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20 March 2015

Mr Reuben McGovern
Investigator
Anti-Dumping Commission
C/o Australian Customs and Border Protection Service
Customs House
1010 La Trobe Street
DOCKLANDS VICTORIA 3008

For Public File

Dear Mr McGovern

**Hot rolled rod in coils exported from Indonesia, Taiwan and Turkey :
Submission in response to SEF and PAD 240**

1.0 Executive Summary

On 24 February 2014 OneSteel Manufacturing Pty Ltd ("OneSteel") made an application for the publication of a dumping duty notice in respect of certain rod-in-coil ("RIC") exported from Indonesia, Taiwan and Turkey. On 10 April 2014, the Anti-Dumping Commission ("the Commission") commenced a formal investigation into OneSteel's allegations that RIC was exported from Indonesia, Taiwan and Turkey at dumped and injurious prices.

On 15 March 2015 the Commission published its *Statement of Essential Facts* ("SEF") and *Preliminary Affirmative Determination* ("PAD") No. 240. OneSteel welcomes the imposition of securities on exports of RIC from Indonesia (with the exception of exports by PT Ispat Indo "Ispat") and Taiwan. We note that in the case of Turkish exporters, no preliminary margins have been applied, refer to further commentary below. OneSteel does, however, consider that exports by both Ispat and Turkish exporter Habas Sinai ve Tibbi Gazlar Istihsal Endustrisis A.S. ("Habas") have been at dumped prices during the 2013 investigation period. This response to SEF and PAD No 240 challenges the Commission's findings in respect of the determination of dumping margins for Ispat and Habas, including:

(i) In respect of exports from Indonesia by the exporter, Ispat

- the domestic sales by Ispat cannot be established as having been in the ordinary course of trade due to the findings of the Indonesian Safeguard Committee Investigation concluded on 23 December 2014 confirming that RIC domestic sales by two RIC producers (Ispat was one of these) responsible for 58.6% of the domestic production of RIC were at a significant loss;
- the information provided by Ispat to the Commission (by remote verification) contradicts that of the Indonesian Safeguards Committee and therefore should be rejected for normal value purposes;
- without detracting from OneSteel's position concerning the rejection of Ispat data for normal value purposes, OneSteel submits that due to both short-term fluctuation and

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sustained movement in currency evident in the investigation period, the Commission's assessment of dumping margins for Ispat are flawed;

- Ispat's normal value should be based upon the information included in OneSteel's application – domestic selling prices published [redacted] that resulted in weighted-average dumping margins for Indonesia of 15 per cent; and
- further, or in the alternative, Ispat sold the goods to Australia during the investigation period at export prices that differed significantly among different periods of time, specifically from July 2013, and as such Ispat engaged in 'targeted dumping'.

(ii) The Commission has conducted a remote verification of Habas' financial data and has calculated a dumping margin of negative 0.3 per cent

- As indicated in its submission of 16 February 2015, OneSteel is concerned as to the validity of "remote" verifications;
- OneSteel notes that the Commission determined a 5.8 per cent margin for the other Turkish RIC exporter, Diler Demir Celik Sanayi ve Ticaret A.S. ("Diler") and queries whether the Commission:
  - examined whether the domestic grades sold by Diler are also common to Habas' domestic sales;
  - included any domestic grades within the Diler normal value assessment that were excluded in the Habas assessment for normal value purposes;
  - compared Diler's domestic selling prices with those of Habas, including alignment of grades sold by both exporters on the domestic market;
  - compared scrap purchase prices for both Diler and Habas for consistency.

2.0 Background

In the RIC Investigation No. 240, the Commission received exporter questionnaire responses ("EQRs") from:

- PT Gunung Rajapaski ("Gunung") and Ispat of Indonesia;
- Quintain Steel Co Ltd ("Quintain") of Taiwan; and
- Diler and Habas of Turkey.

Following further requests for information by the Commission, Diler was declared a non-cooperative exporter.

The Commission's preferred approach to the verification of information included in EQR's is to conduct meetings with exporters at their premises in the country of export. However, in respect of Indonesia and Turkey, travel advice warnings had been issued by the Department of Foreign Affairs and Trade ("DFAT"). The Commission therefore embarked upon remote verifications of information contained in EQRs for Gunung and Ispat of Indonesia, and Habas of Turkey.

OneSteel maintains concerns about the effectiveness of remote verifications to adequately conclude that the exporter's records are in accordance with audited statements for the company. OneSteel has further concerns about the methodologies employed in determining normal values for exporters the subject of remote verifications (see below).

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3.0 Like Goods

OneSteel's application for measures described the subject goods as:

> "*Hot rolled rods in coils of steel, whether or not containing alloys, that have maximum cross sections that are less than 14 mm.*
>
> *The goods covered by this application include all steel rods meeting the above description of the goods regardless of the particular grade or alloy content.*"

The Commission concluded that OneSteel manufactured rod in coil that was alike in all respects to the imported goods. That is, the Commission was satisfied that[1]:

- *the primary physical characteristics of imported and locally produced goods are similar;*
- *the imported and locally produced goods are commercially alike as they are sold to common end users;*
- *the imported and locally produced goods are functionally alike as they have a similar range of end-uses; and*
- *the imported and locally produced goods are manufactured in a similar manner.*

The Commission further examined whether RIC with a cross dimension of greater than 14mm may be considered a like good for the purposes of the investigation. Following consideration of representations by OneSteel, Quintain and Stemcor Australia Pty Ltd ("Stemcor"), the Commission was satisfied that RIC with a cross section of 14 mm or greater are not like goods.

4.0 Dumping investigation

4.1 Indonesia

As indicated, the Commission did not conduct on-site verifications with the two cooperative exporters, Gunung and Ispat. Verification of EQR responses were conducted remotely.

In correspondence dated 6 February 2015, OneSteel highlighted with the Commission the recent findings of the Indonesian Safeguards Committee published in *Notification of a Proposal to Impose a Measure* pursuant to the WTO Agreement on Safeguards dated 23 December 2014.

The application for safeguards measures was made by Ispat and PT Krakatau (a lower volume producer than Ispat of RIC in Indonesia) following an upsurge in imports of RIC into Indonesia from China, Malaysia and Japan in 2013.

The goods the subject of the investigation by the Indonesian Safeguards Committee involved rod in coils in 5.5 mm to 20 mm diameter. The goods covered by the Safeguards investigation overlap the goods the subject of the Commission's No. 240 investigation (that involve RIC of less than 14 mm).

OneSteel does not consider that the Commission has taken full account of the facts relating to the Indonesian Safeguards Committee's findings and the implications of the Commission's findings as to sales made in the ordinary course of trade by Ispat (and Gunung) in Investigation No. 240.

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[1] Refer Statement of Essential Facts and Preliminary Affirmative Determination No. 240, Pages 16, 17.

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Whilst the Commission acknowledges the findings of the Indonesian Safeguards Committee, it has asserted that the findings and the information supplied by OneSteel "do not contain sufficient evidence" to support a rejection of domestic selling price information in Indonesia for normal value purposes.

