

10 August 2017

The Director, Operations 1  
Anti-dumping Commission

**BY EMAIL: [operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au)**

Dear Director,

**Submission of an Australian industry member**

**Case: *Dumping Investigation No. 384 (Alloy Round Bar exported from China)***

**RE: Verification Report – Exporter (Jiangsu Yonggang Group Co. Ltd)**

OneSteel Manufacturing Pty Ltd (**OneSteel**) refers to its earlier submission in the matter as a member of the Australian industry. OneSteel now responds to the Commission's conclusion of a verification report for the exporter, Jiangsu Yonggang Group Co. Ltd (**Yonggang**).

***Yonggang yet to be subject to on-site verification***

In spite of Yonggang's regular appearance as an exporter of steel products the subject of dumping investigations by the Anti-dumping Commission (**Commission**), it has yet to be subjected to on-site verification by the Australian administration (at least). Although OneSteel never considers remote "verification" a suitable substitute for on-site verification, the risks of this 'resource saving' approach are compounded several times over when it is applied to an exporter whose financial information has never been subjected to 'live' interrogation by Commission officers in relation to a certain general product category, in this case, steel.

***Determination of profit***

OneSteel notes that at [5.6] of the *Verification Report*<sup>1</sup> the Commission concluded as follows:

*An additional amount of profit was not included as the verification team did not find profit made on domestic goods sold in the OCOT.*<sup>2</sup>

The Commission's conclusion is at odds with established WTO jurisprudence and the Commission's own policy on this point.<sup>3</sup> In order for the Commissioner to not determine an amount for profit under s 45(2) of the Regulations,<sup>4</sup> the Commission must not have found a single domestic sale of the like goods made in the ordinary course of trade by the exporter during the

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<sup>1</sup> EPR Folio No. 384/036

<sup>2</sup> *Ibid.* at p. 9.

<sup>3</sup> Appellate Body Report, *European Communities – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil*, WT/DS219/AB/R, adopted 22 July 2003 (**EC – Tube or Pipe Fittings**) and refer also Anti-dumping Commission, *Dumping and Subsidy Manual*, April 2017 Edn, at p. 49.

<sup>4</sup> References to s 45 shall be references to the provisions of s 45 of the *Customs (International Obligations) Regulation 2015 (Regulations)*.

entire investigation period. With respect, OneSteel finds this implausible given the exporter's otherwise profitable performance.<sup>5</sup>

In *EC — Tube or Pipe Fittings*, the Appellate Body concluded that the language in Article 2.2.2 of the *WTO Anti-dumping Agreement*<sup>6</sup> does not exclude reference to low volume sales made in the ordinary course of trade as a relevant source of information for the determination of an amount for profit. The Appellate Body Report is cited in relevant part with emphasis added:

*“As the Panel correctly observed, it is meaningful for the interpretation of Article 2.2.2 that Article 2.2 specifically identifies low-volume sales in addition to sales outside the ordinary course of trade. In contrast to Article 2.2, the chapeau of Article 2.2.2 explicitly excludes only sales outside the ordinary course of trade. The absence of any qualifying language related to low volumes in Article 2.2.2 **implies that an exception for low-volume sales should not be read into Article 2.2.2.**”*<sup>7</sup>

Section 45(2) applies Article 2.2.2 of the *WTO Anti-dumping Agreement*. Therefore, OneSteel considers that the Commission should have regard to any domestic sales made in the ordinary course of trade, and apply the amount as profit when ascertaining a normal value for the exporter under s 269TAC(2)(c) of the Act.<sup>8</sup>

However, even if OneSteel is wrong, and the exporter has not in fact made a single sale of the like goods in the ordinary course of trade, then the provisions of s 45 of the Regulations, do not preclude the Commission from attempting to determine an amount for profit under an alternative methodology. This statutory obligation is in fact prescribed in the language of the Regulations. In relevant part, s 45(3) provides, with emphasis added:

- “(3) *If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the **Minister must work out the amount by:***
- (a) *identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or*
  - (b) *identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or*
  - (c) *using any other reasonable method and having regard to all relevant information.”*

<sup>5</sup> NON-CONFIDENTIAL ATTACHMENT A

<sup>6</sup> *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Anti-dumping Agreement)* and references to any Articles shall be references to articles of that agreement.

<sup>7</sup> Appellate Body Report, *EC — Tube or Pipe Fittings*, [97]–[98]

<sup>8</sup> References to s 269 shall be references to the provisions of Part XVB of the *Customs Act 1901 (the Act)*.

In other words, the provision does not exhaust the Commission's obligation to consider profit on the "*production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade*" under s 45(2) – as the Commission appears to have concluded in the *Verification Report* – but rather to work through the alternative<sup>9</sup> options in s 45(3); which includes, but is not limited to having regard to profit on "*the sale of the same general category of goods in the domestic market of the country of export*" or "*the weighted average profit realised by other exporters from the sale of like goods*", or (subject to s 45(4)) "*using any other reasonable method having regard to all relevant information*", then the Commission has not sufficiently fulfilled its administrative duty to the Minister.

Again, assuming that Yonggang has not made a single domestic sale of the like goods in the ordinary course of trade (an unlikely scenario), then the Commission, if it has not already done so, must attempt to assess an amount for profit under the alternate methodologies outlined in s 45(3). In doing so, there is no requirement to test for ordinary course of trade in any of these three alternatives, nor will the Commission read any ordinary course of trade requirement into them.<sup>10</sup> We note that the impending publication of the *Statement of Essential Facts (SEF)* is no longer a limiting factor imposed upon the Commission to make whatever additional enquiries it needs to make to fulfil its administrative obligations – given the Commissioner's decision to extend the publication date of the SEF by a further 60 days to 17 September 2017,<sup>11</sup> and that "remote" assessment of these facts has not previously posed a problem for the Commission.

In terms of information relevant to an assessment of profit by Yonggang within the terms of s 45(3)(c), OneSteel attaches NON-CONFIDENTIAL ATTACHMENT A that Yonggang was among the most profitable Chinese steel makers during the investigation period.

### **Conclusion**

OneSteel expects the Commission to determine an amount for profit under s 45 for the purpose constructing a normal value under s 269TAC(2)(c) for Yonggang.

Should the Commission seek to discuss any aspect of this submission, please do not hesitate to contact the respondent Australian industry.

FOR AND ON BEHALF OF THE AUSTRALIAN INDUSTRY RESPONDENT

ONESTEEL MANUFACTURING PTY LTD

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<sup>9</sup> "Any of these three alternatives can be used as there is no hierarchy". Refer *Dumping and Subsidy Manual*, April 2017, at p. 49.

<sup>10</sup> *Ibid.*

<sup>11</sup> Anti-dumping Notice No. 2017/104 (19 July 2017) refers