Subject: Comments on the Statement of Essential Facts No. 316

Dear Madam or Sir:

With reference to the Statement of Essential Facts No. 316 (the SEF) issued on 21 April 2016, on behalf of our clients: Jiangsu CP Xingcheng Special Steel Co., Ltd. (Xingcheng) together with its exporter Jiangyin Xingcheng Special Steel Works Co., Ltd.(the Exporter), we appreciate that the SEF confirms the conclusion in the Verification Report (Report) that information submitted by Xingcheng is complete, accurate and verifiable. However, we regret to find that certain mistakes in calculation of export prices, which have been raised in the comment to the Report, were not considered in the SEF. Besides, we also found some other mistakes with regard to the determination of normal value as well as the adjustments made to normal value. Therefore, we would like to address these issues in detail below. It is highly appreciated if you could take all these comments into account and correct the mistakes accordingly for the final determination.

1. The determination of starting-point for all export prices

We notice that Section 3.2 of the Report states that: “The visit team verified the accuracy of Xingcheng’s export sales spread-sheet by reconciling it to source documents in accordance with ADN 2016/30.” Section 3.7 continues that: “In relation to the goods exported by Xingcheng to unrelated parties, the verification team recommends that export price be determined under subsection 269TAB(1)(a) of the Act, as the price paid by the importer less transport and other costs arising after exportation.” Section 5.10.2 of the SEF confirms the above conclusion.

In light of the above explanations, it is clear that Xingcheng’s export prices to unrelated parties are true, complete and accurate, which are suitable for the determination of export prices.
We, however, regret to find that “Total invoice price ex VAT (RMB)” calculated in “Confidential Attachment 4c - Xingcheng DM” and used by the Commission for the determination of export prices are not the prices paid by the importers less transport, as stated in Section 3.7. The actual FOB export prices paid by the importers were properly reported in column [20] “FOB export price (USD/TON)” in “Confidential Attachment 4c - Xingcheng DM”, which have been verified by the Commission. Please see Confidential Exhibit 1 attached for all evidences collected by the Commission during the on-spot verification regarding each transaction to Australia during the investigation period.

Based on these evidences, it is clear that the goods value on commercial invoices are the real prices paid by the importers. We hereby request the Commission to use the correct numbers for the determination of FOB export prices.

With regard to the “Total invoice price ex VAT (RMB)”, the Commission explained through email dated 7 April 2016 as below:

“The starting point for the calculation of the Export Prices in Appendix 1 are from the actual figures, ex VAT, contained in invoices derived from Xingcheng’s accounting system as the price paid in RMB. These invoices were provided to the visit team and verified as part of the downwards export sales verification.”

These prices are the internal transfer prices between Xingcheng and its exporter. Although they were actual figures derived from Xingcheng’s accounting system and the relevant VAT invoices were also provided, this does not mean that these figures could be qualified as actual export prices paid by importers as required by subsection 269TAB(1)(a) of the Act.

These internal transfer prices are calculated at EXW level and are net of any expenses incurred for exportation and are net of 12% non-refundable VAT. This can be proved by the formula used in column “Average unit price incl VAT” of in “Confidential Attachment 4c - Xingcheng DM”, i.e. In this formula, the numbers are the ocean freight for two transactions respectively. The number “0” means this transaction is dealt at FOB level thus no ocean freight; the numbers are the ocean freight for two transactions respectively. The number 0.17 is the VAT payable rate i.e. 17% and the number 0.05 is the VAT refundable rate i.e. 5%. The number is the internal
estimation of total inland transportation from the factory to the loading port and the handling expenses associated. It means that the internal transfer prices between two related companies have been deducted the ocean freight, inland transportation, handling expenses and the non-refundable VAT based on the commercial invoice prices to unrelated importers.

The above calculation formula is also supported by the evidences collected by the Commission during the on-spot verification. In each set of export documents as attached Exhibit 1, there is a one-page document printed from Xingcheng’s accounting system named “MES Ware”. At the top of this document, there is always a formula in Chinese as below.

If translated into English, it is exactly the same with the formula used in column “Average unit price incl VAT” of in “Confidential Attachment 4c - Xingcheng DM”, i.e.

Furthermore, the above calculation formula could also be reconciled to the statement made by Xingcheng in its questionnaire reply as follows.