Respectfully, OneSteel reiterates that the Indonesian Safeguards Committee findings and recommendations are ***directly relevant*** to the Commission's anti-dumping investigation in respect of OneSteel's allegation of dumped exports from Indonesia causing material injury to the Australian industry. The Commission discounted the relevance of the Indonesian Safeguards Committee based upon the following reasoning[2]:

- *Different methodologies are employed for establishing whether an entity making an application for anti-dumping measures in one jurisdiction has suffered injury, as opposed to whether that same entity, when under investigation in another jurisdiction, is engaging in dumping;*
- *The Notification of a Proposal to impose a Measure does not identify Ispat's profit or loss, but instead refers broadly to the financial performance trend of the two Applicants, Ispat and a second Indonesian producer of the goods; and*
- *Ispat's annual report for 2013 is undertaken at group level and shows that at the group level the company was profitable during the investigation period.*

OneSteel refutes the reasoning of the Commission to discount the relevance of the Indonesian Safeguards Committee findings. OneSteel requests the Commission to reconsider its position on the Indonesian Safeguards Committee findings taking full account of the following key factors:

(i) Similar to an Anti-Dumping Investigation, the "Like Goods" in a Safeguards investigation are specified. In the Indonesian Safeguards investigation, rod in coil is specified by reference to HS Codes that align with the HS codes in Investigation No. 240;

(ii) Material injury to an industry and its participants ***for the goods*** as verified in respect of a safeguards investigation where it is confirmed that the "applicant" has ***experienced financial losses*** for a specified narrow range of goods (i.e. RIC of 5.5mm to 20.0mm) during 2010 to 2013 with a negative trend of 36.0 per cent, and in 2013 suffered a huge financial loss compared to 2012, is directly relevant information to the Commission's investigations into similar goods exported to Australia;

(iii) The Committee's comments extend beyond "the financial performance trend of the two applicants" (which include Ispat as the larger producer of RIC volume) and specifically confirm that "a huge financial loss" was evident in 2013 – the period of investigation in Investigation No. 240[3];

(iv) This position is further evidenced by the Committee's findings that the Applicants' costs in 2012 and 2013 for the goods were above domestic market selling prices in Indonesia[4];

(v) The annual report profit result for Ispat in 2013 is at the Group level and is not reflective of the financial performance for the narrower rod in coils business and therefore is irrelevant in supporting a finding of RIC sales in the ordinary course of trade.

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[2] Ibid, Pages 33, 34.

[3] Refer Section 7 of "Notification Under Article 12.1(B) of the Agreement on Safeguards on Finding Serious Injury or Threat Thereof Caused by Increased Imports, Notification of a Proposal to impose a Measure, Indonesia."

[4] Ibid, Section 11.

OneSteel does not consider that the Commission can be satisfied that Ispat (or Gunung) has made sales in the ordinary course of trade in Indonesia during the 2013 investigation period. The Indonesian Safeguard Committee's findings refute such a conclusion by confirming that it has verified the Applicant companies (i.e. Ispat and Krakatau) have sold RIC at a loss (i.e. selling prices below production costs) in Indonesia in 2012 and 2013, and that the loss in 2013 was a significant reduction on that of 2012.

Contrary to the Commission's conclusions at Section 6.5.4 of SEF and PAD No. 240 the available information contained in the Safeguards Notification Report refute a finding that Ispat recorded domestic sales in the ordinary course of trade for RIC during 2013. Normal values for Ispat and Gunung, therefore, cannot be determined under s.269TAC(1) as the Commission cannot be satisfied that sales by the domestic industry participants are in the ordinary course of trade (as evidenced by the Indonesian Safeguards Committee).

Normal values for Ispat could be determined under subsection 269TAC(2)(c) on the basis that the Commission is satisfied that cost data provided by Ispat is reliable. The Commission has indicated that it was able to *remotely* verify Ispat's CTM&S data, however, the contradictory nature of the Indonesian Safeguards Committee's findings on the Applicants losses in 2013 would raise uncertainties associated with the reliability of the Ispat CTMS data for subsection 269TAC(2)(c) purposes.

The evidence indicates that normal values for RIC in Indonesia should be determined under subsection 269TAC(6) based upon the best available information. OneSteel submits that the best information available to the Commission is either:

(i) Ispat's CTM&S data for 2013, with a level of profit applied; or

(ii) Market selling prices for RIC included in OneSteel's application sourced from an industry publication.

Additional comment

OneSteel does not consider that the Commission has adequately considered the full impact of its *preliminary* findings for Ispat. By inference, the Commission's finding authorises an exporter that has been materially injured by a substantial upsurge in imports on its home market the opportunity to continue to export goods to Australia at injurious prices. A finding of this nature is unacceptable and is contrary to the intent of Australia's anti-dumping provisions.

4.2 Gunung

Gunung's normal value was based upon domestic selling prices in Indonesia under subsection 269TAC(1). Normal values were based upon the same level of trade as the exported goods and assessed at the ex-factory point.

The Commission, in the verification report for Gunung,originally established a weighted-average dumping margin for Gunung of 12.3 per cent. In SEF and PAD No. 240 this has been reduced to 10.6 per cent.

Gunung made representations to the Commission that its domestic sales should have been stated in Indonesian Rupiah ("IDR") rather than the US dollars ("USD"). Gunung's export sales were in USD. The Commission verified the export sales in USD that reconciled with the audited accounts. The Commission also found that Gunung's accounts are reported in USD and that it did not see a requirement to convert to IDR.

OneSteel agrees with the Commission's position that the currency in which the exporter's sales and accounts are reported is the appropriate currency for comparison purposes. To shift the currency into IDR would likely mask dumping that has occurred.

Gunung also made a request for certain revenues to be taken into account in respect of its cost of production. It appears the Commission has accepted Gunung's claim and the information submitted. The new information altered Gunung's CTM&S from that verified as part of the earlier verifications.

The claimed revenues are not disclosed in the Gunung submission dated 23 December 2014. It is therefore unclear to OneSteel whether the claimed adjustments to Gunung's CTMS are reasonable.

4.3 Ispat

Ispat was the largest exporter of RIC to Australia during the investigation period. The Commission assessed dumping margins for Ispat on the basis of domestic sales under subsection 269TAC(1).

The Ispat Verification Report indicates that the Commission determined that Ispat's domestic sales of RIC at a loss throughout the investigation period were less than 20 per cent of the volume of sales. The loss-making sales, therefore, were included in Ispat's normal value calculations. The Commission was also satisfied that there were sales in the ordinary course of trade that were greater than 5 per cent of the volume of sales exported to Australia.

Ispat's domestic sales as verified by the Commission were in local currency (i.e. IDR).

4.3.1 The impact of the depreciation of the IDR against the USD

Notwithstanding that OneSteel is of a view that Ispat's domestic sales are not in the ordinary course of trade (due to the Indonesian safeguard Committee's findings) it is relevant to consider the Commission's methodology in assessing normal values for Ispat that have been significantly influenced by the rapid and sustained depreciation of the IDR against the USD in the period of investigation.

A. The Commission's methodology: The use of the "approach employed by the [USITC]"

At Section 6.5.4 of SEF and PAD No. 240, the Commission concluded that it:

> *"… does not currently have an established practice for determining short-term or sustained currency movements as referred to in ss.269TAF (3) and (4). In the absence of a standardised approach, the Commission has, for the purposes of this investigation, analysed the IDR/USD exchange rate based upon the approach employed by the United States International Trade Commission…"*

OneSteel submits that it is incorrect for the Commission to conclude that it does not have an established practice for determining these matters. Indeed, the *Dumping and Subsidy Manual* (Dec. 2013 edn, at p. 117), states the Commission's policy as follows:

> *"Where it is established that there has been a 'sustained movement' in the exchange rate, the previously applicable rate of exchange may be applied for a period of 60 days.*
>
> *"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."*

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In breach of its published policy, the Commission deferred to the so-called *"approach employed by the United States International Trade Commission ("USITC")".* The Commission provided no citation of the alleged USITC approach, instead referred to the following approach applied by the Commission in the case of a "sustained currency movement":

"- an eight week moving average for the IDR against the USD was established for the investigation period;
- *a weekly average of actual daily rates was established;*
- *a weekly average of the eight week moving average was established;*
- *where the weekly average of actual rates exceeded the weekly average of benchmark rates by more than five per cent that week was identified as a period of unusual movement; and*
- *the number of consecutive weeks of unusual movement was established."*

OneSteel assumes that the Commission's reference to the "approach employed by the" USITC, is in fact a reference to a practice specified in *Policy Bulletin 96-1* (*Import Administration Exchange Rate Methodology*, 4 March 1996). If this is in fact the US policy position that the Commission seeks to rely upon for its interpretation of subsections 269TAF(3) and (4) of the *Customs Act*, then OneSteel submits that the USITC approach is not applicable to Australian domestic law and policy for the following reasons:

1. *The currency of the USITC practice is unclear, and seldom applied*

For the sake of clarity, OneSteel attaches a copy of Policy Bulletin 96-1 (dated 4 March 1996) (NON-CONFIDENTIAL ATTACHMENT A) ("US *Policy Bulletin*") and publication 61 FR 9434 (March 8, 1996) giving notice of the US *Policy Bulletin* (NON-CONFIDENTIAL ATTACHMENT B) ("USITC Notice").

