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PUBLIC RECORD

19th September 2017

Joan Fitzhenry
Anti-Dumping Review Panel
c/o Legal, Audit and Assurance Branch
Department of Industry, Innovation and Science
10 Binara Street
Canberra City ACT 2601

Email: ADRP@industry.gov.au

Dear Member

Hollow Structural Sections ("HSS") Exported from the People's Republic of China (China), Republic of Korea (Korea), Malaysia and Taiwan (ADN 2017/70)

I refer to the Anti-Dumping Review Panel ("the Panel") Public Notice dated 23 August 2017 and Austube Mills Pty Ltd ("Austube Mills") notes the applications for review of the exporters of the goods from China, Korea, Malaysia and Taiwan.

For the assistance of the Panel in conducting this *Review of a decision by the Parliamentary Secretary* under subsections 269ZHG(1) of the *Customs Act 1901*[1], Austube Mills provides the following observations in response to the matters raised by the various exporter applicants for review, by way of submission.

[1] All references to statutory provisions are references to provisions of the *Customs Act 1901*, unless otherwise specifically stated.

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1. Application by Tianjin Youfa Steel Pipe Group Co., Ltd ("Youfa")

In our view **Youfa** has failed to demonstrate that the Commissioner's recommendation to continue a countervailing duty notice and the Minister's acceptance of that recommendation was not the correct or preferable decision.

In large part the application to the Panel by **Youfa** appears to rely on various claims of lack of procedural fairness. The extent, if any, to which the jurisdiction of the Review Panel set out in Division 9 of Part XVB of the Act includes issues of procedural fairness was considered by the Panel in ADRP Report 16, *Quenched and Tempered Steel Plate*, of 17 March 2015. Applying the observation of Mortimer J in *GM Holden Limited v Commissioner of the Anti-Dumping Commission* [2014] FCA 708 at [175] that:

> *there is no basis in the scheme to impose an obligation on the TMRO to consider and deal with a claim of denial of procedural fairness in its own terms. What the TMRO may need to do, as it did in this case, is examine an underlying factual and reasoning challenge articulated by the party said to have been denied procedural fairness in relation to a particular "finding" in the CEO report.*

In ADRP Report 16, the Panel concluded that her Honour would have reached the same conclusion in relation to the jurisdiction of the Anti-Dumping Review Panel.

We submit, therefore, that all claims by the applicant alleging lack of procedural fairness should be dismissed as beyond the remit of the Panel.

We further contend that the review applicant's assertion that alleged errors by the Commissioner in relation to such issues as public bodies, less than adequate remuneration ("LTAR") and specificity resulted in a decision that was not correct or preferable cannot be sustained. The public record demonstrates that the Commission carefully assembled and considered information from both previous relevant inquiries and from the current inquiry process and reached a reasoned conclusion that there were reasonable grounds for satisfaction that the expiry of the countervailing duty notice would be likely to lead to a recurrence of the subsidisation and the material injury that the notice is intended to prevent.

In particular we consider that support for the process undertaken by the Commissioner is found in the following statement by the Appellate Body in *US — Lead and Bismuth II*[2] concerning the application of Article 21 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"):

> *We believe that it is important to distinguish between the original investigation leading to the imposition of countervailing duties and the administrative review. In an original investigation, the investigating authority must establish that all conditions set out in the SCM Agreement for the imposition of countervailing duties are fulfilled. In an administrative review, however, the investigating authority must address those issues which have been raised before it by the interested parties or, in the case of an investigation conducted on its own initiative, those issues which warranted the examination.*

[2] WT/DS138/AB/R – para. 63

In the present investigation the Commissioner has addressed all issues raised by interested parties including those raised by the applicant.

Ground 1: The ADC failed to engage in a proper investigation in failing to analyse whether State Invested Enterprises were "public bodies", wrongly concluded that Tianjin Youfa did not respond to information requests, failed to ask proper questions, failed to give timely notice of unanswered questions posed to the Government of China, placed undue reliance on previous investigations and relied inappropriately on its own overly general market research report;

The first Ground for review by **Youfa** refers to a number of issues which in substance are issues of Procedural Fairness. As outlined above Austube Mills requests that the Panel disregard such issues.

