APPLICATION FOR REVIEW OF A DECISION BY THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY NOTICE OR A COUNTERVAILING DUTY NOTICE

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City
ACT 2601
P: +61 2 6276 1781
F: + 61 2 6213 6821
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INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Department of Industry and Science, or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures
- to terminate an investigation into an application for dumping or countervailing measures
- to reject or terminate examination of an application for duty assessment, and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations:

- to publish a dumping duty notice
- to publish a countervailing duty notice
- not to publish a dumping duty notice
- not to publish a countervailing duty notice

Review inquiries, including decisions

- to alter or revoke a dumping duty notice following a review inquiry
- to alter or revoke a countervailing duty notice following a review inquiry
- not to alter a dumping duty notice following a review inquiry
- not to alter a countervailing duty notice following a review inquiry
- that the terms of an undertaking are to remain unaltered
- that the terms of an undertaking are to be varied
- that an investigation is to be resumed
- that a person is to be released from the terms of an undertaking

Continuation inquiries:

- to secure the continuation of dumping measures following a continuation inquiry
- to secure the continuation of countervailing measures following a continuation inquiry
- not to secure the continuation of dumping measures following a continuation inquiry
- not to secure the continuation of countervailing measures following a

continuation inquiry.

Anti-circumvention inquiries:

- to alter a dumping duty notice following an anti-circumvention inquiry;
- to alter a countervailing duty notice following an anti-circumvention inquiry;
- not to alter a dumping duty notice following an anti-circumvention inquiry; and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations to** the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or an application that was lodged late.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for ADRP review of a decision of the Minister whether to publish a dumping duty notice or countervailing duty notice (or both). It is approved by the Commissioner pursuant to s 269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A MINISTERIAL DECISION?

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An "interested party" may be:

- if an application was made which led to the reviewable decision, the applicant
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision
- a person directly concerned with the importation or exportation to Australia of the goods
- a person directly concerned with the production or manufacture of the goods
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia, or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of "interested party" in s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision was first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application should include a statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and **must** take account only of information which was before the Minister when the Minister made the reviewable decision (s269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- - at least 30 days after the public notification of the review;
- - but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer

period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- - Minister affirm the reviewable decision (s 269ZZK(1)(a)), or
- - Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- - affirm his/her original decision; or
- - revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- - lodged with, or mailed by prepaid post to:

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

- - OR emailed to:

ADRP@industry.gov.au

- - OR sent by facsimile to:

Anti-Dumping Review Panel
c/o Legal Services Branch
+61 2 6213 6821

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

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

Telephone: +61 2 6276 1781
Facsimile: +61 2 6213 6821

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission
Department of Industry and Science
Ground Floor Customs House
1010 Latrobe Street
MELBOURNE 3008

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular.

(Penalty: 20 penalty units – this equates to $3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision to publish a dumping duty notice or countervailing duty notice.

APPLICATION FOR REVIEW OF

DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY NOTICE OR COUNTERVAILING DUTY NOTICE

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

to publish : ☑ a dumping duty notice(s), and/or
☐ a countervailing duty notice(s)

OR

not to publish : ☐ a dumping duty notice(s), and/or
☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- - provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application
- - provides reasonable grounds for the decision not being the correct or preferable decision, and
- - is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

☑ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

☑ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.

☑ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.

☑ Full description of the imported goods to which the application relates.

☑ The tariff classification/statistical code of the imported goods.

☑ A copy of the reviewable decision.

☑ Date of notification of the reviewable decision and the method of the notification.

☑ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

☑ A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

[If the application contains material that is confidential or commercially sensitive] an additional non‑confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:

Name: JOHN BRACIC

Position: DIRECTOR

Applicant Company/Entity: J.BRACIC & ASSOCIATES PTY LTD

Date: 17 / 07 / 2015

J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

APPLICATION FOR REVIEW OF THE DECISION TO PUBLISH A DUMPING DUTY NOTICE ON EXPORTS OF ROD IN COIL BY PT GUNUNG RAJAPAKSI FROM INDONESIA

1. APPLICANT

Name: PT. Gunung Rajapaksi
Address: Jl. Imam Bonjol 4, Wr, Bongkok, Ds. Sukadanau,
Cikarang Barat, Bekasi 17520, West Java, Indonesia
Entity: Company

