Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

Mr Paul O’Connor
Member, Anti-Dumping Review Panel
c/- ADRP Secretariat
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By e-mail: ADRP@industry.gov.au

Dear Mr O’Connor,

Zinc Coated (Galvanised) Steel exported from the People’s Republic of China, the Republic of Korea and Taiwan

I write with regard to the public notice published on 23 August 2018, advising your intention to review the decision of the then Assistant Minister for Science, Jobs and Innovation (the then Assistant Minister) to publish a notice under subsection 269ZDB(1)(a) of the *Customs Act 1901*[1] (the Reviewable Decision). The Reviewable Decision was published on the Anti-Dumping Commission (Commission) website on 17 July 2018, referred to in Anti-Dumping Notice No. 2018/94.

I understand that the Commission has provided you with the confidential versions of documents referred to in *Anti-Dumping Commission Report No. 456 and 457*, as well as those referred to in *Statement of Essential Facts No. 456 and 457*, relevant dumping margin calculations and any confidential versions of submissions received. Please do not hesitate to ask if you require any further relevant information (as defined in section 269ZZK) associated with this matter.

I have considered the applications for the Reviewable Decision and have decided to make some comments on the various grounds raised therein. Please find attached my comments (***Attachment A*** refers), which I submit for your consideration.

I remain at your disposal to assist you in this matter, and I and / or officers from the Commission would be happy to participate in a further conference if you consider it appropriate to do so.

Yours sincerely,

Dale Seymour
Commissioner
Anti-Dumping Commission

24 September 2018

[1] All legislative references are to the *Customs Act 1901* unless otherwise stated.

Attachment A

I make the following submissions in response to the grounds set out in the notice published on 23 August 2018. These grounds are with respect to the consideration by the Anti-Dumping Review Panel (ADRP) of the Reviewable Decisions of the then Assistant Minister and reported in *Anti-Dumping Commission Report No. 456 and 457* (REP 456 and 457).

I consider that REP 456 and 457 adequately deals with the grounds raised by Chung Hung Steel Corporation in its application. I have therefore addressed my submissions by reference to the grounds raised only by Synn Industrial Co., Ltd (Synn) in this Attachment.

All of the matters raised by the applicant relate to the Commission's approach to and its findings concerning the calculation of variable factors. I note that chapter 4 of REP 456 and 457 sets out the Commission's approach to its calculation of those factors.

I make specific observations in respect of each ground as follows.

GROUND ONE – The Minister erred in comparing normal values and export prices using quarterly, rather than monthly, time periods, which distorted the dumping margin due to significant fluctuation and volatility of costs and prices across the review period.

The applicant contends that the Commission has incorrectly disregarded the submitted monthly cost data, instead undertaking its calculations of normal value and export price on a quarterly basis. This approach was allegedly in spite of substantial fluctuations in the costs of key raw material inputs such as hot rolled coil (HRC) and cold rolled coil (CRC), and corresponding prices of galvanised steel, across the whole of the investigation period and within each of the quarters.

General observations

In general, the Commission uses a quarterly rather than monthly approach to the ordinary course of trade (OCOT) test in a dumping margin calculation (which is based on a weighted average for the whole of the period examined). There are a number of reasons for this approach, many of which have been conveyed at paragraph 12 of the conference summary from 28 August 2018. The Commission only wishes to add the following:

- the Commission's experience is that in many cases the exporters' accounting system (and therefore the evidence it puts to the Commission) does not report data in the level of detail required (by model) for the Commission to undertake a reliable month to month comparison.
- the OCOT test (per section 269TAAD) requires a comparison of costs to corresponding sales of the goods on a line by line basis to assess whether they were profitable, whether those costs were recoverable and whether those sales which are profitable and / or recoverable were in sufficient volumes to enable a proper comparison. The point at which the terms of the sale are established and the point at which the cost of production <u>and</u> the associated selling, general and administrative costs are incurred is a function of the exporter's accounting practices.

- arguably, if reliable data is available, the Commission could undertake the OCOT comparison on a week to week, month to month or quarter to quarter basis. However, there are significant practical impediments to using shorter time periods, not least the potentially vast array of different model types. Further, the flow of raw materials through production to the finished goods is often inconsistent, such that raw material purchases in one month may relate to production in the same and / or a following month; the same applies to the timing of the sale, which may also occur in the same or a following month. Whilst the use of quarterly data doesn't fully resolve this issue, it is a reasonable means of accounting for these timing differences to provide a more reliable comparison in most instances.

