Ursine Steel Co., Ltd.

9 April 2018

Director Operations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2600

Review 419 – Hollow Structural Sections exported from Taiwan

Dear Director

This submission is made on behalf of Ursine Steel (Ursine) in response to the Anti-Dumping Commission's (the Commission) preliminary findings outlined in Statement of Essential Facts Report No. 419.

Comparable domestic like products

Ursine wishes to express its concerns about the lack of clarity and transparency surrounding the Commission's preliminary determination of the most comparable domestic like models to the goods exported during the review period. There is no report that outlines the Commission's preliminary findings or reasons for basing its normal value determination on certain domestic models as opposed to other comparable models. Likewise, SEF 419 provides no information or understanding of the domestic like model considered by the Commission to be the most comparable like model.

Ursine is confused by this issue given the Commission's confirmation that:

> *In terms of the model matching methodology relied on to determine Ursine's dumping margin, the ADC has adopted the approach used in Continuation Inquiry 379. Under this approach, the ADC used Ursine's domestic sales of 400 pre-galvanised RHS to calculate normal values, using a specification adjustment to ensure domestic sales were fairly comparable with export sales.*

This statement is particularly troubling given that the methodology adopted in review 379 was not consistent with the methodology used in this current review. Upon querying the issue further, the Commission confirmed:

[redacted]

To address the confusion, Ursine requests the Commission to clearly explain its preferred approach in review 419 and how it accords to the approach undertaken in review 379, so that Ursine can properly consider whether the correct or preferable decision has been made.

Notwithstanding the confusion outlined above, Ursine repeats its view that domestic products specified to [redacted] are the most comparable domestic like model as they possess characteristics that are identical to the exported goods. As highlighted in Ursine's questionnaire response at Exhibit C-3, the like goods table shown below outlines Urine's view that the exported models of [redacted] and the domestic models of [redacted] have no differences between them in terms of grade, size, wall thickness, shape or finish. This is due to these two products being produced from identical coil feed material.

[CONFIDENTIAL TABLE REMOVED]

As highlighted in the table below, the export model [redacted] and domestic model [redacted] share common galvanised coil specifications ([redacted] & [redacted]). As such, they possess the same minimum yield strength as required by [redacted], despite the lower yield strength requirement stipulated in the [redacted] standard. This confirms that the closest structural grade of the subject goods sold on the domestic market during the review period is [redacted]. This is further supported by the technical details in the submitted product catalogue and sample mill certificates for [redacted] contained in exhibit A-3.10 and exhibit C-4 of Ursine's questionnaire response. In addition, the two models are used in same structural applications (for general building materials).

[CONFIDENTIAL TABLE REMOVED]

Finally, it is noted that in its exporter briefing submission, AusTubeMills proposed that the model matching principle be conducted by determining the grade of the product. Ursine agrees with this view to the extent that the Commission rely on the <u>actual</u> grades of the finished products, and not the minimum grade specified in the relevant standards. As noted in the table above, as both [redacted] and [redacted] are produced from the same coil feed material, products specified to those grades would have common actual yield strength, which in the case of [redacted], would be above the minimum yield strength specified in the relevant standards.

Therefore, Ursine requests the Commission to reconsider the evidence presented which demonstrates that the most comparable like good sold domestically is [redacted] as it is manufactured from the identical coil used to produce the goods exported to Australia. Domestic sales of [redacted] are therefore considered to be identical to [redacted] exports and an appropriate basis for assessing dumping.

<u>Specification adjustment</u>

If the Commission holds the view that domestic sales of [redacted] are the most appropriate comparison with the export sales, then Ursine strongly contends the specification adjustment applied by the Commission is flawed for the following reasons.

First, Ursine reiterates its early point that the domestic sales of [redacted] are identical to the export sales of [redacted] as they are produced from the same coil feed materials. As such, establishing a normal value on [redacted] domestic sales sold in the ordinary course of trade, requires no specification adjustment as there are no differences between the products which would affect their price comparability.