2. APPLICANT'S CONTACT DETAILS

Name: Hendri
Position: Export Manager
Tel: (62-21) 89838162 - 67
Fax: (62-21) 8900976 / 8900977
Email: dte05@grdsteel.com

APPLICANT'S REPRESENTATIVE
Name: John Bracic
Company: J.Bracic & Associates Pty Ltd
Postal address: PO Box 3026, Manuka, ACT 2603
Tel: 0499 056 729
Email: john@jbracic.com.au

3. DESCRIPTION OF THE IMPORTED GOODS

The Anti-Dumping Commission's (the Commission) Report No. 240[1] describes the goods as follows:

> hot rolled rods in coils of steel, whether or not containing alloys, that have maximum cross sections that are less than 14mm.

4. TARIFF CLASSIFICATION OF THE IMPORTED GOODS

The reviewable decision affects imported goods classified to the following subheadings in Schedule 3 to the Customs Tariff Act 1995:

- 7213.91.00 (statistical code 44); and
- 7227.90.90 (statistical code 42).

[1] Report 240, page 14.

PT. GUNUNG RAJA PAKSI

Steel Is Our Business

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

Dear Review Panel,

We wish to advise that PT Gunung Rajapaksi, an exporter of rod in coils from the Republic of Indonesia, has engaged J.Bracic & Associates Pty Ltd to act on our behalf for the purposes of our application to the Review Panel.

All communications concerning this matter should be directed to:

Mr John Bracic
Director
J.Bracic & Associates

Phone: +61 499 056 729
Email: john@jbracic.com.au
Address: PO Box 3026
Manuka, ACT 2603

Yours sincerely,

Heny
Export Manager
12 July 2015

Commonwealth of Australia

Gazette

GOVERNMENT NOTICES

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Anti-Dumping Commission

***Customs Act 1901* – Part XVB**

Rod in Coils Exported from the Republic of Indonesia, Taiwan and the Republic of Turkey

Findings in Relation to a Dumping Investigation

Public notice under subsections 269TG (1) and (2) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of rod in coils (the goods) exported to Australia from the Republic of Indonesia (Indonesia), Taiwan and the Republic of Turkey (Turkey).

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

- tariff subheading 7213.91.00 with statistical code 44; and
- tariff subheading 7227.90.90 with statistical code 42.

A full description of the goods is available in Anti-Dumping Notice No. 2014/27, which is available on the internet at www.adcommission.gov.au

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 240* (REP 240). REP 240 outlines how the Anti-Dumping Commission (the Commission) carried out the investigation and recommends the publication of a dumping duty notice in respect of certain goods.

On 13 May 2015, the Commissioner terminated part of the investigation into the goods exported from Indonesia by PT Ispat Indo (Ispat), and from Turkey by all exporters. *Termination Report No. 240* sets out the reasons for this termination, and is available on the internet at www.adcommission.gov.au.

I have considered REP 240 and have accepted the Commissioner's recommendations and reasons for the recommendations, including all material findings of fact or law on which the Commissioner's recommendations were based, and particulars of the evidence relied on to support the findings.

The method used to compare export prices and normal values to establish the dumping margin was to compare the weighted average export prices with corresponding normal values over the investigation period in terms of subsection 269TACB(2)(a) of the *Customs Act 1901* (the Act). The normal value was established under subsections 269TAC(1) and

269TAC(6) of the Act. The export price was established under subsections 269TAB(1)(a) and 269TAB(3) of the Act.

Particulars of the dumping margins that have been established in respect of rod in coils exported from Indonesia and Taiwan are set out in the table below.

Country	Exporter / Manufacturer	Dumping margin and effective rate of dumping duty
Indonesia	Gunung	10.1%
	All other exporters (excluding PT Ispat Indo)	10.1%
Taiwan	Quintain	2.7%
	All other exporters	2.7%

The effective rate of duty that has been determined is an amount worked out in accordance with the ad valorem duty method, as detailed in the table above.

I, KAREN LESLEY ANDREWS, Parliamentary Secretary to the Minister for Industry and Science, have considered, and accepted, the recommendations of the Commissioner, including the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 240.

