6 May 2019

Director Operations 2
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Dumping investigation into solid base angles exported from the Peoples Republic of China

Dear Director

This submission is made on behalf of Vincent Buda & Company (V.Buda) in response to the Anti-Dumping Commission’s (the Commission) issues paper published on 17 April 2019.

Goods subject of the application

V.Buda reiterates its position made in earlier submissions, that the description of the goods subject of the application is clear, and as a result the parameters of the scope of goods to be investigated are also clear. That is:

solid base angles, made from hot rolled coil steel, alloyed or non-alloyed, cold roll-formed, whether or not galvanised.

The further information included in the application is as the Commission has noted, used to provide additional background information about the general nature and characteristics of the subject goods. In this case, the background information includes:

- the typical term used to describe the goods;
- the typical end-use application;
- the generally supplied nominal dimensions; and
- goods specifically not covered by the goods description.

Apart from the goods specifically identified as not being covered by the application, the remaining background information provides no limits, parameters or specific criteria, which would suggest that Galintel intended to segregate a subset of goods within the clear goods description.

That is, the goods subject of the application are typically used in lintel applications but can and are used in alternative end-use applications. Likewise, the goods subject of the application are generally supplied in nominal sizes of 100 mm x 100 mm x 6 mm or 150
mm x 100 mm x 6 mm, ranging in length from 900 mm to 4000 mm, but can and are supplied in alternative sizes.

In V.Buda’s view, the use of the terms ‘typically’ and ‘generally’ makes it clear that the goods subject of the application are not intended to be constrained by this background information. If it were the case that the goods subject of the application were intended to be confined to only those two nominal sizes, the expectation is that Galintel would have made this clear in the body of the goods description itself.

It is also apparent that the goods subject of application are not intended to be constrained by the two nominal sizes given Galintel’s response to production of like goods by other Australian manufacturers. By way of example, in its submission of 25 March 2019, Galintel submits that angled products manufactured by Millform do not meet the goods description on the basis that ‘[t]he angle product offered is again light gauge in differing lengths above those supplied by Galintel and not used as lintels designed for support of brick and block.’. Despite noting that Millform’s angled products range from 30mmx30mm to 100mmx100mm, Galintel considers that they are not like goods as they are of a different thickness, different lengths and different end-use. No mention is made of the angle sizes. The same reasoning is provided for angled goods manufactured by Telfords.

In the case of goods manufactured by Australian Rollforming Manufacturers Pty Ltd (ARM), Galintel contends that the goods do not fall within their description as they:

- are flat faced angles & not profiled like Galintel;
- are galvanised to a different standard;
- are a thinner gauge; and
- are used in applications such as rail rolling stock components, conveyor sections, noise walls, bridge decking, and sheeting.

It is again apparent that Galintel does not identify the size range of ARM’s angled products as being the characteristic that renders them falling outside of the scope of the goods subject of its application.

Therefore, in V.Buda’s view, it is without doubt that Galintel’s goods description does not limit the investigation to a subset of goods constrained by their nominal size. If anything, Galintel’s submission to date appears to consider that the goods are limited to lintel applications, certain galvanised coating characteristics and gauge.

**Commission’s interpretation of the goods subject to the application**

In its published issues paper, the Commission explains that it can refer to further information ‘to clarify and interpret the scope of the goods under consideration.’ Whilst V.Buda accepts that there are circumstances in which the Commission may be required to ‘clarify and interpret’ the goods subject to investigation, those circumstances do not apply in this case.
It is the Commission’s accepted policy and legal interpretation that ‘once an investigation is initiated, it is not possible to alter the scope of the inquiry’. To highlight be example, if an applicant were to describe goods subject of their application as ‘steel pipe with an outside diameter up to 150mm’, the Commission is unable to expand the scope of goods under investigation to ‘steel pipe with an outside diameter up to 250mm’ or narrow the scope of goods under investigation to ‘steel pipe with an outside diameter up to 50mm’.

However, as noted earlier, there is limited scope for the Commission to clarify the scope of goods, where the particulars of goods the subject of the application set out in the dumping duty notice, was ambiguous. For example, in the current steel pallet racking investigation, the goods are defined as:

Steel Pallet racking, or parts thereof, assembled or unassembled, of dimensions that can be adjusted as required (with or without locking tabs and/or slots, and/or bolted or clamped connections), including any of the following - beams, uprights (up to 12m) and brace (with or without nuts and bolts).

