Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] 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 Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a ministerial decision.

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 public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. 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.

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 0, 11 and/or 12 of this application form (s269ZZG(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.

[1] By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Hunan Valin")

Address: Yuetang District, Xiangtan City, Hunan Province, People's Republic of China

Type of entity (trade union, corporation, government etc.): Limited liability company

2. Contact person for applicant

Full name: Wang Libo

Position: Chief Director, Legal Department

Email address: wanglb668@126.com

Telephone number: +86 13907326302

Please note that all communications in relation to this application are requested to take place with and through Hunan Valin's legal representatives. For contact details please refer to Part E of this application.

3. Set out the basis on which the applicant considers it is an interested party

Pursuant to Section 269ZZC of the *Customs Act* 1901 ("the Act"), a person who is an interested party in relation to a reviewable decision may apply for a review of that decision. An *"interested party"* is defined under Section 269T of the Act as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia. Hunan Valin is a manufacturer and exporter of the goods to which the decision relates, namely steel reinforcing bar, and is thus an *"interested party"* for the purposes of the Act and this application.

4. Is the applicant represented?

Yes ☑ **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

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

☑ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

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

The goods the subject of the reviewable decision were hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.

The goods include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.

Goods excluded from the goods which were the subject of the reviewable decision are plain round bar, stainless steel and reinforcing mesh.

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

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

- 7213.10.00 (statistical code 42);
- 7214.20.00 (statistical code 47);
- 7227.90.10 (statistical code 69);
- 7227.90.90 (statistical code 01);
- 7227.90.90 (statistical code 42) (prior to 1 January 2015);
- 7227.90.90 (statistical codes 02 and 04);
- 7228.30.10 (statistical code 70); and
- 7228.30.90 (statistical code 49) (as of 1 July 2015, statistical code 40);
- 7228.60.10 (statistical code 72).

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

2016/39

9. Provide the date the notice of the reviewable decision was published

The reviewable decision was dated 12 April 2016. It was published on the next day, 13 April 2016. The Anti-Dumping Commission website evidences that publication took place on 13 April 2016 as follows (see "Date Loaded"):

EPR300

Public Record for Dumping Investigation - Case 300

Steel Reinforcing Bar Exported from China

No.	Type	Title	Date Loaded
065	Notice	Section 8 Notice (PDF 65KB)	02/05/2016
064	Notice	ADN 2016/39 - Findings in Relation to a Dumping Investigation (PDF 924KB)	13/04/2016
063	Report	Final Report - REP 300 (PDF 2.9MB)	13/04/2016

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

See Attachment A

PART C: GROUNDS FOR THE 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: ☒

See Attachment B, in respect of which confidential and non-confidential versions have been provided.

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

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 0.**

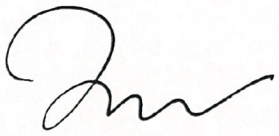
12. **Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

    Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

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* it gives public notice of its intention 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: Charles Zhan

Position: Senior Lawyer

Organisation: Moulis Legal

Date: 13 May 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:	Charles Zhan
Organisation:	Moulis Legal
Address:	6/2 Brindabella Circuit Brindabella Business Park Canberra International Airport Australian Capital Territory Australia 2609
Email address:	charles.zhan@moulislegal.com
Telephone number:	+61 2 6163 1000

Representative's authority to act

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

See Attachment C.

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: / /

ATTACHMENT B

NON - CONFIDENTIAL

13 May 2016

In the Anti-Dumping Review Panel

Application for review
Steel reinforcing bar exported from China

Hunan Valin Xiangtan Iron & Steel Co., Ltd.

Introduction

By way of an application to the Anti-Dumping Commission ("the Commission") dated 13 May 2015, OneSteel Manufacturing Pty Limited ("OneSteel") applied for a dumping investigation into imports of certain steel reinforcing bar ("rebar") from the People's Republic of China ("China").

In response to that application, the Commission initiated the subject anti-dumping investigation in respect of rebar exported from the subject countries on 1 July 2015.

At the conclusion of the investigation, in a decision published on 13 April 2016, the Parliamentary Secretary to the Minister for Industry, Innovation and Science ("the Parliamentary Secretary") decided to impose dumping duties on rebar exported to Australia from China.[1]

Specifically, the Parliamentary Secretary decided to publish notices in relation to rebar exported from China under Sections 269TG(1) and (2) of the *Customs Act 1901* ("the Act").[2] These notices had the effect of imposing dumping duties on exports from the exporters to which they applied.

Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Hunan Valin") is a Chinese manufacturer and exporter of rebar.

Hunan Valin seeks review by the Anti-Dumping Review Panel ("the Review Panel"), under Sections 269ZZA(1)(a) and 269ZZC, of the decision (or decisions) made by the Parliamentary Secretary to impose dumping measures against its exports of rebar to Australia, as outlined in this application.

We now address the requirements of both the form of application that has been approved by the Senior Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2)(b) in relation to each of Hunan Valin's grounds of review, being those requirements not already addressed within the text of the approved form itself.

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1 Based on the recommendations contained in *Report No. 300 – Alleged Dumping of Steel Reinforcing Bar Exported from the People's Republic of China*, March 2016 ("Report 300").