I am satisfied, as to the goods that have been exported to Australia from Indonesia (except by PT Ispat Indo) and Taiwan, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under subsection 269TG(1) of the Act, I DECLARE that section 8 of the *Dumping Duty Act* applies to:

(i) the goods; and

(ii) like goods that were exported to Australia after 2 March 2015 (when the Commissioner made a preliminary affirmative determination under section 269TD of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before the publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused or is being caused. Therefore under subsection 269TG(2) of the Act, I DECLARE that section 8 of the *Dumping Duty Act* applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from Indonesia (except for PT Ispat Indo) and Taiwan. Measures apply to goods that are exported to Australia after publication of this notice. Measures also apply to goods that were exported to Australia after the Commissioner made a preliminary affirmative determination to the day before my decision was published. The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on Australian industry prices

and the consequent impact on the Australian industry including reduced sales volumes, reduced market share, reduced revenues, price depression, price suppression, reduced profits, reduced profitability, reduced employment and reduced attractiveness for reinvestment.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of my decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how anti-dumping measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at www.adcommission.gov.au.

REP 240 and other documents included in the public record may be examined at the Commission's office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the Case Manager on telephone number +61 3 8539 2437, fax number +61 3 8539 2499 or email at operations1@adcommission.gov.au.

Dated this 3rd day of June 2015

KAREN LESLEY ANDREWS

Parliamentary Secretary to the Minister for Industry and Science

5. DATE AND METHOD OF NOTIFICATION OF THE REVIEWABLE DECISION

Public notification of the reviewable decision was made on 17 June 2015 and was published in The Australian newspaper and the Gazette on that day.

6. INTRODUCTION

On 24 February 2014, the Australian industry producing like goods lodged an application for the publication of a dumping duty notice in respect of rod in coils exported to Australia from Indonesia, Taiwan and Turkey. The Commission initiated the dumping investigation on 10 April 2014.

PT Gunung Rajapaksi (Gunung) is a producer of rod in coil that exported the goods under investigation to Australia during the period of investigation (1 January 2013 to 31 December 2013).

On 3 June 2015, following the Commission's investigation, the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary) made the decision under subsection 269TG(2) of the Customs Act 1901 (the Act) to impose interim dumping duties in accordance with Section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* on like goods exported by the Gunung.

Final Report No. 240 (Report 240) contains the material findings of fact and reasoning that forms the basis for the Parliamentary Secretary's decision to impose duties.

Background

Prior to the Commission providing its findings and recommendations to the Parliamentary Secretary in Report 240, the Commissioner terminated the investigation in respect of rod in coils exported by all exporters from Turkey and by PT. Ispat Indo (Ispat) from Indonesia. The decision to terminate was based on the following findings:

- the margin of dumping by Ispat was negligible;
- the margin of dumping by one Turkish exporter was negligible;
- the margin of dumping by all other Turkish exporters was not negligible, however the volume of dumped goods from Turkey was negligible.

In terms of dumping by exporters not covered by the termination decision, Report 240 found:

- the margin of dumping by Gunung was not negligible at 10.1%, and
- the margin of dumping by Quintain Steel Co. Ltd. (Quintain) from Taiwan was not negligible at 2.7%.

The Commission estimated the total size of the Australian market for rod in coil during the 2013 investigation period to be approximately 540,000 tonnes[2]. It is estimated that the combined volume of imports sourced from Gunung and Quintain accounted for approximately 2.1% of the total Australian market, or 1.1% and 1% respectively.

[2] Ibid, page 17.

Imports from all sources (including exporters with negligible margins of dumping, exporters with negligible volumes of dumped goods and exporters not subject to investigation) other than Gunung and Quitain accounted for 88% of total imports during the investigation period.

Table 1 below provides a summary of the respective import volumes and size of the Australian market during the 2013 investigation period.

Rod in coil imports - 2013		
Country of export		**Volume (tonnes) (note 1)**
Indonesia		41,921
	Gunung	XXXX
	Ispat (**note 3**)	XXXX
Taiwan		5,132
Turkey		12,472
NZ		33,292
Other		731
Total imports		**93,548**
Total Australian market (note 2)		**540,000**
Note 1. Page 17 of Report 240.		
Note 2. Table B-1.5 of OneSteel's application, page 29.		
Note 3. Estimated by deducting Gunung's known volumes from the total Indonesian volume.		