At the outset, the USITC Notice states:

> *"The [United States] Department of Commerce ("the Department") has revised its policy regarding currency conversions to conform to changes resulting from the Uruguay Round Agreements Act ("the URAA"). We are now announcing this change in methodology and the accompanying computer code and requesting comments on this new methodology. At the end of a one-year test period, the Department will reexamine the methodology, make any needed changes, and prepare regulations."* [emphasis added]

It is not clear to OneSteel whether or not a "final model" has been adopted by the USITC, especially in light of the *Final Rule* (62 FR 27295-27424) published by the USITC on 19 May 1997 ("*Final Rule*"), specifically at page 62 FR 27295, 27377, the USITC states the following:

> *"Second, regarding the comment on our treatment of depreciating currencies, we note that the Department addressed this issue in Certain Pasta from Turkey, 61 FR 30309, 30325 (June 14, 1996). In that case, which involved a situation where the foreign currency was depreciating against the U.S. dollar, we used actual daily exchange rates rather than the benchmark rates generated by the model. We agree with the commenter that we should address depreciating currencies more fully in a final model, and we welcome further suggestions on this point.*" [emphasis added]

OneSteel understands that there is limited precedent for the practice contained in the US *Policy Bulletin.* Therefore, given that the practice contained within the US *Policy Bulletin* is unclear, and found to be subject to limitations by the US administering authority, OneSteel submits that the so-called "approach applied by the" USITC, should not be applied in preference to the policy guidance contained in the *Dumping and Subsidy Manual*.

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2. *Sustained movement: The underlying US legislation is narrower than Australian domestic law*

In relation to currency conversion in circumstances where there has been a 'sustained movement' in foreign currency value, subsection 773A(b) of the US *Tariff Act of 1930 ("*US *Tariff Act")* operates only in circumstances designed to benefit exporters facing foreign currency appreciation. This view is supported by the language of the US Statute, the *Policy Bulletin* and the *Final Rule*.

Firstly, the US Statute provides, *inter alia*:

> ***"SEC. 773A. [19 U.S.C. 1677b–1] CURRENCY CONVERSION.***
>
> *"(b) SUSTAINED MOVEMENT IN FOREIGN CURRENCY VALUE.—In an investigation under subtitle B, if there is a sustained movement in the value of the foreign currency relative to the United States dollar, the administering authority shall allow exporters at least 60 days to adjust their export prices to reflect such sustained movement."*[emphasis added]

In turn, the *Policy Bulletin* reads, in relevant part, as follows:

> ***"Step 3: Adjustment for Sustained Movement***
>
> *"When there has been a sustained movement increasing the value of a foreign currency in relation to the dollar, respondents under investigation, but not review, are given 60 calendar days to correct their prices. The 60-calendar-day grace period begins on the first day after the recognition period. During that period, the official rate in effect on the last day of the recognition period will be the official rate in investigations. For reviews, the model continues to apply the eight-week average to determine whether daily rates are normal or fluctuating.*
>
> *"When a foreign currency has decreased in value in relation to the dollar, there is no adjustment required for a sustained movement, and the official rate generated by the model will normally apply to currencies depreciating against the dollar* …" [emphasis added]

The *Final Rule*, provides at 62 FR 27295, 27377:

> *"Sustained movements: While the model discussed above identifies and addresses sustained movements in exchange rates, paragraph (d) sets forth a general rule that where there is a sustained movement ``increasing the value of the foreign currency relative to the U.S. dollar,'' exporters will be given 60 days in which to adjust their prices.*
>
> *"Two commenters claimed that paragraph (d) is ``one-sided.'' Specifically, one commenter objected to the fact that paragraph (d) only addresses sustained appreciations in a foreign currency relative to the U.S. dollar. In this commenter's view, section 773A(b) does not specify whether the sustained movement must be upward or downward. The second commenter (presumably referring to the fact that paragraph (d) does not address sustained depreciations in a foreign currency) pointed out that under paragraph (d), respondents can take advantage of favorable exchange rates when a foreign currency appreciates, but domestic industries do not receive a comparable benefit when the currency depreciates. The commenter suggested that the Department should address this by establishing a special rule for situations where exporters should be raising their U.S. prices in response to exchange rate changes, but, instead, are lowering them.*
>
> *"We are not adopting the proposals put forward by these commenters. The language contained in paragraph (d) regarding upward sustained movements reflects the legislative intent expressed in the SAA, which specifically discusses the granting of an adjustment period following ``a sustained increase in the value of a foreign currency relative to the U.S. dollar.'' SAA at 842." [emphasis added]*

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On the other hand, the Australian legislative provision is drafted in neutral terms, and has scope to be applied in cases of both foreign currency increases and decreases, specifically:

> ***"Section 269TAF Currency Conversion***
>
> *"(1) If, for the purposes of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsection (2) [where a forward rate of exchange is used], is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best establishes the material terms of the sale of the exported goods.*
>
> *…*
>
> *"(4) If:*
>
> *(a) the comparison referred to in subsection (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."*

The Australian domestic legislative provision is in line with WTO jurisprudence on this matter, and OneSteel refers to its earlier submission to the Commission (dated 6 February 2015) on this issue.

Therefore, even if the Commission accepts that the US *Policy Bulletin*, expresses the current "approach employed by the [USITC]" - which is not admitted - then the methodology contained in it is designed for a US Statute that is narrower in its application than the equivalent Australian legislative provisions. Therefore, the US *Policy Bulletin* has limited direct application to the Australian legislative provisions in relation to an interpretation of the methodology to be applied in circumstances of a depreciating foreign currency.

3. *The US Policy Bulletin cannot be applied so as to 'embrace an absurd result'*

The US Court of International Trade considered the application of the *Policy Bulletin* to the US Statute's provision in relation to currency fluctuations under paragraph 773A(a) of the US *Tariff Act*, in *Viraj Group, Ltd. v. United States of America and Carpenter Technology, Corp., et al.* (CIT February 26, 2002) ("*Viraj Group*").

In relevant part, paragraph 773A(a) of the US *Tariff Act*, provides as follows:

> *"(a) In General. In an antidumping proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise, except that, if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency. <u>Fluctuations in exchange rates shall be ignored.</u>"* <u>[Emphasis added]</u>

Unlike the US *Tariff Act's* provision under paragraph 773A(b) for sustained movements in foreign currency, there is no restriction on the USITC from considering depreciations in foreign currency in the context of currency fluctuations. In *Viraj Group*, the US Court had to consider whether or not it was appropriate for the Department of Commerce "to ignore a 1.1 percent declination in value on a

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monthly basis and to ignore the overall 14.6 percent declination in the value of the rupee during the period of review". The Department of Commerce resisted applying paragraph 773A(a) of the US *Tariff Act* and ignored the 'fluctuation' in the rupee on the basis of the *Policy Bulletin* that provides, inter alia:

> *"An actual daily rate that varies from the benchmark rate by more than 2.25 percent is treated as a fluctuation, and an actual daily rate that varies within 2.25 percent from the benchmark rate is treated as normal."* [at 61 FR 9434, 9436]

In addition, the *Policy Bulletin* recognises that:

> *"whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, the lower actual daily rates will be employed from the time of the large decline."* [at 61 FR 9434, 9436]

Further, the US *Policy Bulletin* indicates that it may be appropriate to use daily rates in:

> *"situations where the foreign currency depreciates substantially against the dollar over the period of investigation or the period of review.*" [at 61 FR 9434, 9435]

In considering the USITC's approach in the circumstances of the case before it, the US Court considered whether or not the decline in the rupee's value was 'precipitous and large', or whether it was properly a 'fluctuation':

> *"This Court does not suggest that the rupee's gradual change is factually identical to the rapid and large declines in value of the won and baht [i.e. precipitous (40% decline over two months) and large (18% drop in one day)]. However, the rupee's downward movement, while small and gradual, appears cumulatively to have had more than a de minimis effect upon Commerce's dumping margin calculations…*
>
> *"The statute may permit various methodologies, but "it is possible for the application of a particular methodology to be unreasonable in a given case when a more accurate methodology is available and has been used in similar cases." [Thai Pineapple, 273 F.3d] at 1085. This case, although factually distinguishable from Stainless Steel from Korea and Pipes and Tubes from Thailand, is "no different in principle from cases in which Commerce has modified its approach." [Thai Pineapple, 273 F.3d] at 1085"* [emphasis added].

