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24 February 2015

Ms Candy Caballero
Director Operations
Anti-Dumping Commission
Ground Floor Customs House
1010 Latrobe Street
Docklands, VIC 3008

Dear Ms Caballero

Dumping investigation 24 – Hot rolled rod in coils exported from Indonesia
Re.: Australian industry response to remote exporter verification report of PT. Gunung Rajapaksi

This submission is made by the applicant Australian industry producing hot rolled rod in coils (**rod in coils**), OneSteel Manufacturing Pty Ltd (**OneSteel**), in response to:

- the Anti-Dumping Commission's (**Commission**) remote exporter verification report for PT. Gunung Rajapaksi (**PT. Gunung**) dated December 2014 (**Report**); and
- the submissions of PT. Gunung to the Report dated 23 December 2014 and 3 February 2015.

<u>Summary</u>

In summary, OneSteel submits that:

- the public record versions of the Report and PT. Gunung submissions contain insufficient detail of the substance of the confidential information and claims made;
- it is unclear how the Commission calculated the PT. Gunung's major raw material cost of production, and whether or not the transfer price of its related party supplier was tested by the Commission as comparable to market prices for the raw material;
- there appears to be an insufficient level of verification of sales, other variable and direct costs, selling, general, administration and other overhead costs;
- additional disclosure (for interested parties) of the claimed adjustments and due allowances are required;
- there has been a sustained movement in the exchange rate relevant to the conversion of currencies in this case, such that it is appropriate to fix the exchange rate to the date before the sustained movement commenced; and
- the date of sale is properly the date on which the material terms of sale have been agreed to, and that any 'tolerated' breaches of those terms do not necessarily imply that a later date should be taken to be the date of sale.

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Evidentiary matters

At the outset OneSteel notes the extent of redaction of information in both the Report and the PT. Gunung submissions. OneSteel refers the Commission to the obligation on parties under subsection 269ZJ(2) to ensure that a summary of information claimed to be confidential contains:

> *"(a) … sufficient detail to allow a reasonable understanding of the substances of the information; but*
>
> *(b) does not breach that confidentiality or adversely affect those interests;*
>
> *is given to the CEO for inclusion in the public record".*

OneSteel further refers to the Commission's own policy on public record versions of documents and evidence contained with Australian Customs Dumping Notice (ACDN) No. 2012/42, that provides inter alia:

> *"All redacted or deleted text in documentation provided for the Electronic Public Record (EPR) must be accompanied by a summary that contains sufficient detail to allow a reasonable understanding of the substance of the information. This may be done by providing bracketed text following any redacted text."*

In this case, both the Report and both the PT. Gunung submissions contain redactions without the requisite summary, sufficient to permit OneSteel and other interested parties to understand and/or respond substantively to the claims made.

Although in drafting its response below to the Report and PT. Gunung submissions, OneSteel has made a number of assumptions concerning the nature of the findings and claims made, OneSteel nevertheless requests the Commission:

(a) review its public record version of the Report; and
(b) require PT. Gunung to revise its public record version of the submissions,

in accordance with subsection 269ZJ, and ACDN No. 2012/42.

Verification of related party transactions

OneSteel observes that the Commission has identified, that a related party, PT. Gunung Garuda (**PT. Garuda**), "manufactures slabs and billets and supplies the majority of the billets used by PT Gunung to manufacture rod in coils".

From the publicly available information available it appears that PT. Garuda is an associate of PT. Gunung in terms of the statutory definition of 'associate' under subsection 269TAA(4)(b):

> *"… 2 persons shall be deemed to be associates of each other if, and only if:*
> *…*
> *(c) both being bodies corporate:*
>
> *(i) both of them are controlled, directly or indirectly, by a third person…".*

Due to public record redactions following the below statement, it is not clear to OneSteel whether or not the Commission accepted the related party raw material costs of PT. Gunung (*Report*, para. 7.2):

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> *"Where a company produces a product that is further processed within another business unit of the company… the Commission considers that is acceptable for those products to be transferred at cost, as long as the transfer price recovers all the cost of production".*

It is not clear to OneSteel whether this is a statement of policy, or a factual conclusion by the Commission. OneSteel observes that the Report contains no evidence that the Commission undertook any verification of the completeness, accuracy or relevance of the raw material cost of the billet supplied by (the related party) PT. Garuda to PT. Gunung. In other words, there is no evidence whether or not the "transfer price" of the billet supplied by PT. Garuda, "recovers all the cost of production" of that entity. Neither is it clear, how the Commission can conclude that it (*Report*, para. 7.2.2):

