Australian Government
Department of Industry and Science

Anti-Dumping Commission

Attachment A

Anti-Dumping Commission response

Applications for Review of Decision relating to Rod in Coils exported from the Republic of Indonesia and Taiwan

Abbreviations

ACBPS	Australian Customs and Border Protection Service
the Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Australian industry	OneSteel Manufacturing Pty Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	*Customs Tariff (Anti-Dumping Act) 1975*
Gunung	PT Gunung Rajapaksi
Indonesia	the Republic of Indonesia
Ispat	PT Ispat Indo
OneSteel	OneSteel Manufacturing Pty Ltd
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry
REP 240	Final Report No. 240
SEF 240	Statement of Essential Facts No. 240

Key points of note in reading responses to the Applicant's claims

(i) Whilst the Anti-Dumping legislation (Part XVB of the *Customs Act 1901* ('the Act') and the *Customs Tariff (Anti-Dumping Act) 1975* (the 'Dumping Duty Act')) refers to the Minister, for the purposes of this response all references to the Minister or Parliamentary Secretary are used interchangeably. This approach reflects the Minister for Industry and Science's delegation of responsibility for Ministerial decision-making on operational anti-dumping matters (under the Act and the Dumping Duty Act) to the Parliamentary Secretary to the Minister for Industry and Science.

(ii) On 17 June 2015, the Parliamentary Secretary's decision to impose a dumping duty on rod in coil exported to Australia from the Republic of Indonesia ('Indonesia') and Taiwan was published (Anti-Dumping Notice (ADN) 2015/76 refers).

(iii) Two interested parties sought reviews of this decision to the Anti-Dumping Review Panel ('ADRP'), including exporter PT Gunung Rajapaksi ('Gunung') and the Australian industry OneSteel Manufacturing Pty Ltd ('OneSteel').

(iv) On 21 August 2015, the ADRP invited the Anti-Dumping Commission ('the Commission') to address certain issues in respect of the review applications. This document details the Commission's responses to the relevant issues, as invited by the ADRP.

(v) In drafting responses to the issues raised by the applicants, the Commission has had regard to all information submitted to it in accordance with legislative timeframes during the investigation up until the day Final Report No. 240 ('REP 240') was submitted to the Parliamentary Secretary. This information includes Statement of Essential Facts No. 240 ('SEF 240'), verification visit reports and submissions from interested parties. In drafting this response, the Commission has also had regard to analysis it performed during the investigation. The Commission confirms that, in drafting this response, no new information (that was not considered during the investigation) has been considered.

(vi) The response by the Commission is presented in a non-confidential format.

(vii) The Commission also notes that a number of claims raised by the applicants were addressed in REP 240.

CLAIMS MADE BY ONESTEEL

OneSteel requested a review of the Parliamentary Secretary's decision in respect to:

1. the application of interim measures based upon the ad valorem form of anti-dumping duties; and
2. the normal value and subsequent dumping margin determined for "all other exporters" for both Indonesia and Taiwan.

Claim 1: The application of interim measures based upon the ad valorem form of anti-dumping duties

A. Information that is not *relevant information* as defined

Attachment 4 to OneSteel's application – Legal Opinion

B. Factual claims disputed, commentary and background

1. OneSteel contends that the Parliamentary Secretary has erred in accepting the Commissioner's recommendation to impose measures based on the ad valorem duty method. OneSteel claim that the correct and preferable decision to remove the injurious effects of dumping, is one based upon the combination duty method.

2. OneSteel advised that it has obtained an independent legal opinion that rejects the viewpoint, as outlined in ADRP Report No. 16, previously expressed by the ADRP that it has no jurisdiction to review the form of measures.

3. The Commissioner did not have regard to OneSteel's legal opinion during the investigation and therefore considers this is not relevant information to the review. Regardless, the Commission notes the recently published ADRP Report No. 20, which again confirmed that the ADRP has no jurisdiction to review the form of measures. Specifically, it is stated at paragraph 43 that:

   > *I find that the Panel therefore has no power to review the decision to use the ad valorem method to calculate the dumping duty, since it is not part of the reviewable decision. This is the same conclusion reached by the Panel in ADRP Report No.16.*

4. As a result, Claim 1 of OneSteel's application should be excluded from the review.

Claim 2: The normal value and subsequent dumping margin determined for "all other exporters" for both Indonesia and Taiwan

A. Information that is not *relevant information* as defined

Nil

B. Factual claims disputed, commentary and background

1. OneSteel contends that the Parliamentary Secretary has erred in assigning uncooperative exporters from Indonesia and Taiwan the same normal value, export price and dumping margin as was assigned to cooperative exporters. OneSteel requested that the ADRP review this error and recommend that the normal value for uncooperative exporters exclude adjustments that were afforded to cooperative exporters under subsection 269TAC(8) of the Act.

2. The Commission notes that during the investigation period the only exporters identified for Indonesia and Taiwan were considered to be cooperative. As there were no uncooperative exporters from Indonesia or Taiwan, the Commission may set the all other rate at a level it considers reasonable in the circumstances. The Commission considers the approach taken in the circumstances was reasonable.

CLAIMS MADE BY GUNUNG

Gunung contends that the findings in REP 240 are not correct or preferable due to:

1. a lack of positive evidence demonstrating a link between dumped exports and injury suffered by the Australian industry;
2. a failure to properly isolate and distinguish factors other than the dumped exports;
3. a failure to ensure that injury caused by other factors are not attributed to the dumped exports; and
4. a lack of evidence demonstrating that injury attributable to the dumped exports is material.

