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29th November, 2017

D'Souza, Sangeeta <Sangeeta.D'Souza@industry.gov.au>
Ms S Disouza
Case Manager
Anti Dumping Commission
Operations 2
Industry House
10 Binara Streeet
Canberra
ACT 2600

Dear Sangeeta,

As you are aware Sanwa is a Australian company without an employee, let alone a department, singly devoted to anti-dumping actions as we believe the AD applicant has available to prosecute its cases. I say this only to make the point that we do not have the resources to take to task any/every piece of information added to the public record of this case. Frankly we let most of it be posted without rebuttal simply because life is too short to take every argument to task. In any event there comes a point where something needs to be said and when I read that the ADC considers that I do not have a fixed contract of sale with my manufacturer of deformed bar in coil... Celsa/Novacero, that line has been crossed.

The SEF dated November 14 in relation to Anti Dumping investigation EPR 418 quotes on pages 32/32 as follows :

> ***The Commission has examined Nervacero's claims and considers the invoice date to be the date of sale due to:***
> ***the actual weight and therefore the final invoice price is not known until the invoice date (because the weight is based on the weight of the truck departing the mill);***
> ***transactions are recognised as sales in the accounting system on invoice date;***
> ***in its CTMS data Nervacero allocated quarterly SG&A costs using sales volumes determined based on invoice date;***
> ***invoice date was recognised as date of sale in Investigation 264 and Nervacero stated that its practices had not changed since that time;***
> ***Nervacero claimed it has an enforceable contract at order confirmation, however it did not provide any evidence that the contract had to be enforced in the past (in fact there is evidence that the risk of non-payment of an order is managed by Nervacero through different means); and***
> ***the Manual requires any claim for a date of sale other than invoice date to address whether the materials cost differs between the time of the pro forma invoice / order confirmation and the invoice, and***

whether contracts were entered into for the materials purchases,[32] which Nervacero hasn't addressed, and in relation to which the Commission found no evidence that Nervacero's pricing considerations support its claim.

For these reasons the Commission considers that no adjustment is warranted.

I would like to make some comments on the conclusion and the reasoning behind this conclusion from the perspective of the other party in most of these allegedly "non-existent" contracts.

- ***the actual weight and therefore the final invoice price is not known until the invoice date (because the weight is based on the weight of the truck departing the mill);***

The contract we sign with Celsa makes very clear that there is a weight tolerance of plus minus 10 percent. Accordingly the level of certainty which any contract must satisfy so as to be enforceable is very clearly met and I do not think there is a first year law student attending his first lecture of the day who would think that the inability to provide an exact weight would disqualify a contract from being a contract in this way. This piece of evidence is so weak one wonders why the AD Commission even bothered.

- ***transactions are recognised as sales in the accounting system on invoice date;***

Internal accounting systems of my supplier bear no relevance to whether I have an enforceable contract with my supplier. This is almost as weak as the first reasoning.

- ***in its CTMS data Nervacero allocated quarterly SG&A costs using sales volumes determined based on invoice date;***

I would argue once again that the CTMS data of my supplier bear no relevance to whether I have an enforceable contract with my supplier. I am sure for reasons of accounting convenience comparison of SG&A costs would be based on invoiced sales volume but this is a matter of convenience only

- ***invoice date was recognised as date of sale in Investigation 264 and Nervacero stated that its practices had not changed since that time;***

I cannot comment on past practices but the expression "two wrongs don't make a right" springs to mind.

- ***Nervacero claimed it has an enforceable contract at order confirmation, however it did not provide any evidence that the contract had to be enforced in the past (in fact there is evidence that the risk of non-payment of an order is managed by Nervacero through different means); and***

Well it is going to take a really stupid reason to beat number 1 above although some of the following reasons give it a runs for its money. However this one is even more stupid. Celsa is being prejudiced because it contracts with reliable business partners who respect the contract. Sanwa has a good relationship with Celsa and expects that the contract will be honoured if the market goes up and we will honour the contract if the market goes down. Very simply we firmly believe we have a firm contract which is enforceable. If we did not we would expect to be sued and if Celsa did not honour the contract terms, we would sue.

the Manual requires any claim for a date of sale other than invoice date to address whether the materials cost differs between the time of the pro forma invoice / order confirmation and the invoice, and whether contracts were entered into for the materials purchases,[32] which Nervacero hasn't addressed, and in relation to which the Commission found no evidence that Nervacero's pricing considerations support its claim.

Sanwa understands that scrap costs, for which Nervacero is dependant, may change from month to month. Does the Commission really need to investigate whether this is the case ? Is the commission aware that Celsa and indeed all Electric Arc Mills are largely converters of scrap to finished product. Scrap is the largest determinant of finished product pricing by far and is a volatile commodity. I would have thought this is obvious.

Now taking cheap shots at the ADC for its exceedingly weak position on the timing comparison may be fun, this isn't the reason why I have made this submission.

How exactly does any producer guard against inadvertent dumping violations when there is a timing difference between the date of the shipment and the date of contract. If in this intervening period the domestic market moves downwards then no problem but if the price of scrap rises and a producer's (Novacero) European competitors push prices upwards then what is a Novacero supposed to do. Sorry sharedholders we cannot increase our prices domestically because the business concluded last month and invoiced this month will end up being lower than our current domestic sales and will fall foul of the Australian Anti Dumping regulations ??

Now the ADC may think that our market is so big that other markets will respect our Australian pricing levels and not seek to recover cost increases in their much bigger domestic market because they might run foul of our anti dumping provisions. Unfortunately this does not resemble reality as every mill will try to immediately put prices up if their costs go up and will not in any way be influenced by tiny markets like Australia and our problems.

From Sanwa perspective we have a fixed and firm contract with Celsa at the time we reach agreement with them and at the very latest, and really only for sake of clarity at the time the business is confirmed by receipt of the contract from Celsa and it is signed and returned.

We reject 100 percent any suggestion that the date of sale could be later than this.

Regards

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