> *"is satisfied that the cost to make figure, amended for the costs of billet… recorded in the domestic and Australian CTMS spreadsheets reflect the costs to make rod in coils".*

It may be that some of the detail of verification of "all the cost of production" of the raw material billet is contained within the redactions to the Report. However, unless this is the case, OneSteel submits that the Commission must recommend to the Minister that the cost of production or manufacture of the goods (in the country of export), cannot be determined in accordance with subregulation 180(2), because the records available to the Commission do not, in accordance with subregulation 180(2)(b)(ii):

> *"reasonably reflect competitive market costs associated with the production, or manufacture, and sale of like goods".*

When interpreting subregulation 180(2), the *Dumping & Subsidy Manual* (December 2013) (**Manual**), provides that in the case where a major input is produced by an associate of the exporter, the Manual expressly provides (*Manual*, p. 44):

> *"An exception arises, however, where the company supplying the input is related to the exporter concerned. When considering competitive market costs the Commission will examine inputs more carefully when the input supplier is a subsidiary of the exporting company or part of the same holding company that owns the exporter.* ***In such cases it is reasonable for that company to cooperate with dumping inquiries****.*
>
> *Each of the following situations concern the question whether the cost to make reflect competitive market costs for the purposes of Regulation 180.*
>
> *…*
>
> *The Commission will accept the costs of these inputs as being reasonable if the cost of such an input reflects the normal market prices for these inputs. However, if an associate makes its records available then regard may be had to the information from that source and not the market in order to determine whether the records in relation to a major input are reasonable."*

Applied here there is no evidence that the related, upstream supplier of the majority of raw material billet cooperated with the Commission's inquiries. In the absence of such cooperation, any information submitted in relation to raw material costs and their allocation to the exporter's costs of manufacture must be examined with a high degree of circumspection by the Commission.

The submission in response to the Report by PT. Gunung appears to suggest that the Commission did not apply certain 'cost recovery' adjustments to the exporter's billet cost. Although, OneSteel can speculate about the nature of these claims, it is not appropriate that it do so, and requests that

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the Commission require PT. Gunung to ensure that its submission contain sufficient detail to allow a reasonable understanding of the substance of the information and claims. Additionally, there is no indication that the Commission 'tested' the purchase price from the related party entity to establish whether the raw material goods were purchased at reasonable market rates.

Verification to Financial Statements

Relevance and completeness of sales

The Commission advises (Report, Section 5) that it verified the completeness and relevance of sales by:

> *"identif[ying] sales of rod in coils from the code WR shown in the Audited Sales spreadsheet… [t]he information in the Audited Sales [spreadsheet] reconciled to the information in the Domestic Sales spreadsheet."*

OneSteel does not accept that this level of verification can provide the Commission with any reasonable level of satisfaction concerning the relevance and completeness of PT. Gunung's domestic sales information. One reason for this concern is that there is no evidence that the Commission tested whether goods not coded "WR" were nevertheless relevant domestic like goods sales. This risk is further compounded by the 'remote' verification of the exporter's information.

'CTMS methodology' and 'Selling, administration and financial expenses'

OneSteel has reviewed the Commission's disclosed verification of PT Gunung's cost to make items (at para. 7.2.1) and selling, administration and financial expenses (at para. 7.3).

OneSteel repeats the concerns raised above regarding the related party nature of the supply of billet raw material, and also its concerns regarding the redaction of sufficient detail to allow a reasonable understanding of the substance of the information provided. Further, OneSteel cannot determine how, if any verification was conducted to permit the Commission to consider the reasonableness (specifically the relevance, completeness and accuracy) of PT Gunung's direct labour, manufacturing overheads, other costs, selling and administration costs and financial expenses.

The Commission must consider revising the public record version of the Report to the extent that any reasonable understanding of the methodology applied to reach the level of satisfaction claimed in the Report concerning the reasonableness of the exporter's information provided. Any such revision, should be in accordance with the requirements outlined in subsection 269ZJ(2).

