

24 March 2020

The Director  
Quality Assurance and Verification  
Anti-Dumping Commission  
GPO Box 2013  
CANBERRA ACT 2600

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

Dear Director,

**Reinvestigation of certain findings in Reports Nos. 486 and 489 concerning steel reinforcing bar (rebar) exported from the Republic of Korea (Korea) and Taiwan (with the exception of Power Steel Co., Ltd)**

**AUSTRALIAN INDUSTRY SUBMISSION – PRELIMINARY REINVESTIGATION REPORTS**

InfraBuild (Newcastle) Pty Ltd (**InfraBuild Steel**), a member of the Australian industry producing like goods to the goods the subject of *ADRP Review No. 108*, makes the following comments and observations concerning the preliminary reinvestigation report published on 10 March 2020.

**1. Exclusion of like goods (SD280 grade models) from the calculation of Wei Chih's normal value not permitted under law**

Having concluded that there were "*sufficient sales of SD420W sold in the OCOT to permit a proper comparison*"<sup>1</sup>, the Commission appears to have excluded from its further consideration for normal value calculation purposes, sales of SD280 grade. This despite the Commission noting its consideration raised in ADRP conference that "*rebar of grades SD420W and SD280 sold by Wei Chih on the domestic market were like goods to the 500N model rebar exported by Wei Chih during the review period.*"<sup>2</sup> By doing so, the Commission has improperly excluded an entire category of like goods from its calculation. In *ADRP Decision No. 110*, Panel Member O'Connor was critical of this approach. The definition of "like goods" does not permit the Commission to exclude from its analysis under subsection 269TAC(1), goods meeting the definition, and the question of "relevance" does not permit the Commission to discriminate between models:

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<sup>1</sup> *EPR Folio No. 489/026.*

<sup>2</sup> *EPR Folio No. 489/026 at p. 7.*

*“34. In the present case, the Commissioner, through the application of the first stage of this sufficiency test, confirmed the presence of large volumes of like goods sold on the domestic market. The Commissioner did not test whether such sales could form the basis for the determination of normal values i.e. whether such sales had been made in arms length transactions and were in the ordinary course of trade. Such an examination was not thought to be necessary as a result of the application of the second stage of the sufficiency test with its focus not upon like goods but upon comparable models.*

*“35. The second leg of the sufficiency test seeks to read into s.269TAC a requirement that domestic sales, which would otherwise be considered in the ascertainment of normal value, must meet an additional requirement in order to be relevant to the determination of normal value. This additional requirement is not evident by the express language of s.269TAC nor can one be inferred when that section is read in context.”<sup>3</sup>*

Further support for this view is found in the comments of Senior Member expressed it in *ADRP Review No. 100*<sup>4</sup>:

*“11. The use of model matching is an acceptable method to use for the comparison of products sold domestically with those exported. It is a practical way of taking into account differences in goods which, although like goods, are not identical. However, difficulties in taking a model matching approach is not a basis for discarding domestic sales of like goods which otherwise meet the criteria of s.269TAC(1) and do not fall within the excluding categories in s.269TAC(2).”<sup>5</sup>*

## 2. Incorrect calculation of specification adjustment

Subsection 269TAC(8) specifically requires that specification adjustments must be based on the effect on price comparability between the domestic sales and exported goods:

*“(8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:*

*(a) relate to sales occurring at different times; or*

***(b) are not in respect of identical goods; or***

*(c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;*

*that price paid or payable for like goods is to be taken to be such a price **adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.***

<sup>3</sup> ADRP Decision No. 110 (*Steel Reinforcing Bar exported from the Republic of Turkey*), pp. 17-18.

<sup>4</sup> ADRP Review No. 100 (*Wind Towers exported from the People’s Republic of China and the Republic of Korea*)

<sup>5</sup> Refer ADRP Review No. 100, *Letter from Senior Member Joan Fitzhenry to Commissioner Dale Seymour* (4 July 2019), pp. 4-5.

