Australian Government

Anti-Dumping Review Panel

Anti-Dumping Review Panel
C/O Legal, Audit & Assurance

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By EMAIL

Mr D Seymour
Commissioner of the Anti-Dumping Commission
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3000

Dear Mr Seymour,

STEEL ROD IN COILS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

The Anti-Dumping Review Panel (ADRP) is conducting a review of a decision of the former Parliamentary Secretary to the then Minister for Industry, Innovation and Science to publish a dumping duty notice under s.269TG(1) and (2) of the *Customs Act 1901* (the Act) on 22 April 2016 in respect of Steel Rod in Coils (RIC) exported from People's Republic of China (Reviewable Decision). The Reviewable Decision was made in relation to your report, No. 301 (REP 301).

The applicants for the review are: Hunan Valin Xiangtan Iron & Steel Co., Ltd (Hunan Valin); Vicmesh Pty Ltd (Vicmesh); Jiangsu Shagang Group Co., Ltd (Shagang); and OneSteel Manufacturing Pty Ltd (Administrators Appointed) (OneSteel), together referred to as the "Applicants".

As you are aware, I am currently conducting the review.

Pursuant to s.269ZZL of the Act, I require that the following findings in REP 301, relating to the Applicants' grounds of review, be reinvestigated.

Finding 1: In constructing the normal value for Hunan Valin pursuant to s.269TAC(2)(c) of the Act, the Anti-Dumping Commission (ADC) made an upwards adjustment to the surrogated steel billet cost with a 'yield percentage' factor

In its application for review, Hunan Valin contends that the ADC already and separately calculated and applied a "*conversion cost percentage*" based on the actual cost difference between the unit cost of billet and the unit cost for RIC, as part of its inclusion of that surrogate steel billet cost in Hunan Valin's normal value construction. It claims that this *"conversion cost percentage*" incorporates any yield loss as well as other costs of conversion. Therefore Hunan Valin claims that the surrogate billet costs do not need to be further adjusted upwards in the normal value construction to account for the yield loss, as this would amount to a double-counting.

Hunan Valin states that it was first appraised of the "yield percentage" adjustment at the time of the Statement of Essential Facts ("SEF 301"), and in its comments on SEF 301, requested that the yield percentage uplift be removed. This issue was not addressed in REP 301 and the ADC did not remove such uplift. There is no explanation of or reference to the yield uplift in REP 301, and the issue is not addressed in the ADC's submission to the Review Panel pursuant to s.269ZZJ of the Act (the ADC submission).

You are therefore requested to reinvestigate this issue, taking into consideration Hunan Valin's concerns and submissions in this regard, as well as all other parties' submissions. If found to be valid, you should remove the yield percentage uplift and recalculate the normal value for Hunan Valin. In this event, you should also make any consequential amendments to the dumping margin (and ascertained normal value) for Hunan Valin.

Finding 2: The finding relating to the amount of profit in Hunan Valin's constructed normal value

In its application for review, Hunan Valin contends that in calculating its constructed normal value, the ADC used an incorrect profit ratio, as reflected in a spreadsheet provided by the ADC. Hunan Valin contends that the incorrect profit ratio results from an Excel spreadsheet command error.

The ADRP notes that in the ADC's submission it is acknowledged that there was a mathematical error in the calculation of Hunan Valin's profit and the ADC updated its calculations in the Confidential Attachment – Hunan Profit.

You are requested to include this updated profit calculation in the reinvestigation report and recalculate the normal value for Hunan Valin. You should also make any consequential amendments to the dumping margin (and ascertained normal value) for Hunan Valin.

Finding 3: The finding relating to the selection of the Latin American steel billet export prices at free on board (FOB) level published by Platts, to substitute the billet costs recorded in the cooperating exporters' cost to make and sell (CTMS) information

The Panel notes that there was a change in the selected benchmark between SEF 301(wherein the selected benchmark was the East Asian Billet CFR Price) and REP 301 (wherein the selected benchmark is the Platts Lain American steel billet FOB price).

