J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

20 September 2015

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
AUSTRALIA

REVIEW OF THE DECISION TO PUBLISH A DUMPING DUTY NOTICE ON EXPORTS OF ROD IN COIL FROM INDONESIA AND TAIWAN

Dear Panel Member,

This submission is made on behalf of PT. Gunung Rajapaksi (Gunung) in response to the application by OneSteel Manufacturing Ptd Ltd for a review of the decision to impose interim dumping duties on exports of rod in coil exported from Indonesia and Taiwan.

The submission also addresses the submission from the Anti-Dumping Commission in respect of the issues raised in Gunung's application for appeal.

Response to OneSteel Manufacturing's submission

Relevant information

In its application to the Anti-Dumping Review Panel (ADRP), the applicant references the report and recommendations of the House of Representatives Standing Committee on Agriculture and Industry (the Committee), which inquired into Australia's anti-circumvention framework. It is noted that the Committee tabled its report on 1 June 2015. This is well after the Anti-Dumping Commission (the Commission) provided its final report (REP 240) to the Parliamentary Secretary on 13 May 2015.

Whilst it is noted that the Commission, in its submission of 11 September 2015, has not identified the Committee's report as not being relevant information pursuant to subsection 269ZZK(6)(a) of the *Customs Act 1901* (the Act), Gunung questions whether the Committee report is considered to be relevant information for the purposes of the ADRP's review. The Committee report is not referenced by the Commission in REP 240 or in any submissions by interested parties to the investigation. Therefore, it is reasonable to conclude that the

Commissioner did not have regard to the Committee report, and was not required to have regard to the Committee report, in accordance with s.269TEA(3)(a) of the Act.

This is particularly relevant in this circumstance given that the applicant and the Commission made written and oral submissions to the Committee's inquiry. At no point during the rod in coil investigation was Gunung or other interested parties provided an opportunity to comment on the Committee's report. As such, Gunung requests that the ADRP member carefully examine and consider whether the Committee report meets the definition of relevant information for the purposes of this review.

Ad valorem duty method

The applicant claims that the imposition of an ad valorem rate of duty is not preferred as it increases the potential risk of circumvention and avoidance of the intended effect of the duty. Conversely, the applicant submits that:

> *[t]he floor price component of the combination method removes the incentive for the exporter to lower its export price to reduce the duty liability and avoid the intended effect of the duty.*

Firstly, it is noted that the applicant provides no explanation as to how the imposition of an ad valorem or the combination rate of duty is at all relevant to any of the defined forms of circumvention activity. Section 269ZDBB of the Act defines circumvention activity as:

i) Assembly of parts in Australia;
ii) Assembly of parts in a third country;
iii) Export of goods through one or more third countries;
iv) Arrangements between exporters;
v) Avoidance of intended effect of duty; and

On 26 February 2015, the *Customs Amendment (Anti-Dumping Improvements) Regulation 2015* expanded the anti-circumvention framework by further prescribing the slight modification of goods as a circumvention activity.

It is clear to Gunung then, that an exporter subject to interim dumping duties that simply lowers its export price cannot in any way be considered a circumvention activity as defined. Whilst the applicant continually refers to the avoidance of the intended effect of duty, it is important to note that subsection 269ZDBB(5A) of the Act, which deals with the avoidance of the intended effect of duty as a circumvention activity, relates to an importer selling the imported goods in Australia without increasing the price commensurate with the total amount of duty payable. It does not relate to an exporter reducing its export prices.

The applicant further submits that '*circumvention through export price manipulation remains a threat in a rising market (i.e. by not increasing export prices commensurate with increases in normal value)*'. It is contradictory to expect that in a rising market, exporters would increase their export prices commensurate with increases in normal value, whereas in a falling market, where an exporter decreases its export prices commensurate with decreases in normal value, it is considered that the exporter is circumventing the measures by avoiding the intended

effect of the duty. As such Gunung considers the applicant's position to be inconsistent and lacking clarity.

The applicant further '*submits that the intended effect of anti-dumping measures is to ensure export prices are non-injurious to the effected Australian industry*'. Gunung considers this to be a deeply flawed view and reflects a concerning lack of importance placed on the fundamental principles underpinning the international and domestic anti-dumping frameworks.

Anti-dumping measures are not intended to ensure that export prices are non-injurious. They are intended to remove the effects of injurious dumping. To highlight by example, where an exporter's prices are found to be dumped by a margin of 3%, and the export prices are also found to have undercut the Australian industry's prices by a margin of 10%, the maximum amount of dumping duty that can be imposed is the full margin of dumping (ie 3%). In that example, even after the imposition of a dumping duty rate, export prices will continue to undercut the Australian industry's price by 7% and continue to remain injurious. This remaining amount of injury caused by the prevailing export prices cannot be attributed to dumping and must not be addressed by the imposition of an anti-dumping measure.

On the fundamental question of whether a preferred form of measure exists within the existing dumping framework, Gunung submits that no such preference exists. The *Customs Tariff (Anti-Dumping) Regulations 2013* simply sets out the mathematical formula required to be applied in calculating the amount of interim duty to be imposed under each of the methods available.

In Gunung's view, where there is a choice of appropriate measures, the least onerous measure should be chosen that adequately addresses the effects of dumping and does not go further than is necessary to attain it. Understandably, the applicant has proposed the combination method of duty as the preferred form of measure, as it introduces a minimum price control which works as an effective barrier to entry into the Australian market.

In this particular circumstance, where all interested parties agree that rod in coil is a commoditised product and dumped exports from Gunung and Taiwan represent approximately 2.1% of the Australian market, and the remaining 85% of rod in coil imports are unaffected by any form of dumping measure, the imposition of a minimum floor price goes well beyond addressing the effects of dumping.

Response to Commission's submission

It is noted upon review of the Commission's submission that no attempt has been made to address specific areas of concern with its assessment of material injury in REP 240. The Commission's submission provides no more than a meagre summary of the broad conclusions stated in REP 240.

There is no discussion or response to the issue of how it properly considered and addressed the impact of the local price premium on the price undercutting found to exist. For example, if the average level of price undercutting was found to be 4% across all exports of rod in coil during the investigation period, and the local price premium amounts to 5% of the import

parity price, it stands to reason that the sole cause of undercutting was the inclusion of the local price premium.

Likewise, the Commission provides no confirmation of the facts submitted by Gunung that its export sales volume had significantly declined over the injury analysis period, and how in that circumstance it could be found that Gunung's export sales contributed to a material loss of sales volume by the Australian industry.

Finally, on the primary question of the materiality of injury caused by dumped exports which accounted for approximately 2.1% of the total Australian market, the Commission continues to submit vague statements founded on unsubstantiated assumptions. It submits that '*OneSteel would endeavour to protect its market share'* and *'any price undercutting will have a market pricing impact both in terms of absolute price and price potential*.' In Gunung's view, these conclusions continue to reflect the lack of proper understanding and assessment of the impact of non-dumped imports, which represented approximately 85% of total imports of rod in coil during the investigation period, and the capacity for import substitution of commodity products such as rod in coil.

In conclusion, Gunung considers that the Commission has not presented any compelling reasons why the reviewable decision should not be reinvestigated, and recommendations made by the ADRP that the Minister revoke the decision and substitute a new decision.

Yours sincerely,

John Bracic