2 A reference in this Application to "the Act", or to a "Section", "Subsection" or "Subparagraph" is a reference to a Section, Subsection or Subparagraph of the Act, unless otherwise specified.

A First ground – the steel billet costs substituted in Hunan Valin's costs of production were not in the country of export

Introduction

In Report 300, the Commissioner of the Anti-Dumping Commission (hereinafter "the Commission") recommended to the Parliamentary Secretary that the situation in the market of the country of export (namely, China) was such that sales in that market were not suitable for use in determining a price for normal value purposes under Section 269TAC(1). As a result, the Commissioner proceeded to work out the normal value of the rebar concerned under Section 269TAC(2)(c), on the basis of the cost to make and sell the rebar, and profit.

In working out the normal value in this way, the Commission did not use Hunan Valin's costs as set out in its financial records, or at least did not *only* use Hunan Valin's costs. Instead, the Commission "substituted" what it referred to as a "benchmark" cost for steel billet into Hunan Valin's costs.

The Commission claims to have done this because it was not satisfied that Hunan Valin's financial records *"reasonably reflect[ed] competitive market costs associated with the production or manufacture"* of rebar by Hunan Valin.[3]

The dumping margin calculated for Hunan Valin in Report 300 with the substitution of the benchmark cost was a positive (dumping) margin of 15.2%.

Hunan Valin disagrees with the substitution of the benchmark cost for steel billet in the determination of its normal value.

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3 *Customs (International Obligations) Regulation 2015*, Regulation 43(2)(b) refers. A reference in this Application to a "Regulation" is a reference to these Regulations, unless otherwise specified.

10 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision[4]

The first ground of Hunan Valin's disagreement is that the benchmark steel billet cost was required by the Act to be a cost *"in the country of export"*, and it was not such a cost.

Section 269TAC(2) provides as follows:

> *Subject to this section, where the Minister:*
>
> *(a) is satisfied that:*
>
> *(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or*
>
> *(ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);*
>
> *the normal value of goods exported to Australia cannot be ascertained under subsection (1); or*
>
> *(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);*
>
> *the normal value of the goods for the purposes of this Part is:*
>
> *(c) except where paragraph (d) applies, the sum of:*
>
> *(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
>
> *(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export--such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or*

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[4] As per the requirement of Section 269ZZE(2)(b) of the Act, and question 10 of the form approved under Section 269ZY of the Act.

> *(d) if the Minister directs that this paragraph applies--the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.* [underlining supplied]

The Commission explained the benchmark steel billet cost that it used in working out Hunan Valin's normal value as follows:

> *Based on the depth of the market, and the geographic distance from China minimising the potential distortions of GOC influenced billet prices impacting on the Latin American billet export prices, the Commission considers that the Latin American export billet prices in FOB terms represent the best available information*

Prima facie, and clearly, a Latin American export billet price is not a cost of production in the country of export of Hunan Valin's rebar. The country of export of Hunan Valin's rebar is China. An export price of Latin American countries is not a cost in China, and was certainly never a cost of Hunan Valin.

Section 269TAC(5A) directs the Commission, in the consideration of what are the costs of production to use under Section 269TAC(2)(c)(i), as follows:

> *Amounts determined:*
>
> *(a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and*
>
> *(b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);*
>
> *must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b).*

In Report 300, the Commission maintained that:

> *...normal values were constructed under subsection 269TAC(2)(c) and in accordance with sections 43, 44 and 45 of the Customs (International Obligations) Regulation 2015 (the Regulation).*

Taking each of these Regulations in turn, we note:

- Regulation 43(1) is a directional or descriptive regulation, which does not in our view impact on the issues at hand. It simply restates Section 269TAC(5A).
- Regulation 43(2) sets out when the Minister must use the financial records of an exporter to work

out an amount as a cost of production – for the purposes of argument, we will proceed on the assumption that the Minister did not have to use Hunan Valin's financial records, by reason of the non-compliance of those records with a requirement of Regulation 43(2)(b).

- Regulation 43(3), (4) and (5) relate to the allocation of costs, and thus are not relevant for present purposes.

- Regulation 43(6) and (7) relate to the adjustment of costs in the circumstances of start-up operations, and thus are not relevant for present purposes.

- Regulation (8) relates to the Minister's ability to disregard any information that is considered to be unreliable, and thus is not relevant for present purposes.

- Regulation 44 refers wholly to administrative, selling and general costs, and thus is not relevant for present purposes.

- Regulation 45 refers wholly to profit, and thus is not relevant for present purposes.