Page 33 of the *Dumping & Subsidy Manual* provides some guidance as to how the OCOT test is undertaken:

> Ordinary course of trade
>
> One of the circumstances where sales may not be in the ordinary course of trade is when sales have been made at a loss. In order to test whether loss making sales are in the ordinary course of trade, all of the exporter's domestic sales of like models (transaction by transaction) and the unit cost to make and sell those domestic models are required. The cost of the goods in these calculations is the sum of the costs of production for the domestically sold goods and the administrative, selling and general expenses. (See also section 9.3 of the manual '*Normal value based on constructed method*').
>
> The steps when examining sales at a loss are:
>
> *Step 1 – quantify the volume of sales at a loss over the investigation period – subsections 269TAAD(1)(a), (b) and (2).*
>
> - *Determine the domestic costs to make and sell (CTMS) for each model:* The CTMS for domestic sales are verified for each model. The CTMS is generally calculated for each quarter of the investigation period. In some circumstances a monthly, or an annual, domestic CTMS may be used. A monthly CTMS may be appropriate where an exporter has monthly costing records and: there are significant variations in raw material costs from month to month; or there is a highly inflationary or deflationary market.

There is no further guidance provided in the Manual concerning the definition of a "significant variation". As noted in the conference on 29 August 2018, the Commission's view is that some sort of month to month volatility, or a highly inflationary / deflationary market, might provide grounds for moving to a month to month calculation. In other cases, a significant variation might occur due to circumstances beyond the exporter's control (e.g. an unexpected shortage in raw materials leads to a sudden, sharp increase in costs that can't be matched by a corresponding increase in prices).

Movements in costs and selling prices

The key raw material input of zinc coated (galvanised) steel is HRC or CRC, which accounts for approximately 80 per cent of the weighted average cost to make galvanised steel products. The Commission is therefore of the understanding that substantial fluctuations in the costs of key raw material inputs would impact every exporter of galvanised steel from the People's Republic of China, the Republic of Korea and Taiwan. Synn is the only applicant to seek a review of the Reviewable Decision under Anti-Dumping Notice No. 2018/94 on this ground.

The Commission has previously provided the ADRP with the underlying calculations for the dumping margin calculation for Synn. Drawing on this information in **Confidential Attachment 1**, the Commission has examined the monthly variations in Synn's cost to make data as well as Synn's purchase prices of raw materials (HRC) by reference to each model type. **Confidential Attachment 1** also shows monthly movements in Synn's selling prices for galvanised steel in both the domestic and export markets.

Conclusion

Synn was able to provide the Commission with reliable monthly costing records from a cost to make point of view; selling, general and administrative costs were calculated on an annual basis (allocated as a percentage of revenue).[2] However, the Commission does not consider that the evidence before it shows significant variations in raw material costs, nor was there a highly inflationary or deflationary market in respect of the goods.

The Commission observes that there are some increases and some decreases from month to month; however, these movements are generally consistent (e.g. a similar rate of increase or decrease for the raw material costs, cost to make and prices paid can be observed). As observed during the conference on 29 August 2018, the Commission does not consider there to be any basis for arguing that these monthly variations are unusual, excessive, significant, volatile or otherwise indicative of unreliable data on which to base its calculations, nor why an OCOT test conducted on a quarterly basis is inappropriate.

GROUND TWO – The Minister erred in constructing normal values under section 269TAC(2)(c) for certain export models when suitable domestic sales of like goods existed during the review period which allowed for normal values to be determined pursuant to subsection 269TAC(1).

The applicant contends that, if the Commission had conducted the ordinary course of trade (OCOT) test using monthly normal values, sufficient volumes of domestic sales would have existed to calculate normal values pursuant to subsection 269TAC(1).

The Commission considers that if Ground One is not accepted by the ADRP, Ground Two will also fail. However, the Commission's preliminary analysis indicates that the use of monthly normal values would impact on the OCOT test for Synn. Some additional domestic sales would be found to be profitable, and this would also impact on the profit rate applied to any models for which normal value was established under subsection 269TAC(2)(c). Accordingly, a different dumping margin would be established for Synn.

Conclusion

I remain of the view that, having given due consideration to the matters raised by the applicants, and addressed in this Attachment, the approach outlined in REP 456 and 457 ought to be considered as being consistent with the relevant legislation and has resulted in the correct and preferable decision.

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[2] As an aside, the Commission notes that the actual selling, general and administrative costs associated with each model are rarely recorded in that way, and instead an allocation is made based on the annual costs.