Vicmesh, in its application for review, challenges the ADC's selection of the Latin American steel billet FOB export price as the surrogate billet cost, as *'particularly unreasonable'*. You are requested to reinvestigate this issue, taking into consideration Vicmesh's claims in this regard. You should also take into consideration the claims made by OneSteel in this regard, in its application for review, in particular, its contention that that it is not consistent with World Trade Organisation (WTO) best-practice or even the ADC's policy and practice to base an external competitive benchmark for market costs on an 'export' price index, rather than a competitive price benchmark that is reflective of domestic market conditions (such as Mexican, Canadian or United States domestic billet prices available from MEPS (International) Ltd). You should also take in account all other parties' submissions on this issue, both to the ADRP and to the ADC in Investigation No. 301.

If as a result of the reinvestigation, a different benchmark is selected for steel billet, you should also make any consequential amendments to the dumping margins (and ascertained normal values).

Finding 4: The finding relating to the conversion of the benchmark price to a benchmark cost by deducting the verified average profit rate realised by Chinese exporters from sales of steel billets

In REP 301 it is stated:

> *"The Commissioner considers it reasonable to deduct the verified average profit rate realised by Chinese exporters from sales of steel billets in order to calculate the competitive market costs for steel billets. This is consistent with the Commissioner's approach to utilising actual verified domestic profit rates in domestic sales of like goods when constructing normal values."*

It appears reasonable for the ADC to convert the price benchmark into a cost benchmark (since the exporters are vertically integrated and produce, not purchase, the billets, and the benchmark is a substitution for the billet costs recorded in the exporters' CTMS). However, there would appear to be no basis to use the profit rate realised by Chinese exporters from sales of steel billets, which is unrelated to the benchmark in question. It is my understanding that the "*Commissioner's approach to utilising actual verified domestic profit rates in domestic sales of like goods*", that is referred to in REP 301, is with regard to the 'determination of profit' for the purposes of s. 269TAC(2)(c)(ii) and s.269TAC(5B) of the Act, and s.45 of the *Customs (International Obligations) Regulation 2015* (Regulation), whereas the determination

of the benchmark 'cost' is for the purpose of determining the cost of production of the goods in accordance with s.269TAC(2)(c)(i) and s.269TAC(5A) of the Act, and s.43 of the Regulation. The appropriate profit rate to deduct appears to be that of the Latin American producers that make up the benchmark price, as contended by OneSteel and Vicmesh.

If in reinvestigating Finding 3 above, your selection of the benchmark remains that of the Platts Latin American steel billet FOB price, you are requested to reinvestigate this issue, and recalculate the cost benchmark by deducting an amount of profit of the Latin American sellers of the billet that are the subject of the competitive benchmark, instead of deducting the verified average profit rate of Chinese exporters from sales of steel billets.

You should also make any consequential amendments to the dumping margins (and ascertained normal values).

Finding 5: The finding relating to the selection of a 'FOB' Benchmark, unadjusted for the cost of transport from a factory to the wharf

As noted above, there was a change in the selected benchmark between SEF 301(wherein the selected benchmark was the East Asian Billet CFR Price) and REP 301 (wherein the selected benchmark is the Platts Latin American steel billet FOB price). One of the stated reasons for the change was that the East Asian benchmark captured overseas freight costs, which the ADC claimed in REP 301 was "*impossible to remove with a sufficient degree of certainty*", making it less appropriate to use as a benchmark.