Finally, the Court directed the US Department of Commerce as follows:

> *"Commerce is nevertheless directed to explain where there is a long-term declination in the value of a foreign currency during the period of review by as much as 14.6 percent, how such a long-term substantial declination can be ignored if Commerce is to arrive at an accurate and fair dumping margin and not embrace an absurd result."* [emphasis added]

OneSteel, submits that even if the Commission continues to accept the current applicability of the *Policy Bulletin* (which is not admitted), then even under US anti-dumping jurisprudence, it is not appropriate to apply its methodology with such slavish adherence as would cause the Commission to, in the language of the US Court of International Trade, "embrace an absurd result".

In the investigation before the Commission, OneSteel notes that across the investigation period (calendar year 2013), the IDR devalued by 25.77% against the USD (refer CONFIDENTIAL ATTACHMENT C).

B. The methodology contained in the US Policy Bulletin is inconsistent with Australian law and policy

What is a "short-term fluctuation"?

To recite subsection 269TAF(3) of the *Customs Act*, Australian domestic law provides:

> *"(3) If:*
>
> *(a) the comparison referred to in subsection (1) requires the conversion of currencies; and*
>
> *(b) the rate of exchange between those currencies has undergone a short-term fluctuation;*
>
> *the Minister may, for the purpose of that comparison, disregard that fluctuation."* [emphasis added]

Therefore, under the Australian statute, the reference is to a "short-term fluctuation". The ordinary meaning of "short-term" is:

> *"Occurring in or relating to a relatively short period of future time"*[5]

Given that the Reserve Bank of Australia official exchange rate is published on a (business) daily basis, the "period of future time" may be assessed in terms of multiples of days. Anything less than two days would not constitute a "short-term fluctuation" within the meaning of the Australia law. On the other hand, the US Statute does not prescribe a period of time over which the "fluctuation" is to be assessed (refer extract of paragraph 773A(a) of the US *Tariff Act*, above). Therefore, to the extent that the US *Policy Bulletin*, seeks to compare an actual daily rate to a moving average of the daily rate, then it may, arguably be an approach permissible under the US Statute. The same may not be said of the Australian law. In other words, the US Statute seeks to identify 'daily' fluctuations, compared to the Australian law that explicitly seeks to identify, "short term fluctuations". Similarly, the arbitrary appointment of a daily 2.25% variance between the actual daily rate and the moving average rate that forms the basis of the US *Policy Bulletin* may also be said to be inconsistent with the Australian statute that requires, by implication of the use of the language of "short-term fluctuation", a comparison of the movement in the daily rate over "a relatively short period of future time".

The Commission's *Dumping and Subsidy Manual* (December 2013 edn., p. 117), merely interprets a "short term fluctuation" under subsection 269TAF(3) as not a "sustained movement". On the other hand, the concept of a "sustained movement", is well examined by the *Dumping and Subsidy Manual (Id.):*

> *"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."*

OneSteel submits that in order for subsection 269TAF(3) and 269TAF(4), to be interpreted with a degree of internal statutory consistency, a "short-term fluctuation" must be interpreted to be a change in the exchange rate that is "short-term", and "not sustained". In other words, to identify, a "short-term fluctuation", it may be first necessary to identify a "sustained movement".

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[5] Oxford Dictionaries. Oxford University Press, n.d. Web. 16 March 2015. <http://www.oxforddictionaries.com/definition/english/short-term>.

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What is a "sustained movement"?

Given that the basis for subsections 269TAF(3) and (4) is Article 2.4.1 of the WTO *Anti-Dumping Agreement*, a point which is acknowledged in the Commission's *Dumping and Subsidy Manual* (*Id.*), then a sustained movement exists if the currency shows "steady change" or "movement" for a 60 day period, whereas a "short-term fluctuation" is a movement in the rate of exchange for less than a 60 day period, i.e. it is "short-term" and not "sustained":

> *"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."*

So to determine a 'sustained movement' consistent with Australian domestic law and policy, OneSteel recites the methodology contained in the Commission's *Dumping and Subsidy Manual (Id.)*, in relevant part:

> *"Where it is established that there has been a 'sustained movement' in the exchange rate, the previously applicable rate of exchange may be applied for a period of 60 days.*
>
> *"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."*

The Commission's policy requires an interpretation of both the period of 'movement', i.e. to determine whether it was 'sustained', and the significance of that movement. OneSteel does not accept that the significance of the 'sustained movement' is an element of the test under subsection 269TAF(4). OneSteel, submits this position, on the strength of the ordinary meaning of the word 'sustained', which is defined as:

"Continuing for an extended period or without interruption"[6]

Therefore, on this ordinary meaning of the word 'sustained', the significance of the movement, up or down, beyond the moving average, is an irrelevant consideration. The purpose of the provision is simply to give exporters an opportunity to adjust export prices, where the movement (either an appreciation or devaluation) of the value of the foreign currency, is above or below a moving average rate. Once that requirement is satisfied, then that is all that is required to activate the provision. Therefore, on any reading of the US *Policy Bulletin*, the methodology (there described) is inconsistent with the language of subsection 269TAF(4) of the *Customs Act* and the *Dumping and Subsidy Manual*.

In any event, OneSteel submits that if the Commission was to follow the methodology applied in the US Policy Bulletin, then the principle established in *Viraj Group*, i.e., that the application of methodology "cannot embrace an absurd result", must still be applied. In other words, the Commission, must, if it proposes, to accept the so-called, approach applied by the USITC, must also follow US jurisprudence.

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[6] Oxford Dictionaries. Oxford University Press, n.d. Web. 16 March 2015. <http://www.oxforddictionaries.com/definition/english/sustained>.

OneSteel, observes that the Commission has ignored the US Policy Bulletin's fall-back provision, designed to guard against, such 'absurd results'. This is contained in the closing provisions of the US *Policy Bulletin*:

> *"Whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, use actual daily rates from the start of the recognition period".*

To demonstrate this point, OneSteel refers to *Chart 1*, below, which indicates the variances in the daily exchange rate from a 60 and 90 day moving average. It is observed that "precipitous and large" variances (up to 13.16%) have been recorded. However, under the Commission's narrow interpretation of the US *Policy Bulletin*, these "precipitous and large" declines in the value of the IDR against the USD, have been ignored by the methodology applied. This is an erroneous approach.

