry has serious doubt as to the Commission's ability to assess the accuracy of information through any means other than on-the-spot verification. [redacted] [legal in-confidence] The only form of "benchmarking" of producer/exporter information mandated by Australian domestic legislation and the *WTO Anti-dumping Agreement*<sup>5</sup> is via the sampling methodology. [redacted] [legal in-confidence]

#### ***Legitimate approaches to managing resource constraints in Dumping Investigation No. 300***

[redacted] [legal in-confidence], the Australian industry is concerned that the Commission not subject the outcome of the present *Dumping Investigation No. 300* to [redacted] [legal in-confidence]. Therefore, unless the Commission is able to resource on-the-spot verification of each cooperative exporter by Commission officers, then either non-governmental experts be engaged to conduct financial verification of the producer/exporter's information, or the Commission invoke the sampling provisions of the

<sup>3</sup> *Ibid.*, at para. 8.198.

<sup>4</sup> Anti-Dumping Commission, *Dumping and Subsidy Manual*, Canberra, December 2013, pp. 117 -119.

<sup>5</sup> Article 6.10.

*Customs Act*, and assess the information in accordance with the policy and practice established under the *Subsidy and Dumping Manual*.

I would be pleased to discuss any aspect of this submission in further detail with you.

Yours sincerely



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