Table 1. Import volumes

7. REASONS FOR BELIEVING THAT THE REVIEWABLE DECISION IS NOT THE CORRECT OR PREFERABLE DECISION.

Gunung contends that the findings in Report 240 are not correct or preferable due to:

i) a lack of positive evidence demonstrating a link between dumped exports and injury suffered by the Australian industry;
ii) a failure to properly isolate and distinguish factors other than the dumped exports;
iii) a failure to ensure that injury caused by other factors are not attributed to the dumped exports.
iv) a lack of evidence demonstrating that injury attributable to the dumped exports is material.

In order to publish a dumping duty notice, subsections 269TG(1) and (2) of the Act requires the Minister to be satisfied that the subject goods are dumped, and that as a result of the dumped goods "…material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered".

Subsection 269TAE(1) of the Act sets out a non-exhaustive list of matters that the Minister may have regard to in assessing and determining whether material injury to the Australian industry is being caused by dumped exports. Determinations under subsection 269TAE(1) are subject to subsections 269TAE(2A) and (2AA) of the Act. Subsection 269TAE(2A) of the Act requires that injury caused by factors other than dumping not be attributed to the dumped goods, whilst subsection 269TAE(2AA) of the Act requires that the material injury determination "*must be based on facts and not merely on allegations, conjecture or remote possibilities*".

This provision is reflected in Article 3.1 of the WTO Anti-Dumping Agreement (ADA) which states:

> A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

Gunung contends that the material injury analysis and assessment in Report 240 is flawed as it is not based on affirmative or credible evidence which provides a reliable link between the dumped exports and the Australian industry's injury.

a) Causation – Volume effects

Report 240 found that by the end of the injury analysis period, '*Indonesia had become the largest source of rod in coils imported*', and that over that time, '*annual sales from Indonesia increased by over 500%*' whilst '*annual sales by OneSteel decreased by approximately 16 per cent*'. On that information, Report 240 concludes that the Australian industry "*experienced injury in the form of reduced sales volume and reduced market share for rod in coils in the Australian market*."

In assessing whether dumped exports caused material injury, it is evident from the report that the Commission does not distinguish and isolate the volume effects attributable between dumped and non-dumped exports. Report 240 makes no mention of the relative trends or movements in export volumes from dumped and non-dumped sources over the injury analysis period. Gunung considers that such analysis is necessary to more precisely identify and isolate the effects of dumped imports from other factors such as non-dumped imports.

In its submission of 23 March 2015[3], Gunung submitted its export sales volumes (refer to Table 2 below) to the Commission for each calendar year of the injury analysis period to demonstrate that its export volumes had moved in line with the market trend and importantly, decreased over the period in which the Australian industry's sales also decreased by 16%.

[3] EPR record no. 61, page 4.

GRP Exports of rod in coil to Australia				
Year	2010	2011	2012	2013
Volume (tonnes)	XXX	XXX	XXX	XXX
Movement (%)		XXX%	XXX%	XXX%

Table 2. Gunung export volumes

This information confirms that Gunung's exports fell by XX% from 2011 to 2012 and by XX% between 2012 to the 2013 investigation period. The Commission would have had access to and therefore able to confirm these figures by reconciliation to Customs' import database.

Given that exports by Gunung have decreased since 2011 by over XX%, it is clear then that the estimated 500% increase in Indonesian exports of rod in coil over the injury analysis period comes from non-dumped exports by the Indonesian exporter, Ispat. Using the Australian industry's estimate of total import volumes of rod in coil from Indonesia shown in Table 1 of this application, and its own export volume over the investigation period, Gunung estimates that non-dumped exports by Ispat accounted for over XX% of the total volume from Indonesia during the investigation period.

Therefore in Gunung's view, the facts clearly show that the decline in the Australian industry's sales volumes and market share in the investigation period were not caused by dumped exports from Gunung. Instead the evidence on the record strongly suggests that injury in the form of lost sales and reduced market share are the direct result of increased exports from non-dumped sources.

