

6 May 2015

Ms Candy Caballero
Director Operations
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3000

Public File

Dear Ms Caballero,

Investigation into Steel Rod in Coil exported to Australia from Indonesia, Taiwan and the Republic of Turkey – Policy on currency fluctuations

Introduction

The Commission's treatment of sustained currency movement is critical to the Rod in Coil investigation and to future investigations due to the increasing volatility of international currencies.

It is essential that Commission's operational policy development is balanced, based on Australia's legislation and relevant WTO jurisprudence. Any newly developed policy should not be for the sole benefit of foreign exporters and at the expense of the Australian Industry.

Key findings in relation to Currency Movements

- Ispat of Indonesia is the major exporter of the GUC and has benefited from a rapid and sustained depreciation of the local IDR currency during the second half of the investigation period (a 25.7% depreciation in a six month period)

'relative to Gunung, Ispat benefitted from a difference in the timing of export sales in the context of a depreciating IDR'.¹

The SEF preliminary findings are that Ispat has a negligible dumping margin whilst Gunung has a 10.6% dumping margin.

- Sub section 269TAF of the Customs Act provides scope for the Minister to take into account the effect of a "sustained movement" in currency to fix a rate of exchange for multiple 60 day periods.

(4) If:

(b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement;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.

¹ Pg 34 – SEF & PAD Report 240

(6) *Nothing in subsection (4) prevents the Minister publishing more than one notice if a sustained movement in the rate of exchange continues for more than 60 days.*

- The Dumping and Subsidy manual indicates that the principles underlying the provisions of 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.
- Sub section 269TAF Currency Conversion is drafted in neutral terms and has scope to be applied in cases of both foreign currency increases and decreases. This is in line with WTO jurisprudence on currency conversion, as referred to OneSteel's submission dated the 6th February 2015:
 - *"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."*²
- The Commission acknowledges its policy for determining short term or sustained currency movement is not fully developed, i.e. The Commission

'does not currently have an established practice for determining short-term or sustained currency movements as referred to in ss.269TAF (3) and (4).

Policy Development for Currency Fluctuations

- In the SEF the Commission advised that as it didn't have a standardised approach to short term or sustained currency movements it initially analysed the approach employed by the United States International Trade Commission (USITC).
- As referenced in OneSteel's submission dated the 20th March 15 there are number of significant issues with adopting the US policy for the Australian framework
 - The US statute upon which the US policy for determining a sustained currency is based is different to the Australian legislation.
 - The US Policy Bulletin was a test model developed in 1996 for a 1 year test period. The Policy Bulletin acknowledges that its proposed model is still conceptual and provides a clause to abandon the proposed methodology.

*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.*³

² 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.

³ Policy Bulletin 96-1: Import Administration Exchange Rate Methodology 4 March 1996

- The limitations of the policy's model for determining a sustained currency model are also reinforced in the US Court of International Trade's finding:

*"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%, 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."*⁴
- In the investigation before the Commission, OneSteel notes that across the investigation period (calendar year 2013), the Indonesian Rupiah devalued by 25.77% against the US\$ as shown in Attachment C to the OneSteel submission of 20th March.
- In the same submission of the 20th March 15, OneSteel proposed a model for dealing with sustained currency movements that is consistent with both the legislation and the Commission's own policy manual. OneSteel's proposed model for dealing with currency is balanced and symmetrical and can be applied in instances of appreciating and depreciating currencies.
 - The notion of a 'sustained movement' suggests something outside of a normal range of fluctuation.⁵.... different from a moving average rate of exchange for the previous 60, or 90 days.
 - Nothing in subsection (4) prevents the Minister publishing more than one notice if a sustained movement in the rate of exchange continues for more than 60 days.

Conclusion

It is essential that Commission's operational policy development is balanced, based on Australia's legislation and relevant WTO jurisprudence. Any newly developed policy on currency fluctuations should be symmetrical and not be for the sole benefit of foreign exporters at the expense of the Australian Industry only.

Based upon the Commission adopting a balanced and symmetrical methodology, it is OneSteel's view that there are four periods of sustained currency movements where using a fixed currency at the beginning of each 60 day period is required.

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 The US Court of International Trade in *Viraj Group Ltd. V United States of America and Carpenter Technology, Corp., et al. (CIT Feb 26, 2002)*

⁵ Dumping and Subsidy Manual Page 117

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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

A handwritten signature in black ink, appearing to read "Matt Condon".

Matt Condon
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OneSteel Manufacturing Pty Ltd