



# Application for review of a Commissioner's decision

## *Customs Act 1901 s 269ZZQ*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Commissioner of the Anti - Dumping Commission.

Section 269ZZO *Customs Act 1901* sets out who may make an application for review to the ADRP of a review of a decision of the Commissioner.

All sections of the application form must be completed unless otherwise expressly stated in this form.

### **Time**

Applications must be made within 30 days after the applicant was notified of the reviewable decision.

### **Conferences**

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel begins to conduct a review (by public notice in the case of termination decisions and by notice to the applicant and the Commissioner in the case of negative prima facie decisions, negative preliminary decisions and rejection decision). Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after the Panel begins to conduct a review. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

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<sup>1</sup> By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

**Further application information**

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZQA(1)). See the ADRP website for more information.

**Withdrawal**

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application, refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email [adrp@industry.gov.au](mailto:adrp@industry.gov.au).

## **PART A: APPLICANT INFORMATION**

### **1. Applicant's details**

Applicant's name: Milltech Pty Ltd (Milltech)

Address: 5 Laverick Ave Tomago NSW 2322

Type of entity (trade union, corporation, government etc.): Company

### **2. Contact person for applicant**

Full name: Dean Taylor

Position: Commercial Manager

Email address: dean@milltechmartinbright.com

Telephone number: (02) 4964 0100

### **3. Set out the basis on which the applicant considers it is entitled to apply for review to the ADRP under section 269ZZO**

Milltech Pty Ltd is the person who made the application for the dumping duty notice.

### **4. Is the applicant represented?**

No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

***\*It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.\****

## PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

The reviewable decision to which this application relates is the decision by the Commissioner of the Anti-dumping Commission to terminate the investigation into chrome plated steel bar exported from Italy.

### 5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under

- ☐ Subsection 269TC(1) or (2) – *a negative prima facie decision*
- ☒ Subsection 269TDA(1), (2), (3), (7), (13), or (14) – *a termination decision*
- ☐ Subsection 269X(6)(b) or (c) – *a negative preliminary decision*
- ☐ Subsection 269YA(2), (3), or (4) – *a rejection decision*
- ☐ Subsection 269ZDBEA(1) or (2) – *an anti-circumvention inquiry termination decision*

### 6. Provide a full description of the goods which were the subject of the reviewable decision

The goods which are the subject of the investigation are:

*Chromium plated circular solid steel bars (chrome bars) that have all of the following characteristics:*

- *circular cross section;*
- *made from alloy or non-alloy steel bar;*
- *chrome plating of any thickness;*
- *lengths not greater than 8 metres; and*
- *diameters in the range 18mm to 170mm.*

Goods excluded from this application include:

- *chromium plated steel bars with oval or flattened circle cross sections; and*
- *hollow or tubular chrome plated bars;*

### 7. Provide the tariff classifications/statistical codes of the imported goods

The goods are typically classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- ☒ Tariff subheading 7215.90.00 with statistical code 55
- ☒ Tariff subheading 7215.50.90 with statistical code 54
- ☒ Tariff subheading 7228.30.10 with statistical code 70
- ☒ Tariff subheading 7228.60.10 with statistical code 72
- ☒ Tariff subheading 7228.60.90 with statistical code 55

As notified in Anti-Dumping Notice 2016/22 published on 2 March 2016.

### 8. If applicable, provide the Anti-Dumping Notice (ADN) number of the reviewable decision

ADN. 2016/69 was published on 3 August 2016 notifying of the termination.

**9. Provide the date the applicant received notice of the reviewable decision**

The applicant was notified of the reviewable decision on 3 August 2016 by email from the Commission.

***\*Attach a copy of the notice of the reviewable decision to the application\****

ADN 2016/69 is at Attachment A

## PART C: GROUNDS FOR YOUR APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☐

### **10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision**

The following are the grounds on which the applicant believes the reviewable decision is not the correct or preferable decision.

#### **A. The export price has not been determined in accordance with the legislation**

Termination Report TER 31<sup>2</sup> notes the following in regards to the determination of the export price.

*The Commission has relied on data provided by Stelmi and has calculated export prices under subsection 269TAB(1)(a):*

*The Commission calculated export prices at ex works terms, as it was not possible to accurately identify inland transport cost from the expenses incurred for goods shipped on cost, insurance and freight terms.*

The exporter visit report for Stelmi<sup>3</sup> notes in regards to the calculation of export prices the following:

#### **3.2.1 Inland and marine freight costs**

*Stelmi was unable to quantify the inland freight costs separately from all other overseas freight costs as these were included in the total overseas freight cost. Stelmi provided the visit team with an estimate of inland freight costs provided by the freight provider for one shipment; however the visit team consider that this was unverified and may not be reflective of all shipments. Thus the visit team consider it appropriate to calculate export prices (and subsequently domestic prices) at ex works (EXW) level.*

The above information shows that export prices have been calculated at an ex-works, a pre-exportation point.