We see nothing in any of these provisions which directs, allows or even suggests that the Commission could use, in the circumstances here at issue, an export price of Latin American countries as a cost of production of an exporter having China as its country of export. The statutory requirement under Section 269TAC(2)(c)(i) is that the Commission must determine the cost of production or manufacture of the goods *"in the country of export"*. The Commission has not done so. Evidently, the Commission has determined what it wants the costs in the country of export to be. Hunan Valin's concern and complaint is that the benchmark steel billet cost does not exist in the country of export, is not "of" the country of export, is formed by economic forces which are not evident in the country of export and has no relationship to the country. Indeed the Commission has gone to an inexplicable effort to ensure that the cost it used has nothing whatsoever to do with the country of export:

> *Based on the depth of the market, and the geographic distance from China minimising the potential distortions of GOC influenced billet prices impacting on the Latin American billet export prices, the Commission considers that the Latin American export billet prices in FOB terms represent the best available information for competitive market costs of steel billets.*

We submit that Australian law directs the Minister to work out the normal value of goods, where the prices in sales of those goods are considered not to be suitable for that purpose, based on:

- the sum of *"cost of production or manufacture of the goods in the country of export"* according to Section 269TAC(2)(c); or

- third country sales under Section 269TAC(2)(d).

The principal and overarching requirement for such a normal value calculation is regulated by Section 269TAC(2)(c) and (d). The operation of Regulation 43 is for the purpose of prescribing the "manner" to be adopted, and the "factors" that should be taken into account, in working out the relevant costs described under Section 269TAC(2)(c)(i). We have explained how none of the Regulations mandate or permit the use of costs that do not exist in the country of export. The "manner" and the "factors" must still comply with and cannot extend beyond the enabling law and the regulation-making power under that law. The consideration that permits the Minister not to use the financial records of an exporter – being a conclusion that the records do not reasonably reflect competitive market costs – is not a justification for ranging far and wide around the world to identify costs which not only do not exist in the country of export but which have no relationship to the country of export.

In response to this, the Commission might maintain – and has frequently said - that no costs for steel billet in China reasonably reflect competitive market costs. Rather than support its position, and with respect, that proposition instead underlines the illogical nature of such an application of the law. The Act provides that the Minister must determine the costs in the country of export. The records of an exporter need not be used for that purpose if they do not reasonably reflect competitive market costs. But the Minister must still determine the costs in the country of export. Presumably, the Commission at this point of the argument would say that it cannot or should not use costs in China because it does not think any of them reasonably reflect competitive market costs. This is illogical because the Commission's starting point is itself illogical, as we now explain.

We refer the Review Panel to Section 269TAC(4), which describes the way in which a cost-based normal value may be worked out where:

> *...the Government of the country of export:*
>
> *(a) has a monopoly, or substantial monopoly, of the trade of the country; and*
>
> *(b) determines or substantially influences the domestic price of goods in that country;*

In that situation, pursuant to Section 269TAC(4)(e), the normal value may be:

> *...a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:*
>
> *(i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;*

> *(ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;*

We also refer the Review Panel to Section 269TAC(5D)(a), which allows the normal value to be *"the amount determined by the Minister, having regard to all relevant information"* unconstrained by the rules under Section 2569TAC(2)(c) (ie *"in the country of export"*) or of Section 269TAC(4)(e) (ie *"in a country determined by the Minister"*), where:

> *both of the following conditions exist:*
>
> *(i) the exporter of the exported goods sells like goods in the country of export;*
>
> *(ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;*

Notably, Section 269TAC(5D) cannot be applied to China, because China is listed in Schedule 2 to the *Customs (International Obligations) Regulations 2015.*

To return to our earlier point, we respectfully say that it is illogical to say that there is or can be no "cost" that reasonably reflects a competitive market cost in China. This is because the legislature has intended, and the legislation states, and the World Trade Organisation *Anti-Dumping Agreement* requires, that the costs for normal value determination are to be determined in the country of export. The express words of the legislation, and the scheme of the legislation, require this to be the case:

- For a WTO Member, being a country specified in Schedule 2 of the Regulations to which we have referred, the costs determined by the Minister are those *in the country of export.*
- For non-market economies, the costs to be determined are those *in a country determined by the Minister* – they do not have to be determined in the country of export, and indeed would be unlikely to be so determined because of the finding that the country was a non-market economy.
- For countries where market conditions do not prevail in respect of the domestic selling price of those like goods, colloquially referred to as "economies in transition", the normal value can be determined by the Minister *having regard to all relevant information.*

Moreover, if the Commission remains unmoved by the proposition that the legislation precludes the adoption of costs that are not *"in the country of export"*, the legislation has helpfully allowed there to be an alternative, namely third country export prices. In other words, if the Minister cannot determine the costs in the country of export, then an option that is available is that presented under Section 269TAC(2)(d), being the only one that is available.

This requirement that the costs of production for the calculation of normal value are those in the country of export has been confirmed and crystallised by the WTO Panel decision in *European Union – Anti-Dumping Measures on Biodiesel from Argentina*[5] ("EU - Biodiesel"). That dispute involved the EU's decision to resort to a constructed normal value in relation to exports from Argentina. In constructing the normal value the EU substituted a FOB price based benchmark cost for soybean into the Argentinian exporter's costs of production, on the basis that the Argentinian cost of soybean was distorted by various Argentinian Government regulatory measures. The Panel stated:

> *7.256. The text of both Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 refer to the "cost of production" in "the country of origin". Thus, the question before us is whether the cost used by the EU authorities for soybeans can be understood to be a cost in "the country of origin", that is, in Argentina.*
>
> *7.257. We recall, in this regard, that the EU authorities found the domestic prices of the main raw material used by biodiesel producers in Argentina to be "artificially lower" than international prices due to the distortion created by the Argentine export tax system. On that basis, the EU authorities disregarded the price actually paid by Argentine producers for soybeans and replaced it with "the price at which those companies would have purchased the soya beans in the absence of such a distortion". Accordingly, the EU authorities replaced the average actual purchase price of soybeans during the IP, as reflected in the producers' records, with the average reference price of soybeans published by the Argentine Ministry of Agriculture for export, FOB Argentina, minus fobbing costs, during the IP. The EU authorities considered that this reference price reflected the level of international prices and that this would have been the price paid by the Argentine producers in the absence of the export tax system.*
>
> *7.258. In our view, it is plain from this that the cost used by the European Union is not a cost "in the country of origin". It was specifically selected to remove the perceived distortion in the domestic price of soybeans caused by the Argentine export tax system. This is because the prices prevailing in Argentina were considered to be artificially lower than international prices. In other words, the EU authorities selected this cost precisely because it was not the cost of soybeans in Argentina.* [footnotes omitted]

Thus, the Panel decided that the costs used for constructing normal value under Article 2.2 of the Anti-Dumping Agreement must be based on the cost of production in the country of origin. The Panel ruled as follows:

> *7.260. ...the European Union acted inconsistently with Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 by using a "cost" that was not the cost prevailing "in the country of origin", namely, Argentina, in the construction of the normal value.*

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5 WT/DS473/R (29 March 2016)

We submit that the WTO Panel's finding in EU - Biodiesel is directly relevant to the present investigation, and resolves any ambiguity, as it establishes that costs in the country of origin must be used for normal value purposes. A finding of the existence of a "particular market situation" in the market for the like goods (which, in Australia, equates with the situation where sales in that market are found not to be suitable for use in determining a price fir normal value purposes) simply allows the investigating authority to determine the normal value by way of a cost-based construction or to base it on an exporter's third country sales. It does not allow the investigating authority to go beyond the markets of the country of export and substitute costs which are not those "in" or "of" the country of export.

We submit that these findings confirm the already clear language of Section 269TAC(2)(c) of the Act, which requires the constructed normal value to be based on *"the cost of production or manufacture of the goods in the country of export"*, together with the relevant selling, general and administrative ("SG&A") and profit.

Accordingly, Hunan Valin respectfully requests the Review Panel to find that the substitution of a benchmark steel billet cost derived from prices for steel billet exported by Latin American countries is not the correct decision.

11 Correct or preferable decision

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[6]

The correct or preferable decision ought to be that if the Commission correctly formed the view that Hunan Valin's costs did not reasonably reflect competitive market costs in one or other respect, then that cost ought to have been determined in the country of export. In that the benchmark steel billet cost was not so determined, that part of the reviewable decision was incorrect.

In B below, we identify the further consequences that flow from the making of the correct decision.

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6 As per the requirement of Section 269ZZE(2)(c) and (d) of the Act, and question 11 of the form approved under Section 269ZY of the Act.

12 Material difference between decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision[7]

The proposed decision - that the benchmark steel billet cost substituted by the Commission not be used – without any other decision being made by the Commission about the legitimacy of the decision that Hunan Valin's financial records did not reasonably reflect competitive market costs and the consequences of that decision – do not resolve the question of what ultimately is the correct or preferable decision.

The acceptance by the Review Panel of this ground of review is materially different because the Review Panel would not then be able to recommend to the Parliamentary Secretary that the benchmark steel billet cost can be used.

The acceptance by the Review Panel of the ground of review in B below, either independently or together with acceptance of this ground of review, is set out in B12.

B Second ground – no evidence and improper consideration of whether Hunan Valin's costs reasonably reflected competitive market costs

Introduction

As has already been explained, in working out the normal value for Hunan Valin on the basis its costs of manufacture, the Commission substituted a benchmark steel billet cost. However, it is a matter of record that Hunan Valin did not purchase steel billet. As found by the Commission:

> *The Commission notes that all cooperating exporters are integrated manufacturers of steel products, including rebar. As such, the Commission acknowledges that these exporters do not purchase steel billet, but manufacture it themselves from raw materials including iron ore, coke or coking coal and scrap steel. However, as noted in Appendix 1, the Commission considers that the GOC influences in the iron and steel industry are wide ranging and affect competitive market supply of production inputs including (but not limited to) raw material inputs for steel billet. Therefore, the Commission considers it reasonable in respect of integrated producers to*

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7 As per the requirement of Section 269ZZE(2)(e) of the Act, and question 12 of the form approved under Section 269ZY of the Act.

substitute the exporters' steel billet costs with benchmark steel billet costs.

With respect, this does not reflect any legal consideration of the issue at all, and Hunan Valin rejects it entirely.

Hunan Valin disagrees with the substitution of the benchmark cost for steel billet in the determination of its normal value. No finding was made as to the competitive market cost of the raw materials that Hunan Valin did purchase – amongst which were iron ore, coal and coking coal – and in any case the record demonstrates that these inputs were recorded in the financial records of Hunan Valin at their actual costs and that those actual costs reasonably reflected competitive market costs.