In selecting the Platts Latin American Billet FOB export prices, it was stated in REP 301 that as this new benchmark is calculated at the FOB basis and, as such, *"removes any concerns regarding overseas freight being included"*. Vicmesh in its application for review contends that an FOB price would include the cost of transport from the factory to the wharf which does not "*equate to a domestic integrated mill cost to make billet*". In the ADC's submission it is stated:

> *"In regard to the comments relating to freight cost not been removed from the Latin American benchmark, I make the following observations. Firstly, while it is not possible to remove all freight from the Latin American benchmark the ADC selected benchmark is at a level of trade which minimises additional freight costs. I consider the freight values of the benchmark* ***are less distortionary*** *in the currently utilised benchmark (FOB, Latin America) then they would be in the benchmark utilised in SEF 301 (CFR, East Asia). The CFR benchmark would contain additional overseas freight values which are not present in the FOB benchmark.*" (my emphasis)

By this statement, it is acknowledged that there are distortions in the benchmark and the emphasis should not be on the fact that there are less distortions than in the previously selected benchmark, but rather that such distortions be removed or adjusted, to ensure a fair comparison between export price and normal value. It is not clear why you consider that *"it is not possible"* to remove an estimated freight cost

from the FOB benchmark, based on data of normal freight rates payable in the region of the origin of the benchmark.

You are therefore requested to reinvestigate this issue, making an appropriate downward adjustment to the benchmark for the cost of transport from the factory to the wharf.

You should also make any consequential amendments to the dumping margins (and ascertained normal values).

Finding 6: The finding that RIC exported from China at dumped prices caused material injury to the Australian industry producing RIC

In particular:

(a) You should reinvestigate the impact of non-dumped imports on injury, in accordance with s.269TAE(2A)(a) of the Act, and any such injury must not be attributed to the exportation of these goods. I refer you to Shagang's application for review for more details in this regard as well as Vicmesh's application for review. In the reinvestigation you should take into consideration WTO jurisprudence on non-attribution;

(b) You should reinvestigate the use of the "*but for*" methodology, in relation to causation, as detailed in Shagang's application for review. In particular, you are referred to the discussion of this '*alternate analytical*' method in Dumping and Subsidy Manual, November 2015 (the Manual), where it is stated that any alternate method '*will be required to be evidence based*' and will require a '*compelling explanation*' as to why causation exists notwithstanding the absence of any coincidence. You should also take cognisance of WTO jurisprudence on this issue and the following discussion of the *'but for'* analytical method in the Manual:

> "*Under a 'but for' analytical method it may be possible to compare the current state of the industry to the state the industry would likely have been in if there had been no dumping. Such analysis also inquires about the likely effects of the dumping or subsidisation alone. <u>Parties submitting information to demonstrate injury based on 'but for' grounds must provide, and explain, the evidence on which this claim rests.</u> For example, how they estimated the effects of the dumping by using suitable accounting methods and counterfactual analysis. <u>It is not sufficient to simply assert such an effect as this will not meet the evidentiary requirement.</u>*" (my emphasis);

(c) At the same time, you should also reinvestigate the finding of *'materiality of injury'*, particular in the light of your reliance on the '*but for*' methodology. Please refer to Shagang's application for review for further details.

(d) You are also requested to reinvestigate the causation finding in the light of various statements in REP 301 relating to the vertical integrated nature of

Arrium Ltd, and Vicmesh's submissions on what it characterizes as a failure "*to differentiate trade exposed versus non-exposed sectors*". In particular:

- REP 301 notes that the majority of OneSteel's sales of RIC were to related parties over the investigation period, but states that OneSteel advised that sales to its related parties remain subject to market forces regarding price;

- REP 301 refers to OneSteel's internal transfer pricing process and *"found that the cost methodology utilised by OneSteel reflected Australian accounting standards whereby transfer prices internally are recognised at the lower of cost or market price.*"

In reinvestigating this issue, you should explain how you "*tested*" the assertion and confirmed that sales to both related and unrelated parties are based on market pricing, and reconcile this with OneSteel's transfer pricing policy, referred to in the second bullet point above. Also, you should re-examine the implications of this "*factor*" on causation, bearing in mind the injury findings relating to price suppression and profitability.

<u>Date for providing reinvestigation report</u>

Please report the result of the reinvestigation within 70 days from the date of this letter, that is, by **28 October 2016**.

Thank you for your assistance and co-operation.

Yours sincerely,

Leora Blumberg
Member
Anti-Dumping Review Panel

19 August 2016