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<sup>2</sup> Termination Report TER 319 p.5

<sup>3</sup> Visit Report – Exporter Stelmi Italia SPA, p.6

The Commission has not identified how it calculated export prices at an ex-works level aside from transportation charges.

Milltech does not consider that it may be correct to simply deduct the charges from the freight provider for all the post ex-works costs associated with the goods shipped on cost, insurance and freight (CIF) terms.

Milltech considers that there should be profit or cost elements additional to these costs that should also be deducted from the export price to account for the costs incurred by Stelmi in arranging shipping on CIF terms.

Stelmi incurs additional costs in arranging shipments on CIF terms above those on ex-works terms. These costs are part of the cost of doing business and would be required to be recovered.

For example an exporter sells the goods with a profit margin of 5%.

- On an ex-works cost of €1,000 the price is €1,050, profit of €50.
- On a CIF cost of €1,200 the price is €1,260, profit of €60.
- If the costs for a CIF shipment are simply deducted to arrive at an ex-works price this gives an ex-works price of €1,060, which is an overstated and inaccurate export price.

In addition there is no mention of port, handling, loading charges and customs fees in the country of export and whether these charges are included in the CIF charges from the freight provider or whether Stelmi pays these charges.

If Stelmi pays such charges these charges should be deducted from the export price.

Milltech considers that the export price calculated by Commission is higher than it should be if the above costs have not been deducted to arrive at an ex-works price. This would mean that the calculation of the dumping margin is incorrect.

Milltech also notes that there is no information regarding currency conversion for exports and whether regard was had to the legislation for determining a date for conversion of currencies.

#### **B. The calculation of the normal value is not in compliance with the legislation**

Termination Report TER 31<sup>4</sup> notes the following in regards to the calculation of the normal value.

##### **4.3.2 Normal value**

*The Commission used Stelmi's domestic sales data to calculate a normal value, being the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in Italy, in sales that are arm's length transactions by Stelmi, pursuant to subsection 269TAC(1).*

Section 269TAAD of the legislation, Ordinary Course of Trade, notes in regards to the cost of goods.

*(4)The cost of goods is worked out by adding:*

- (a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and*

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<sup>4</sup> Termination Report TER 319, p.5

- (b) *the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.*

(5) *Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.*

The regulations state for the cost of production or manufacture:

#### **43 Determination of cost of production or manufacture**

(1) *For subsection 269TAAD(5) of the Act, this section sets out:*

- (a) *the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the **amount**) to be the cost of production or manufacture of like goods in a country of export; and*
- (b) *factors that the Minister must take account of for that purpose.*

(2) *If:*

- (a) *an exporter or producer of like goods keeps records relating to the like goods; and*
- (b) *the records:*
  - (i) *are in accordance with generally accepted accounting principles in the country of export; and*
  - (ii) *reasonably reflect competitive market costs associated with the production or manufacture of like goods;*

*the Minister must work out the amount by using the information set out in the records.*

(3) *The Minister must take account of the information available to the Minister about the allocation of costs in relation to like goods, in particular to establish:*

- (a) *appropriate amortisation and depreciation periods; and*
- (b) *allowances for capital expenditures and other development costs.*

(4) *For subsection (3), the information includes information given by the exporter or producer of the goods mentioned in subsection (1) that demonstrates that the exporter or producer of the goods has historically used the method of allocation.*

#### **Records kept in accordance with generally accepted accounting principles (GAAP)**

The exporter and termination reports do not state whether the Commission was satisfied that the exporter records of Stelmi were kept in accordance with GAAP. This is a requirement of the regulations and legislation in calculating a normal value.

Milltech notes that Stelmi only provided an Italian language version of its financial reports in its exporter questionnaire response<sup>5</sup>. There is no English version on the public record, the Commission standard exporter questionnaire notes that English versions should be provided for documents.

Milltech questions how the verification team could satisfy themselves that the records were in accordance with GAAP if there was no English version provided.

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<sup>5</sup> Questionnaire - Exporter Stelmi S.p.A., p.2



### Whether costs reasonably reflect competitive market costs

The exporter and termination reports do not state whether the Commission was satisfied that the exporter cost of production or manufacture reasonably reflect market costs. This is a requirement of the regulations and legislation in calculating a normal value.

The onus is not on the applicant to provide evidence that the costs of production or manufacturer do not reflect reasonable market costs.

The regulations impose a requirement on the Commission to be satisfied that the exporter cost of production or manufacture reasonably reflect market costs. There is no evidence or statement of such on the public record that the Commission was so satisfied.

This calls into question whether OCOT and the normal value calculations have been properly calculated.

This is also relevant as Milltech notes that there are related party transactions noted in the Stelmi statements. The exporter report<sup>6</sup> makes note that there are no related party issues in regards to domestic and export sales but is silent on any related party transactions in relation to costs.

These transactions should have been examined and tested by the Commission as to whether they represented market costs.