Notwithstanding that evidence strongly supports the view that the decline in the Australian industry's sales volume and market share were caused by non-dumped exports, the Commission concludes in Report 240[4] *"that OneSteel would have been in a stronger position to achieve sales to both its existing customers and prospective customers had the price offerings of the dumped goods been less competitive."*

As highlighted in Gunung's submission of 23 March 2015[5], the Commission appears to be relying on a 'but-for' argument based on an assumption that the Australian industry would have made the lost sales had imports not entered the Australian market at dumped prices. This is further confirmed by the Commission's estimate of injury caused by dumped exports as the total value of goods exported by Gunung and Quintain[6].

In Report 240, the Commission does not disagree with Gunung's assessment that the causation analysis undertaken and outlined in its report is based on a 'but-for'

[4] Report 240, pages 48-49.
[5] EPR record no. 61, page 3.
[6] Report 240, pages 49.

methodology. Nor does Report 240 provide any compelling explanation or reasoning for the use of such analysis in these circumstances.

The Commission's Dumping and Subsidy Manual[7] provides clear guidance that its preferred approach to the assessment of material injury and causation is the utilisation of the 'coincidence analysis'. The Dumping and Subsidy Manual makes clear that where a "coincidence analysis" shows no coincidence between dumped imports and injury indicators, or is unable to be undertaken, the alternative 'but-for' analysis requires a compelling explanation.

In Gunung's view, Report 240 contains no coincidence analysis or compelling explanation as to why such analysis was not possible and why therefore the 'but-for' analysis was preferred. This is a fundamental flaw in the material injury findings of Report 240. The Commission's Dumping and Subsidy Manual states[8] that its causation methodology will be "*assessed by examining the trends or movements in the volumes and prices of dumped or subsidised imports over time, and also the volume and price movements in the injury factors.*" As previously explained, no such analysis appears to have been undertaken and if it had been, the evidence would have shown that the 500% increase in the volume of non-dumped exports by Ispat from Indonesia was the primary cause of the Australian industry's lost volumes and market share.

The main flaw in the Commission's but-for assessment is that it relies on the mistaken assumption that in the absence of dumping by Gunung, its sales of rod in coil during the investigation period would have been replaced by the Australian industry's sales. This is clearly contrary to the Commission's own stated practice in basing findings on a 'but-for' assessment which states that '*[i]t is not sufficient to simply assert such an effect as this will not meet the evidentiary requirements.*'[9]

This is further supported by the Appellate Body finding in Mexico – Anti-Dumping Duties on Rice[10], which observed that assumptions by an investigating authority should be based on positive evidence:

> *An investigating authority enjoys a certain discretion in adopting a methodology to guide its injury analysis. Within the bounds of this discretion, it may be expected that an investigating authority might have to rely on reasonable assumptions or draw inferences. In doing so, however, the investigating authority must ensure that its determinations are based on 'positive evidence'. Thus, when, in an investigating authority's methodology, a determination rests upon assumptions, these assumptions should be derived*

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[7] Commission Dumping & Subsidy Manual, page 120.
[8] Ibid. page 122.
[9] Ibid. page 123.
[10] Appellate Body Report, Mexico – Definitive Anti-Dumping Measures on Beef and Rice, WT/DS295/AB/R, para 204; Page 69.

> *as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.*

The Appellate Body went further in that dispute and concluded that an examination on positive evidence is not fulfilled when the assumptions on which the investigating authority's methodology relies are not properly substantiated and explained:

> *An investigating authority that uses a methodology premised on unsubstantiated assumptions does not conduct an examination based on positive evidence. An assumption is not properly substantiated when the investigating authority does not explain why it would be appropriate to use it in the analysis … In the Final Determination, Economía did not explain why [its] assumptions were appropriate and credible in the analysis of the volume and price effects of the dumped imports, or how they would contribute to providing an accurate picture of the volume and price effects of the dumped imports … We would expect an investigating authority to substantiate the reasonableness and credibility of particular assumptions.*[11]

Gunung submits that Report 240 provides no reasoning or basis for the assumption that the Australian industry's sales would have replaced sales made by Gunung during the investigation period in the absence of dumping. In fact the findings in Report 240 strongly supports the contrary view, that in the absence of dumping by Gunung, those export sales would have been replaced by alternative non-dumped export sources.