Austube Mills is also concerned that the submission made by **Youfa** appears to introduce information that is not "relevant information" as defined in section 269ZZK(6) being:

> "*the information to which the Commissioner had had regard or was, under paragraph 269TEA(3)(a), required to have regard, when making the findings set out in the report under section 269TEA to the Minister in relation to the making of the reviewable decision*"[3]

Further to this observation the review Applicant appears not only to introduce new information but completely changes the basis of the arguments about how factors such as the normal value should be determined. Case in point is the review applicant's final submission for Continuation Inquiry 379 where the review applicant claimed in the concluding remarks:

> *"Any uplift of steel input costs should be based only on the Korean & Taiwan basket of HRC prices, adjusted downwards by* [redacted] *for the lower cost narrow strip, and the upward adjustment for the VAT factor should only be* [redacted]*, not 8%."* [4]

Subsequently in the *Application for Review* the review Applicant now puts forwards a contrary approach which, as far as Austube Mills is aware, was at no time suggested during the inquiry:

> *"It is not an appropriate investigatory mechanism to obtain a benchmark for a completely different product, being HRC, and then seek to make adjustments. The Commission should instead aim to directly find appropriate figures for narrow strip. This is the obvious approach when one considers the basis on which it could make any adjustment to HRC benchmarks if it thought it had received information in a timely fashion. One could only adjust HRC pricing to equate to narrow strip pricing, by looking at the differences in cost to make for each and also, the market circumstances for producers of such goods that could be expected to impact upon supply and demand. That exercise could only be undertaken by examining narrow strip production, in*

[3] Section 269ZZK(6)(a)

[4] EPR 379/69 p.5

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> *which case the Commission could simply look at that for the benchmark and not take the circuitous route via HRC figures that then need to be adjusted."* [5]

Austube Mills requests that the Panel Member only consider "relevant information" in the assessment of the claims made by **Youfa**. Austube Mills further requests that the Member not consider new arguments or approaches that were not presented during the Continuation Inquiry.

Finally, Austube Mills would like to highlight the contradictory information provided by **Youfa** during the investigation which further clouded the ability of the Commission to verify information supplied by the Applicant. One such example of misinformation is the submission of 1 May 2017 where the applicant asserted categorically that:

> *4.2 HRC is 'defined' as being product having a width exceeding 600mm as per the Customs Tariff Item 7208 and is manufactured by integrated steelmakers from 'slab' and via a hot strip mill. Most HSS producers, including the Australian producers, the Korean producer, and the Taiwanese producers use HRC that has to be slit to width and uncoiled for making the HSS.*
>
> *4.3 'Tianjin Youfa; **do not use HRC** but what is technically known as [redacted] or narrow strip being less than 600mm wide and classified Customs Tariff item 7211.* [6] *[emphasis added]*

This claim was subsequently changed in the Submission on the 22 May 2017 in light of the fact that the use of lower quality 'narrow strip' would make **Youfa's** structural products non-compliant with Australian Standard AS/NZ1163 which does not allow the use of substandard 'narrow strip' feed material:

> *"It is also evident from the verification process that the 'Tianjin Youfa' Group entities produced [redacted] million tonnes of Circular Pipe (CHS) to the non-structural, commercial grade, of which some [redacted] million tonnes were subsequently hot dipped galvanised. **These CHS tonnes are produced from the 'narrow strip' , whereas the structural grade non-circular (RHS) product for the Australian market, which comprised [redacted] of the [redacted] exported to Australia, requires the wider hot rolled coil produced via a hot strip mill.**[7] [emphasis added]*

Austube Mills requests that the Panel Member consider the misinformation provided by **Youfa** and changes in position on topics such as use of Narrow Strip which were corrected when inconsistencies were exposed during the continuation Inquiry process.

