Independent trade advisory group on anti-dumping & customs issue solutions

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PUBLIC RECORD VERSION

March 16, 2015

Director
Operations 2
Anti Dumping Commission

Dear Director,

RE: SEF237

The following responses are forwarded in relation to the SEF237 findings on the two manufacturers,

Hua'an Linan Silicon Industry Co Ltd,
and
Gizhou Liping Linan Silicon Industry Co Ltd.

Via the trading entity Xiamen K Metal Australia during the I.P., namely:

- 441
- 2202
- 3303

The abovementioned entities all had domestic sales of identical product, namely Grades 441; 2202; and 3303.

Following the Commission's Verification Visit during the period 9th July 2014 and 14th July 2014 to Xiamen K Metal Co. Ltd (KM) and Hua' an Linan Silicon Industry Co. Ltd (Hua'an) that evidenced a negative Dumping Margin of 2.3% and a zero countervailing margin, the Commission has subsequently revised those evidential findings to an effective 14.1% rate of Dumping and Countervailing Securities.

The subsequent findings by the Commission appear, in part, to have been based on the use of previous foreign findings and third party information references which from an evidentiary perspective would need to take account of variations in like goods, different times, and differing market conditions.

With respect to the like goods analysis, we submit that in relation to Grade 441 exports, the Commission has taken an overly broad like goods test analysis which will provide the Australian applicant protection that is simply not desirable.

We submit therefore that evidentially the applicant does not produce or offer to supply Grade 441, both domestically and for export. Grade 441 should be excluded from the scope of this Investigation.

We therefore dispute the like goods assessment in ***para 3.5 of SEF237***.

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NORMAL VALUES

Para 6.5 of SEF237 overturned the Verified Normal Value s 269TAC(1) calculations of the July 2014 visit by applying constructed Normal Values in accordance with s 269 TAC (2) (c) and Regulation 180, 181, and 181A of the Regulations.

The critical consideration with the SEF treatment on Normal Value is the resort to Regulation 180 (2) that requires cost of production records to "reasonably reflect competitive market costs associated with the production or manufacture of like goods".

We do not accept the Commission's views expressed in ***para 6.7.2*** on electricity costs and on the basis of actual payments by the group's two manufacturers, there should be no uplift for electricity expenses.

Para 6.7.3 of SEF 237 therefore is rejected given the verified finding detailed in Section 12 of the Visit Report which reads, inter alia, :-

> "We examined electricity payments made by Hua'an Linan and Guizhou Linan during the Investigation Period. We compared the rate per kilowatt to a table of electricity tariffs (*confidential attachment 33*) provided by the Government of China for the relevant provinces. We noted that over the course of the Investigation Period Hua'an Linan paid a rate of RMB xxxx per kilowatt, which is RMB xxxx per kilowatt less than the table indicated. However, Guizhou Linan paid a rate of RMB xxxx per kilowatt, which is RMB xxxx per kilowatt higher than the maximum rate provided in the electricity scales table. We examined the electricity invoices, however they did not provide any evidence of the basis of the rate applied or the category of electricity utilisation. Based on the evidence provided, we are unable to conclude that a countervailable subsidy is being provided in the form of reduced electricity rates."

Factually the situation is that 'Guizhou' actually paid xxxxxxxxx RMB more than the Commission's applied Tariff rate which when offset against the Hua'an applied Tariff rate increase of xxxxxxxxxxx RMB, results in there being no subsidy benefit to the relevant production.

The Commission's "xxxx" treatment of 'Guizhou' electricity payments and rates is considered contrary to the Commission's Dumping Duty practices.

There should be no xxxx uplift for any electricity benefit as the producers actually paid more than the bench rate applied and Normal Values should be adjusted accordingly.

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PROFIT – UPLIFT – PARA 6.8

The Commission calculated a weighted average net profit, measured as a percentage mark-up on full cost to make and sell for the Linan Group, before performing the abovementioned amendment (6.7.3 electricity) to the recorded costs incurred in relation to electricity.

That uplift appears to have been xx%, which incidentally is the xxx rate included as an uplift.

The determination of a profit element has to be a net profit and we seriously challenge how a xx% uplift can be applied.

Our calculations on net profit result in significant lower amounts than the xx% applied for both 'Hua'an' and 'Guizhou'.

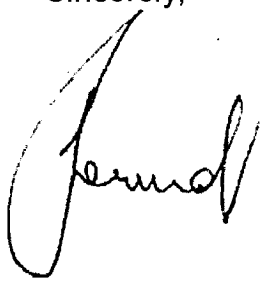
For 'Hua'an' our calculation based on the domestic sales of identical export product is xxx% gross profit and xxx% nett profit (after tax).

For 'Guizhou' our calculation based on the domestic sales of identical export products is _a xxxxxxxx % gross profit (xxxx) and thus a xxxx % nett profit (after tax).

We submit that the uplift for profit has been grossly overstated and that the normal values for the Linan Group be reassessed on the basis of no electricity benefit and a significantly reduced net profit uplift.

We thank you for your consideration and request the opportunity to substantiate our reasons for the Commission needing to reassess its Normal Value calculations for the Linan Group.

Sincerely,



M J HOWARD
Representative