10 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision[8]

The decision to determine Hunan Valin's costs of production using a substituted steel billet price was based by the Commission on its finding that the financial records of Hunan Valin did not reasonably reflect competitive market costs.

Axiomatically, it is not possible to determine that a cost did not reasonably reflect a competitive market cost – so as to then go on to substitute it in the cost of production as part of the exercise of determining the cost of production of the goods concerned – unless it is first determined that the exporter's cost was or was not a competitive market cost. A market generates prices by way of the interaction of the forces at work in that market, principally being the forces of supply and demand. In a market, the cost of a manufacturer in acquiring an input for production is the price of the party that supplied that input to the manufacturer. If there is no price, such as is the case where a manufacturer simply does not buy the input concerned, then there can be no determination made as to whether the cost for that input reasonably or unreasonably reflected competitive market costs.

In our view, the Commission admits that this is the case – perhaps unwittingly – in its attempt to justify its decision in the following sentence:

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8 As per the requirements of Section 269ZZE(2)(b) of the Act, and question 10 of the form approved under Section 269ZY of the Act.

> *However, as noted in Appendix 1, the Commission considers that the GOC influences in the iron and steel industry are wide ranging and affect competitive market supply of production inputs including (but not limited to) raw material inputs for steel billet.*

It is hard to tell what this means. However what it does tell us is that the Commission accepts that the alleged GOC influences in the iron and steel industry affect *competitive market supply* of *production inputs* including *raw material inputs for steel billet.* The use of the word *"including (but not limited to)"* cannot somehow capture the cost of steel billet itself when steel billet is not competitively supplied to Hunan Valin on the market *because Hunan Valin produces steel billet itself.* The Commission's focus in its "substitution" exercise must be on those costs in the financial records of the exporter in respect of which it can make a judgement about whether or not they reasonably reflect competitive market costs. The Commission based its determination on the alleged effect of GOC influences on the prices of the raw materials used by the exporters, finding that they were artificially low because of those influences. In that case, it is the costs of those raw materials that needed to be considered for substitution in the determination of the costs of production. Steel billet is not one of those raw materials. Without a market-generated cost in the first place, no judgement can be made, and no substitution can be so practised.

Accordingly, we submit that it was only those inputs purchased by Hunan Valin on the market that the Commission considered to be distorted by GOC influences that could be considered for the purposes of applying Regulation 43(2)(b), and which could be substituted in the Minister's determination of the costs of production under Section 269TAC(2)(c)(i) if the result of the consideration was that they did not reasonably reflect competitive market costs.

In this regard we note the following extract from Report 300:

> *The Commission considers that GOC-driven market distortions are not limited to the most significant key raw materials but also include the other inputs associated with the production of the steel billets. In responding to the exporters' submissions in relation to the Commission's decision to conduct an assessment of competitive market costs on steel billet levels, the Commission notes the following facts:*
>
> - *Unlike some of the products that form the basis of SEF reports Yonggang and Shiheng refer to in their submissions, rebar manufacturing requires a number of direct input materials, most of which can be assessed to be material in relation to calculation of cost to make and sell (CTMS) of billet. These are:*
>
> - *iron ore;*
> - *coking coal and/or coke;*
> - *coal;*
> - *various alloys (chromium, vanadium, magnesium, boron etc.);*
> - *pig iron;*
> - *natural gas;*

- *electricity;*
- *water;*
- *oxygen;*
- *nitrogen;*
- *steam;*
- *lime;*
- *dolomite;*
- *auxiliary materials and*
- *scrap steel.*

- *None of the exporters' CTMS or raw material purchases information contains sufficient details of these items for the Commission to be able to undertake a comprehensive analysis of all these inputs.*

- *Some of these raw materials are being sourced in various types and grades. For example, coal expenses are generally expressed as one figure for each product model in the CTMS spreadsheet but may actually contain a mixture of:*

  - *gas coal;*
  - *gas-fat coal;*
  - *fat coal;*
  - *high-sulphur fat coal;*
  - *lean coal;*
  - *coking coal;*
  - *high-sulphur coking coal;*
  - *anthracite;*
  - *North Korean coal;*
  - *soft coal and;*
  - *meagre lean coal.*

- *It is evident that each of these sub-groups of raw materials would have their own competitive market costs and often these costs are incomparable with any other sub-group's competitive market cost.*

- *Apart from the difficulties in identifying a reliable competitive market cost basis for all these different sub-groups of products, as the certain amount or proportion of all these sub-groups of raw materials are not known, an accurate substitution of these costs with competitive market costs is not possible.*

- *The Commission also observed that certain raw materials were being sourced in semi-finished or further processed forms from the Chinese domestic market. For example, the Commission verified that Chinese exporters were purchasing further processed iron pellets from their domestic market but record these purchases as iron ore in their accounting systems. This causes similar types of complexities in determination of competitive market costs and substitution of distorted costs with competitive market costs in a precise manner.*

In these extracts the Commission admits that the task that it understood it was required to undertake under the Regulation in relation to those raw materials was too difficult or too onerous for it to do, and that therefore it did not undertake the analysis and the consideration that was required. Certainly, Hunan

Valin was entirely cooperative, and provided all of the information as requested by the Commission, including as to its iron ore, coal and coking coal purchases. In its Exporter Questionnaire, Hunan Valin provided a detailed breakdown of the following raw materials in its CTMS:

> [CONFIDENTIAL TEXT DELETED – costs of raw materials reported by Hunan Valin in a confidential attachment to the Exporter Questionnaire]

Indeed, the only raw material that is *not* in Hunan Valin's cost of production of rebar is steel billet.