The following extract from the 2014 Stelmi financial statements show evidence of related party transactions.<sup>7</sup>

#### Relationships with subsidiaries, affiliates, parent and sister companies

During the year were entertained the following transactions with subsidiaries, affiliates, parent and sisters:

The company had the following transactions with companies of the group

Company	Borrowings	Credits Financial	Income from consolidated fiscal	Revenues	Purchases / costs
Lebogest Spa	51,958	543835	542887	4,500	
Equity Securities mg SpA	16,455			22286	1309465
ICC-Italian Cable Company Spa					
<b>Total</b>	<b>624118</b>	<b>543835</b>	<b>542887</b>	<b>26,786</b>	<b>1309465</b>

These reports, which did not include any atypical and / or unusual transactions are conducted at arm's market.  
The value of € 1,309,465 relates to the annual rent paid by the company to the shareholder Stelmi Italy MG Equity Securities Spa

The extract above mentions annual rent paid to a related party, this should be tested to see whether it was at market prices.

Similarly, Stelmi has received State aid in the form of an energy rebate that is not discussed in any of the Commission reports or exporter submissions.<sup>8</sup>

<sup>6</sup> Visit Report – Exporter Stelmi Italia SPA, p.8

<sup>7</sup> Stelmi S.p.A. Financial Statements 2014, p53

<sup>8</sup> Stelmi S.p.A. Financial Statements 2015, p.25

beginning of the year value Changes during the year-end value  
**Total accrued income and prepaid expenses** 33316 352579  
 The item breaks down as follows (Article 2427, first paragraph, no. 7. Cc).

Description	Amount
Deferred interest andriba finan.estero	3,115
prepaid insurance	20,842
prepaid contracts	11,063
deferred lease	156134
Centrobanca and prepaid surely Banco pop commissions.	6,646
prepaid ticket	4,406
Rediscount Fairs 2016	12,738
Rate loans for energy-intensive	129364
Other non-appreciable amount	8,270
	<b>352579</b>

The increase in accrued income is primarily attributable to credit facilities granted to companies with strong electricity consumption (so-called "energy-hungry society") the amount of which increased by Euro 50 thousand, € 79,000 at 31 December 2014 to Euro 129 thousand at December 31, 2015. This receivable relates to amounts paid by the company for the years 2014 and 2015 not yet paid, as at other energy-hungry companies, being still continuing the process initiated by the European Community of the measures' compatibility checking introduced by the Government with the European rules on state aid.

The energy rebate calls into question whether costs of energy for Stelmi are representative of a market cost.

The following extract from the 2015 Stelmi financial statements show similar evidence of related party transactions.<sup>9</sup>

#### Relationships with subsidiaries, affiliates, parent and sister companies

During the year were entertained the following transactions with subsidiaries, associates, parent and sister companies:  
 The Company entered into the following transactions with the group companies

Society	debts financial	Credits financial	Credits comm.li	debts comm.li	proceeds Consolid. fiscal	Shopping
Lebogest Spa	5,132	158518		6,532	158507	446
ICC-Italian Cable Company Spa	6,455					429
<b>Total</b>	<b>21,587</b>	<b>158518</b>		<b>6,532</b>	<b>158507</b>	<b>875</b>

These reports, which do not include any atypical and / or unusual transactions are settled at normal conditions market.

In particular, in addition to our society Company subject to the direction and coordination of LEBOGEST SPA, the latter and the other companies that are subject are set out below and analytically, reports, detailing the reasons and interests whose evaluation has influenced the decision

#### Trade and other transactions

Society	debts	Credits guaranteecommitments	revenues
Lebogest Spa	6,532		446
ICC-Italian Cable Company Spa			429
<b>Total</b>	<b>6,532</b>		<b>875</b>

#### Amortisation and depreciation, capital expenditures, allocation and methods

The regulations similarly impose obligations on the Commission to be satisfied on the allocation and methods of allocation of costs relating to the above.

<sup>9</sup> Stelmi S.p.A. Financial Statements 2015, pp.55-56

There is no evidence or statement of such on the public record that the Commission was so satisfied.

This is relevant, especially in regards to the new peeling machine that Stelmi purchased as to whether that had been properly accounted for.<sup>10</sup>

Our company during the year 2014 incurred costs of investment in new capital goods (the main investment made in the year is represented by the purchase of a peeler and accessories Euro 1.5 million) for which it intends to access the tax credit provided under Article 18 of the Decree Law 24 June 2014, No. 91, ratified with amendments by Law 11 August 2014, No. 116 (known as "competitiveness decree") and the quantification of the benefit which will be on display in the tax return.

The benefit obtained by Stelmi from the "competitiveness decree" noted above should have been examined by the Commission.

The Dumping and Subsidy Manual notes on page 44.

*Because the intention is to determine competitive market costs, depreciation of items based on taxation laws that do not reflect the actual costs of depreciation is not accepted.*

The regulations state for the determination of administrative, selling and general costs (AS&G).

