

Our Ref: GS:MD:01624

6 January 2015

Mr Geoff Gleeson
Anti-Dumping Commission
Customs House
1010 La Trobe Street
Docklands VIC 3008

Sent By Email: Heidi.MATUSCHKA@adcommission.gov.au

Dear Mr Gleeson,

**Re Indian Steel Corporation
Uncooperative Exporter Status
ADC Investigation into alleged dumping of zinc coated (galvanised) steel
exported to Australia from India and Socialist Republic of Vietnam**

We confirm that we act on behalf of Indian Steel Corporation (**ISC**) in this matter.

We have to hand your letter of 7 November 2014, and note that you have determined that you will refer ISC to the Commissioner as an 'Uncooperative Exporter' (**the Commission's Determination**).

ISC has maintained a firm view that they have genuinely engaged in cooperating with the Commission's request for documentation and information to the highest degree reasonably possible.

ISC understands that the Commission has set timeframes for the determination of ISC's exporter status, and the Commission's Determination is as a result of ISC not meeting those deadlines. Nevertheless, an issue remains with the imposed deadlines and the failure to accord ISC an adequate opportunity to address the concerns and requirements of the Commission.

As can be seen from the confidential Attachment A to the letter of 7 November 2014, ISC has responded expeditiously to each request and deadline set by the Commission. Unfortunately there remains a significant time gap between the response of ISC of 19 September and the Commission's advice of 16 October 2014 that ISC's response remained inadequate, and that ISC had until the 23 October 2014 to remedy the deficiencies as identified by the Commission. The timeframe for this further compliance was disproportionate in the circumstances. For the reasons

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as subsequently advised by ISC, it was neither practical nor possible for ISC to meet this deadline. The Commission's failure to accede to a reasonable request for an extension to this deadline also remains an issue.

ISC's intention has always been, and remains to cooperate with the Commission.

Chronology of Cooperation

The following chronology sets out ISC's cooperation with the Commission:

1. ISC submitted its response to the exporter questionnaire by 3 September 2014 having earlier sought guidance from the Commission.
2. The Commission wrote to ISC via email on 5 September 2014 outlining the inadequacies of the data provided. Specifically, the Commission required all PDF annexures to be resubmitted in excel format. The Commission also outlined that Annexure G1 (Australian CTMS) had only been provided for the annual period April 2013 to March 2014. The Commission requested that the data be broken down and provided for each quarter (or month) for the investigation period from 1 July 2013 to 30 June 2014. The Commission also noted that ISC did not provide information for all domestic sales, production and domestic CTMS.
3. Subsequently, ISC responded on 5 September by submitting the Annexures in Excel format and advising that they were unable to provide the Annexure G1 (Australian CTMS) data on a monthly or quarterly basis as their data systems did not record data in that manner. Furthermore, data was provided for the period 1 April 2013 to 31 March 2014 as that was the financial year in which ISC operated.
4. ISC also submitted on 10 September 2014 (which was within the deadline of 11 September imposed by the Commission) a full response to Section D of the questionnaire with supporting Annexure, as well as Domestic CTMS data.
5. The Commission responded on 11 September 2014 requiring submission of a Non-Confidential version of the Questionnaire, which ISC did on the same day. The Commission did not have a position in relation to the Annexure G1 (Australian CTMS) data that was provided.
6. On 13 September 2014, ISC immediately supplied a revised Non-Confidential version of the questionnaire based on the advice of the Commission on 12 September 2014.
7. On 16 September 2014, the Commission requested that ISC revise Section E (Fair Commission). This had not been previously raised with ISC by the Commission. Queries were also raised in regard to Annexure D-4. Although no specific deadline was requested of it, ISC provided its response by 19 September 2014.