Although it is true that adjustments under s.269TAC(8) need not be calculated based solely on price, any adjustment to the normal value must first establish that any differences between models affect price comparability. As far we can observe, like goods are sold according to their models, i.e. the entire package of features and physical characteristics inherent in the goods identified with the the class or model. Goods, are not *per se*, sold into the market based on their cost. Therefore, the market would likely reject a more expensive model that is in all respects identical to a less expensive model, except in relation to its costs of production. Indeed, the Commission did analyse the price difference between two models sold domestically, specifically SD280 and SD420W grade models, and concluded that:

*“The key difference between grades SD420W and 500N is the minimum yield strength. SD420W has a minimum yield strength of 420Mpa whereas 500N has a minimum yield strength of 500Mpa.*

*“The Commission sought to establish whether yield strength is a relevant factor affecting price comparability by analysing Wei Chih’s domestic sales of SD280 (with a minimum yield strength of 280MPA) and SD420W grades (with a minimum yield strength of 420MPA) and assessing whether there is an observable price difference.*

*“The outcome of this analysis is contained in Confidential Attachment 1 and shown in figure 1 below.*

...

**“As shown in figure 1 above, there is an observable price difference between Wei Chih’s domestic sales of SD280 and SD420W grades. Therefore, the Commission considers that yield strength has an effect on price comparability.”**<sup>6</sup> [emphasis added]

Inexplicably, the Commission did not disclose whether the correlation between yield strength and price was positive or negative. From the Australian industry’s experience, we will posit that the Commission would or ought to have found a positive correlation between yield strength and price, that is to say, that the higher the yield strength, the higher the price.

Notwithstanding this finding of a positive correlation between yield strength and price, the Commission then proceeded to apply a negative (or downward) adjustment to the normal value which appears to be based on the lower yield strength model (SD420W) sold domestically, to that exported to Australia. This decision is not the correct or preferable decision, given that the Commission’s own analysis likely indicates a positive correlation between grade (measured by minimum yield strength) and price.

The Commission’s justification for the negative (or downward) adjustment to the normal value appears based on the cost of production. Having earlier established that Wei Chih did not sell models of SD490 and 500N on the domestic market, it must be concluded that the comparison of “Wei Chih’s domestic selling prices and costs of like goods over the review period”, were based on variants of SD280 and SD420W models. Having earlier established that the correlation between minimum yield strength and price was, likely, positive, the Commission merely supports the positive correlation of the two factors, through a third, namely costs of production. However, without any testing of the market, the Commission then ignores the primacy of the relationship between minimum yield strength and price, for production cost.

<sup>6</sup> EPR Folio No. 489/026 at pp. 11-12.

Thus, the Commission observes that as domestic sales of SD420W cost more to produce than the 500N grade exported to Australia, that the adjustment is necessarily a negative one. Even though the goods exported have a higher minimum yield strength, and that the Commission already found that the likely relationship between minimum yield strength and price was positive. This conclusion was also supported by the Australian industry's *"evidence of a price difference between grades SD420 and SD490 in the form of a quote from a Taiwanese producer of rebar"*<sup>7</sup>.

### **3. Conclusion**

The Commission's proposed recommendation to the ADRP to apply a negative (downward) adjustment to the normal value based on cost of production, when the key marketing feature of the goods (i.e. minimum yield strength) indicates that a positive (upward) adjustment be made is not the correct or preferable decision, and should be revised.

The Australian industry would propose that an adjustment based on the price premium observed for each 10 MPa units of minimum yield strength between grades SD280 and SD420W would provide a reasonable method of calculation to the Commission for an adjustment between grade SD420W and SD490. Such an approach would also permit the Commission to apply the necessary adjustment to the domestic sales of grade SD280 in OCOT that should also form part of the calculation of the normal value under s.269TAC(1) with an upward adjustment under s.269TAC(8).

Please do not hesitate to contact your Liberty Steel representative on record with any questions.

FOR AND ON BEHALF OF THE

**AUSTRALIAN INDUSTRY APPLICANT**

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<sup>7</sup> EPR Folio 489/026, p. 13.