Firstly, Report 240 reiterates the point on a number of occasions that rod in coil is a commodity product and "*the market for rod in coils is highly price sensitive*". As a result, "*price is one of the primary factors affecting purchasing decisions*". Given this market characteristic and the finding that all imported goods were "*between four per cent and 10 per cent below the OneSteel weighted average quarterly selling price*", it is contradictory to expect and assume that an end-user would, in the absence of dumping from an exporter representing approximately 1.1% of the total market, source its required volume from the Australian industry when prevailing prices from non-dumped sources are at the very least 4% less than the industry's prices.

As Report 240 confirms, the trend data for import volumes showed that Indonesia grew by over 500%, whilst imports from Turkey and Taiwan grew to approximately 12,000 tonnes and 5,000 tonnes respectively over the injury analysis period. This substantial growth in import volumes, coupled with the significant decline in sales by the Australian industry over that same period, depicts a strong substitution effect away from the locally produced goods to imports.

[11] Ibid., para 205, page 69.

The likelihood of import substitution is further supported by consistent statements by the importer, Sanwa Pty Ltd (Sanwa) and the Australian industry. Sanwa commented that

> *if measures were imposed prices will obviously rise and most likely importers may look to access rod in coils from other Asian countries, will import drawn wire without this value adding taking place in Australia or will commence importing ready made mesh rather than rod in coils. Sanwa noted that all of these alternate options are taking place now and the opportunity for local manufacturers to add value will further decrease.*[12]

The Australian industry stated to the Commission at the verification visit and reflected in the visit report[13], that

> *…rod in coils was a commodity product and that importers and end users could change sources and countries of supply very quickly. OneSteel further said that since the initiation of the investigation it had noticed an increase in offers and imports from [confidential].*

In addition, it is noted from evidence[14] requested and submitted to the Commission, that certain importers were purchasing rod in coil from multiple exporters across multiple countries. Given that non-dumped imports represented approximately 88% of total imports in the Australian market, it is reasonable to expect that in the absence of dumped exports by Gunung during the investigation period, these importers would likely have sourced their rod in coil from existing or new non-dumped sources.

A review of the sales information submitted to the Commission by a major importer of rod in coil shows that it on-sold imported rod in coil sourced from different exporters and different countries to same customers. The sale of rod in coil sourced from Indonesia to a particular customer in one month and sale of rod in coil sourced from non-dumped exporters to the same customer in the next month, confirms that in a market absent of dumped imports, the Australian industry would not have achieved greater sales during the investigation period.

<u>Conclusion</u>

In conclusion, Gunung submits that Report 240 contains no meaningful basis for demonstrating that dumped exports by Gunung, which accounted for approximately 1.1% of the total Australian market, caused the significant decline in the Australian industry's sales of the injury analysis period. An assessment of the available import data would clearly show that the volume of dumped exports by Gunung decreased

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[12] EPR record no. 032, page 20.

[13] EPR record no. 037, page 45.

[14] [redacted] **(Importer entity)** – Import/sales information submitted to the Commission (refer to Confidential Attachment 1).

significantly and followed a similar trend to that experienced by the Australian industry.

The Commission's finding that dumped exports caused material injury in the form of lost sales and reduced market share is founded on an assumption that the Australian industry's sales would have replaced those by Gunung in a market unaffected by dumping. Report 240 provides no foundation or reasoning for such an assumption, particularly in light of the strong evidence to the contrary.

b) Causation – Price effects

Report 240 finds that the Australian industry's selling prices have declined since 2011 and that these prices were falling at a greater rate than corresponding costs. As a result, price depression and price suppression were found to have occurred during the investigation period.

For the purposes of assessing causality between dumped exports and injury, the Commission seems to have relied solely on its price undercutting analysis. Based on a comparison of free-into-store selling prices, the Commission found that imports undercut Australian industry's prices by '*4.07 per cent to 7.02 per cent*' at an aggregate level over the investigation period. When price comparisons were performed at the customer level, price undercutting ranged from '*negative 2 per cent (not undercut) to 15.5 per cent*'.

As an exporter, Gunung does not have visibility of selling prices by Australian importers or the Australian industry into the Australian market and therefore accepts the Commission's price undercutting analysis as being accurate. However, Gunung submits that the Commission's analysis is inadequate for isolating the impact from non-dumped sources and properly identifying the price effects attributable to dumped imports.