#### **44 Determination of administrative, selling and general costs**

*(1) For subsection 269TAAD(5) of the Act, this section sets out:*

- (a) the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount (the **amount**) to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and*
- (b) factors that the Minister must take account of for that purpose.*

*(2) If:*

- (a) an exporter or producer of like goods keeps records relating to the like goods; and*
- (b) the records:*
  - (i) are in accordance with generally accepted accounting principles in the country of export; and*
  - (ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;*

*the Minister must work out the amount by using the information set out in the records.*

*(4) The Minister must take account of the information available to the Minister about the allocation of costs, in particular to establish:*

- (a) appropriate amortisation and depreciation periods; and*
- (b) allowances for capital expenditures and other development costs.*

*(5) For subsection (4), the information includes information given by the exporter or producer of goods that demonstrates that the exporter or producer of the goods has historically used the method of allocation.*

*(6) If:*

- (a) the Minister identifies a non-recurring item of cost that benefits current production or future production (or both) of goods; and*
- (b) the information mentioned in subsection (4) does not identify the item;*

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<sup>10</sup> Stelmi S.p.A. Financial Statements 2014, p52

*the Minister must adjust the costs identified by the exporter or producer to take that item into account.*

As with the costs of production, there is no evidence or statement of such on the public record that the Commission was satisfied with the matters relating to the AS&G costs.

This is relevant due to the nature of the relationships of Stelmi with its shareholders. The following extracts are from the 2014 Stelmi financial statements<sup>11</sup>.

**Suffered in this market environment, the strong price competition and the difficult economic situation of the sector has persisted for several years has caused, even for the year 2014, a sharp fall in margins sale of the company having a negative impact on corporate profitability that was heavily negative. This market situation has led, in fact, the company to achieve also a loss in 2014 Statements of significant entities (Euro 2,444,000) that, as in previous years, the partner majority proceeded to cover entirely through the renunciation of the right to return financing and related interest and with their contextual conversion in capital reserves of € 2,452 thousand. 31 December 2014, the equity of the company amounted to Euro 753,000 substantially unchanged from the previous year (31 December 2013 was EUR 745 thousand). 31 December 2014, moreover, the company has outstanding bank loans of € 18,715,000 of which € 2,548,000 against installments due in 2015 that will be able to repay through cash flows arising from operations and with the support of partner Lebogest SpA.**

**In this regard, we note that during the month of April 2015 the majority shareholder has granted an financing of additional Euro 600,000 which were paid installments of loans taken out with the main banks. During the month of May 2015, the shareholder Lebogest SpA waived repayment of this financing, which has been converted into capital reserve.**

The extract notes that the partner majority in Stelmi will cover entirely the loss of €2,444,000 through the renunciation of the right to return financing and related interest.

Milltech questions whether the financing support provided by its majority shareholder has been properly taken into account in the finance costs of the Stelmi SG&A. In effect the major shareholder is bearing the costs of finance that may not show up in the financial statements of Stelmi that were verified by the Commission. As such, the AS&G costs will be understated and the OCOT and normal value would have been incorrectly calculated.<sup>12</sup>

**In this context, economic and financial importance particularly delicate, these financial statements have been prepared on a going concern of the company on the basis of a binding letter signed by Lebogest SpA and addressed to the board of Stelmi on 27 July 2015, with which the majority shareholder has committed to fund and support patrimonial society along a time horizon of at least twelve months as of December 31, 2014, in order to ensure both the performance of its obligations both its regular continuation and business continuity without you occur in a substantial decrease in its ability to operate regularly.**

The above extract shows that the major shareholder is bearing the cost of funds. Milltech questions whether this was taken into account and whether the finance costs in Stelmi financial statements represent a market cost and the true cost of finance.

**Among these commitments, the shareholders have indicated their willingness to waive repayment of loans already granted to the company, in addition to those already paid during 2015. As a result, from a point of view sheet, it believes that the capital will not be affected by any loss of perspective for the year 2015.**

The above extract shows shareholders waiving repayments of loans<sup>13</sup>.

<sup>11</sup> Stelmi S.p.A. Financial Statements 2014, p.48

<sup>12</sup> *ibid.*, p.49

<sup>13</sup> *ibid.*, p.49

The 2015 Stelmi statements further note that:

- Lebogest, the largest shareholder contributed €1,548,000 in 2015<sup>14</sup>
- The minority shareholder renounced loans of €469,000 p31, and €574,000<sup>15</sup>
- Revaluation provided a net amount of €2,029,000<sup>16</sup>

Milltech questions whether these contributions have been properly taken into account in the determination of AS&G costs.

Though the loans from the shareholders to Stelmi have been renounced the shareholders would still be bearing the cost of those loans. These costs should have been taken into account in the cost to make and sell of the goods.

It appears from the fiscal accounts that the largest shareholder is granting financing to Stelmi for loan repayments to the banks and then waiving repayment of that financing. In effect the largest shareholder is repaying the Stelmi bank loans.

