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Case No. AS0022

Comments on Statement of Essential Facts

**Optical Fibre Cables Imported into the United
Kingdom from China**

SDG Group

July 18, 2023

Non confidential version

CONTENT

I. INTRODUCTION	3
II. INCORRECT DETERMINATION OF SUBSIDY AND CALCULATIONS OF SUBSIDY AMOUNT.....	4
II.1 SDG	4
II.1 (1) Loan 2 (RMB xxxxxx)	4
II.1 (2) Loan 6 (RMB xxxxxx)	5
II.1 (3) Loan 7 (RMB xxxxxx)	5
II.2 SDGI	6
II.2 (1) Loan 12 (RMB xxxxxx)	6
II.2 (2) Land use right.....	7
III. EXTERNAL BENCHMARK OF BANK INTEREST RATE	8
IV. CONCLUSION	9

I. Introduction

1. In the context of subsidy investigation concerning imports of Optical Fibre Cables into the United Kingdom from China and the Statement of Essential Facts (SEF) issued by the Trade Remedies Authority (RA), Shenzhen SDG Information Co., Ltd. (SDG) and Shenzhen SDGI Optical Network Technologies Co., Ltd (SDGI) hereby provide the comments on the SEF.
2. For easy reference, we also use SDG Group as an abbreviation for both companies, except comments that are specifically related to either SDG or SDGI, we will indicate which comments are related to which SDG Group's company.
3. Since SDG Group commented on the issues of the UK industry and sampling procedures in regard to the anti-dumping investigation (please see submission of July 17, 2023, submitted to TRA), SDG Group will not repeat each of those argument points herein, unless it is necessary.
4. To be highlighted is that TRA did not explain the reason when two exporters who were initially sampled declined to further cooperate with TRA in the subsidy investigation, and why TRA did not make efforts to continue selecting additional exporters from the sample pool.
5. Moreover, there is no provision in either SCM Agreement or the UK basic Regulations concerning sampling in the subsidy investigation, although other WTO Members are applying sampling techniques in the subsidy investigation. However, they all try to make sure that sampling is representative and that the selection of the sampled exporters represent the largest percentage of the total export volume from China.¹
6. SDG Group does not dispute whether it is legally permitted to have sampling procedures

¹ For instance, in US trade remedy investigations, the Commerce normally proceeds two different sampling procedures, i.e., one group selected for purpose of dumping investigation and another group selected for purposes of subsidy investigation because investigation period is prescribed differently.

in subsidy investigation, the point is that TRA should have provided justification why sampling is needed and whether the investigation on one sampled exporter from the sample pool is reasonable, and in compliance with the purpose and objective of a trade remedy investigation.

7. Investigation on one sampled company has practically led to a duty rate equivalent to “country wide single duty rate”, which in SDG Group’s opinion, is in violation of the SCM Agreement.

II. Incorrect determination of subsidy and calculations of subsidy amount

8. In the calculation disclosure to SDG and SDGI, it is noted that TRA made several errors in treating certain subsidy amounts, which gave rise to incorrect findings.

II.1 SDG

II.1 (1) Loan 2 (RMB xxxxxx)

9. There is an error in determining Loan 2. As was explained in Annex II-D3 (column F with the title of purpose of loan), such loan was not used by SDG, but transferred to another related company, i.e., Shenzhen SDGI Optical Network Technologies Co., Ltd.
10. SDG Group provided proof of the bank transfer slip and submitted as Appendix D3 -2.
11. SDG Group submits that TRA must determine whether a person/entity has been factually bestowed, either directly or indirectly, a benefit through a financial contribution within the meaning of Article 1.1(a)(1) and (b) of the SCM Agreement.
12. Since such loan was not used and held at all by SDG, there was no benefit received by SDG under loan 2. SDG Group asks TRA to have it removed from the calculation in order to reflect the true situation of SDG in this regard.

13. It is understood that the reason SDG reported such loan was purely for the purpose of reconciliation. TRA is in possession of all the supporting documents pertaining to this issue and should delete this loan from the calculation.

II.1 (2) Loan 6 (RMB xxxxxx)

14. Respecting Loan 6, the situation is like Loan 2 mentioned above. As was explained in Annex II-D3 (column F with the title of purpose of loan), it was not used by SDG, but transferred RMB [xxxxxx] to Shenzhen SDG Dongzhi Technology Co., Ltd. and RMB [xxxxxx] to Shenzhen SDG Information Co., Ltd.

