

14 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: Selection of comparable competitive cost benchmark**

OneSteel Manufacturing Pty Ltd (**OneSteel**) refers to its earlier submissions in this matter as a member of the Australian industry, and acknowledges the Anti-dumping Commissioner's (**Commissioner's**) decision to extend the deadline to publish the SEF (Statement of Essential Facts). We also note, that within this extended timeframe, the Anti-dumping Commission (**Commission**) has commenced its exporter verification program in *Dumping Investigations No. 416*<sup>1</sup> and *No. 418*.<sup>2</sup>

Assuming that the Commission concludes that a particular market situation exists in China's domestic market for alloy round bar, then in determining exporters' normal values under s 269TAC(2)(c)(i), we observe that the Commission must select appropriate competitive costs of production of the goods outside China in a manner consistent with the WTO Appellate Body report in *EU – Biodiesel (Argentina)*.<sup>3</sup> We make this submission in order to assist the Commission in making a compliant selection of external competitive cost information.

***Selection of comparable competitive cost benchmark***

OneSteel has previously submitted that the selection of an export-price based benchmark is *not* appropriate for use to arrive at 'the cost of production' for an exporter where a particular market situation has been found in the market of the country of origin – as has been found to exist in various Chinese domestic steel markets. OneSteel has consistently pointed to the need for the Commission to have regard to alternate domestic-based competitive markets for determining the cost of production.<sup>4</sup>

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<sup>1</sup> *Steel rod in coils exported from Indonesia, Korea and Vietnam*

<sup>2</sup> *Steel Reinforcing Bar exported from Greece, the Republic of Indonesia, Spain (Nervacero S.A), Taiwan (Power Steel Co. Ltd) and the Kingdom of Thailand*

<sup>3</sup> Appellate Body Report, *European Union – Anti-Dumping Measures on Biodiesel from Argentina*, WT/DS473/AB/R, adopted 6 October 2016, AB-2016-4 (*"EU – Biodiesel (Argentina)"*), p. 43 [6.74]

<sup>4</sup> Refer here to submissions of OneSteel in *Dumping Investigation No. 300* at EPR Folio No. 300/054, p. 4; see also submission in *Dumping Investigation No. 301* at EPR Folio No. 301/033, p. 7; and the application of OneSteel to the Anti-Dumping Review Panel concerning rod in coils exported from China (19 May 2016) at p. 6 [10.1]; and the application of the former related party, Moly-Cop, in *Dumping and Subsidy Investigation No. 316* at EPR 316/038, p. 2; and the application of Moly-Cop to the Anti-Dumping Review Panel concerning grinding balls exported from China (30 November 2016) at p. 6.

It is now well settled in Australian domestic law and international WTO jurisprudence that there is nothing to preclude the Commission from relying on ‘information from other representative markets’.<sup>5</sup> However, OneSteel has consistently and repeatedly pointed to the importance of selecting comparable competitive markets, and adapting that information to reflect the costs of production in the country of origin, in a manner consistent with Article 2.2 of the *Anti-dumping Agreement*.<sup>6</sup>

OneSteel has always posited that the only competitive market costs of steel billets capable of being adapted to reflect the costs of production in the country of origin are those based on domestic competitive markets. The problem with a competitive cost benchmark based on export market values is that the distortionary effects of Chinese prices are directly introduced to the value of the benchmark, by virtue of the interaction between non-Chinese and Chinese prices in export markets.

Indeed, the Commission was cognisant of the risk of a competitive cost benchmark being affected by Chinese prices. Accordingly, in *Dumping Investigation No. 301* the Commission justified its selection of Latin American export billet prices in FOB terms as representative of the best available information on competitive market costs of steel billets for the following reasons:

*“The Commission considers that the Latin American benchmark is a competitive benchmark that has not been identified as being affected by Chinese prices due to the following factors:*

- *geographic distance from Asia limiting the distortionary effects of the GoC on the iron and steel industry;*
- *significant production levels generating a ‘deep’ trade market and a relatively high level of competition; and*
- *the existence of anti-dumping and trade remedy cases from Latin America on Chinese steel products.”<sup>7</sup>*

Paradoxically, the Commission considered the correct issues, but reached the wrong conclusion - that is that Latin American billet export prices were not affected by Chinese prices.

For example, the ‘*geographic distance from Asia*’ of a benchmark market may indeed be relevant to **domestic** market conditions, but is irrelevant when considering **export-market** prices, especially where such prices are quoted on FOB terms (as the Latin American billet price benchmark in fact is). As the quote is exclusive of sea freight, it is designed to compete on a head-to-head basis with other price quotes from anywhere in the world, including a sea-port in China.

Similarly, the Commission’s reference to ‘*significant production levels*’, generating a ‘deep’ trade market, are all relevant to prevailing **domestic** Latin American market conditions, but do nothing to deflect the impact of the market distortions inherent in Chinese prices on the **export-market** based price quotes/trades.

Furthermore, the Commission’s regard to ‘*the existence of anti-dumping and trade remedy cases*’ in Latin American countries on “Chinese steel products” is again very relevant to the resistance of Latin American **domestic** markets to Chinese prices, but as the Commission no doubt

<sup>5</sup> See *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309 at para. 111; and *EU – Biodiesel (Argentina)* at [6.71] – [6.74].

