

November 5, 2020

SUBMITTED BY EMAIL

PUBLIC

SIMA Registry and Disclosure Unit
Anti-Dumping and Countervailing Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
Ottawa, ON K1A 0L8

Dear Sir/Madam:

**RE: Corrosion-Resistant Steel
Request for Normal Value Review – COR 2018 IN
KG Dongbu Steel Co. Ltd.**

We represent ArcelorMittal Dofasco G.P. (“AMD”), a domestic producer of corrosion-resistant steel and a participant in the Canada Border Services Agency’s (“CBSA”) investigation into dumped Corrosion-Resistant Steel Sheet (“COR”) from South Korea (COR 2018 IN).

AMD has reviewed the public version of KG Dongbu Steel Co. Ltd’s normal value review (“NVR”) request, dated September 18, 2020. The CBSA should defer initiating any NVR for COR until price, cost and demand volatility associated with the global pandemic have stabilized. Dongbu’s request appears designed to take advantage of the recent decline in prices and costs in order to secure low normal values before prices and costs increase as the global economy recovers from the COVID pandemic.

In addition, we note that the CBSA Antidumping and Countervailing Duty Directorate is facing unprecedented circumstances and an extremely high workload involving proceedings with mandatory statutory deadlines in other priority proceedings under the *Special Import Measures Act* (“SIMA”). The Canadian government even passed extraordinary legislation to extend SIMA’s statutory timelines. In particular, the CBSA’s final determination for *Corrosion-Resistant Steel 2* (COR2 2019 IN) was extended by four months.

NVRs are discretionary proceedings that should only be undertaken in appropriate circumstances, taking into consideration not only market factors, but also the availability of resources to conduct NVRs given the demands associated with other priority SIMA proceedings. If the CBSA’s resources are currently stretched completing ongoing investigations, it should not initiate



discretionary NVRs in the current context unless compelling circumstances so require. Such circumstances do not currently exist in the present case.

Access to the Confidential Record

The domestic industry was not provided access to Dongbu's confidential normal value request. The principles of procedural fairness require that a party know the case to meet.¹ In all other SIMA proceedings, the CBSA balances this basic legal principle with the need to protect confidential business information by providing outside legal counsel that have submitted undertakings with exclusive access to the confidential record. In this case, however, the CBSA declined to provide access to counsel with undertakings on the basis that there is no official proceeding underway.

The CBSA's refusal to provide counsel with the confidential normal value review request undermines the object and purpose of making normal value requests fair and transparent by providing the domestic industry with the ability to comment on such requests. The COR Finding is for the benefit of the domestic industry and the domestic industry has an interest in any review of Dongbu's normal values. However, the domestic industry cannot comment on whether the facts warrant a normal value review when those facts are withheld. By depriving AMD and Stelco's counsel access to the confidential version of Dongbu's normal value request, the CBSA has infringed on the domestic industry's right to procedural fairness.

Initiating would be contrary to the purpose of normal value reviews and SIMA

Dongbu seeks to have its normal values updated to reflect prices and/or costs at the bottom of the current economic downturn. With prices now increasing, Dongbu appears to be trying to use this process to gain a competitive advantage in the Canadian market. Any normal values issued to Dongbu based on depressed prices and costs would be outdated as soon as they are issued and provide Dongbu with normal values that would not reflect the prices and costs that are expected to prevail in 2021.

The purpose of normal value reviews is not to ensure that exporters from countries subject to SIMA findings have low-priced access to the Canadian market. Rather, the purpose is: "...to ensure effective enforcement of the Canadian International Trade Tribunal's (CITT) orders and findings".² Timing a normal value review request to capture the bottom of the price cycle, at a time when current prices are rising, is patently inconsistent with this purpose.

¹ *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para 56.

² *Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)*, Memorandum D14-1-8, Issued July 19, 2019, available online: <https://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-8-eng.html> at para. 1.



Updating normal values to capture a period of extremely low pricing is also inconsistent with the purpose of SIMA. The Tribunal has consistently held that “the object and purpose of SIMA is to protect domestic industries from injury caused or threatened by the dumping or subsidizing of foreign goods”.³ The evidence described in and attached to this letter demonstrates that updating normal values at this time would result in normal values below prevailing market prices. This would expose the domestic industry to injury rather than protecting it.

The global and South Korean COR price has been in a state of flux

The global coronavirus pandemic, and corresponding economic downturn, have affected COR pricing and demand in every market.

Table 1 below reports CRU’s “Asia” price for corrosion-resistant steel, both past and forecast.

Table 1: CRU Steel Sheet Products Market Outlook September 2020 - Price Update (US\$/MT)⁴

	2019				2020				2021			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
USA	[
Midwest												
Germany												
Asia												
China												
India, Mumbai]

Table 2 reports MEPS South Korean price for hot-dipped galvanized steel coil, which includes COR, from January 2019 to September 2020, the latest date for which data is available to the domestic industry.

³ See e.g. *Gypsum Board*, GC-2016-001, Statement of Reasons (January 19, 2017), at para 37; *Caps, Lids and Jars*, PB-95-001, Statement of Reasons (February 26, 1996).

⁴ Confidential Attachment A: CRU Steel Sheet Products Market Outlook September 2020 - Price Update, Table s. 39.