[5] ADRP Application for Review - Tianjin Youfa Steel Pipe Group Co., Ltd p. 6

[6] EPR 379/63 p. 4

[7] EPR 379/69 p. 2

Ground 2: The ADC wrongly concluded that there was a subsidy from a "public body"

Austube Mills supports the Commission's finding that the GOC materially influenced conditions within the Chinese hot rolled steel market during the inquiry period and that hot rolled steel provided by Chinese state invested enterprises (SIEs) was less than the competitive benchmark and therefore conferred a benefit on HSS produced in China.

Austube Mills also reinforces the Commission's observation that a similar program in respect of steel billet raw material was countervailed by the Commission in 2016 in relation to steel grinding balls[8] and that in this case the Commission also found that SIEs producing steel raw materials continue to be considered "public bodies" for the purposes of the definition of *subsidy* in subsection 269(T) of the ACT.[9]

Austube Mills also refers the Panel to the *Dalian 2015* case[10] where in relation to a claim "*Whether the respondents erred in construing or applying the term "public body" in s 269T of the Act by finding that SIEs which produce HRC and narrow strip are public bodies*." Judge Nicolas J found that:

> *"It is clear from Report 203 (at p 57) that Customs' conclusion was based upon its consideration of the whole of the information available to it. It is also apparent from Report 203 (at p 44) that Customs understood the indicia referred to by the WTO Appellate Body in the US/China Report were not determinative of the question whether a particular entity was a "public body" but that they may be of assistance in answering that question. Accordingly, I do not accept the applicants' submission that Customs misapplied the legislation or the WTO Appellate Body decision in holding that the relevant SIEs were public bodies."* [11]

As with the *Dalian 2015* case there is no evidence that the Commission has erred in determining that there was a subsidy from a "public body".

Ground 3: The ADC wrongly concluded that there was a "benefit" by reason of less than adequate remuneration from domestic suppliers of narrow strip and hot rolled coil, in so far as it adopted the wrong geographical benchmark; considered the wrong product and failed to apply the de minimis rule;

Austube Mills reasserts that the Panel should only consider information that was before the Minister at the time of making the decision. Austube Mills again refers to the final submission made on behalf of the review applicant which stated:

> *Any uplift of steel input costs should be based only on the Korean & Taiwan basket of HRC prices…[sic]* [12]

[8] EPR 316/54 S3.3.1 and Appendix 5

[9] EPR 379/70 p. 102

[10] *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885 ("Dalian 2015")

[11] See Dalian 2015 case at [73]

[12] EPR 379/69 p. 5

Clearly the Applicant in their final submission to the continuation inquiry on 22 May 2017 appears to exhibit significantly less concern about the geographic benchmarks selected and the "basket of" HRC prices under consideration at this late stage of the Inquiry.

Ground 4: The ADC wrongly concluded that any benefit was "specific".

In relation to the *Dalian 2015* Federal court decision[13] Austube Mills refers the Panel to Austube Mills Submission of 11 May 2017[14]. Austube Mills reiterates that with effect from 11 June 2013 the revised construction of s269TAAC(4) means that *Dalian 2015* is authority for the proposition that Program 20 benefits a limited number of particular enterprises and consequently the Minister is authorised to determine that the subsidy is "specific" for inquiries that begin on or after that date. Investigation 379 under division 6A of the Act commenced after that date.

Ground 5: The calculations applied by the ADC were erroneous, even if a countervailable subsidy otherwise existed, by reason of applying the wrong benchmark country, the wrong product, utilising the wrong income denominator and failing to limit its accounting to the alleged differential between actual prices and the benchmark and instead counting the entire benchmark figure as the benefit;

As outlined in Ground 3 (above) Austube Mills reasserts that the Panel Member should only consider information that was before the Minister at the time of making the decision. Austube Mills again refers to the final submission made on behalf of the applicant which stated:

> *Any uplift of steel input costs should be* ***based only on the Korean & Taiwan basket of HRC prices…*** [15] ***[sic with emphasis added]***

With regards to a calculation error Austube Mills understands from the *Conference Notes* of 15 August 2017 that the Commission has conceded that an error was made which disadvantaged the review applicant. Unfortunately Australian Industry is not afforded the opportunity to comment on errors that may have favoured the Applicant.