<sup>6</sup> *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*

<sup>7</sup> Report No. 301, *Dumping – Rod in Coils exported from China* [EPR Folio No. 301/038] at p. 17

understands, is completely irrelevant to the setting of **export-market** prices on FOB terms. In other words, the Commission has effectively identified all the reasons why export-based markets do not offer a suitable competitive cost benchmark unaffected by Chinese prices.

It is submitted that the issue of adapting the information of competitive cost benchmarks may be addressed in part by the selection of benchmark domestic prices from countries that are economically comparable (in terms of their levels of economic development) to China. Other administrations have addressed this inquiry by reference to the per capita gross national income (**GNI**) data as reported by the World Bank.<sup>8</sup>

Once an economically comparable market is identified, the Commissioner is then able to substitute the exporter/producer's billet costs with the costs of inputs utilised in producing the finished goods (billet costs) in the comparable market under s 43(8) of the *Customs (International Obligations) Regulations 2015 (the Regulations)* to determine a normal value under s 269TAC(2)(c).

Originally, the Commissioner considered in *Dumping Investigations Nos. 300 and 301* that "Latin American export billet prices in FOB terms represent the best available information on competitive market costs of steel billets" in those cases.<sup>9</sup> However, *Dumping Investigation No. 384* has an investigation period that coincides with at least six-months of the investigation periods of two other current dumping investigations – namely, *Investigation Nos. 416 and 418* – both of which concern the key feed material (steel billet) in competitive, and potentially comparative markets. OneSteel considers that superior competitive cost benchmarks are now available to the Commission based on verifiable cost to make data for producers of billet in comparable markets.<sup>10</sup> The further advantage of utilising the verifiable cost information arising from *Investigations Nos. 416 and 418*, is that they will represent fully costed competitive benchmarks for billet inputs (exclusive of a profit margin). Indeed, the issue of subtracting the correct amount for profit on the SBB Latin American Billet price was considered imperfect by the Anti-Dumping Review Panel (**ADRP**) in *ADRP Report No. 40 concerning steel rod in coils exported from China*<sup>11</sup>:

*"[117] I have concerns about the use of Chinese profit to convert the Latin American billet price to a cost, as expressed in the Reinvestigation Request and would have been open to consider the Latin American profit margin, if it was based on reliable data. However, it has become clear to me, for the reasons referred to above, that the Latin American profitability is extremely unreliable, possibly to the point of being meaningless, due to the fact that it's derived from broad, general and public information of a few selected companies, with a wide range of profit margins, and is in relation to a wide product base, rather than in respect of steel billet."*

On the other hand, OneSteel's proposal has the advantage of not requiring any adjustment for profit, as it is based on the full cost of billet production in economically comparable markets, most closely aligned in terms of economic development to China.

<sup>8</sup> United States Department of Commerce, *Enforcement and Compliance Antidumping Manual*, 16 March 2015, Chapter 10 at p. 12.

<sup>9</sup> EPR Folio No.301/038 at p. 17

<sup>10</sup> The investigation periods for *Investigations No. 416 and 418* match the review periods (1 April 2016 to 31 March 2017).

<sup>11</sup> Report of Member Blumberg dated 13 December 2016

### Sources of economically comparable markets suitable for use and adaption to arrive at the 'cost of production'

According to the World Bank's latest publication of *World Development Indicators*, China's gross national income per capita based on purchasing power parity (PPP, international dollars) for 2016 was \$15,500.<sup>12</sup>

Therefore, the closest comparable markets (in terms of 2016, GNI per capita) for which verifiable billet cost information is available (following the initiation of *Investigation Nos. 416 and 418*) are Thailand (\$16,070) and Indonesia (\$11,220).<sup>13</sup>

Given that the Commission has previously found that it must conduct its assessment of competitive market costs at the steel billet level,<sup>14</sup> then once the Commission has selected a verifiable producer in a suitable economically comparable market, the Commission should substitute the aggregate of all inputs utilised in producing the steel billet in the competitive market and substitute those values for the unreliable Chinese costs to produce steel billet by adding the individual Chinese exporter/producer's conversion costs to convert the steel billet into the finished product (rebar or rod in coils) in order to calculate the finished product's cost to make.

### **Conclusions**

This investigation presents the Commission with a perfect opportunity to improve its selection of appropriate competitive costs of production of the goods outside China in a manner entirely consistently with the WTO Appellate Body report in *EU – Biodiesel (Argentina)*. Therefore, OneSteel seeks that the practice of export-price based so-called competitive benchmarks be abandoned in preference of comparable, domestic-based prices capable of adaption. The Commission will have verifiable cost information from such markets courtesy of the current investigations concerning feed material costs from other markets across an investigation period that matches at least six-months of the investigation period applicable here.

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>12</sup> Source: <http://data.worldbank.org/data-catalog/world-development-indicators> (accessed, 1 July 2017)

<sup>13</sup> *Ibid.*

<sup>14</sup> EPR Folio No. 301/038 at pp. 13 -14.