



J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

21 July 2016

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

**REVIEW OF THE DECISION TO PUBLISH A DUMPING DUTY NOTICE ON EXPORTS OF
ROD IN COILS FROM CHINA**

Dear Panel Member,

This submission is made on behalf of Jiangsu Shagang Group Co., Ltd (Shagang) in response to the application by OneSteel Manufacturing Ptd Ltd (OneSteel) for a review of the decision to impose interim dumping duties on exports of rod in coil exported from China.

The submission also provides additional information in support of Shagang's own application for review.

Response to OneSteel Manufacturing's application for review of a reviewable decision

Ground 1 – Benchmark prices based on export market conditions

OneSteel disputes the decision to base the steel billet benchmark price on export market prices and claims that this approach is inconsistent with WTO jurisprudence and the Commission's own policy interpretations. OneSteel refers to Appellate Body reports involving *US – Softwood Lumber IV* and *US – Anti-Dumping and Countervailing Duties* as support for its position, although it is noted that OneSteel does not directly reference the findings of the Appellate Body in either case.

Whilst the Appellate Body's findings were made in the context of an examination of Article 14(d) of the Subsidies and Countervailing Agreement, Shagang does consider the views and interpretations of the Appellate Body to be relevant. In considering the question of what types of alternative benchmarks could be relied upon in a manner consistent with Article 14(d) of the SCM, the Appellate Body found in *US – Softwood Lumber IV*¹ that, where an investigating authority relies on an external benchmark, "it is under an obligation to ensure that the resulting benchmark relates or refers to, or is connected with, prevailing market conditions in the country of provision, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale, as required by Article 14(d)." The

¹ Appellate Body Report, WT/DS257/AB/R, para 106, page 43

Appellate Body further "*underscored the importance of making appropriate adjustments to ensure that alternative benchmarks reflect prevailing market conditions in the country of provision*".

The Appellate Body made no mention of whether domestic surrogate prices or export surrogate prices were preferred as OneSteel appears to be arguing. Instead and apparently overlooked by OneSteel, the Appellate Body provided clear guidance to investigating authorities looking to establish an external benchmark for the purposes of determining whether a subsidy had conferred a benefit. The Appellate Body identified required factors to be considered in achieving to meet the clear objective of establishing a benchmark that was relevant to and connected with the prevailing market conditions in the country of provision.

Ground 2 – Deduction of profit from benchmark price for steel billet

Shagang considers OneSteel's view and position on this issue to be unreasoned. The decision to make adjustment to the steel billet benchmark for profit is reasonably based upon the Appellate Body's interpretation that '*the resulting benchmark relates or refers to, or is connected with, prevailing market conditions in the country of provision, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale*'.

As noted by the Commission in REP 301, Shagang was an integrated steel producer that did not purchase steel billet but instead sourced the relevant raw materials necessary to produce steel billet. Therefore, Shagang's cost of steel billet would not incorporate or include an element of profit when transferred internally to be converted to rod in coils.

It is illogical then to compare and replace Shagang's cost of steel billet with a steel billet price inclusive of a profit margin achieved by the surrogate steel billet producer. For this reason, the Commission correctly identified the need for an adjustment to its surrogate benchmark, which would at the very least ensure that the benchmark reflected a cost of steel billet and not a price.

Ground 3 - Claimed adjustment for micro-alloys

Shagang considers OneSteel's claim for adjustment of micro-alloys used in the production of steel billet particularly extraordinary in light of the Commission's decision to reject all of Shagang's raw material and conversion costs relevant to the production of steel billet, and replace it with a surrogate benchmark price. For example, the Commission has disregarded all of Shagang's imported iron ore purchase costs which were sourced primarily from Australia and Brazil at prevailing international spot prices. Those iron ore costs are estimated to represent approximately █% of the total cost of producing steel billet. By contrast, the cost of relevant alloys account for a small fraction of the total cost of production of steel billet.

Additional information in support of Shagang's application for review of a reviewable decision

Shagang wishes to reiterate the views outlined in its application to the Review Panel that the Commission's approach to the rejection and replacement of all costs in the production of steel billet, including iron ore supplied by Australia's largest exporters at prevailing international spot prices, to be totally unsound and without any legal basis. By doing so, the Commission is endorsing and authorising a position and interpretation that allows for all costs of an exporter to be rejected where

a single cost, regardless of its relative significance, is found or considered to be affected by market distortion.

By any measure and reading of the relevant provisions of Australia's domestic legislation and the WTO Anti-Dumping Agreement, such an approach and practice is not permissible with the current framework applying to exports from market economies. If such an approach is accepted under the current dumping rules and guidelines applying to market economies, then this will surely lead to Australian industry applicants simply seeking higher dumping margins by highlighting doubts about a single and possibly immaterial costs item, for the sole purpose and expectation that it may result in all costs being rejected and replaced with an alternative surrogate benchmark.

As explained and found by the Panel in *EU – Biodiesel*, such an approach does not accord with the obligations of investigating authorities to determine costs on the records of the exporter where those records are kept in accordance with GAPP and reasonably reflect the costs of production.

Finally, in its application for review, Shagang highlights that the market situation finding outlined in REP 301 relies heavily on allegations of subsidisation without any evidence or findings of fact that subsidies affected Shagang's domestic selling prices or relevant costs of production. Report 301 concludes:

The Commission holds that the Chinese Government (including central, provincial and local governments) materially contributed to the excess supply of RIC in the domestic Chinese market and hence significantly influenced domestic price for Chinese RIC during the investigation period. This influence has occurred through the following mechanisms.

- *Chinese Government directives, subsidy programs and involvement in strategic enterprises.*
- *Taxation arrangements, including value add taxes and export rebates.*

Shagang again reiterates that ■% of its purchased iron ore was sourced from outside China at international spot prices. As such, Shagang's iron costs cannot be considered to be subsidised, and it is noted that OneSteel Manufacturing has not made any allegations in its current subsidy application against exports of rod in coil that iron ore is being purchased at less than adequate remuneration.

As such, there was no basis or evidence which would support a finding that Shagang's iron ore costs were distorted or did not reflect competitive market costs.

Yours sincerely,

John Bracic