Raw material cost

In its latter (3 February 2015) submission, PT Gunung raises an issue around the accuracy of the Commission's cost allocation methodology. Again, the redactions within the submission make it impossible to understand the substance of the claim or the nature of the confidential evidence submitted. In spite of this, OneSteel believes that the submission raises significant concerns around the completeness and accuracy of the exporter's submission to the Commission. OneSteel is concerned that the Commission is unable to recommend to the Minister that the records on which it relies constitute reliable information.

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Fair comparison between export price and normal value

The issue of fair comparison between the export price and the normal value arises in the report at the following two levels:

(a) due allowance and adjustments to normal values; and
(b) conversion of currency.

Other adjustments

OneSteel is concerned by the lack of disclosure around the 'other adjustments' apparently applied by the Commission. The failure for 'other adjustments' to be adequately disclosed establishes ongoing precedents that the Commission is willing to accept redactions of this nature. OneSteel does not consider that the redactions are in accordance with the policies detailed in ACDN No. 2012/42. OneSteel requests further disclosure of the nature and substance of these adjustments, and reserves its right to comment further following such disclosure.

Conversion of currency

In its submission in response to the Report, PT Gunung raised an objection to the conversion of the currency of domestic sales (Indonesian Rupiah, **IDR**) into the currency of the exported goods (United States Dollars, **USD**). Citing, the so-called longstanding practice of the Commission "of converting the export sales into the denominated currency of domestic sales", PT Gunung alleges that the Commission's approach in this case is inconsistent with that 'practice'. Further, PT Gunung cites subsection 269TAF(1), with emphasis on the need to nominate a rate of exchange on the date of the transaction or agreement that… ***best establishes the material terms of the sale of the exported goods***". In effect, PT Gunung raises two objections:

- firstly, that the export sales ought to have been converted into IDR; and
- secondly, any currency conversion is to occur by reference to the date of the export sale.

OneSteel notes from the Report that although domestic sales are invoiced in IDR, they are reported within the company's accounts in terms of USD. Given the lack of disclosure within the Report regarding the Commission's consideration of this issue, OneSteel feels that it is in no position to comment substantively on the Commission's approach to currency conversion, at this time.

In terms of the timing of the currency conversion, OneSteel notes that this should not override the primary requirement that the domestic date of sale and export date of sale, properly determined, not be overlooked, and that a fair comparison between the two sales are made.

Separately, but related to the issue of conversion of currency, OneSteel observes that the rate of exchange between the IDR and USD has undergone a sustained movement within the meaning of subsection 269TAF(4), as graph 1, below, demonstrates:

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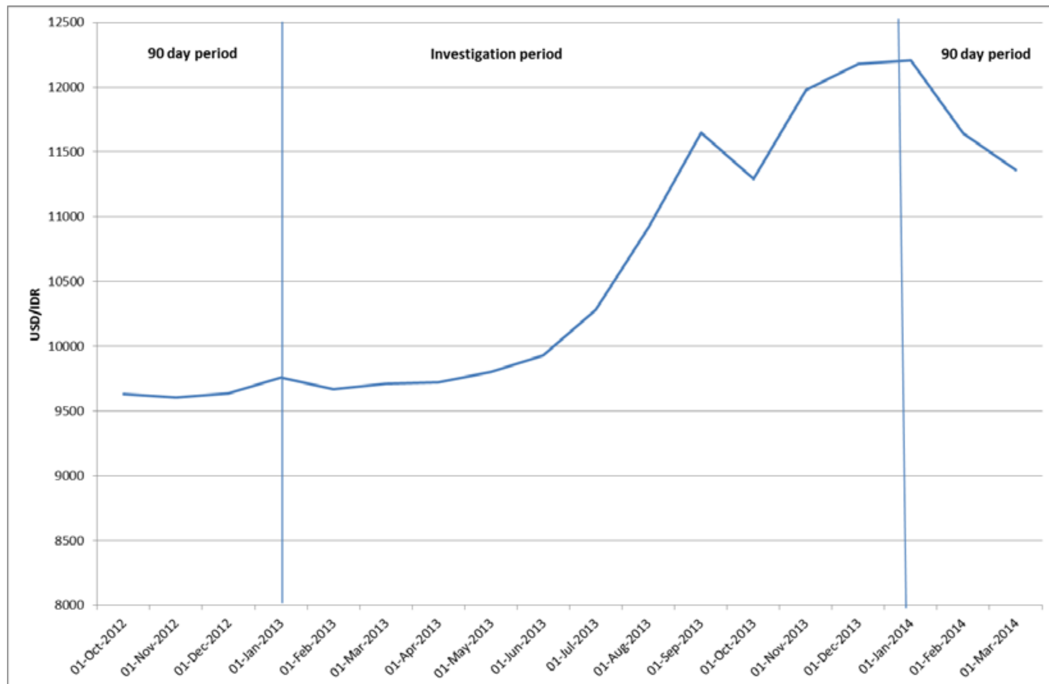