Ground 6: The ADC improperly double counted for the alleged LTAR input materials, adjusting both as to a constructed normal value and as to a countervailable subsidy;

The Commission avoids double-counting of the raw materials cost uplift by removing the uplift value from exporters' dumping margins when a combined dumping and subsidy duty is imposed. This is outlined in the Dumping and Subsidy Manual as follows:

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[13] *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885 ("Dalian 2015")

[14] EPR 379/66 p.6

[15] EPR 379/69 p. 5

Where there is an export subsidy, the general approach followed when working out the amount of the countervailing and dumping duty in a joint application are:

- *countervailing duty will be firstly imposed before deciding how much dumping duty should be imposed;*
- *the amount of any export subsidy will be deemed to have contributed to the dumping margin by the full amount of the export subsidy. As the export subsidy has been included in the amount of countervailing duty, the same amount of export subsidy has to be deducted from the amount of dumping duty to avoid double counting;*
- *any domestic subsidy, on the other hand, is not relevant to double counting and a domestic subsidy will be countervailed to the full amount of that subsidy - it will not affect quantification of dumping duty;*
- *regard will be given to the lesser duty rule (unless certain circumstances apply—see Chapter 23 The lesser duty rule and non-injurious price).*[16]

As far as Austube Mills can assess, the Commission has followed its policy and has not improperly double-counted the LTAR input materials as this is undertaken when combining the dumping duty and subsidy margin.

Ground 7: The ADC failed to adequately consider whether there would likely be material injury caused if the measures were revoked;

As highlighted in the start of this section the public record demonstrates that the Commission carefully assembled and considered information from both previous relevant inquiries and from the current inquiry process and reached a reasoned conclusion that there were reasonable grounds for satisfaction that the expiry of the countervailing duty notice would be likely to lead to a recurrence of the subsidisation and the material injury that the notice is intended to prevent.

Ground 8: The ADC wrongly based a number of assessments on an erroneous finding of a market situation in the People's Republic of China.

The ongoing nature of the GOC's involvement within and distortion of HRC and HSS markets is reflected by the Commission's numerous market situation findings, concerning these products, as listed below.

- Investigation (No. 177) (2012) Hollow Structural Sections.
- Investigation (No. 203) (2013) Hollow Structural Sections.
- Investigation (No. 190) (2013) Galvanised and Aluminium Zinc Coated Steel.
- Investigation (No. 193) (2015) Galvanised and Aluminium Zinc Coated Steel.
- Investigation (No. 198) (2014) Hot Rolled Plate Steel.

[16] Dumping and Subsidy Manual p. 113

Further to these findings the issue of Market Situation was recently the subject of review by the Panel in December 2016 in Panel Report No 40 which found in relation to Steel Rod in Coils exported to Australia from China:

> *For the reasons discussed above, I do not consider that there was an error in the conclusion by the ADC that there was a particular market situation that justified rendering domestic sales of RIC not suitable for use in determining normal value under s.269TAC(1). According, I do not consider the Parliamentary Secretary's decision in this regard was not the correct or preferable one.* [17]

In coming to this conclusion the Panel referenced that formerly Customs' original analysis and approach to the issue of market situation in regard to the iron and steel market in China, and its relationship with HSS market in China in REP177 is not dissimilar to the Commission's approach and analysis of the RIC market in China in REP 301. As such the Member referred to Nicholas J in the *Dalian* Case as follows:

> *I do not think Customs either misconstrued or misapplied s 269TAC(2)(a)(ii). In particular, I am satisfied that Customs did not equate government influence on a market with unsuitability within the meaning of s 269TAC(2)(a)(ii). Rather, Customs' finding on this issue was in my view* the result of a considered assessment of a factual question requiring "a broad judgment" *namely, whether the impact of the various GOC influences on the Chinese iron and steel industry rendered domestic sales of HSS "not suitable" for use in determining normal value under s 269TAC(1) of the Act.* [18] *[emphasis added]*

Austube Mills submits that the Commission with respect to Continuation Inquiry 379, as with the preceding cases undertaken, undertook a *considered assessment of a factual questioning requiring a broad judgement* in coming to a conclusion of a continued existence of a market situation in the iron and steel markets in China.