Subsection 269TAE(2A) of the Act requires that the Minister must consider whether any injury '*is being caused or threatened by a factor other than the exportation of those goods such as:*

(a) the volume and prices of imported like goods that are not dumped;'

The obligation to ensure non-attribution is found in Article 3.5 of the ADA and has been interpreted by the Appellate Body in US – Hot rolled steel[15], which ruled:

> *The non-attribution language in Article 3.5 of the Anti-Dumping Agreement applies solely in situations where dumped imports and other known factors are causing injury to the domestic industry at the same time. In order that investigating authorities, applying Article 3.5, are able to ensure*

[15] Appellate Body Report, US – Anti-Dumping Measures on certain Hot-Rolled Steel products from Japan, WT/DS184/AB/R, para 223; pages 74-75.

> *that the injurious effects of the other known factors are not 'attributed' to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties.*
>
> *We emphasize that the particular methods and approaches by which WTO Members choose to carry out the process of separating and distinguishing the injurious effects of dumped imports from the injurious effects of the other known causal factors are not prescribed by the Anti-Dumping Agreement. What the Agreement requires is simply that the obligations in Article 3.5 be respected when a determination of injury is made.*

The Appellate Body added[16]:

> *[A]lthough this process may not be easy, this is precisely what is envisaged by the non-attribution language. If the injurious effects of the dumped imports and the other known factors remain lumped together and indistinguishable, there is simply no means of knowing whether injury ascribed to dumped imports was, in reality, caused by other factors. Article 3.5, therefore, requires investigating authorities to undertake the process of assessing appropriately, and separating and distinguishing, the injurious effects of dumped imports from those of other known causal factors.*

Report 240 confirms that in comparing sales data from all cooperating importers with the Australian industry's sales data, '*the weighted average quarterly selling price per tonne for imported goods was between four per cent and 10 per cent below the OneSteel weighted average quarterly selling price*.' Given then that selling prices of imports from each of the countries subject to investigation were undercutting the Australian industry's prices in the market during the investigation period, it was incumbent on the Commission to isolate and distinguish the effects of non-dumped rod in coil imports from dumped imports.

16 Ibid., para 228, page 76.

Instead the Commission made no effort to segregate the effects between dumped and non-dumped imports. This is confirmed by the statement in Report 240 '*that in a market unaffected by dumping, it is reasonable to expect that OneSteel would continue to set its prices with regard to benchmarked import prices. In this case, as the price of imports would be higher at least by the dumping margins found, it would be expected that OneSteel's prices would also be higher by at least the percentage of the dumping margins found*.' [emphasis added]

In making this finding, the Commission is effectively attributing all of the price effects experienced by the Australian industry during the investigation period, to dumped exports by Gunung and Quintain. This confirms a lack of proper assessment and consideration of the impact of non-dumped imports. At is simplest level, the Commission expects that in a market unaffected by dumping, the export prices for Gunung and Quintain, which accounted for approximately 1.1% and 1% of the total Australian market respectively, would have been 10.1% and 2.7% higher. This in turn would have allowed the Australian industry to increase its selling prices by at least the higher of the two dumping margins, being 10.1%.

Gunung considers this view to be deeply flawed and in breach of the requirements of subsection 269TAE(2AA) of the Act, for determinations to be based on facts and not conjecture or remote possibility. The Commission's finding seems premised on the idea that prices of the remaining 88% of imports that entered the Australian market during the investigation period, have no impact on other export prices or the Australian industry's selling prices.

Firstly, the evidence shows that higher price offers from Gunung would not be accepted by importers or end-user customers in a market where '*price is one of the primary factors affecting purchasing decisions*' and prices from non-dumped sources were substantially lower. This is supported by:

- verified importer sales data provided to the Commission showing a switch of supplier from Gunung in May 2014 to lower priced exporters from ████ in June 2014[17];
- statements by the importer, Sanwa, in which it '*advised that if measures were imposed prices will obviously rise and most likely importers may look to access rod in coils from other Asian countries*';
- statements by the Australian industry that '*rod in coils was a commodity product and that importers and end users could change sources and countries of supply very quickly*'; and
- statements by Stemcor '*that rod in coils is regarded as a commodity product, which means that the grades/sizes used in market are commonly available and when produced to similar grade and dimension it is interchangeable regardless of its origin*'[18].