The €600,000 financing repayment mentioned in the accounts represents a finance cost in the cost to make and sell of Stelmi products that should have been included in the costs for the OCOT tests.

The shareholder covering the loss of €2.5 million in 2014 and the renunciation of loans of €1.5 million, €469,000 and €574,000 total approximately €5 million in financing by the shareholders.

This €5 million Euro would also have a finance cost that should have been included in the costs for the OCOT tests.

Milltech also questions whether the Commission examined the net benefit of €2,029,000 to Stelmi provided by the revaluation. What the revaluation was in regards to and whether it was a matter the Commission should have taken into account.

Milltech considers that the Stelmi financial statements evidence that the major shareholder is providing financial and administrative support to Stelmi.

The financial statements note that Stelmi is effectively part of a consolidated company<sup>17</sup>.

Milltech submits that the AS&G costs of the shareholders should also have been taken into account in determining the AS&G costs, especially in regards to financing costs.

Milltech submits that the AS&G costs have been understated in the Stelmi costs to make and sell of the goods meaning that the OCOT and normal value have been incorrectly calculated.

### **C. The normal value has been incorrectly calculated**

The Commission calculated the normal value under 269TAC(1) as noted above.

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<sup>14</sup> Stelmi S.p.A. Financial Statements 2015, p.26

<sup>15</sup> Ibid., p.27

<sup>16</sup> Ibid., p.26

<sup>17</sup> Stelmi S.p.A. Financial Statements 2015, p.36

Milltech submits that this calculation is incorrect and that the Commission should have calculated a normal value based on a cost to make and sell plus a profit.

Milltech provided submissions to the Commission noting that Stelmi has been unprofitable, and has sustained losses from 2013 to 2015. Milltech included a copy of Stelmi's 2015 financial statement, which shows a loss of €1.29 million for that year. Milltech claimed that such a loss is difficult to reconcile with the negative dumping margin calculated by the Commission. Milltech also highlighted a statement from Stelmi's 2014 financial statement that included a note that stated the company has been forced to sell below cost<sup>18</sup>.

**competitive behavior**

In the year 2014, the competition has been very aggressive, especially by competitors based in Eastern Europe where they benefit from primary factors to produce a much more favorable of our costs. The their expansionary policies are based on the pricing policies that have reduced the values of competition Western Europe, or in terms of volume or in terms of margin.

The table below shows the consequent results in the last three years in terms of value production, gross operating profit and pre-tax profit.

	31/12/2014	31/12/2013	31/12/2012
production value	30953159	30233702	28330444
EBITDA	(1027672)	(642004)	(147440)
Result before the taxes	(2961014)	(2512754)	(2036212)

and<sup>19</sup>

As widely illustrated in this document, the company has to face fierce competition by, mainly, the operators of the countries of the East which, benefiting from the cost structure

less can apply very low selling prices, forcing the company to sell below cost.

The statements made by Stelmi Italia S.p.A. are consistent with the normal values submitted by Milltech in regards to the difference in cost between Italian and Eastern European production costs.

The Stelmi financial statements<sup>20</sup> show that it made an overall loss in 2014 of approximately 10% on a production value of €30.1 million with a resulting loss before tax of €2.96 million.

The Stelmi statements highlight that Romania and the other eastern countries are low cost countries. Milltech questions how can Stelmi be a loss making company yet have a negative dumping margin to Cromsteel, who are a profitable company as per their accounts. Stelmi and Cromsteel compete in the same domestic markets yet Stelmi has a -6.7% margin and Cromsteel has a margin of 23%.

The Commission in dismissing Milltech's submissions<sup>21</sup> noted that:

*The Commission notes that Stelmi manufactures and sells a range of products related to chrome bar and tubes. Some of these products are not like goods to the chrome bar subject to the*

<sup>18</sup> Stelmi S.p.A. Financial Statements 2014, p.49

<sup>19</sup> ibid., p.54

<sup>20</sup> Stelmi S.p.A. Financial Statements 2014, p.24

<sup>21</sup> Termination report TER 319, p.7

*Commission's investigation. These excluded goods include stainless steel chrome bar, and tube-related products.*

*Stelmi's income statements from 2014 and 2015 provide an overall income statement that includes sales of all goods in all markets. There is no differentiating sales between products or markets. The Commission is unable to determine whether Stelmi's sales for all products are unprofitable, or whether sales in the domestic or export markets in which it sells chrome bar are also unprofitable.*

*Similarly, the note in Stelmi's 2014 financial statement states that Stelmi faces 'fierce competition' from Eastern (European) countries that have forced the company to sell below cost. The Commission notes that this statement does not indicate which sales are affected, and whether Stelmi's sales to Australia are included. It is not clear which product lines are loss-making.*

The exporter report<sup>22</sup> notes that:

#### **4.1 Verification of Stelmi's costs up to audited financial statements**

*The visit team verified the completeness and relevance of Stelmi's cost to make and sell spreadsheet by reconciling it to audited financial accounts in accordance with ADN 2016/30.*