Thus, the prices used by the Commission as the start point to determine the export prices are internal transfer prices between Xingcheng and its Exporter, which is net of ocean freight, inland transportation, handling expenses and the non-refundable VAT.

2. The fair comparison between export price and normal value

Following the comment under point 1, it is clear that the export prices used by the Commission are at the EXW level. However, when comparing these export prices to
normal value, the Commission uplifted the normal value with inland transportation, handling expenses and the non-refundable VAT. It means that the Normal value has been constructed to the FOB level with the non-refundable VAT.

Thus, the comparison of export price and normal value was at different price levels. In addition, while the export price is net of non-refundable VAT, the normal value is uplifted with it. Therefore, the price comparability is affected and the comparison made by the Commission is unfair.

3. The determination of export prices for related transactions

In Section 3.6 of the Report, the Commission found that:

In respect of export sales of grinding balls by Xingcheng to the related party during the investigation period, the visit team found evidence that:

• the price is 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; and

• Xingcheng and the related party, both being bodies corporate, are controlled, directly or indirectly, by a third person (whether or not a body corporate). ¹

The verification team therefore considers that all export sales of grinding balls to Australia by Xingcheng to the related party during the investigation period were not arms-length ² transactions.

The second paragraph of Section 3.7 further concludes:

The verification team verified that the non-arms-length sales of the goods were consumed by the related party and not subsequently sold. Therefore, in relation to the sales to the related party, the verification team recommends that the export price be determined under subsection 269TAA(1)(c), having regard to all the circumstances of the exportation.

Section 5.10.2 of the SEF confirms the above statement and conclusion.

In addition, the Commission explained through email dated 7 April 2016 regarding the determination of export prices for related transactions as below:

During the verification the visit team discussed the related party relationship, in particular the price negotiation with them and the unrelated parties. The visit team

¹ Customs Act 1901 (Cth) s.269TAA(4)(b)(i).
² Section 269TAA of the Act outlines the circumstances in which the price paid or payable shall not be treated as being at arms length. These are where: there is any consideration payable for or in respect of the goods other than price; the price is 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; or in the opinion of the Parliamentary Secretary, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.
determined from that discussion that the prices between Xingcheng and the related party are influenced by their commercial relationship.

Xingcheng recalls that during the verification visit, it seems no any discussion regarding the price negotiation between Xingcheng and its related customer in Australia. We also fail to see any such discussion in the Verification Report.

Besides, Xingcheng considers that the mere fact the importer being a related company of Xingcheng or both companies are controlled by a third party is not a decisive fact or element to find that the related import prices are not arms-length. No any evidence could have demonstrated that the prices between two related companies were influenced by their relationship that rendered such prices to be unreliable.

As a matter of fact, the export prices for related transactions were determined based on free negotiation without any influence of their relationship. This can be demonstrated by the cost differences used by the Commission to adjust the export prices.

<table>
<thead>
<tr>
<th>Row Labels</th>
<th>Period</th>
<th>Unit cost of grinding bar</th>
<th>Cost Difference between periods</th>
</tr>
</thead>
<tbody>
<tr>
<td>XCQ6001-25</td>
<td>2014-Q4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XCA6001-25</td>
<td>2015-Q3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>XCA6001-38</td>
<td>2015-Q3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The price difference between these three models in different period is set forth below.

<table>
<thead>
<tr>
<th>Level of trade</th>
<th>Model Match</th>
<th>Period</th>
<th>Quantity</th>
<th>Exchange rate</th>
<th>Net invoice value USD</th>
<th>Net invoice value RMB</th>
<th>Unit price in RMB</th>
<th>Price Difference between periods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trader</td>
<td>XCQ6001-25</td>
<td>2014-Q4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>End user</td>
<td>XCA6001-25</td>
<td>2015-Q3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>End user</td>
<td>XCA6001-38</td>
<td>2015-Q3</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

From the above table, it can be concluded that the prices differences are corresponding to the costs differences, i.e. the higher the costs, the higher the prices. In addition, the above costs and prices differences also perfectly demonstrate the physical characteristic differences between different sizes of products, i.e. the smaller the size, the higher the price and cost.