8. On 16 October 2014, ISC received the Commission's reply advising that notwithstanding ISC's response of 19 September 2014, there remained deficiencies and ISC was therefore given until 23 October 2014 to remedy these deficiencies.
9. On 22 October 2014, ISC emailed the Commission with final responses with the understanding that it would sufficiently satisfy the Commission's queries within the time frame imposed. ISC also informed the Commission of its Indian National Cultural Festivities would commence on the following day, and that its office would be un-contactable during this holiday period. The ISC was willing to further cooperate by continuing to be available for clarification of its responses after this period.
10. On 28 October 2014, the Commission wrote to ISC stating that the deficiencies identified in its correspondence of 16 October 2014 were yet to be addressed. As such the Commission had proceeded with its Determination, and the reasons were outlined in Confidential Attachment A.
11. On 30 October 2014 ISC requested additional time to address the Commission's view outlined in Confidential Attachment A, as it was surprised to discover that the Commission did not find its final response satisfactory. ISC believed it could justify its responses with explanations and further Annexures to assist the Commission with its understanding. The ISC could not immediately respond with these justifications and explanations because of the Indian festivities which caused key staff members to be out of office. This was explained in its email correspondence dated 31 October as a part of its "mercy pleading" with the Commission.
12. On 1 November 2014, ISC attempted to cooperate by explaining the information data it provided according to Confidential Attachment A. The ISC provided supporting Annexures as a way to assist the Commission to understand its explanations.
13. On 7 November 2014 the Commission confirmed in its letter to ISC that ISC would be treated as an uncooperative exporter. This is despite the reasonable request and attempt to cooperate by ISC.

ISC had thought that they provided all required data and information and it was surprised to discover that the Commission could not find the relevant documents in the emails provided. Furthermore, ISC was surprised that the Commission's view was that certain added or updated data did not amend any information or contained specific missing information in the format the Commission required. ISC attempted to comply even though their National Cultural Festival made it difficult for them to do so in October 2014.

Cooperation by ISC

ISC voluntarily participated and cooperated with the Commission as communicated in its initial letter to the Commission via email dated 28 July 2014. ISC has since

expended considerable time and resources in compiling the material requested by the Commission and providing responses to the Commission's questionnaire.

Notwithstanding the numerous attempts to rectify deficiencies identified by the Commission, it would appear that the Commission's Determination eventuated from a combination of a number of factors:

- a) Incompatibility of ISC's internal record keeping with the requirements of the questionnaire; (e.g. different financial year, no monthly data as it wasn't maintained, year to year data only, extremely large amounts of domestic sales that couldn't be summarised as samples couldn't be provided, etc.) As a steel exporter based in India, the methods in which they maintain their data is vastly different to Australian standards;
- b) Misunderstanding of the specific information required, albeit genuine attempts of rectification. Unreasonably onerous obligations were imposed on ISC to satisfy the Commission's requirements, notwithstanding the multiple attempts of ISC to provide what they thought was the requested data and information;
- c) Lack of or inadequate communication causing delay in light of time constraints; and
- d) Imposition of an unreasonable timeframe for compliance. The Commission had taken almost one month to respond to ISC and provide a further list of queries. However, in turn it only permitted ISC 7 days to provide responses to what the ISC were not aware remained as deficiencies. This was clearly an onerous and disproportionate time frame.

As you can see this was not a straight forward compliance exercise. ISC has made a genuine attempt to follow specific requests of the Commission.

In the circumstances it is apparent that ISC was not afforded a reasonable opportunity to provide all relevant data. In making the Commission's Determination, the Commission has failed to properly take into account the factors referred to in paragraphs (a) to (d) above and the ISC's level of cooperation as outlined in the Chronology.

Further, the imposition of a short timeframe for compliance as per the Commission's letter of 16 October, and the failure to consider the cultural sensitivities of ISC's request for additional time and the failure to accord ISC additional time all constitute matters that should require the Commission to reconsider its position.

ISC proposal

In the circumstances ISC seeks the following from the Commission:

- (i) A review of the Commission's Determination;
- (ii) An opportunity for ISC to submit to the Commission for its consideration, a further documents and data to address the deficiencies outlined in the Commission's letter dated 28 October 2014 (**further ISC data and information**);

(iii) An opportunity for ISC to make further submissions to the Commission for its consideration (**further ISC submission**); and

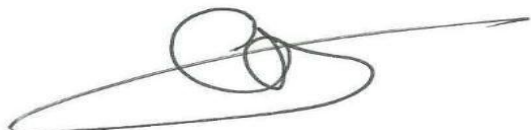
(iv) An acknowledgement by the Commission that it will consider the further ISC data and information and the further ISC submission.

The Commission should note that ISC remains willing to cooperate with the Commission.

In the circumstances we request that you exercise your discretion in reconsidering the Commission's Determination so that a fair outcome can be achieved.

We await your response.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, sweeping loop that crosses itself, followed by a long horizontal stroke extending to the right.

George Spiliotis

Principal

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