Graph 1: USD/IDR exchange rate 1 October 2012 to 31 March 2014 (Source: WM/Reuters, 31 December 2014)

Graph 1 is relevant to an understanding of whether or not a short-term fluctuation in the rate of exchange between the two currencies has occurred. Specifically, subsection 269TAF(4) provides as follows:

> *"If:*
>
> *(a) the comparison referred to in subsection [269TAF](1) requires the conversion of currencies; and*
>
> *(b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement;*
>
> *the Minister may, by notice published in the Gazette, declare that this subsection applies with effect from a day specified in the notice and, if the Minister does so, the Minister may use the rate of exchange in force on that day for the purposes of that comparison during the period of 60 days starting on that day".*

OneSteel observes the Commission's policy in relation to sustained movements in currencies is contained in the Manual (at p. 117):

> *"The principles underlying the provisions of s. 269TAF(3) to 269TAF(6) are that an exporter faces a lag in responding to exchange rate changes and this should be recognised in anti-dumping investigations. Where there has been 'sustained movement' in exchange rates during the period of investigation a 60 day period is given to the exporter to respond to those currency changes and , if seeking not to be dumping, has the opportunity to set new export pricing levels.*
>
> *"The actual exchange rate movements in that 60 day period are disregarded so that dumping findings of a 'technical' nature might be avoided. This typically arises where the sales to Australia take place during a period in which there has been a sustained movement in the rate of exchange, and reflected in an appreciation of the value of the foreign currency*

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> *in which the domestic sales in the exporting country are denominated compared to the currency in which the exporter's selling price to Australia is denominated."*
>
> *…*
>
> *"A currency may show steady change, or some fluctuation, over time in the rate of exchange. The notion of a 'sustained movement' suggests something outside of a normal range of fluctuation. There must have been a 'movement', and this 'movement' must have been 'sustained' throughout subsequent periods.*
>
> *"The Commission may, for example, and where the circumstances warrant, examine the rate of exchange throughout the investigation period – if the movements, up or down, were not significantly different from a moving average rate of exchange for the previous 60, or 90 days, it may be taken to support a view that no sustained movement had occurred."*

Although the Manual describes the use of subsection 269TAF(4), in circumstances beneficial to the exporter, i.e. in the case of domestic currency appreciation, OneSteel notes that WTO jurisprudence in relation to this provision is not confined only to such circumstances, and the provision may be invoked in the case of domestic currency depreciation[1]. In *US — Stainless Steel (Korea)*, the complainant, Korea, argued in an investigation the authorities were bound to allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation. The WTO Disputes Settlement Panel (**Panel**) took Korea's argument in that case to be:

> *"Korea is in effect asking us to read this provision to further say that 'in an investigation the authorities shall take no actions to address currency depreciations'.*

The Panel concluded:

> *"We can perceive no textual basis to imply such an additional rule into Article 2.4.1."*

The Panel explicitly stated that:

> *"the requirement that a Member take certain actions in the case of currency appreciation does not in our view mean that Members are prohibited from taking any action to address a situation arising from a currency depreciation."*

OneSteel submits that notwithstanding the Commission's policy on this matter, in light of the WTO's decision in *US — Stainless Steel (Korea)*, it is entirely open to the Minister to exercise the discretion available under subsection 269TAF(4), and use the rate of exchange in force prior to the sustained movement for the purpose of converting currencies to permit a comparison between the export prices of goods exported to Australia and the corresponding normal values of like goods under subsection 269TAF(1). In fact to do so would, serve to expose continued injurious dumped export pricing by the exporter that would otherwise be concealed by an advantageous depreciation in the IDR value against the USD.

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[1] Refer *United States – Anti-Dumping measures on stainless steel plate in coils and stainless steel strip from Korea*, WT/DS179/R, paras 6.129–6.130, adopted on 22 December 2000.