For the sake of argument, even if the related export prices were not arms-length, the determination of these related export prices are not proper. In particular, the cost adjustment made by the Commission gave rise to some problems leading to incorrect conclusion.
In the worksheet “Australian Sales” in “Confidential Attachment 4c - Xingcheng DM”, the Commission indicated that the export prices to the related company were “[...] based on price of same grade grinding balls to arms-length customer in an earlier period (Sale No. 2).” (“Nominal Export Prices”) In the worksheet “Price” in “Confidential Attachment 4c - Xingcheng DM”, the Commission further calculated the cost difference of grinding bars between three models: the models (XCA6001-25 and XCA6001-38) actually exported to Australia and the model (XCQ6001-25) the export price of which is used to substitute the former. And then, the Commission subtracted the cost differences from the Nominal Export Prices.

There are two mistakes made by the Commission in this regard. First, the determination of these related export prices has the same flaw as discussed under point 1 of this comment, which should be corrected by the Commission into the actually export prices paid by the related importers. Second, as demonstrated in the table above, the grinding bar costs of models (XCA6001-25 and XCA6001-38) actually exported are higher than the cost of models (XCQ6001-25) used for the purpose of substitution. Logically, the higher the costs, the higher the prices. Thus, the cost differences, i.e. [redacted] Yuan and [redacted] Yuan respectively, should be added to the Nominal Export Prices instead of subtracting from.

4. The determination of non-refundable VAT

The purpose of reporting the “Average unit price incl VAT” in Appendix 1 (the worksheet “Australian Sales” in “Confidential Attachment 4c - Xingcheng DM”) is to facilitate the Commission to calculate the non-refundable VAT. This is because, according to China’s tax law, the non-refundable VAT is calculated based on the internal transfer price between Xingcheng and its exporter. Thus, the correct non-refundable VAT should be calculated as follows:

\[
\text{Non-refundable VAT} = \frac{\text{Average unit price incl VAT}}{1.17} \times 12\%
\]

In the worksheet “Australian Sales” in “Confidential Attachment 4c - Xingcheng DM”, however, the Commission calculated the non-refundable VAT based on the constructed normal value. Since the constructed normal value is a theoretical price, the non-refundable VAT calculated on this base is also a theoretical one. This is obviously wrong and should be corrected.
5. **The average domestic inland transportation and domestic credit cost adjusted from normal value do not reflect the actual delivery terms and payment terms of the domestic sales**

In domestic sales, there are two types of delivery terms: pick up at the factory and home delivery. Only those domestic sales with delivery terms of home delivery would incur domestic inland transportation. However, the Commission allocated the total domestic inland transportation to all domestic sales regardless whether the sales were home delivery or not, thus underestimated the unit average domestic inland transportation.

The same applies to the Commission’s calculation of unit average domestic credit cost. Some domestic transactions were made with advance payment, and some were made with credit period. In spite of this remarkable ramification, the Commission allocated the total domestic credit cost to all domestic sales regardless of the actual payment term.

If these mistakes were to be corrected, the unit average domestic inland transportation is [Blank] Yuan/ton, and the unit average domestic credit cost is [Blank] Yuan/ton.

6. **The substitution of grinding bar costs is not proper**

Section 5.8 of the SEF provides that “The Commission’s proposed benchmark for grinding bar cost consists of the following: i. A monthly Latin American export billet price in free-on-board (FOB) terms”

As reported in the questionnaire reply and verified during the on-spot verification, Xingcheng is vertically integrated producer of the grinding ball. It starts its production from iron ore to iron and then to steel billets. The steel billets are further processed into grinding bar and then to grinding ball.

The Commission substituted the costs of grinding bar starting with steel billets have overlooked the fact that Xingcheng is vertically integrated producer. The steel billets used by Xingcheng to manufacture the grinding ball were mostly produced in-house on net cost base. However, the monthly Latin American export billet price in free-on-board (FOB) terms contains a reasonable profit of the billet and necessary cost to move the goods from factory to port. Therefore, an adjustment is needed to bring the billet price used by the Commission to net cost at factory level. This adjustment is justified under Article 2.2 of the WTO Antidumping Agreement, which requires that the cost of production shall be the cost of the country of origin.

* * *

In conclusion, the export prices and the normal value were not properly determined. We hereby respectfully ask the Commission to take into account of the foregoing and
to make corrections accordingly. In fact, there should be no dumping by Xingcheng. Please refer to **Confidential Exhibit 2** for Xingcheng’s own calculation.

Submitted for and on behalf of Xingcheng

Pu Lingchen/Guan Jian

11 May, 2016