Claim 1: A lack of positive evidence demonstrating a link between dumped exports and injury suffered by the Australian industry

A. Information that is not *relevant information* as defined

Nil

B. Factual claims disputed, commentary and background

1. Gunung submits in its application that REP 240 "*contains no meaningful basis for demonstrating that dumped exports by Gunung, which accounted for approximately 1.1% of the total Australian market, caused the significant decline in the Australian industry's sales of the injury analysis period.*"[1]

2. Gunung asserts that un-dumped goods from the only other Indonesian exporter, PT Ispat Indo (Ispat) accounted for over 85 per cent of the total volume of goods exported from Indonesia during the investigation period and submitted that the evidence strongly suggested that the injury experienced by the Australian industry resulted from Ispat's un-dumped exports.

3. The Commission addressed submissions in relation to similar claims by Gunung at section 8.11 of REP 240. The Commission reiterates the following key points in regards to the injury analysis undertaken:
    - the rod in coils market is highly price sensitive;
    - OneSteel sets its prices on the basis of an import parity pricing model;
    - while the Australian market in total is estimated at 540,000 tonnes, approximately two thirds of OneSteel's sales are to related parties; and
    - Gunung's exports make up approximately 1.1 per cent of the total market, however they represent a significant portion of the trade exposed market.

4. The Commission also notes the following:
    - the Commission undertook a detailed analysis of the then Australian Customs and Border Protection Service (ACBPS) import database for all countries under investigation, and established that Gunung was an

[1] Gunung application at page 17

exporter of shipments arriving in six of the 12 months of the investigation period, five of which were in the first half of the year;

- in the months where goods exported by Gunung arrived, those exports accounted for between 17 and 53 per cent of exports originating from Indonesia, and between nine and 33 per cent of all goods imported regardless of origin;
- in the months where goods exported by Gunung arrived, the ACBPS data identified that Gunung's export pricing was lower than the weighted average export pricing across all imports for the corresponding periods. In addition, Gunung's export price was lower than the Indonesian export pricing in several of the corresponding months, and on average was lower than Ispat's export prices over the investigation period;
- the Commission considered it appropriate to cumulate the effects of dumped exports for injury analysis purposes, therefore Gunung's exports were not viewed in isolation and were considered in conjunction with dumped exports from Taiwan; and
- the Commission undertook price undercutting analysis on a macro and micro level and was satisfied that the presence of dumped goods in the market created a competitive benefit for the importers of those goods and influenced pricing decisions for both exporters found not to be dumping as well as the Australian industry.

Claim 2: A failure to properly isolate and distinguish factors other than the dumped exports

Claim 3: A failure to ensure that injury caused by other factors are not attributed to the dumped exports

The Commission has addressed Claims 2 and 3 jointly below.

A. Information that is not ***relevant information*** as defined

Nil

B. Factual claims disputed, commentary and background

1. Gunung submitted in its application that the Commission failed to properly isolate and distinguish factors other than the dumped exports and failed to ensure that injury caused by other factors are not attributed to the dumped exports.

2. The Commission disputes this claim.

3. Section 269TAE(1) of the Act identifies circumstances in relation to the exportation of goods that the Minister can have regard to in determining whether material injury to an Australia industry has been caused by dumping. Furthermore, this section provides that these circumstances do not limit the Minister's assessment of material injury.

4. Section 269TAE(2A) of the Act requires that the Minister must consider other factors that may have caused injury and not attribute such injury to the exportation of the goods.

5. At section 8.9 of REP 240, the Commission identified and addressed a number of other possible causes of injury to the Australian industry which included:
   - Un-dumped goods;
   - Imports from other countries not subject to the investigation;
   - Factors specific to the Australian economy;
   - Initiation of the carbon tax; and
   - Efficiency of OneSteel's operations.

6. Section 8.9 of REP 240 demonstrates that the Commission took into consideration other possible injury factors raised during the investigation. Furthermore, the Commission differentiated the effects of dumping from other factors that may have caused injury, as noted in section 8.10 of REP 240.

7. The Commission remains satisfied that the abovementioned other possible causes of injury do not detract from the assessment that dumping caused material injury to OneSteel.

Claim 4: A lack of evidence demonstrating that injury attributable to the dumped exports is material

A. Information that is not *relevant information* as defined

Nil

B. Factual claims disputed, commentary and background

1. The Commission notes that the *Ministerial Direction on Injury 2012* indicates that:
   - the identification of material injury be based on facts and not assertions unsupported by fact;
   - material injury is injury that is not immaterial, insubstantial or insignificant; and
   - there is no threshold amount that is capable of general application and that the materiality of injury is dependent on the current economic conditions of the industry.

2. As indicated above, the Commission is satisfied that under a monthly import parity pricing model, OneSteel would endeavour to protect its market share in the months where Gunung originated dumped goods of the volumes identified, by maintaining price competitiveness. Based on the monthly import volumes, any price undercutting will have a market pricing impact both in terms of absolute price and price potential. The Commission considers that the injury suffered was greater than that likely to occur in the normal ebb and flow of business. As a result, the Commission remains satisfied that dumping, in and of itself, caused material injury to OneSteel.