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Graph 1, above, reveals that during the second half of the investigation period, there was a rapid and sustained movement in the USD/IDR exchange rate. In fact between 1 July and 31 December 2013, the IDR depreciated against the USD by at least 23%.

When the movement in the exchange rate is analysed in accordance with the Manual, for a 90 day period following the conclusion of the investigation period, it is observed that the value of the IDR remains 14% below its 1 July 2013 levels, in terms of USD. In these circumstances, the movement in the USD/IDR remains sustained in accordance with the Commission's policy.

Onesteel therefore requests that the Commission recommends the Minister publish a public notice pursuant to subsection 269TAF(4) with effect from a date on which the sustained movement in the rate of exchange between the USD and IDR commenced (say, 1 July 2013), and that the Minister further exercise the discretion under subsection 269TAF(6) to publish such additional notice as are required to address the continued sustained movement, in excess of 60 days.

Date of sale of the 'exported goods' and 'like goods'

OneSteel observes that in its response to the Report, PT Gunung, queried the Commission's assessment of the date of sale of the exported goods, and domestic like goods.

The heavily redacted text within the Report, and the redaction of key points within the PT. Gunung submission means that, at this time, OneSteel is confined to making the following general comments on the appropriateness of certain timing of the date of sale.

Firstly, OneSteel agrees that the invoice date is the appropriate starting point for a consideration of the actual date of sale. However, it is entirely appropriate for the Commission to be open, on the evidence, to alternate dates. This is broadly consistent with policy (*Manual*, p. 60):

> "Where a claim is made that an exporter claims **a date other than the date of invoice better reflects the date of sale, the Commission will examine the evidence provided**." [emphasis added]

OneSteel does not believe that the Commission is confined to always accept the invoice date as the date of sale, unless that position is challenged by the exporter. As these matters are subject to directions of the Minister, it would be inappropriate for the Commission to constrain its recommendation to the Minister notwithstanding the evidence available to it. Therefore, in circumstances where the evidence supports the view that "the material terms of sale were, in fact, established by this other date", it would be appropriate for the Commission to conclude that this "other date" is the date of sale.

Secondly, although OneSteel generally agrees with the proposition that evidence which suggests that "price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date" tends to support the view that material terms of sale have not in fact been established (*Manual*, p. 60), the Commission must apply careful consideration to whether or not a change to delivery quantities or times, although tolerated by the parties, is nevertheless a breach of the terms of sale.

For example, just because an exporter/manufacturer changes the delivery quantities, or splits the delivery dates due to production or other constraints/overruns, does not *ipso facto*, indicate informality or ongoing negotiations. Often these allowances/changes exist within the formal terms of

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trade between the parties. On other occasions, recipient parties chose to tolerate these possible breaches of the contract for the sake of preserving the continuation of the trading relationship.

Similarly, earlier breaches of the contract between the parties may be resolved by adjustment in price to latter sales. Again, this does not suggest that the terms between the parties have changed, but rather an allowance is being tolerated to preserve the trading relationship between them.

Without any better disclosure of the factual issues in contention here, OneSteel, suggests that the Commission carefully review the terms contained in the original purchase order, and if factors such as goods description, price, quantity and delivery, including all tolerances usual within the trade and commerce of this industry, have been met, then the material terms have most likely been agreed to at an earlier date to the date of invoice.

Conclusion

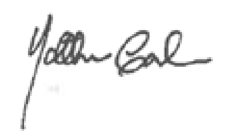
OneSteel considers that the Commission must require for the additional disclosure of redacted information in the PT Gunung Verification report to allow a reasonable understanding of the substance of the information treated as confidential. Further, the Commission must request PT. Gunung, make additional disclosure in its submission. It is further considered that the Commission should reconsider its acceptance of information that is clearly impacted by the exporter's relationship with its related-party supplier, and the impact of the rapid sustained depreciation of the local currency on normal values determined for the exporter.

OneSteel considers that the recommendations contained in the Report must be reconsidered in light of the responses identified above.

OneSteel regards the publication of a notice by the Minister under subsection 269TAF(4) as a matter of urgency for the case as it affects this exporter, and Indonesian exporters more broadly.

If you have any questions concerning this letter please do not hesitate to contact OneSteel's representative Mr John O'Connor on (07) 3342 1921 or Mr Matt Condon of OneSteel on (02) 8424 9880.

Yours sincerely



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