Second, it is incorrect to calculate the price differential of [redacted] and [redacted] products, and apply this to [redacted] pipes. [redacted] and [redacted] are not used for identical applications and as such have different factors affecting their prices. For instance, in the case of [redacted] pipes, they are used for building support (eagle frame adjustable pillars), vehicle front tube, whilst [redacted] pipes are used for large mechanical base, high strength pillars. The market characteristics of these individual products and the corresponding demand in these markets are very different and this directly impacts on the prices that Ursine Steel can achieve. As such, it is not reasonable to transpose the price differential from [redacted] products to [redacted] products across grades.

Third, Ursine's production of [redacted] has a greater actual yield strength value ([redacted] Mpa) than that of the exported [redacted], which results in a higher unit price. This is confirmed by Austube in its exporter briefing submission:

> *The strength grade of HSS is an import attribute for model matching as higher strength grade material will have a higher sell price in the market. This is because the cost of Hot Rolled Coil feed material increases due to the higher strength coil required to produce higher strength HSS. The strength increase in coil is achieved through the addition of expensive alloying elements which increases the manufacturing cost of the Hot Rolled Coil.*
>
> …
>
> *It should be noted that the higher strength grade in these countries may attract an addition premium over and above the Hot Rolled Coil cost difference as the product will generally be used in more critical design situations.*

Ursine again agrees with AusTube's summation of the positive relationship between coil feed material, strength grade and price of the finished goods. Therefore, if the Commission considers that [redacted] is the most like model to the exported [redacted], rather than an upward adjustment, a downward adjustment to the [redacted] prices is required to ensure proper comparison with the exported goods.

<u>Date of sale</u>

In rejecting Ursine's claim that the date of contract best established the material terms of sale, the Commission advised that:

> *For a claim that a date other than the date of invoice to succeed it would be necessary to demonstrate that the material terms of sale were, in fact, established on another date. Evidence would need to address whether price and quantity were subject to any continuing negotiation after the claimed contract date.*
>
> *A claim for the use of another date of sale 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;*
> • *whether contracts were entered into for the materials purchases, and materials inventory valuation.*

Ursine repeats its previous comments and statements contained with its exporter questionnaire response. After receiving an inquiry order from the Australian customer, Ursine negotiates and submits a counter-offer for a FOB price. Upon receipt of a purchase order, Ursine sends a sales contract for execution by the customer. Upon the execution of the sale contract, the price and other material terms of sale become fixed and binding, which may not change, and indeed did not change in the actual course of business during the whole of the review period.

This is supported by the export sales source documents contained in the questionnaire and supplementary source documents submitted as part of the remote verification undertaken by the Commission. Those documents confirm that none of the material terms changed following the execution of the sales contract.

On the question of the considerations in determining price between export and domestic sales, Ursine again reiterates and confirms its previous statements to the Commission. [redacted]. Upon receiving an order inquiry, Ursine will negotiate price with the customer with an understanding of the [redacted]. Therefore, where a domestic and export order inquiry are made in the same month, there will be little difference in the price considerations for comparable products.

However, Ursine's process for negotiating and setting price outlined above highlights the issue of timing which affects price comparability between the export sales and domestic sales, and is the basis of the claim that the date of contract should be determined to be the date of sale. To highlight by actual example, we refer to the export invoice '[redacted]' made during the review period and a comparison of the relevant order and invoice dates for that particular export sale and the corresponding normal value to be compared with it.

It shows that the order and contract month for that export sale related to [redacted]. Therefore, Ursine relied on its [redacted], which relied on the [redacted], when negotiating and agreeing to prices with the exporter customer. The corresponding invoice and shipment date occurred in [redacted], approximately [redacted] months after the contract and terms of sale were agreed by the parties.

In establishing a normal value for this export sale, the Commission has identified that the invoice date falls within the [redacted], and compared the export price to the weighted average normal value for the same quarter ([redacted]). Given the short lead times for domestic sales ([redacted]), the domestic sales relevant to that [redacted] normal value occurred in the months of [redacted], [redacted] and [redacted]. That is, Ursine relied on its [redacted] for [redacted] and the [redacted], when negotiating and agreeing to prices with the relevant domestic customers

[CONFIDENTIAL TABLE REMOVED]

This highlights the first of the timing issues with the Commission's comparison of export prices with normal values. The export prices for this sample transaction were negotiated and fixed [redacted] months prior to the shipment date and at no point were the terms of the contract altered. It also highlights that domestic sales which were negotiated and agreed after the goods were exported from Taiwan (being those in [redacted] and [redacted]), form part of the normal value to be compared with the export price which was agreed in [redacted], approximately [redacted] months later.