*Details of the verification are contained within the verification work program at **Confidential Attachment 1**.*

*In the EQR, Stelmi initially provided cost to make and sell data at a single level, that is, one set of data for all products identified as chrome bar. At the visit, the verification team requested a breakdown of these standard costs by each of the five models identified as the goods. Noting that Stelmi records actual cost data, the team requested management reports to calculate the variance between standard cost estimates and actual costs for the investigation period. Stelmi supplied this information, allowing the team to apply the variances in steel and other costs, by quarter, to an updated pivot of CTMS data. The verification team did not identify any other issues during the upwards verification of CTMS.*

Milltech submits that if the Commission was able to obtain management reports for chrome bars it would also been able to obtain management reports for the other products that Stelmi sold.

The Commission would also have as part of its verification been able to obtain data on all sales to conduct the upwards verification.

The management reports and sales data would have enabled the Commission to determine which products were unprofitable and in which markets.

Milltech submits that the Commission should have closely examined this issue as details of Stelmi being unprofitable since 2013 were provided in the application.

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<sup>22</sup> Visit Report – Exporter Stelmi Italia SPA, p.8

Milltech further submits that the Commission should have closely examined this issue to query why a company that had been making large losses since 2013 was profitable in the goods under investigation. Was the company profitable for just these goods?

Milltech also questions the verification of sales data given the Commission statements above, whether the Commission could be satisfied that it had all the relevant sales data.

Milltech also questions the verification of costs data given the Commission statements above, whether the Commission could be satisfied that it had all the relevant costs data.

Milltech also questions how the Commission was able to be satisfied that costs relating to depreciation, amortisation and AS&G were reasonably allocated and the methods of allocation if it did not have information on the other products. How did the Commission test that these allocations and methods were reasonable if it did not have the information to test them against the allocation and methods of allocation for the other products.

Milltech submits that Commission has erred in the calculation of the normal value based on the above.

#### **D. Dumping margin and Stelmi prices in Australia**

Milltech has provided the following analysis to show that the dumping margin calculated for Stelmi would make its prices in Australia uncompetitive.

<b>Cromsteel and Stelmi prices in the Australian market</b>	
Cromsteel NV indexed	100
Cromsteel Margin	22.4%
Cromsteel export price	81.7
Margin check	22.4%
Stelmi NV	100
Stelmi Margin	-6.7%
Stelmi export price	107.2
Margin check	-6.7%
Cromsteel price in Australian market	102
Stelmi price in Australian market	134
Stelmi price difference	31%

#### **Method.**

Milltech has indexed the Cromsteel normal value at 100.

A Cromsteel export price has been calculated at 81.7, which gives the Cromsteel margin of 22.4% as found by the Commission.<sup>23</sup>

<sup>23</sup> Issues Paper 2016/02, page 10.



Milltech has assumed the same indexed normal value for Stelmi of 100. Noting that Cromsteel and Stelmi compete in the same domestic markets on price and that the Stelmi accounts make mention of this competition.

A Stelmi export price has been calculated at 107.2, which gives the Stelmi margin of -6.7% as found by the Commission in the termination report.

Milltech has then calculated indexed Cromsteel and Stelmi prices in the Australian market.

These prices are inclusive of all freight costs, customs and clearance fees and delivery to the customer. The prices are based on the export price representing 80% of the selling price in the Australian market with the other 20% being made up of post exportation costs as mentioned.

Milltech has then compared the selling prices of Cromsteel and Stelmi.

This comparison shows that the Stelmi prices are **31% higher** than the Cromsteel selling prices.

Milltech considers that Stelmi would not be competitive in the Australian market at such prices and that this analysis supports its contentions that the export price, normal value and dumping margin for Stelmi have been incorrectly calculated.

#### **E. Commission to maintain a public record**

Section 269ZJ requires the Commission to maintain a public record.

Milltech submits that the Commission has not maintained a public record as required by the legislation and that this has impeded Milltech's ability to take part in the investigation.

The legislation notes that the Commission:

- Must maintain a public record of the investigation, containing, subject to subsection (2), a copy of all submissions from interested parties.
- To the extent that information given to the Commissioner by a person is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests, the person giving that information must ensure that a summary of that information:
  - that contains sufficient detail to allow a reasonable understanding of the substance of the information; but
  - that does not breach that confidentiality or adversely affect those interests;
  - is given to the Commissioner for inclusion in the public record.
- A person is not required to give the Commissioner a summary of information under subsection (2) for inclusion in the public record if the person satisfies the Commissioner that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

The legislation requires a party to satisfy the Commission as to why information cannot be placed on the public record.

Milltech noted the lack of information available from Stelmi in a submission to the Commission dated 25 July 2016 pointing out the lack of information from exporter questionnaires and visit reports on the public record.

