

STAUGHTONS

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Re Silicon Metal Case
Guizhou-Calculation of Subsidy Benefit

PUBLIC RECORD VERSION

We write on behalf of our clients, the Linan Group of China, and in response to your most recent advice of 29th April 2015 further increasing the so called subsidy rate from 3.7% to 6.3%.

Given the final report is due to be forwarded to the Parliamentary Secretary within the next two days, and the fact that it is now 9 months from when the Commission undertook the verification visit in July 2014, we not only reject the the very basis of this latest calculation, we also consider the time provided to respond as being unreasonable.

Restating our previous responses, we maintain that the Commission is obligated to base it's findings and determinations on the best information available rather than, as it has appeared to have occurred during the 7 month period from July 2014 to February 2015, a reliance on what we regard to be third party and foreign jurisdiction publications.

We respectfully submit therefore that the best information available to the Commission is the verified, evidence based acceptable, and independently audited accounting records of the Linan Group of companies of which 'Guizhou' is a member company producer of the goods exported to Australia .

The Commission's verification visit findings in relation to the supply of electricity, and other production and marketing costs by 'Guizhou' ,were based on the actual money price paid and significantly, those factual electricity payments exceeded the so called GOC subsidy Tariff rate for the supply and consumption of electricity .

The Commission's verification of the Linan Group found negligible dumping and zero subsidy benefit. To the dismay of the Linan Group this evidence has apparently been dismissed and ignored in the Commission's subsequent considerations.

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Accordingly we maintain that 'Guizhou' received no benefit by means of any GOC subsidised electricity supply and on that evidence alone there is no factual basis for the Commission resorting to its subsequent constructed Normal Value and subsidy calculations in the 7 months from when the verification visit took place.

The latest revision of the so called subsidy benefit, being that advised on April 29th 2015, is said to have been based on a reconciliation of electricity invoices with the data submitted by 'Guizhou' in its exporter questionnaire responses which were lodged with the Commission 12 months ago in April 2014.

Given the very purpose of a verification visit we consider it only reasonable to claim that the verification visit in July 2014 would be given far more weight than the producer's initial response in the commission's questionnaire. We do understand that any 'visit report' is subject to review by the Commission's case management team, but in this instance the amount actually paid by 'Guizhou' for the supply of electricity did not, and has not changed. As stated previously, the actual amount paid for electricity factually exceeded the so called subsidy tariff rate.

Evidenced actual money price paid, in our opinion, also 'outweighs' any consideration of invoices received.

Additionally, the latest revision is considered to be further flawed on the basis it ignores the following factual 'elements':-

- A separate charge for 'KVA', being a basic supply charge for electricity supplied to furnaces, being RMB 30 per 'KVA'. The Commission is of the view that the 'KVA' has no relevance to consumption which we claim is simply wrong as on our understanding the amount of 'KVA' charged is based on the rate of consumption.
- The amount paid for electricity, being for both the 'KVA' and consumption included the 17% VAT which the Commission, on our reading of its methodology, has not taken this into consideration.

Based on the advice received in the past few days, it appears that the commission is intending to recommend to the Parliamentary Secretary that dumping and countervailing measures be imposed on the basis of a constructed determination. Given the timing of recent events it really affords no real opportunity for our interests to further challenge the basis of that recommendation.

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We restate the basic principle that positive verified evidence in relation to the overseas producers, exporters, has to be the best information available on which the Commission can base it's findings and especially so given the Commission's 'standard s 269T (1) warning' to exporters that any failure to provide relevant information within a reasonable period of time may result in the Commissioner determining 'export prices and normal values' based on the best available facts.

The Linan Group cannot be considered to have acted in any way that would discount it's degree of cooperation or the veracity of it's verified data.

Regrettably, in this case the evidenced based findings of no dumping, no countervailing for the Linan Group exports to Australia have, in our opinion, been dismissed on the basis of third party references, information and commentary.

There are always winners and losers in this process but given the Australian end user application of the subject goods, especially the lower grade 441, and if the Parliamentary Secretary does accept the Commission's now obviously intended recommendations concerning the Linan Group, the real world outcome will be a form of invisible protection for the applicant's invisible production of Grade 441

We clearly reject findings based on 'third party' information and a methodology considered to be at odds with the positive verified evidence since the WTO Anti - Dumping Agreement, as reflected in Australia's own legislation, requires the assessment of dumping be based on positive evidence and involve an objective examination.

As previously expressed, there is clearly insufficient time now available for any further submission. However, we again request the Commission to reconsider by having regard to it's own verified visit findings.

Regards
M J Howard
Representative