

23 March 2015

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commercial + international

By email

Dear Candy

## Statement of Essential Facts 240 Alleged dumping or rod in coils exported from Indonesia

Dear Candy

As you know, we act on behalf of PT Ispat Indo ("Ispat") in this matter.

Ispat wishes to take the opportunity to discuss pertinent aspects of Statement of Essential Facts No. 204 ("the SEF"). In particular, Ispat wishes to add its own comments to the discussion regarding the Indonesian safeguards investigation and exchange rate changes.

### **A Indonesian safeguards investigation**

In its submission dated 24 February 2015, OneSteel Manufacturing Pty Limited ("OneSteel") states that Ispat's financial information is unreliable and should be disregarded. This position is based on the idea that the outcome of a recent safeguards investigation run by the Indonesian Government into imports of *"bars and rods, hot rolled, in irregularly wound coils, of iron or non-alloy steel or of other alloy steel"* conflicts with the finding in this investigation that more than 80% of Ispat's domestic sales of rod in coil passed the ordinary course of trade ("OCOT") test. Specifically, OneSteel refers to the finding in that safeguards investigation that the domestic industry applicants suffered financial losses in 2013. OneSteel further considers that the fact that the Commission undertook a remote verification somehow impinges the quality of its findings in this investigation.

Firstly, we would like to reassure OneSteel that the remote verification undertaken by the Commission was every bit as gruelling and rigorous as any in-country verification.

Secondly, Ispat notes that the Commission considered OneSteel's argument – that the outcome of the safeguards investigation somehow impinges on the validity of findings made in this investigation - prior to the publication of the SEF. The Commission's analysis of this matter is fulsome enough to fully reject the inference that OneSteel has tried to draw from the findings made by the Indonesian Government. Ispat notes the reassertion by the Commission of its findings that the information Ispat submitted was complete and accurate, and that the outcome of the OCOT test was correct. Again, these findings have been based on a full verification of Ispat's records.

Finally, we wish to point out that not only was the product investigated of a different scope, in that it included bars, but Ispat was not the only applicant for the safeguards investigation. The findings made by the Indonesian Government were made in relation to the domestic industry as a whole, or in relation to the applicants as a combined unit. Those findings do not relate to Ispat in isolation. While Ispat does not have access to any information regarding the financial losses suffered by other members of the Indonesian industry, it is confident that the findings made by the Indonesian Government were accurate and factually sound for the purposes of that separate investigation. Having said that, these findings cannot affect the Commission's own separate and independent findings.

## **B The applicable exchange rate**

Based on OneSteel's submission, the SEF considered whether there had been a "sustained movement" in the exchange rate within the meaning of that term in Section 269TAF of the *Customs Act 1901* ("the Act"). Although it determined that there was no sustained movement, the Commission decided that it was appropriate to ignore "fluctuations" in the exchange rate by changing the exchange rates reported by Ispat and verified by the Commission.

Ispat welcomes the Commission's finding that there was no sustained movement in the exchange rate. However, it is with some concern that we note the Commission did not reject OneSteel's position out-of-hand. In essence, OneSteel has attempted to weaponize the "sustained movement" law, in an attempt to increase the chance of a dumping finding where no dumping exists. This is the exact opposite of what the law is intended to do. Section 269TAF is the implementation of Article 2.4.1 of the WTO Anti-Dumping Agreement, which provides in part:

*Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall 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 provision is based on the idea that exporters should be allowed a period of time in which to revise their export prices in cases where a sustained movement in the exchange rate has occurred. Where this is the case, authorities are required to allow exporters a period – we would call it a "grace period" – of 60 days to adjust their prices. The framers of the ADA accepted that exporters may not be able to respond to sustained movements in the exchange rates quickly, and should not be found to have dumped purely by virtue of the fact that they could not adjust their export prices to keep pace with the movement in the currency.

OneSteel has not only made a submission that it is not entitled to make – because it is not an exporter – but has attempted to invert this purpose. On this basis, its argument should not seriously be considered by the Commission.

Finally, Ispat notes that, in ignoring fluctuations in the exchange rate the Commission has used exchange rates that differ from those that were verified by the Commission as being appropriate for comparing Ispat's normal value with its export price. The reason why these new exchange rates were considered to be appropriate to apply to Ispat is unclear. Ispat further notes that it is the adoption of these new exchange rates, not just the "average exchange rates" that have been adopted where a "fluctuation" was identified, that resulted in the diminution of its no-dumping margin to negative 0.7%. If the verified exchange rates are used, Ispat's no dumping margin would be negative 2%.

Ispat's preference is that the verified exchange rates be used. There appears to be no basis for the Commission to adopt the new exchange rates that were used in the SEF calculation.

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Thank you for your consideration of these matters. In light of the no-dumping margins established in the SEF, we respectfully submit that this investigation be terminated insofar as it relates to Ispat, at the soonest possible opportunity.

Yours sincerely

A handwritten signature in black ink, reading "Alistair Bridges". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

**Alistair Bridges**  
Senior Lawyer