A prime example in regards to Stelmi is the lack of information in the exporter questionnaire on the public record. The questionnaire was only seven pages long and there was no explanation as to why information relating to the missing questions and sections was not provided.

The onus is not on interested parties, such as Milltech to bring to the Commission attention the lack of information provided on the public record, the onus is on the party providing that information to satisfy the Commission as to why that information cannot be provided.

The legislation requires the Commission to be satisfied that information is confidential and a summary cannot be provided for the public record.

In the case of Stelmi there has not been any information as to how the Commission was satisfied as to why that information could not be provided.

Information that is publically available, such as financial statements, including the English versions, should have been placed on the public record in the case of Stelmi.

In moving to exception based reporting (as outlined in ADN 2016/30) for Stelmi has seen a great deal of information kept off the public record relating to the verification.

The aim of exception based reporting as outlined in the ADN was to provide less focus on the verification process and greater process on the important verification issues.

The move to exception based reporting as done in the Stelmi verification report is not in accordance with the requirements of the legislation regarding the public record as stated in section 269ZJ.

Information has been withheld from the public record for which there would appear to be no valid reason for keeping such information confidential. The Stelmi questionnaire response appears to be incomplete when compared to those from Romanian exporters with no responses on the public record submitted to questions from Section E onwards.

Examples of such information would be:

- Depreciation periods in the accounts for items including plant, building and equipment. This information could not be considered commercial sensitive. The placement of such information on the public record would have enabled Milltech to satisfy itself that the exporter was depreciation items in accordance with accounting principles.
- The allocation of shared costs and the method of allocation could not be considered commercially sensitive. Whether shared costs were allocated based on sales revenue, sales tonnes units or metres, or on production volumes or on building space devoted to each product would not be considered commercially sensitive.
- A description of the production process. This would have allowed Milltech to satisfy itself that all of the processes necessary for the production of chrome bars had been included in costings.

ADN 2012/42 provides information regarding the obligations on providing a public record version, as does the guidance material for making a submission available on the Commission website.

These obligations have not been adhered to in regards to Stelmi.

## Conclusion

Milltech considers that the termination decision is not the correct or preferable decision as:

The Commission has not satisfied itself of matters as required by the regulations as noted above.

The export price should be calculated taking into account all costs, including port, clearance charges and customs duties and the extra costs of engaging a freight forwarder, or the profit inherent in the CIF costs, for the CIF shipments as noted above.

The cost to make and sell should take account of the costs of the major shareholders providing financial and administrative support to Stelmi.

Whether Stelmi has benefited from the tax incentives regarding depreciation and the revaluation that have distorted those costs to Stelmi so that they are not representative of market costs should be taken into account in the cost to make and sell.

The allocation and method of allocation of costs such as depreciation and other AS&G costs should be re-examined and compared with other products to see if they have been properly allocated.

The Commission has failed to maintain a public record in regards to Stelmi that has impeded Milltech's ability to make detailed responses to their submissions.

**11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10**

Milltech submits that the correct or preferable decision is that:

- the termination decision by the Commission should be revoked.
- the investigation should be resumed into Stelmi and all the above matters raised by Milltech be re-examined by the Commission.
- Milltech's opinion is the correct or preferable decision resulting from the grounds raised in response to question 10 is that the Commission would find that Stelmi was dumping the goods during the investigation period at a margin that was greater than 2%.

**12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision**

*Only answer question 12 if this application is in relation to a reviewable decision made under subsection 269X(6)(b) or (c) of the Customs Act.*

Not applicable.

#### PART D: DECLARATION

The applicant/the applicant's authorised representative *[delete inapplicable]* declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* beginning to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:  .....

Name: **MATTHEW REIL**

Position: **DIRECTOR**

Organisation: **MILLTECH Pty Ltd**

Date: **2 / 9 / 2016**

**PART E: AUTHORISED REPRESENTATIVE**

*This section must only be completed if you answered yes to question 4.*

**Provide details of the applicant's authorised representative**

Full name of representative:

Organisation:

Address:

Email address:

Telephone number:

**Representative's authority to act**

***\*A separate letter of authority may be attached in lieu of the applicant signing this section\****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:.....

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date:     /     /

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**From:** Dean Taylor  
**Sent:** Wednesday, August 3, 2016 4:26 PM  
**To:** 'Hemsley, Ryan'  
**Subject:** RE: Part termination of investigation against Italy [SEC=UNCLASSIFIED]

Thanks Ryan

**From:** Hemsley, Ryan [mailto:Ryan.Hemsley@adcommission.gov.au]  
**Sent:** Wednesday, August 3, 2016 4:24 PM  
**To:** '  
**Subject:** Part termination of investigation against Italy [SEC=UNCLASSIFIED]

Hi Dean,

Please find attached a letter informing you and Fred of the part termination of the investigation against Italy.

If you have any questions, please let me know.