It is not apparent that any consideration was given by the Commission to the question of whether the reported costs reasonably reflected competitive market costs. Further, the raw material cost that was provided strongly supported the proposition that the cost of these raw materials did reasonably reflect competitive market costs. For example, the single most significant raw material, iron ore and iron ore fines, was purchased from [CONFIDENTIAL TEXT DELETED – number] countries. More than [CONFIDENTIAL TEXT DELETED – number]% of Hunan Valin's iron ore in the investigation period was purchased from Australia, more than [CONFIDENTIAL TEXT DELETED – number]% from [CONFIDENTIAL TEXT DELETED – country], and more than [CONFIDENTIAL TEXT DELETED – number]% from [CONFIDENTIAL TEXT DELETED – country]. Domestically sourced iron ore comprised [CONFIDENTIAL TEXT DELETED – number]% of the supply at costs which were within the range of the costs of the iron ore supplied from other countries. In terms of coal, Hunan Valin purchased from China and [CONFIDENTIAL TEXT DELETED – country], with the price of the coal purchased from [CONFIDENTIAL TEXT DELETED – country] being [CONFIDENTIAL TEXT DELETED – degree] cheaper than that purchased domestically.

The conclusions that we draw from this, and that we ask the Review Panel to also draw, are that the Commission had no basis to find that Hunan Valin's costs of production of rebar did not reasonably reflect competitive market costs. What the Commission did was to ignore the costs that Hunan Valin did incur, and instead made a blanket decision, apparently applicable to all Chinese exporters, that a foreign steel billet price would be substituted at a particular point in their cost of production regardless of whether the exporter purchased that input or not.

Hunan Valin also rejects the statement that

> *None of the exporters' CTMS or raw material purchases information contains sufficient details of these items for the Commission to be able to undertake a comprehensive analysis of all these inputs.*

The Commission never requested any information from Hunan Valin other than CTMS information and

information about purchases of major raw materials, being raw materials that constituted more than 10% of the total cost of production. The Commission's statement is not a legal justification for what was done. Adverse decisions cannot be made in an investigation like this on the basis of a lack of information, and certainly the "cure" for that lack of information cannot be and should not be the adoption of a substituted cost for an input that none of the exporters purchased.

Essentially, we think the Commission's approach has been to treat Hunan Valin using what the Commission considers to be "relevant information", of the type that might be used on the basis of a finding that an exporter operated in an "economy in transition". As we have already pointed out, the economy in transition provisions of the Act cannot be used in the case of exporters from China. The proper disciplines under Section 269TAC(2)(c) and its supporting Sections and Regulations must be used. Otherwise, the rule of law is not applied and has no meaning.

11 Correct or preferable decision

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[9]

The correct decision ought to have been that there was no evidence, and no finding made, that the financial records of Hunan Valin did not reasonably reflect competitive market costs. It was unlawful to substitute a steel billet price into Hunan Valin's costs of production. No findings that Hunan Valin's costs of production did not reasonably reflect competitive market costs were made nor can they now be made. Hunan Valin was fully cooperative and provided all of the information requested by the Commission. That information was not analysed or not properly analysed for the purposes of excluding it from the Commission's consideration. Nor, in our submission, could it have been excluded, although that is now not relevant. The key point is that any failure by the Commission to properly request, obtain and consider information cannot now be cured, and it is through no "fault" of Hunan Valin that this situation has arisen.

Thus, the reviewable decision concerning Hunan Valin's dumping margin was not the correct or preferable decision.

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9 As per the requirements of Section 269ZZE(2)(c) and (d) of the Act, and question 11 of the form approved under Section 269ZY of the Act.

The Review Panel is therefore requested to recommend to the Parliamentary Secretary that the normal value for Hunan Valin be worked out under Section 269TAC(2)(c) on the basis that there was no information before the Commission to determine that Hunan Valin's costs did not reasonably reflect competitive market costs and that therefore Hunan Valin's costs should be used.

On the correction of this error, and *only* this error (ie without taking into account the correction of the errors that are set out in C below) the dumping margin for Hunan Valin in the investigation period was [CONFIDENTIAL TEXT DELETED – number]%.

12 Material difference between decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision[10]

Presently, pursuant to the reviewable decision, the dumping margin in respect of Hunan Valin's exports to Australia during the investigation period was 15.2%. The dumping margin that results from the correction of the error explained above (and *only* that error) is [CONFIDENTIAL TEXT DELETED – number]%'

We submit that the difference between the outcomes of these two decisions is material.

We refer the Commission to "Conclusion and request", below, for the cumulative outcome of the correction of the errors identified in this application.