Table 2: MEPS Hot-Dipped Galvanized Coil - Quarterly (Korean Won ‘000)⁵

Q1 2019	Q2 2019	Q3 2019	Q4 2019	Q1 2020	Q2 2020	Q3 2020
[]

Table 3 reports the same MEPS South Korea pricing data on a monthly basis for September 2019 to September 2020.

Table 3: MEPS Hot-Dipped Galvanized Coil – Monthly (Korean Won ‘000)⁶

Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20
High [
Low]

The tables report that global and South Korean corrosion-resistant steel prices bottomed out in Q2 and Q3 of 2020, falling approximately 9% compared to the pricing that prevailed in February and March of 2020.

In most markets, economic recovery began in Q3 2020 and is expected to slowly continue in 2021. As reported at Table 1, the Asia hot-dipped galvanized coil price rose quarter-on-quarter in Q3 2020, will continue to rise in Q4 2020 and into 2021. The CRU forecast pricing for Asia is for it to rise by 12% by mid-2021.

The basis of Dongbu’s normal value review request is that there was a recent downward trend in the price of COR and COR substrate. The recent price volatility is directly correlated to the pandemic induced global economic downturn. Current forecasts are that the price of COR is expected to recover slowly.⁷ It is unreasonable to recalculate prospective normal values in the middle of a pandemic induced economic upheaval, particularly when recovery is underway. Any new normal values calculated based on 2020 data would most likely require a second review at the

⁵ Confidential Attachment B: MEPS International Steel Review, Pricing (June 2020); Confidential Attachment C: MEPS International Steel Review (July 2020) at 3; Confidential Attachment D: MEPS International Steel Review (August 2020) at 3; Confidential Attachment E: MEPS International Steel Review (September 2020) at 3. Note: MEPS reports a monthly high and low price. The quarterly prices are the average of the high and low prices over the three months comprising a quarter.

⁶ *Ibid.*

⁷ Confidential Attachment A: CRU Steel Sheet Products Market Outlook September 2020 - Price Update, Table s. 39.



end of the pandemic once COR markets have normalized. Initiating a review at this time would result in inefficient use of CBSA resources and unnecessary costs to all parties.

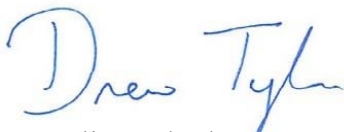
Further, the domestic industry objects to calculating any prospective normal values based on Q2 and Q3 2020 pricing, costs and profits. Q2 of 2020 was the bottom of an unprecedented economic downturn. It would undermine the objective of SIMA to permit exporters to take advantage of unprecedented economic turmoil by allowing them to set prospective normal values based on the lowest market pricing and costs during a pandemic induced economic downturn.

Normal value reviews are a means to address outdated normal values. The elapsed time since values were last issued is a stated consideration in CBSA's normal value review policy.⁸ However, CBSA should also consider the substantive question of whether updated normal values are likely to be more or less representative of present and near-term market conditions. Where holding a review would likely increase rather than narrow the gap between those values and prevailing prices, CBSA should decline to initiate a review. Conducting a normal value review at this time will increase the gap between prospective normal values and prospective South Korean prices and costs. In other words, if CBSA were to initiate a normal value review, it would be introducing rather than addressing a distortion in the market by providing Dongbu with normal values tied to an irregular pricing and costing event.

Conclusion

From time-to-time it is necessary to update prospective normal values. However, it is not appropriate to do so in the middle of a global economic downturn, when the period of investigation will include cost and price data that are clearly much lower than the costs and prices that are expected to prevail during the economic recovery. Further, the high work-load currently facing CBSA involving SIMA proceedings with mandatory timelines must be taken into consideration given priority at this time. We submit that CBSA should decline to initiate a NVR at this time.

Yours truly,



Conlin Bedard LLP

⁸ *Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)*, Memorandum D14-1-8, Issued July 19, 2019, available online: <https://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-8-eng.html> at para. 12(b).



List of Attachments

Attachment	Description
Confidential Attachment A	CRU Steel Sheet Products Market Outlook September 2020 - Price Update
Confidential Attachment B	MEPS International Steel Review, Pricing (June 2020)
Confidential Attachment C	MEPS International Steel Review (July 2020)
Confidential Attachment D	MEPS International Steel Review (August 2020)
Confidential Attachment E	MEPS International Steel Review (September 2020)

Corrosion-Resistant Steel Sheet
Request for Normal Value Review
COR 2018 IN
KG Dongbu Steel Co. Ltd.

**Public Summary of
Confidential Attachment A**

to the Letter of
ArcelorMittal Dofasco G.P.

Confidential Attachment A contains excerpts from CRU Steel Sheet Products Market Outlook from September 2020. This data is published by CRU, which is a subscription-based, copyright protected publication.

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Corrosion-Resistant Steel Sheet
Request for Normal Value Review
COR 2018 IN
KG Dongbu Steel Co. Ltd.

**Public Summary of
Confidential Attachments B-E**

**to the Letter of
ArcelorMittal Dofasco G.P.**

Confidential Attachments B-E contain excerpts from MEPS International Steel Review from June, July, August, and September of 2020. This data is published by MEPS, which is a subscription-based, copyright protected publication.

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