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[17] Refer to confidential attachment 1.

[18] EPR record no. 035, page 21.

Hence, it is not reasonable for the Commission to expect that 10.1% higher prices could be achieved by Gunung in the Australian market when non-dumped exports, which represent approximately 88% of total imports, are being sold at substantially lower prices.

Second, it is unreasonable to consider that irrespective of the prices and degree of undercutting from non-dumped imports, the Australian industry would be able to achieve increases in its selling prices at least equal to the 10.1% dumping margin. Gunung agrees with the Commission's view[19] *'that in a market unaffected by dumping, it is reasonable to expect that OneSteel would continue to set its prices with regard to benchmarked import prices.'*

It would be illogical to expect that the Australian industry would be able to base its import parity pricing on non-dumped prices from Gunung when the vast majority of other non-dumped prices in the market were substantially lower. This is especially so when it is clear that imports by Gunung account for approximately 1.1% of the total Australian market.

Finally, Gunung also considers that the Commission's price undercutting analysis is inadequate as it contains no consideration of the local price premium included in the Australian industry's selling prices. It is clearly relevant to the Commission's assessment of the effects of other known factors, to understand the impact that the local price premium had on the degree of undercutting found during the investigation period.

Thie issue is particularly relevant in this case given that the majority of the Australian industry's sales of rod in coil are to its related distribution business that competes directly with unrelated customers that source from both local and import suppliers.

The relevance of price premiums in the examination of price undercutting was addressed by the Panel in EC — Salmon (Norway). In considering the argument by the European Communities that the existence of a price premium was irrelevant to the analysis of price undercutting and could only be taken into account when considering the injury margin, the Panel concluded:

> *Merely that the price premium was taken into account in calculating the injury margin does not demonstrate that it was considered and deemed irrelevant to the evaluation of price undercutting. Having identified the existence of a price premium for the domestic product over the imports, we consider that an unbiased and objective investigating authority could not conclude, without explanation, that such price premium had no bearing on the issue of whether there was significant price undercutting. Thus, the*

[19] Ibid. page 64.

> *investigating authority's finding of significant price undercutting is not consistent with the requirements of Articles 3.1and 3.2.*[20]

Therefore, Gunung submits that the Commission has failed in its requirement to isolate and distinguish the impact of the local price premium on the undercutting found to exist during the investigation period.

Conclusion

In conclusion, Gunung considers that the price undercutting analysis set out in Report 240 is flawed as it makes no attempt to ensure that injury caused by non-dumped exports are not attributed to dumped exports.
Further, the finding that injury caused by dumped exports was material during the investigation period is not based on positive evidence or an objective examination of relevant information provided and gathered during the investigation. Instead the finding appear to be based on mere conjecture and without any reasonable basis.

Finally, Report 240 contains no consideration or assessment of the impact of the local price premium on the degree of undercutting found to exist during the investigation period. Gunung considers this particularly important given that the vast majority of the Australian industry's sales are to related distribution entities.

8. A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application

Gunung submits that had the Commission undertaken an objective and proper examination of relevant information gathered during the investigation, and based its findings on positive evidence and not unsubstantiated assumptions, that the finding would have been that the injury attributable to dumped exports by Gunung and Quintain was negligible.

A proper assessment of the trends in volumes entering the market from dumped and non-dumped sources would have demonstrated that the injury attributable to non-dumped sources was material and the primary cause of the Australian industry's lost sales volumes and reduced market share.

Likewise, a proper assessment of relative prices in the market and an objective examination of the prices that the Australia industry could reasonably achieve in a market where 88% of imports are considered non-dumped and significantly undercutting local prices, would show that any injury attributable to dumped imports is negligible. The assessment would also show that the degree of undercutting found to

[20] Panel Report, European Communities – Anti-Dumping Measure on Farmed Salmon from Norway, WT/DS337/R, para 7.640, pages 273.

exist in the Australian market is contributed to by the Australian industry's decision to include a local price premium in its related part transaction.

As such, the correct and preferable decision should be to terminate the investigation in accordance with subsection 269TDA(13) of the Act, as it relates to Gunung, on the grounds that injury to the Australian industry that has been caused by exports found to be dumping is negligible.