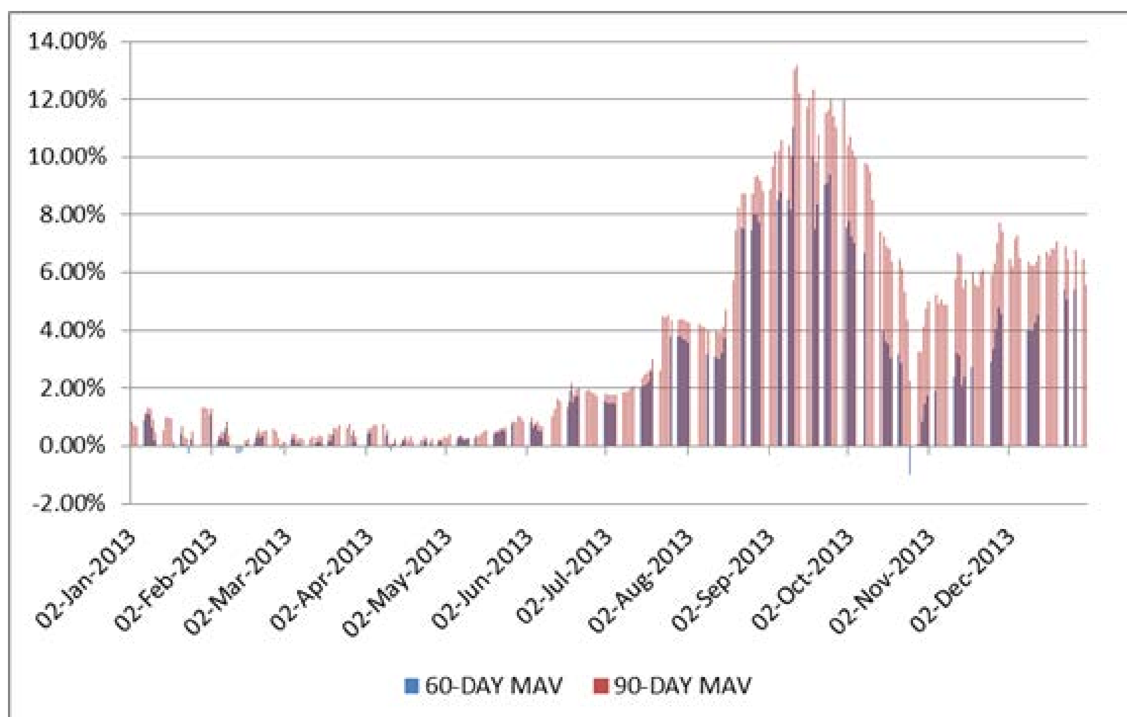

Chart 1: Percentage (%) variance between daily USD/IDR rate to 60 and 90 day moving average daily rates

(Source: RBA)

C. Application of current Australian policy to the Australian legislation

In order to identify, a "short-term" fluctuation or a "sustained movement", OneSteel proposes the following methodology.

In this case, a methodology based on 90 day moving average is proposed. This is because of the rapid decline in the value of the IDR against the USD from 22 July 2013. In these circumstances, OneSteel submits that a moving average that captures a more representative sample of historic values is justified.

In summary, OneSteel proposes the following methodology in this case:

1. Calculate the daily USD/IDR cross-rate based on the RBA daily exchange rate data;
2. Calculate a benchmark based on the moving average of the actual (available) daily exchange rates for 90 business days immediately prior to the actual daily exchange rate to be classified, as either "sustained" or "fluctuating";
3. Calculate the variance between the actual daily rate and the benchmark for the investigation period, and for a period of 90 days beyond the end of the investigation period;
4. Does the upward or downward movement of the variance continue for more than one day?
    a. If yes, then does the upward or downward movement in the variance continue for at least 60 days?
        i. If yes, then there is a "sustained movement";
        ii. If no, then there is a "short-term fluctuation";
    b. If no, then there is no "short-term fluctuation".

OneSteel attaches CONFIDENTIAL ATTACHMENT C, which demonstrates the application of the above methodology to the movement of the IDR against the USD in the current investigation.

Chart 2, below, traces the "short-term fluctuations" and "sustained movements" in the USD/IDR cross rate:

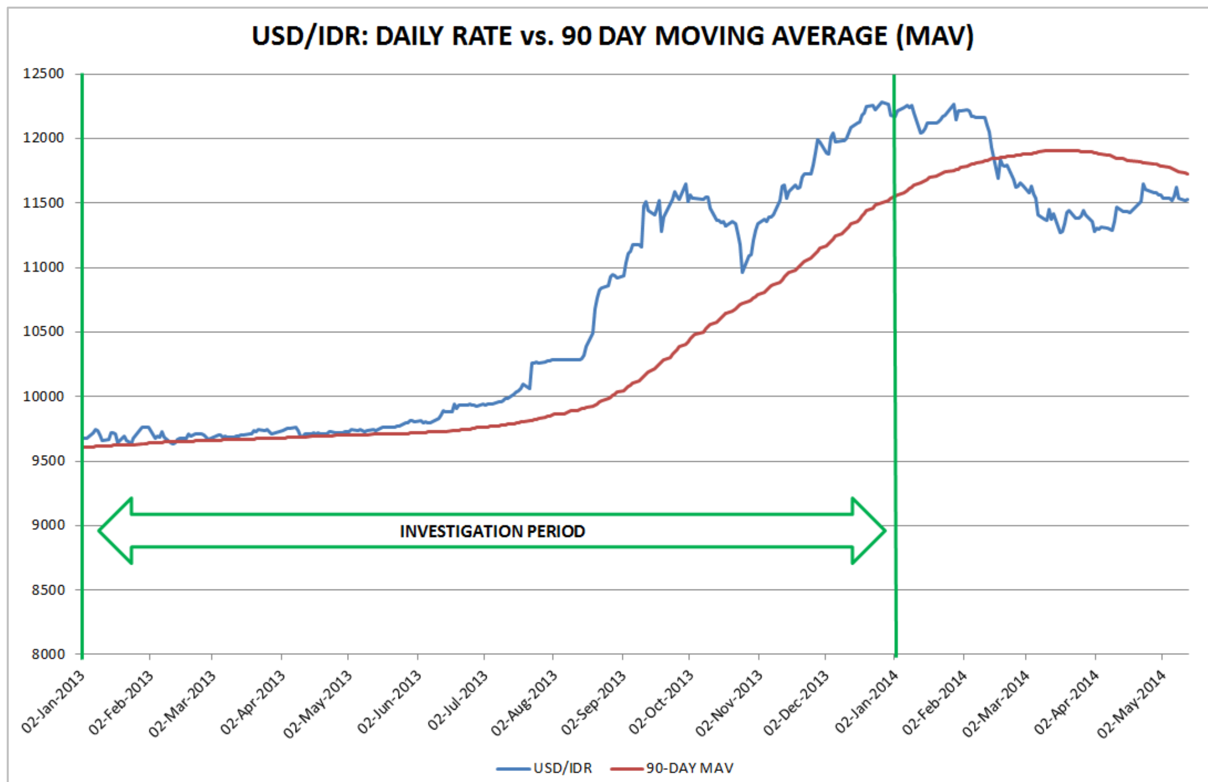

Chart 2: USD/IDR: Daily Rate vs. 90 Day Moving Average Rate

(Source: CONFIDENTIAL ATTACHMENT C)

From Chart 2, above, OneSteel concludes as follows:

- "short-term fluctuation" within the meaning of subsection 269TAF(3) were observed during the following periods:
  [Applicable dates]
- "sustained movements" within the meaning of subsection 269TAF(4) were observed during the following periods:
  [Applicable dates]

Accordingly, OneSteel submits that:

- under subsection 269TAF(3), during periods of "short-term fluctuation", the actual daily exchange rates be ignored, and the benchmark rate be substituted as the exchange rate for that day; and
- under subsections 269TAF(4), (5) and (6) of the *Customs Act*, during the periods of "sustained movement", the Parliamentary Secretary to the Minister for Industry and Science, published the requisite number of notices in the *Gazette,* declaring that subsection 269TAF (4) applies with effect from the following dates:
  [Applicable dates]

  and to use the rates of exchange in force on those days for the purposes of the currency comparison during the 60 day periods starting on those dates.

Based upon the proposed methodology, the Commission can re-calculate normal values for Ispat. It is OneSteel's expectation that based upon the proposed methodology that is consistent with the provisions of subsections 269TAF(3), (4), (5) and (6) that the Commission will establish non-*de minimis* dumping margins for RIC exports by Ispat to Australia during the 2013 investigation period.