C Third ground –the amount of profit was calculated incorrectly and unlawfully

Introduction

As part of the decision to work out the normal value of the goods under Section 269TAC(2)(c), the Commission recommended in Report 300 that an amount of profit for the purpose of Section 269TAC(2)(ii) be worked out under Regulation 45(3)(b).

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10 As per the requirements of Section 269ZZE(2)(e) of the Act, and question 12 of the form approved under Section 269ZY of the Act.

According to the profit calculation spreadsheet pertaining to Hunan Valin that was used for the purposes of making that recommendation, a profit ratio of [CONFIDENTIAL TEXT DELETED – number]% was adopted.

Hunan Valin disagrees with the methodology adopted by the Commission and with the amount calculated.

10 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision[11]

The first ground of Hunan Valin's disagreement is that the Minister has erred in finding that Regulation 45(3) should be adopted for the purpose of the profit calculation. This is because the amount of profit could be worked out under Regulation 45(2).

Regulation 45(2) provides:

> *The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.*

In Report 300 the Commission proposes that Regulation 45(2) cannot be used, and that the amount of profit should be worked out under Regulation 45(3)(b), because the "*overall OCOT [ordinary course of trade sales] profitability is negative*" in relation Hunan Valin's domestic sales of rebar.

This finding is incorrect. This is because Hunan Valin established with the Commission that the overall "OCOT profitability" for its domestic sales of like goods during the investigation period was *not* negative. This was demonstrated by way of providing an updated "cost to make and sale" ("CTMS") spreadsheet to the Commission on 8 January 2016.

Hunan Valin provided this information to show that the CTMS information provided in Hunan Valin's response to the Exporter Questionnaire was prepared based on a general allocation method in relation to the selling expenses for both export (including Australian sales) and domestic sales. The updated CTMS spreadsheet differentiated the selling expenses incurred for export sales from those for domestic

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11 As per the requirement of Section 269ZZE(2)(b) of the Act, and question 10 of the form approved under Section 269ZY of the Act.

sales, thereby providing a more accurate allocation of the selling expenses applicable to the sale of rebar into the different markets. In that submission Hunan Valin demonstrated, based on the updated CTMS information, that Hunan Valin's domestic sales in the ordinary course trade were indeed profitable overall.

However the Commission refused to accept this information - not because the updated information was incorrect or otherwise unreliable, but simply because the information was provided after the issuance of the Preliminary Affirmative Determination ("PAD"), and because the information was perceived as a response to the Commission's view that Hunan Valin's overall OCOT profitability was negative:[12]

> *The Commission considers that the reasons put forward by Hunan Valin for seeking to amend its CTMS spreadsheets significantly are not compelling. The Commission notes that Hunan Valin provided the new set of CTMS data after the PAD was published, which meant that the new data would not be able to be verified. Based on the fact that it is not possible to verify the information in the new spreadsheets, the Commission considers that it cannot rely on the new information Hunan Valin provided on 8 January 2016 for calculation of Hunan Valin's normal values.*

We respectfully submit that this is not a valid reason to reject the information that was faithfully provided by Hunan Valin. The intention or purpose of Hunan Valin's decision to provide corrections to the information and to make it more accurate is irrelevant to the issue of whether the information provided by Hunan Valin was verifiable or reliable.

In any case, the statements that the data *"would not be able to be verified"* and that *"it is not possible to verify the information"* are incorrect. The information was provided by Hunan Valin on 8 January 2016. The Commission did not finalise and publish its verification outcomes in relation to any of the Chinese exporters until 18 January 2016. The SEF was not published until one month later, on 8 February 2016. The Commission's final recommendation was made in a report which we assume, from the non-specific date on the front cover, was provided to the Parliamentary Secretary in *"March 2016"*.

The fact is that the information provided by Hunan Valin was correct, verifiable, and reliable. However the Commission rejected the information because it considered the *"reasons"* given by Hunan Valin to provide the information were *"not compelling"*. The reason that Hunan Valin had for providing that information was to be fully participative and cooperative and to ensure that any dumping margin calculation worked out by the Commission was accurate and was not unfavourable to Hunan Valin.

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12 SEF 300, pages 37 and 38

Hunan Valin considers the Minister's decision to disregard the additional information provided by Hunan Valin to be incorrect and unreasonable.

The second ground of Hunan Valin's disagreement is that, apart from the error identified in the first ground, the amount of profit has not been worked out in accordance with Regulation 45(3)(b) as claimed by the Commission in Report 300.

The Commission claims to have calculated the amount of profit under Regulation 45(3)(b) of the Regulation for the purpose of normal value construction. Regulation 45(3)(b) provides:

> *(3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:*
>
> ...
>
> *(b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export*

However, Report 300 states that the actual amount of profit adopted was:

> *A rate of profit has been added using data related to the arms length sales of like goods in the ordinary course of trade as per subsection 45(3)(b)* [emphasis added]

That is, despite the citation and reference to the Regulation, the Commission has not acted in accordance with Regulation 45(3)(b), which requires the amount to be worked out by reference to the weighted average of the actual amounts realised by the other exporters, without the application of any OCOT test. If the Commission's description of its finding is correct, then the Commission has selectively used only the profit of the domestic sales transactions of those other exporters which passed the OCOT test.