Cheers  
Ryan

**Ryan Hemsley**  
Assistant Director – Operations 4  
Anti-Dumping Commission

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Melbourne VIC 3001

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**E:** [ryan.hemsley@adcommission.gov.au](mailto:ryan.hemsley@adcommission.gov.au)  
**W:** [www.adcommission.gov.au](http://www.adcommission.gov.au)



Australian Government  
Department of Industry,  
Innovation and Science

## Anti-Dumping Commission

Anti-Dumping Commission  
Level 35, 55 Collins Street  
Melbourne VIC 3000

Mr Fred Reis  
Managing Director  
Milltech Pty Ltd  
5 Laverick Avenue  
TOMAGO NSW 2322

Dear Mr Reis

### **TERMINATION OF PART OF INVESTIGATION INTO THE ALLEGED DUMPING OF CHROME PLATED STEEL BAR EXPORTED FROM ITALY AND ROMANIA**

I refer to your application for the publication of a dumping duty notice in respect of chrome-plated steel bar (chrome bar – the goods) exported to Australia from Italy and Romania.

As a result of the Anti-Dumping Commission's (the Commission) investigation, the Commissioner of the Anti-Dumping Commission is satisfied that:

- is satisfied that, in relation to Stelmi S.p.A., there has been no dumping by those exporters of any of those goods the subject of the application and, therefore, has decided to terminate the investigation in accordance with subsection 269TDA(1) of the *Customs Act 1901* so far as it relates to those exporters
- is satisfied that the total volume of goods that have been exported to Australia over a reasonable examination period from Italy that have been dumped from all Italian exporters is negligible and, therefore, has decided to terminate the investigation so far as it relates to Italy in accordance with subsection 269TDA(3) of *the Act*

*Termination Report No. 319* (TER 319), which sets out reasons for the termination, including the material findings of fact or law upon which this decision is based, will be available on the public record. Public notification of the termination of the investigation will be published on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au) on 3 August 2016.

The attached Australian Dumping Notice No. 2016/69 provides details on the termination of the investigation including your right to apply for a review of the decision within 30 days of the public notice.

The investigation into the alleged dumping of the goods from Romania will continue. The Commissioner is due to report to the Assistant Minister of Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science<sup>1</sup> in respect of this investigation on or by 8 August 2016.

Should you have any questions concerning this matter, please contact me on telephone number 03 8539 2464 or email [operations4@adcommission.gov.au](mailto:operations4@adcommission.gov.au).

Yours sincerely,

Ryan Hemsley  
Assistant Director Operations 4  
Anti-Dumping Commission

3 August 2016

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<sup>1</sup> On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister of Industry, Innovation and Science as the Assistant Minister for Science.



## **ANTI-DUMPING NOTICE NO. 2016/69**

### **Chrome-plated steel bar**

### **Exported from Italy and Romania**

### **Termination of part of Investigation**

#### ***Public notice under subsection 269TDA(15) of the Customs Act 1901***

On 10 November 2015, I, Dale Seymour, the Commissioner of the Anti-Dumping Commission, initiated an investigation into the alleged dumping of chrome-plated steel bar (the goods) exported to Australia from Italy and Romania, following an application lodged by Milltech Pty Ltd under subsection 269TB(1) of the *Customs Act 1901* (the Act).

Public notice of my decision to not reject the application and to initiate the investigation was published on the Anti-Dumping Commission's (the Commission) website on 10 November 2015 (Anti-Dumping Notice (ADN) 2015/130 refers). The ADN is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

As a result of the Commission's investigation, I:

- am satisfied that, in relation to Stelmi S.p.A. (Stelmi) there has been no dumping by that exporter of any of those goods the subject of the application and, therefore, have terminated the investigation in accordance with subsection 269TDA(1) of the Act so far as it relates to Stelmi.
- am satisfied that the total volume of goods that have been exported to Australia over a reasonable examination period from Italy that have been dumped from all Italian exporters is negligible and, therefore, have terminated the investigation so far as it relates to Italy in accordance with subsection 269TDA(3) of the Act.

In making the decisions to terminate, I have had regard to the application, submissions from interested parties, *Statement of Essential Facts* (SEF) no. 319, and submissions in response to that SEF.

*Termination Report* no. 319, which sets out reasons for the termination decisions, including the material findings of fact or law upon which the decisions are based, has been placed on the Commission's public record at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The investigation into the alleged dumping of the goods from Romania will continue. I am due to report to the Assistant Minister for Industry, Innovation and Science and the

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Parliamentary Secretary to the Minister for Industry, Innovation and Science<sup>1</sup> in respect of this investigation on or by 8 August 2016.

The applicant may request a review of this decision to terminate the investigation by lodging an application with the Anti-Dumping Review Panel in the approved form and manner within 30 days of the publication of this public notice.

Enquiries about this notice may be directed to the case manager on telephone number 03 8539 2464 or email at [operations4@adcommission.gov.au](mailto:operations4@adcommission.gov.au)

Dale Seymour  
Commissioner  
Anti-Dumping Commission

3 August 2016

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<sup>1</sup> The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.