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

Review 419 – Hollow Structural Sections exported from Taiwan

Dear Director

Ursine steel wishes to respond to the submission made by Austube Mills (ATM) dated 29 October 2018. It is clear to Ursine that ATM misunderstands the basis of the claim made by URSINE, and the nature and timing of information submitted to the Commission during Review 419 in support of its claim. It is also clear that ATM are drawing inferences from the Federal Court case referenced in its submission which has no relevance to the circumstances of Ursine's date of sale claim.

First, with respect to a claimed date of sale other than the invoice date, the Commission's exporter questionnaire makes clear that the exporter must complete and submit the following information:

You should report prices of all goods under consideration (the goods) shipped to Australia during the inquiry period.

The invoice date will normally be taken to be the date of sale. If you consider:

- *the sale date is not the invoice date (see 'date of sale' column in question B4 below)*
- and;
- *an alternative date should be used when comparing export and domestic prices;*

you must provide information in section D on domestic selling prices for a matching period - even if doing so means that such domestic sales data predates the commencement of the inquiry period.

The date of sale column in question B4 requires that the exporter report the date that best establishes the material terms of sale. Whilst these information requirements are

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acknowledged by ATM in its submission, it incorrectly considers that Ursine did not comply.

Appendix B-4 of Ursine's questionnaire response clearly stated the date of sale based on the relevant contract dates for each export sale. Ursine also informed the Commission that corresponding domestic sales covering the period matching Ursine's claimed date of sale were already in the Commission's possession as it had verified the domestic sales information as part of Review 379. In addition, Ursine addressed the issue of the date of sale by detailing the export sales process and the basis upon which the contract date is taken to be the date of sale.

Further, Ursine also claimed that if the Commission determined the invoice date to be the date of sale, an adjustment was warranted for observed production cost differences caused by raw material costs being incurred at different times and which are demonstrated to have affected corresponding domestic and export selling prices. The monthly differences in raw material costs incurred across the review period and the estimated impact on price comparisons between domestic and export sales was addressed by Ursine in its questionnaire response to question G-6.

Therefore, it cannot be suggested that Ursine did not comply with the requirements of the exporter questionnaire in making its date of sale claim based on the export contract dates. It is also false to suggest that Ursine did not raise or bring these adjustment issues to the Commission's attention at the earliest possible opportunity.

As noted in its submission to the ADRP, the Commission did not query or request supplementary information of Ursine in relation to its date of sale claim during its verification procedures. In fact, it was Ursine that first queried whether the Commission had even considered the issue approximately four months after it had submitted its questionnaire response. Up to that point, there had been no suggestion from the Commission that Ursine's submitted evidence, which included additional sales and costs selected for verification by the Commission, was deficient or insufficient for assessing its date of claims.

Given the above circumstances, it is incorrect for ATM to suggest that the findings by the Federal Court in *Al Abdullatif Industrial Group Co Ltd v Minister for Justice & Customs* are relevant. There was no verification report prepared by the Commission which outlined its consideration of the issues and no indication or suggestion from the Commission that the information submitted in its questionnaire response and subsequent remote verification audit, was inadequate. As highlighted above, it required Ursine to first raise the issue with the Commission as to whether it had turned its mind to the claim being made.

The *Abdullatif* circumstances can also be distinguished from Ursine's circumstances in that *Abdullatif* had not raised the matter of adjustments for differences in goods, at the time of the site visit. In alleging differences between goods, *Abdullatif* submitted information following the site visit and which did not quantify the claim differences.

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Customs ultimately disregarded the post-verification information as it did not demonstrate any real difference based upon the exporter's account or other relevant and reliable records. It was also considered to have been provided too late in the investigation.

In contrast, Ursine had:

- clearly articulated its claim in its questionnaire response;
- had provided evidence to demonstrate the claimed date of sale with respect to the two export sales required by the exporter questionnaire;
- had provided evidence to demonstrate the claimed date of sale with respect to the supplementary export sales selected by the Commission in conducting its remote verification;
- had quantified the impact of the raw material costs caused by the difference in time between the month of production and subsequent month of sale of the exported and domestic goods.

Finally, Ursine takes the opportunity to respond to the Commission's statement to the ADRP that it remained '*... of the view that what they [the Commission] had examined in REP 419 fell considerably short of reaching the standard that would cause the Commission to move away from the invoice date.*' Whilst Ursine respects the Commission's right to establish an evidentiary threshold for departing from its preferred policy position on using invoice date for determining the date of sale, it is preferable if that '*standard*' was more clearly articulated so that interested parties were aware of the information requirements.

Yours sincerely

John Bracic