It is well established that the amount of profit worked out under any of three methods prescribed under Regulation 45(3) requires the profit to be calculated based on *"the actual amounts realised"*, that is, taking into account both profit making sales and loss making sales, and not only certain kind of sales based on their profitability. This principle is also well recognised by the Commission itself:

> *There is no requirement to test for ordinary course of trade in any of these three alternatives, nor will the Commission read any ordinary course of trade requirement into them.*[13]

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13 Dumping and Subsidy Manual, page 48.

11 Correct or preferable decision

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[14]

On the basis of the first of the grounds we have addressed under C, we submit that the correct or preferable decision is that the amount of profit must be worked out under Regulation 43(2) based on Hunan Valin's domestic sales of the goods in ordinary course of trade, taking into account the additional information provided by Hunan Valin on 8 January 2016.

In the alternative, if the Review Panel disagrees with the correct or preferable decision that we have advanced in relation to the first ground, the correct or preferable decision is to calculate the amount of profit according to law, being Regulation 43(3)(b). This requires the Commission not to selectively limit its determination to the *"data related to the arms length sales of like goods in the ordinary course of trade"*. All domestic sales of like goods should be taken into account in determining the weighted average of the actual amounts realised by other Chinese exporters from the sale of like goods in the Chinese market.

For further detail of the correct or preferable decision, please see C12 below.

12 Material difference between decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision[15]

In relation to the first ground, the amount of profit worked out under Regulation 43(2) is [CONFIDENTIAL TEXT DELETED – number]%.

Presently, pursuant to the reviewable decision, the dumping margin in respect of Hunan Valin's exports to Australia during the investigation period was 15.2%. The dumping margin that results from the correction of the error explained above (and *only* that error) is [CONFIDENTIAL TEXT DELETED –

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14 As per the requirement of Section 269ZZE(2)(c) and (d) of the Act, and question 11 of the form approved under Section 269ZY of the Act.

15 As per the requirement of Section 269ZZE(2)(e) of the Act, and question 12 of the form approved under Section 269ZY of the Act.

number]%.

We submit that the difference between the outcomes of these two decisions is material.

In relation to the second ground, Hunan Valin does not have access to the sales data of the other Chinese exporters as obtained by the Commission during its investigation. Therefore it is not possible for Hunan Valin to advise the Review Panel of the precise numerical difference that the proposed decision would generate. However, in principle and based on Hunan Valin's understanding of the domestic market for the like goods, and its own circumstances, the proposed decision is likely to have the effect of significantly reducing the amount of profit, as compared to the amount worked out in the reviewable decision.

We refer the Commission to "Conclusion and request", below, for the cumulative outcome of the correction of the errors identified in this application.

Conclusion and request

The decisions to which this application refers are reviewable decisions under Section 269ZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Parliamentary Secretary and form part of the reviewable decision that Hunan Valin seeks to have reviewed.

Hunan Valin is an interested party in relation to the reviewable decision.

Hunan Valin's application is in the approved form and has otherwise been lodged as required by the Act.

We submit that Hunan Valin's application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct or preferable decisions that should result from the grounds that Hunan Valin has raised in the application, and their individual effect on the outcome, are dealt with in A, B and C above.

The cumulative outcome of the proposed decision in A and B and the proposed decision in C (first ground in C) in this application is a negative margin (no dumping) of [CONFIDENTIAL TEXT DELETED – number]%.

The cumulative outcome of the proposed decision in A and B and the proposed decision in C (second ground in C) in this application cannot be advised, for the reasons explained in C12 above.

Accordingly, being fully compliant with the requirements of the Act, Hunan Valin requests the Review Panel to undertake the review of the reviewable decision, as requested by this application, under Section 269ZZK of the Act.

The Review Panel is requested to recommend to the Parliamentary Secretary that the reviewable decision (being the decision to publish notices under Sections 269TG(1) and (2)) be revoked under Section 269ZZM(3)(b) insofar as the Parliamentary Secretary decided to publish those notices in relation to rebar exported by Hunan Valin. This request is based on acceptance by the Review Panel of the grounds advanced by Hunan Valin in A and B above, as well as in C (first ground). This request is also made in respect of acceptance by the Review Panel of the grounds advanced in A and B above, as well as in C (second ground) if the profit that is properly worked out under Regulation 45(3)(b) generates a dumping margin which is negative or *de minimis*.

In the alternative, if the Review Panel accepts only the ground advanced in either C (first ground) or C (second ground) in this application, then the Review Panel is requested to recommend to the Parliamentary Secretary that the reviewable decision (being the decision to publish notices under Sections 269TG(1) and (2)) be varied under Section 269ZZM(3)((b) such that the variable factor pertaining to Hunan Valin's normal value is changed to the amount worked out by applying the amount of profit under Regulation 45(2) or Regulation 45(3)(b) as the case may be.

Lodged for and on behalf of Hunan Valin Xiangtan Iron & Steel Co., Ltd.

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