There is apparent confusion and alternative interpretations offered by interested parties of the phrase ‘dimensions that can be adjusted as required’. In this circumstance, the Commission is required to consider and offer its interpretation of the ambiguous phrasing and how this impacts on the scope of goods.

Importantly, the circumstances in this second example differ substantially to that of the first example. The goods description in the first example is clear and no change to the description can be made or is required. The second example offers a fair degree of ambiguity in the goods description and the Commission is simply interpreting the ambiguous element of the description.

Applying this to the current solid base angles investigation, the goods description contains no terms, phrases or elements which could be considered ambiguous. Likewise the further information contained in the application and the dumping duty notice initiating the investigation, simply highlight the typical and common characteristics of the imported goods to which Galintel’s like products compete. This is simply no part of the goods description which attempts to constrain the parameters of the goods to be investigated, to nominal sizes. The reference to nominal sizes is merely to explain that they are generally in two key sizes. Likewise, they are typically used in lintel applications.

The further information contained in the application is clearly general background information provided by Galintel and not in any way an attempt to limit the scope of goods. Accordingly, as the goods description does not include any reference to goods being limited to certain nominal sizes, the circumstances do not warrant or allow the Commission to alter the parameters of the investigation to a narrower subset of goods than that outlined in the dumping duty notice.

To this point, we note the views of the Trade Measures Review Officer in reviewing a similar ground of appeal in the case of certain electric resistance welded circular hollow sections exported from Korea. The TMRO made the following relevant observation:

1 ADC - Guidelines for applicants, page 9.
2 TMRO - Review of certain electric resistance welded circular hollow sections from Korea, para 21.
The Review Officer considers that there was ample opportunity for the applicant and Customs to discuss and resolve any issues to do with the definition of the goods under inquiry at the time of screening and initiation of the application. The available data indicates that there was discussion between OneSteel Trading and Customs on this matter and that both parties were ultimately prepared to (and did) go on to the inquiry process with mutual agreement (albeit apparently grudgingly on behalf of the applicant) on the terms of reference of the investigation.

V.Buda notes the similarities from that review to this current investigation. The Commission’s consideration report notes that Galintel’s application was first formally lodged on 4 December 2018. The Commission then notified Galintel on 19 December 2018 and 10 January 2019; ‘that the application contained certain important deficiencies, which, if left unaddressed, created doubt regarding the reasonableness of the grounds for the publication of a dumping duty notice.’ Over the course of the following 3 months since originally lodging its application, Galintel submitted further information in support of its application on the following eight days:

- 21 December 2018;
- 2 January 2019;
- 18 January 2019;
- 1 February 2019;
- 6 February;
- 7 February 2019;
- 19 February 2019; and
- 21 February 2019.

Whilst the nature of the significant deficiencies identified by the Commission and Galintel’s subsequently submitted new further information are unknown, it is reasonable to assume that at least some of these related to the goods description. In that case, there was ample opportunity for the Commission to clarify the parameters of the scope of goods, so that the description contained in the application and dumping duty notice made clear that it was constrained to two nominal sizes.

Instead, what is apparent to interested parties such as V.Buda, that following the very early identification of other local producers of like goods, the Commission is seeking to alter the goods description without a proper basis, so as to limit the scope of Australian producers. This is evident given the statement in the Commission’s consideration report that its ‘own research did not identify other Australian producers of solid base angle.’

Other like goods issues not covered in the Commission’s paper

The goods description specifically excludes perforated bar or ‘Rendabar’ as referred to in Galintel’s application. The equivalent product imported by V.Buda is referred to as R-Bar. It includes perforations along the base which allows it to be used in lintel applications where cement render is applied.

It is noted that the goods description provides no further guidance on defining the characteristics of rendabar or R-bar, beyond noting that they possess perforations. As such, V.Buda seeks clarification and confirmation from the Commission on the clear characteristics that would allow importers to identify whether their imported goods meet
the definition of a renderbar. For example, must they be perforated? If so, is there a required number of perforations along the lintel?

V.Buda requests this clarification to ensure there is no confusion surrounding the scope of goods covered by the investigation and any potential measures. It is this form of goods clarification and guidance to interested parties, that the Commission as the investigating authority, is responsible.

Yours sincerely

John Bracic