It is implausible to think that upon receiving an order inquiry in [redacted], Ursine is able to negotiate export prices by forecasting or speculating on movements in [redacted] up to [redacted] months into the future. It is even more fanciful to consider that in setting its export prices to Australia and to ensure it is exporting at its normal value, Ursine would or should take into account domestic selling prices which occur [redacted] months after the export sale has occurred.

The timing issues highlighted above address the second of the questions raised by the Commission, about the differences in the material costs at the time of subsequent invoicing. As explained previously, lead times differ substantially between domestic and export sales, with domestic sales involving the [redacted]. By contrast, the difference between order date and invoice for export sales ranges from [redacted] to [redacted] months over the review period, with an average period of effectively [redacted] months.

This confirms that production of the exported goods [redacted] which contrasts with the domestic sales, where production [redacted]. It also confirms, as highlighted in the earlier example, that the normal value relies on domestic sales which were produced after shipment of the export goods were completed.

These highlighted timing issues are intensified and magnified in Ursine's circumstances given the significant fluctuations and substantial magnitude of volatility in its [redacted] which were contained and presented to the Commission in Ursine's questionnaire response, and shown below. It shows that Ursine's [redacted] costs varied by [redacted]% between the lowest and highest month over the review period. It also shows that significant variations occurred within each quarter ranging from [redacted]% in [redacted] to [redacted]% in [redacted].

[CONFIDENTIAL TABLE REMOVED]

Referencing the table above to the earlier sample export sale, it shows that Ursine would have generally taken into account [redacted] in [redacted] which were approximately NTD [redacted]/kg, compared to the [redacted] invoice date of NTD [redacted]/kg ([redacted]% [redacted]) and the average for the [redacted] of NTD [redacted]/kg ([redacted]% higher).

The above analysis highlights clearly that the order date is the relevant date where the material terms of sale are fixed between Ursine and its export customers, and evidence submitted confirms that no alterations to those terms occurred after the sales contracts were executed. It also shows that the significant fluctuations in [redacted] would have a significant impact on the respective export and domestic prices, given the longer lead time of the exported goods compared to the domestic goods.

It is also noted that the Commission considered it relevant that Ursine did not [redacted] when it is claimed that the date of sale occurred for some export transactions. Ursine's [redacted] were not included in the questionnaire response for review 419 because they had previously been provided to the Commission in Ursine's questionnaire response to review 379. Those costs have been verified and found to be accurate, relevant and reliable. Ursine re-submits the costs verified and relied on by the Commission in Appendix 2 to its dumping margin calculations stemming from review 379 (refer to **Confidential Exhibit A**).

Ursine reiterates its claim that the relevant export date of sale is the reported order/contract date in its Australian sales listing. Those dates should be used for comparing with corresponding normal value. This would ensure that the comparison of export price and normal value is made 'in respect of sales made at as nearly as possible the same time.'[1]

If the Commission continues to hold the view that the date of invoice is the date of sale, then Ursine contends that the Commission must make due allowance pursuant to subsection 269TAC(8) of the

[1] Article 2.4 of the WTO Anti-Dumping Agreement.

Customs Act 1901, for '*sales occurring at different times*'. This adjustment should be made to all normal values which relate to an export sale where the contract date and invoice date do not occur in the same quarter. The amount of the adjustment should be calculated by the movement in Ursine's cost to make and sell between the contract quarter and the invoice quarter.

For example, where an export contract date occurs in [redacted] and the export invoice date occurs in [redacted], the normal value should be adjusted downwards by [redacted]% which reflects the movement in Ursine's [redacted] between the contract quarter (NTD [redacted]/kg) and the invoice quarter (NTD [redacted]/kg).

Yours sincerely

John Bracic