2. Application by Dalian Steelforce Hi-Tech Co., Ltd:

Ground 1 The ADC erred in determining a deductive export price;

Austube Mills supports the Commission's finding that:

> *Having regard to all the circumstances of the exportation the Commission is satisfied that the export price should be calculated using a deductive export price methodology on the basis that prices between Dalian Steelforce, Steelforce Trading and Steelforce Australia were not arms length prices.*[19]

Even if the assertion by the review applicant that "the export price for an unrelated entity was incorrectly compared with those of the related entity Steelforce Trading" is correct, then this fact does not in any way change the assessment

[17] ADRP Report No. 40 p 32

[18] *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885 at [26]

[19] REP379 p 21

by the Commission and the overwhelming evidence is that the transactions were not arms length. This is highlighted by the following extract from the Final Report which does not list the difference in sales transaction value as a key finding:

> *Specifically, the Commission has found that;*
>
> - *Dalian Steelforce and Steelforce Australia are related entities, as Steelforce Australia is the owner of Dalian Steelforce;*
> - *there is a high degree of coordination between Steelforce Trading, Dalian Steelforce and Steelforce Australia;*
> - *it is clear that Steelforce Australia management understands the implications of internal transfer pricing within the Steelforce group regarding its potential liabilities for duties under anti-dumping measures; and*
> - *only one of the verified shipments was sold profitably by the importer and therefore it is reasonable to consider all shipments overall were unprofitable.*[20]

Austube Mills also highlights that the review applicant's assertion that none of the export circumstances has changed since the several previous investigations is simply incorrect - as the following finding attests:

"*only one of the verified shipments was sold profitably by the importer and therefore it is reasonable to consider all shipments overall were unprofitable*"[21] – this is a substantive change from previous investigations.

In relation to sales at a loss, the Commission's *Dumping and Subsidy Manual* states:

> *If goods have been sold at a loss, the Commission will examine the likelihood of recovery of costs. The price paid or payable for the goods by the importer is added to all other costs incurred in the importation and sale of the goods to arrive at a cost recovery price.* ***Sales at a loss are treated as arms length if the costs can be recovered within a reasonable period of time. A "reasonable period of time" is generally taken to be 12 months.*** *The Commission will also consider any other relevant matters when determining whether goods are sold by an importer at a loss.*[22] *[Emphasis added]*

It is clear from the Commission's assessment that it is reasonable to consider that, overall the sales over the twelve month inquiry period were unprofitable and this fact alone is substantive evidence that the transactions between *Dalian Steelforce and Steelforce Australia* should not be treated as arms length.

[20] REP379 p. 21

[21] REP379 p. 21

[22] Dumping and Subsidy Manual April 2017 p. 27

The practice of not treating sales at a loss transactions as arms' length transactions is supported by the approach adopted in previous investigations including:

1. A4 Copy paper exported by UPM China (Investigation 341);

"6.8.2.2.1 Fuji Xerox Australia

In respect of goods exported to Fuji Xerox Australia, the Commission considers that these purchases were not arms length transactions because the goods were sold by Fuji Xerox Australia, in the condition in which they were imported, to unrelated customers at substantial losses, and those losses are not recoverable within a reasonable period of time. The Commission therefore determined the export price for these goods in accordance with subsection 269TAB(1)(b) based on Fuji Xerox Australia's selling prices less prescribed deductions as outlined in subsection 269TAB(2) (deductive export price)." [23]

2. Aluminium extrusions exported by Kam Kiu from China (Investigation 392); and

"Based on information obtained as part of the exporter verification visit, as well as information obtained as part of the KAU importer verification visit, the Commission considered that:

- *the goods have been exported to Australia otherwise than by the importer;*
- *the goods have been purchased by the importer from the exporter; and*
- *the purchase of the goods by the importer were not arms length transactions because, although those goods were subsequently sold by the importer in the same condition to customers in Australia, those goods were sold at substantial losses and those losses were not recoverable in a reasonable period of time."* [24]

3. Quench and Tempered Steel exported by SSAB Singapore to SSAB Australia (Investigation 234).

"In respect of export sales via SSAB Singapore we do not consider these to be arm's length sales. Notwithstanding SSAB Emea's submission in relation to the group pricing policy the evidence provided indicates that SSAB Singapore effectively operates as the export selling arm of SSAB Emea, that is, they are effectively a single entity engaged in the manufacture and export of Q&T plate steel to Australia.