4.3.2 Evidence contained in SEF and PAD No. 240 of 'targeted dumping' by Ispat

Further, or in the alternative, OneSteel alleges that Ispat sold the goods to Australia during the investigation period at export prices that differed significantly among different periods of time, specifically from July 2013. OneSteel submits that closer analysis of the verified exporter data of Ispat will reveal significant fluctuations in the dumping margins across different parts of the investigation period calculated using the weighted average to weighted average approach. Indeed, it is recognised that (a) there are likely fluctuations (in terms of periods of time) across the investigation period; and (b) Ispat 'benefitting' from a difference in the timing of export sales, in the following statement in SEF 240 (at p. 34):

> "[6.5 Dumping Investigation]
>
> "[6.5.2 Ispat]
>
> "The Commission's Assessment
>
> …

"Based on this analysis, the Commission is satisfied that:

- the financial information submitted by Ispat was complete and accurate;
- Ispat achieved sufficient domestic sales in the ordinary course of trade to establish normal values under s.269TAC(1); and
- relative to Gunung, Ispat benefitted from a difference in the timing of export sales in the context of a depreciating IDR." [emphasis added]

For these reasons, OneSteel submits that Ispat has engaged in 'targeted dumping', and it is appropriate for the Commission to use the weighted average to transaction method to work out *whether* dumping has occurred under subsection 269TACB(3) of the *Customs Act*.

Accordingly, the Commission should now calculate dumping margins for Ispat by comparing the respective export transactions determined in relation to *individual* transactions during the investigation period with the *weighted average* of corresponding normal values over that period. This means applying the *weighted average to transaction method* to determine dumping margins.

Subsection 269TACB(3) of the *Customs Act* requires *individual* export prices to be compared with the *weighted average* of corresponding normal values, and that this is to be used in relation to all export sales in the relevant period, in this case, the entire investigation period.

OneSteel observes that subsection 269TACB(6) of the *Customs Act* prescribes the manner of determining a dumping margin in relation to circumstances where a comparison is made under subsection 269TACB(3), and only in relation to the particular transactions with export prices that are less than the weighted average of corresponding normal values. Subsection 269TACB(6)(a) provides that the goods exported to Australia in each such transaction are taken to have been dumped. The *Customs Act* also provides at subsection 269TACB(6)(b) that the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values. The focus of subsection 269TACB(6) is on the particular transactions where the individual export price is less than the weighted average of corresponding normal values. Subsection 269TACB(6) is silent on how to treat the goods exported to Australia in other transactions.

In these circumstances, when using the method under subsections 269TACB(3) and (6), the Commission should not take into account offsets for negative dumping margins arising from transactions where the export price was higher than the weighted average of corresponding normal values. This interpretation has been previously found by the Commission to be consistent with the intention of these provisions, which is, to unmask and take into account export prices that differ significantly among different purchasers, regions or periods. In doing so, the Commission will identify and address 'targeted' or 'masked' dumping that can cause material injury. This approach was found by the Commission to be available under Australian law and that it is consistent with WTO jurisprudence in Report 219 - *Power Transformers exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam*, 2 December 2014.

4.4 Habas

The Commission has also conducted a remote verification of the Turkish exporter of RIC, Habas. The Commission established normal values for Habas under subsection 269TAC(1), and confirmed a weighted average dumping margin of negative 0.6 per cent[7]. In SEF and PAD No. 240, the revised dumping margin for Habas is negative 0.3 per cent.

[7] Refer Habas Exporter Verification Report, P. 24.

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OneSteel provided a submission to the Commission dated 16 February 2015 detailing concerns with the Habas remote verification and the determination of normal values. The Commission addressed OneSteel's comments in SEF and PAD No. 240 and concluded that OneSteel's representations did "*not contain sufficient evidence to support its contention that Habas' normal value cannot be calculated using domestic sales in the ordinary course of trade*[8]". OneSteel contends that the Commission has available to it information from Diler (from that company's initial EQR) that provides a suitable benchmark for the Commission to test the reasonableness of the information remotely verified for Habas.

The information available to the Commission from Diler's EQR can assist the Commission in establishing:

- whether the domestic grades of RIC sold by Diler are also common to Habas' RIC domestic sales;
- whether the domestic sales comparison can be used to confirm the proportion of RIC total sales that represent the highest volume sales and whether this is also consistent for Habas;
- whether any domestic grades included within the Diler normal value assessment were excluded by Habas for normal value purposes (and why these sales may have been excluded);
- if Diler's domestic selling prices are consistent with those of Habas, including alignment of grades sold by both exporters on the domestic market; and
- whether scrap purchase prices for both Diler and Habas were consistent.

Consideration of these factors by the Commission would aid the Commission's assessment of the reliability of the information verified remotely.

5.0 Conclusions and recommendations

OneSteel acknowledges the Commission's efforts in publishing its preliminary findings in SEF and PAD No.240 for RIC exported from Indonesia, Taiwan and Turkey. It is further acknowledged that the remote verification of data imposes limitations on the Commission to fully investigate transactions as would be available in a typical exporter verification visit.

OneSteel welcomes the imposition of securities on RIC exports from Indonesia (with the exceptio of exports by Ispat) and Taiwan. OneSteel maintains its long-held view that exports of RIC by Ispat and Habas during 2013 were at dumped and injurious prices. In respect of exports by Ispat, OneSteel's views are supported by:

- the recent findings of the Indonesian Safeguards Committee that Ispat (the largest manufacturer of RIC of the 2 applicants) and another large Indonesian RIC manufacturer – who together were responsible for >58% of Indonesian RIC production - sold RIC at a loss in 2013;
- the losses confirmed by the Committee for 2013 for Ispat and Krakatau on RIC sales were substantial; and
- the Committee's findings contradict the Commission's assessment that there were sales in the ordinary course of trade by Ispat.

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[8] SEF and PAD No. 240, P.41.

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Whilst not detracting from OneSteel's view that domestic selling prices by Ispat are not in the ordinary course of trade (as per the Committee's findings), OneSteel submits that the Commission has erred in its application of the appropriate methodology to apply in addressing short term and sustained currency fluctuations of the IDR during the investigation period. OneSteel has proposed an alternate methodology that will result in revised normal values and dumping margins for Ispat. Further, or in the alternative, OneSteel also seeks the Commission consider evidence suggesting 'targeted dumping' by Ispat since July 2013.

OneSteel requests the Commission to revisit its conclusions as to the validity of the Indonesian Safeguards Committee findings on RIC sales in Indonesia in 2013. Full account of the Committee's findings will enable the Commission to be satisfied that domestic sales of RIC in Indonesia in 2013 were not sold in the ordinary course of trade. It is OneSteel's position that the normal values for RIC sold in Indonesia during the investigation period should be based upon the published prices as per the independent pricing information included in OneSteel's application.

OneSteel retains reservations as to the determination of normal value for the Turkish exporter, Habas. The Commission has information available to it from another Turkish exporter, Diler which it can use to validate domestic selling price information for Habas. Additionally, information provided by Diler may be used to validate scrap raw material prices provided by Habas.

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

Matt Condon
Manager – Trade Development

OneSteel Manufacturing Pty Ltd

Policy Bulletin 96-1:

Import Administration Exchange Rate Methodology

Introduction

For the first time, the Uruguay Round Agreements Act (the "URAA") provides explicit guidelines for the selection of exchange rates that Import Administration ("IA") will use in converting foreign currencies to U.S. dollars. Our past practice, specified in 19 CFR 353.60, has been to use the same exchange rates as the Customs Service.

Section 773A of the Tariff Act of 1930, as amended, (the "Act") provides that IA will convert foreign currencies at the exchange rates on the date of the U.S. sale, subject to certain exceptions. Those exceptions require IA to ignore "fluctuations" in the exchange rate and to provide respondents in an investigation at least 60 days to adjust prices after a "sustained movement" in the exchange rate.[1] Neither the Act nor the Antidumping Agreement (Agreement on Implementation of Article VI, GATT 1994) provides guidance on defining fluctuations or sustained movements.