In addition, information in relation to SSAB Singapore's selling prices to SSAB Australia shows that these sales were made at a loss. Further, the Commission's visit to SSAB Australia found that the goods were sold by SSAB Australia to unrelated companies in Australia at a loss. Subsection 269TAA(2) of the Act states that where:

- *goods are exported to Australia other than by the importer and purchased by the importer from the exporter; and*

[23] REP341 p. 42

[24] SEF392 p. 19-20

- *the Minister is satisfied that the importer, whether directly or through an associate, sells those goods in Australia at a loss,*

the Minister may treat those sales as non arms length transactions. We recommend that the Minister should be satisfied that the sales made in Australia were at a loss and therefore regard the transactions between SSAB Emea and SSAB Singapore as non arms' length." [25]

In each of these examples sales transactions were found to be made at loss, and those losses were not recoverable in a reasonable period of time, resulting in a finding that the transactions were not arms' length transactions. The same approach has been correctly applied in relation to *Dalian Steelforce* and *Steelforce Australia*.

Grounds 2 to 5

This review applicant makes a number of claims in relation to the calculation of profit:

- *The ADC erred in treating free-trade zone (FTZ) sales as domestic sales for the purposes of calculating profit;*
- *The ADC erred in not treating HSS downgrade domestic sales as like goods and excluding those sales from the calculation of profit;*
- *The ADC erred by not determining SG&A costs on the basis of information from the records of the exporter or producer of like goods;*
- *The ADC erred by not determining profit on the basis of domestic sales of the same general category of goods by the exporter or producer;*

Austube Mills refers the Panel to Austube Mills submission of 11 May 2017[26] which supported the Commission's approach to the determination of profit and refuted a number of the claims made by *Steelforce* with regards to mixed downgrade.

Austube Mills also notes that similar arguments were raised in the judicial challenge to Review 285, which were later settled in the 9 Novermber 2016 decision of Roberton J.[27] The related grounds the subject of judicial review were:

- *Ground 3 alleges that there was no evidence upon which the Commissioner could have based his finding in the Report that profit should be calculated on domestic sales of non-prime HSS only.*

[25] EPR 234/75 p. 26-27

[26] EPR 379/66 p. 2-3

[27] *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309 ("Dalian 2016")

- *Ground 4 alleges an error of law in the calculation of profit based upon select categories of domestic sales of HSS.*

- *Ground 5 alleges that the Commissioner erred in law in relation to the actual amount of Dalian Steelforce's profit. It is claimed that there was an error in the manner in which the Commissioner worked out the actual amount of profit realised.*[28]

His Honour Robertson J found that each of these grounds for review relating to calculation of profit failed and similarly Austube Mills believes that the arguments put before the Panel are equally unfounded and should also fail.

Ground 6 The ADC erred in not determining costs in the country of export.

As with grounds 2 to 5 the issue of *not determining costs in the country of export* was also considered in *Dalian 2016*. The related ground for judicial review was:

> *Ground 6 alleges that the Commissioner, in using a benchmark price to determine Dalian Steelforce's costs of production or manufacture, made errors of law: first, in using production information from steel mills outside the PRC and, secondly, misapplying s 43(2) of the Customs (International Obligations) Regulation 2015 (Cth) (the Regulation).*

On 9 November 2016 Justice Robertson found after reviewing all the available evidence in relation to Ground 6 as follows:

> 110 *As to the point of construction, I do not accept the applicants' submission that using the cost of production or manufacture from countries other than the country of export was, per se, to take into account an irrelevant consideration and to make an error of law.*
>
> 111 *In my opinion, the applicants' submission does not take into account the context in which the expression "the cost of production or manufacture of the goods in the country of export" appears. The context is that the Minister is satisfied that the normal value of goods exported to Australia cannot be ascertained under s 269TAC(1) or that the Minister is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under s 269TAC(1).*
>
> *In those circumstances, the normal value of the goods for the purposes of Pt XVB is to be, relevantly, such amount as* ***the Minister determines to be*** *the cost of production or manufacture of the goods in the country of export (emphasis added.) In my opinion, contrary to the applicants' submission, the provision does not exclude the use of overseas data in an appropriate case. The object of the provision is to determine the cost of production or manufacture of the goods in the country of export but it does not follow that only the cost of production or manufacture of the goods in that country may be used,*

[28] *Dalian 2016* p. 2

particularly where it has been found that the costs of HRC provided by Dalian Steelforce relating to the review period do not reasonably reflect competitive market prices: see the report at page 16.8.

112 *For these reasons, ground 6 fails.* [29]

Similarly, Austube Mills believes the decision by Judge Robertson is equally applicable to the *Steelforce* application and that the Panel should find that Minister did not *err in not determining the costs in the country of export*.

3. Ursine Steel Co., Ltd:

Ground 1: The ADC erred in determining normal values on the basis of domestic sales pursuant to subsection 269TAC(1) of the Act…

Austube Mills supports the Commission's use of a "surrogate model" with appropriate specification adjustments. While Austube Mills agrees STRK 490 is a better match to C350, Austube Mills disagrees that a lack volume of this particular model automatically precludes the use of 269TAC(1). The construction of 269TAC(1) does not require exact models but refers to "like goods":

> *(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for **like goods** sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if **like goods** are not so sold by the exporter, by other sellers of **like goods**.*[30] *[emphasis added]*

STRK 440 model may not be an identical match to the C350 exported product but it is a "like good" and therefore the Commission acted consistently with the legislative provision (subsection 269TAC(1)) in determining there was a sufficient volume of domestic sales of "Like Goods" in the ordinary course of trade ("OCOT"), being the first option under the normal value 'hierarchy', and is consistent with the Commission's practice.

Ground 2: In determining normal value on the basis of domestic sales of like goods, the ADC erred in excluding certain domestic sales which were also considered to be like goods.

Austube Mills is unable to comment on the appropriateness or otherwise of the Commission excluding some domestic sales (due to the redaction of the relevant information by the review applicant). However, given that the review applicant has chosen to redact the product description/grade information, it suggests that this is clearly thought by them to be a contentious issue and one for which the Applicant would not like to afford the Australian industry the opportunity to comment on. On that basis, and the fact the Commission clearly had a reason for excluding certain domestic sales, Austube Mills supports the Commission's decision to exclude this product.

[29] *Dalian 2016* p. 29-30

[30] Section 269TAC(1)

4. Croft Steel Traders Pty Ltd:

Ground 1: The ADC model selection criteria does not provide fair comparison for due allowance and distorts the suitability of sales for normal value.

Austube Mills believes that the Commission acted appropriately in identifying suitable domestic sales of a matching model to the export sales and determining that there were sufficient sales in the OCOT. Given there were sufficient sales in the OCOT of "identical goods" there was no need to seek other models and apply a specification adjustment. This practice is outlined in the Commission's *Dumping and Subsidy Manual*:

> *For normal value to be ascertained under subsection 269TAC(1), the Commission first examines whether there are suitable sales of like goods for home consumption in the country of export by the exporter, made in the ordinary course of trade and at arms length over the investigation period.* ***Model matching criteria will be followed in order to identify identical goods sold on the exporter's domestic market; or absent identical goods*** *which goods most closely resemble the goods under consideration. The sales at a loss tests are applied separately for each grade or model.*[31] *[Emphasis added]*

If you have any questions concerning this submission please do not hesitate to contact Austube Mills on [redacted]

Yours sincerely

[redacted]

[31] Dumping and Subsidy Manual April 2017 p. 33