The Statement of Administrative Action accompanying the URAA (the "SAA") provides that IA is to promulgate regulations implementing the currency conversion provisions of section 773A of the Act. (SAA at 841.) The proposed regulations do not provide the kind of detail necessary to define fluctuations and sustained movement. Instead, we intend to implement and test the model described in this bulletin for one year. We will then make any necessary revisions to the model based on our experience and public comment. Once that process is complete, we will promulgate regulations fully defining our practice. We have designed the exchange rate model described below to define fluctuations and sustained movements with three goals in mind:

1. To implement the statutory requirements as simply as possible.
2. To ensure that all exporters, when they set their U.S. prices and whether under order or not, can know with certainty the daily exchange rate the Department will use in a dumping analysis.
3. To capture the model in simple computer code to reduce the administrative burdens on IA and other parties that wish to monitor exchange rates.

In brief, the model has been designed to convert a file of actual daily exchange rates to a file of "official" daily exchange rates. In this process, each actual daily exchange rate is classified as "normal" or "fluctuating." An extended pattern of appreciating rates defines a "sustained movement."

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[1] Section 773A of the Act also specifies that, if it is established that a forward currency transaction (``hedging'') is linked to an export sale, IA may use the exchange rate specified in the forward contract to convert currency for that sale. The model described in this bulletin does not encompass this exception. When it is appropriate to employ the forward rate provision, it is a simple matter to substitute the forward rate for the results of the model.

Based on these classifications, the model assigns the appropriate official exchange rate for each day.[2]

Summary of the Model

Step 1: Exchange Rate Used

The model classifies each daily rate as "normal" or "fluctuating" based on a "benchmark" rate. The benchmark is a moving average of the actual daily exchange rates for the eight weeks immediately prior to the date of the actual daily exchange rate to be classified.[3] Whenever the actual daily rate varies from the benchmark rate by more than two-and-a-quarter percent, the actual daily rate is classified as fluctuating. If within two-and-a-quarter percent, the actual daily rate is classified as normal.

Actual daily rates classified as normal are the official exchange rate for that day. However, when an actual daily rate is classified as fluctuating, the benchmark rate is the official rate for that day.

Step 2: Recognition Period

Whenever the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks (the recognition period), the model classifies the exchange rate change as a sustained movement. During the eight week recognition period, the model continues to classify each daily rate as normal or fluctuating and to substitute the benchmark rate for the actual daily rate when the daily rate is fluctuating.

Step 3: Adjustment for Sustained Movement

When there has been a sustained movement increasing the value of a foreign currency in relation to the dollar, respondents under investigation, but not review, are given 60 calendar days to correct their prices. The 60-calendar-day grace period begins on the first day after the recognition period. During that period, the official rate in effect on the last day of the recognition period will be the official rate in investigations. For reviews, the model continues to apply the eight-week average to determine whether daily rates are normal or fluctuating.

When a foreign currency has decreased in value in relation to the dollar, there is no adjustment required for a sustained movement, and the official rate generated by the model will normally apply to currencies depreciating against the dollar. However, in both investigations and reviews, whenever the decline in the value of a foreign currency is so precipitous and large as to

[2] We are continuing to examine the application of the model in situations where the foreign currency depreciates substantially against the dollar over the period of investigation or the period of review. In those situations, it may be appropriate to rely on daily rates.

[3] The New York Federal Reserve Bank publishes exchange rates for Monday through Friday only, excluding holidays. We refer to these as the actual daily rate or reported days.

reasonably preclude the possibility that it is only fluctuating, the lower actual daily rates will be employed from the time of the large decline.

The Starting Point

In order to provide certainty for all parties, we will start the model for all currencies as of January 1, 1992. We have chosen this date because the new law is effective for all reviews requested in January 1995 and thereafter. Generally, the earliest possible U.S. sale is 18 to 22 months prior to the anniversary month (18-month review period (first review) with U.S. sales generally made not earlier than 4 months before entry). By starting the model more than a full year prior to the earliest probable U.S. sale date, any distortion caused by the pattern of rates included in the initial benchmark will be eliminated before it can influence the exchange rate on the date of an actual U.S. sale.

Currently, a list of official rates starting with January 1, 1992, for the 30 exchange rates collected by the New York Federal Reserve Bank[4] is available on Internet and through the Central Records Unit. Shortly, all currencies for which there is a product under a dumping order will be posted and distributed. We will maintain these rates and update them quarterly using the Federal Reserve and other reliable sources.

Decision Rules in Greater Detail

The decision rules which follow have been programmed in SAS to convert a list of actual daily exchange rates to a list of official exchange rates for use in dumping investigations and reviews. We will use the file of official daily rates to select the exchange rate for each U.S. sale in our calculations. The following rules will apply:

1. Use the actual daily exchange rate[5] unless the actual daily rate varies by more than two and a quarter percent from the benchmark rate (`"fluctuates"). The benchmark rate is defined as the moving average exchange rate of the 40 reported days immediately preceding the date of the exchange rate being tested and classified.[6]

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[4] The 30 exchange rates are collected by the New York Federal Reserve Bank from a sample of market participants. They are the noon buying rates in New York for cable transfers payable in foreign currencies. These rates are certified by the New York Federal Reserve Bank for customs purposes, as required by section 522 of the Act. The daily rates are published weekly by the Federal Reserve Bank Board of Governors in form H-10. In addition, the Chicago Federal Reserve Bank maintains an electronic file on a bulletin board (which any party can access by modem) of 30 of the currencies. When the need for a currency other than one of the 32 arises, we will identify another reliable source.

[5] The exchange rate on Saturday, Sunday, or on holidays is the rate used for the previous reported day.

[6] The model is based on reported days. For example, the benchmark rate used is 40 reported days or approximately eight calendar weeks. Likewise, the exchange rate recognition period is 40 reported days or approximately eight weeks.

2. When the actual daily rate fluctuates from the benchmark rate, use the benchmark rate until the daily rate fluctuates by more than five percent in the same direction from the benchmark rate for a period of 40 reported days, or approximately eight weeks.[7] In other words, the weekly average of the actual daily rates will be compared to the average benchmark rate for the same week. If the actual exchange rate average exceeds the benchmark average by five percent or more for eight consecutive weeks, a sustained movement in the value of the currency is deemed to have occurred.

3. In investigations, if a sustained movement has occurred, and the foreign currency has increased in value in relation to the U.S. dollar, continue to use the official rate from the last day of the recognition period for 60 days following the end of the recognition period. On the 61st day, we would return to comparing the actual daily rate to the benchmark rate.

Whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, use actual daily rates from the start of the recognition period.

Dated: March 4, 1996.

Susan G. Esserman
Assistant Secretary for Import Administration

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[7] To eliminate “noise” in the daily rates, when testing whether there has been a sustained movement, the model compares the eight average weekly rates for the recognition period to the benchmark rate. Daily rates are too volatile. (By using an average weekly rate, a single day's dip back into the normal range will not mask a sustained movement.) A sustained movement is deemed to have occurred when the average rate for each of the eight weeks of the recognition period deviates from the benchmark by more than five percent.

61 FR 9434, March 8, 1996

DEPARTMENT OF COMMERCE

Notice: Change in Policy Regarding Currency Conversions

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (``the Department'') has revised its policy regarding currency conversions to conform to changes resulting from the Uruguay Round Agreements Act (``the URAA''). We are now announcing this change in methodology and the accompanying computer code and requesting comments on this new methodology. At the end of a one-year test period, the Department will reexamine the methodology, make any needed changes, and prepare regulations.

DATES: Effective Date: The proposed policy is effective March 8, 1996 with respect to all investigations and reviews requested since January 1, 1995. The Department will consider all written comments concerning this methodology and the accompanying computer code received before December 31, 1996.

ADDRESSES: Comments: Address all written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington DC 20230.

Computer Code: The computer code is available to the public as of March 8, 1996 on Internet at the following address: http://enforcement.trade.gov/ In addition, the computer code is available on 3.5'' diskettes in SAS 6.11 format and paper copies are available for reading and photocopying at Room B-099 of the Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Penelope Naas, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482-3534.

SUPPLEMENTARY INFORMATION: The URAA amended the Tariff Act of 1930 (``the Act'') to provide explicit guidance regarding the exchange rate to be used when converting currencies in antidumping proceedings (section 773A). In the Statement of Administrative Action accompanying the URAA, the Administration set out its intention that the Department would ``* * * promulgate regulations implementing the requirements of section 773A.'' In the ``Notice of Proposed Rulemaking and Request for Public Comments'' dealing with proposed antidumping and countervailing duty regulations, the Department announced its intention to implement the requirements of section 773A ``through an exchange rate model announced in a policy bulletin * * *'' (61 FR 7308; February 27, 1996.) Policy Bulletin 96-1, which follows, is a description of the exchange rate model.

As stated in the proposed regulations, we plan to use this model for one year and then evaluate its performance based on public comment. We will then alter the model as necessary and expand the regulations to provide more extensive guidance. The public is invited to comment on the model at any time prior to December 31, 1996. The computer code, through which the exchange rates will be selected is available on Internet and on disks from the Department. The Department also will make available on Internet lists of exchange rates for all currencies required in antidumping proceedings under the Act, as amended by the URAA.

Policy Bulletin 96-1: Import Administration Exchange Rate Methodology

Introduction

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\1\ Section 773A of the Act also specifies that, if it is established that a forward currency transaction (``hedging'') is linked to an export sale, IA may use the exchange rate specified in the forward contract to convert currency for that sale. The model described in this bulletin does not encompass this exception. When it is appropriate to employ the forward rate provision, it is a simple matter to substitute the forward rate for the results of the model.

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1. To implement the statutory requirements as simply as possible.
2. To ensure that all exporters, when they set their U.S. prices and whether under order or not, can know with certainty the daily exchange rate the Department will use in a dumping analysis.
3. To capture the model in simple computer code to reduce the administrative burdens on IA and other parties that wish to monitor exchange rates.

In brief, the model has been designed to convert a file of actual daily exchange rates to a file of ``official'' daily exchange rates. In this process, each actual daily exchange rate is classified as ``normal'' or ``fluctuating.'' An extended pattern of appreciating rates defines a ``sustained movement.'' Based on these classifications, the model assigns the appropriate official exchange rate for each day.<SUP>2

\2\ We are continuing to examine the application of the model in situations where the foreign currency depreciates substantially against the dollar over the period of investigation or the period of review. In those situations, it may be appropriate to rely on daily rates.

Summary of the Model.

Step 1: Exchange Rate Used

The model classifies each daily rate as ``normal'' or ``fluctuating'' based on a ``benchmark'' rate. The benchmark is a

moving average of the actual daily exchange rates for the eight weeks immediately prior to the date of the actual daily exchange rate to be classified.<SUP>3 Whenever the actual daily rate varies from the benchmark rate by more than two-and-a-quarter percent, the actual daily rate is classified as fluctuating. If within two-and-a-quarter percent, the actual daily rate is classified as normal.

\3\ The New York Federal Reserve Bank publishes exchange rates for Monday through Friday only, excluding holidays. We refer to these as the actual daily rate or reported days.

Actual daily rates classified as normal are the official exchange rate for that day. However, when an actual daily rate is classified as fluctuating, the benchmark rate is the official rate for that day.

Step 2: Recognition Period

Whenever the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive

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weeks (the recognition period), the model classifies the exchange rate change as a sustained movement. During the eight week recognition period, the model continues to classify each daily rate as normal or fluctuating and to substitute the benchmark rate for the actual daily rate when the daily rate is fluctuating.

Step 3: Adjustment for Sustained Movement

When there has been a sustained movement increasing the value of a foreign currency in relation to the dollar, respondents under investigation, but not review, are given 60 calendar days to correct their prices. The 60-calendar-day grace period begins on the first day after the recognition period. During that period, the official rate in effect on the last day of the recognition period will be the official rate in investigations. For reviews, the model continues to apply the eight-week average to determine whether daily rates are normal or fluctuating.

When a foreign currency has decreased in value in relation to the dollar, there is no adjustment required for a sustained movement, and the official rate generated by the model will normally apply to currencies depreciating against the dollar. However, in both investigations and reviews, whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, the lower actual daily rates will be employed from the time of the large decline.

The Starting Point

In order to provide certainty for all parties, we will start the model for all currencies as of January 1, 1992. We have chosen this date because the new law is effective for all reviews requested in January 1995 and thereafter. Generally, the earliest possible U.S. sale is 18 to 22 months prior to the anniversary month (18-month review period (first review) with U.S. sales generally made not earlier than 4 months before entry). By starting the model more than a full year prior to the earliest probable U.S. sale date, any distortion caused by the pattern of rates included in the initial benchmark will be eliminated before it can influence the exchange rate on the date of an actual U.S. sale.

Currently, a list of official rates starting with January 1, 1992, for the 30 exchange rates collected by the New York Federal Reserve Bank <SUP>4 is available on Internet and through the Central Records Unit. Shortly, all currencies for which there is a product under a dumping order will be posted and distributed. We will maintain these rates and update them quarterly using the Federal Reserve and other reliable sources.

\4\ The 30 exchange rates are collected by the New York Federal Reserve Bank from a sample of market participants. They are the noon buying rates in New York for cable transfers payable in foreign currencies. These rates are certified by the New York Federal Reserve Bank for customs purposes, as required by section 522 of the Act. The daily rates are published weekly by the Federal Reserve Bank Board of Governors in form H-10. In addition, the Chicago Federal Reserve Bank maintains an electronic file on a bulletin board (which any party can access by modem) of 30 of the currencies. When the need for a currency other than one of the 32 arises, we will identify another reliable source.

Decision Rules in Greater Detail

The decision rules which follow have been programmed in SAS to convert a list of actual daily exchange rates to a list of official exchange rates for use in dumping investigations and reviews. We will use the file of official daily rates to select the exchange rate for each U.S. sale in our calculations. The following rules will apply:

1. Use the actual daily exchange rate <SUP>5 unless the actual daily rate varies by more than two and a quarter percent from the benchmark rate (``fluctuates''). The benchmark rate is defined as the moving average exchange rate of the 40 reported days immediately preceding the date of the exchange rate being tested and classified.<SUP>6

\5\ The exchange rate on Saturday, Sunday, or holidays is the rate used for the previous reported day.

\6\ The model is based on reported days. For example, the benchmark rate used is 40 reported days or approximately eight calendar weeks. Likewise, the exchange rate recognition period is 40 reported days or approximately eight weeks.

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2. When the actual daily rate fluctuates from the benchmark rate, use the benchmark rate until the daily rate fluctuates by more than five percent in the same direction from the benchmark rate for a period of 40 reported days, or approximately eight weeks.<SUP>7 In other words, the weekly average of the actual daily rates will be compared to the average benchmark rate for the same week. If the actual exchange rate average exceeds the benchmark average by five percent or more for eight consecutive weeks, a sustained movement in the value of the currency is deemed to have occurred.

\7\ To eliminate ``noise'' in the daily rates, when testing whether there has been a sustained movement, the model compares the eight average weekly rates for the recognition period to the benchmark rate. Daily rates are too volatile. (By using an average weekly rate, a single day's dip back into the normal range will not mask a sustained movement.) A sustained movement is deemed to have occurred when the average rate for each of the eight weeks of the recognition period deviates from the benchmark by more than five percent.

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3. In investigations, if a sustained movement has occurred, and the foreign currency has increased in value in relation to the U.S. dollar, continue to use the official rate from the last day of the recognition period for 60 days following the end of the recognition period. On the 61st day, we would return to comparing the actual daily rate to the benchmark rate.

Whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, use actual daily rates from the start of the recognition period.

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Susan G. Esserman,
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