15. SDG would like TRA to refer to the bank transfer slip that had been duly submitted as Appendix D3 -6.

16. Consequently, this loan should not be treated as a financial contribution to SDG because it did not hold it and no benefit conferred on SDG, thus, loan 6 should also be deleted from the calculation.

17. SDG reported such loan just for the purpose of reconciliation.

II.1 (3) Loan 7 (RMB xxxxxx)

18. Concerning Loan 7, SDG explained in Annex II-D3 (column F with the title of purpose of loan), that it was not used by SDG, but transferred RMB [xxxxxx] to Changzhou SDGI – Huayin Wire and Cable Co., Ltd.; RMB [xxxxxx] to Sichuan ATOP Technology Co.,; RMB [xxxxxx] to Shenzhen SDG Dongzhi Technology Co., Ltd.; and RMB [xxxxxx] to Beijing Shenzhou Feihang Technology Co., Ltd.

19. Evidence of the bank transfer slips for those loans had been submitted to TRA as Appendix D3 -7.

20. For the same reason mentioned above, if such loan was not used and held by SDG, there was no benefit conferred on SDG under loan 7, it should therefore be deleted from the calculation.
21. SDG reported such loan just for the purpose of reconciliation.
22. Also, there is double counting for such loan in the calculation worksheet of SDG, although TRA listed separate repayment in column F (in fact, such repayment is not actual repayment, but the transfer amount to other companies, the repayment is RMB [xxxxxx] on 2021/5/28.)
23. Evidence is recorded in document number 11 in Appendix D3 -7, with opening principal in calculation formula is still the amount of RMB [xxxxxx]. Such error needs to be rectified based on the evidence.
24. Considering the above illustrated facts and in line with the SCM Agreement, SDG asks TRA to rectify those errors that are improperly treated those loans benefiting SDG.

II.2 SDGI

II.2 (1) Loan 12 (RMB xxxxxx)

25. As reported by SDGI in Table D3-Loan in Annex II, the Loan 12 of RMB [xxxxxx] issued by Bank of China is a short-term loan with a period of one year. However, in calculating the amount of benefit, the benchmark used by TRA to this short-term loan was the same as that applied to the long-term loan, i.e., 20.78%, which was obviously incorrect and unreasonable as the interest rate applicable to the long-term loan is usually higher than that applicable to the short-term loan.
26. By using the long-term loan interest rate to calculate the short-term loan, the amount of benefit calculated would be inflated, which is in contradiction to the benefit determination under SCM Agreement.

27. Since all the supporting documents had been provided to TRA, and being verified without any doubts raised by TRA, SDGI hereby requests TRA to correct the long-term benchmark applied to the short-term loan of SDGI.

II.2 (2) Land use right

28. By examining the calculation table for SDGI, it was found that the unit cost of acquiring the land use right for SDG Group is CNY [xxx] per square meter. SDGI is unable to learn how CNY [xxx] was calculated and by which methods due primarily to insufficient disclosure of the calculation.

29. SDGI could only work out on the basis of the land supporting documents submitted to TRA, in which the unit cost of acquiring the land use right for SDGI should be CNY [xxx] per square meter per year. The calculation details are as follows.

Calculation of Land Amount	
Payment for the land	xxxxxx
Payment for the land(supplementary)	xxxxxx
Deed tax(lump sum)	xxxxxx
Amortization by the end of 2021	xxxxxx
Provision in 2021	xxxxxx
Land Amount by the end of 2021	xxxxxx

Calculation of Tax Paid	
Stamp tax-lump sum	xxxxxx
Land use tax-annually	
2021	xxxxxx
2020	xxxxxx
2019	xxxxxx
2018	xxxxxx
2017	xxxxxx
2016	xxxxxx
2015	xxxxxx
Tax Paid by the end of 2021	xxxxxxx

(These tables were also reported in Table D4-Land use rights)

30. First, the land certificate indicates that the area of the land (No. A631-0107) is [xxxxxx]

square meter. The period for the land use right is 30 years. Second, the initial cost for acquiring the land use right paid by SDGI should be CNY [xxxxxxx (=xxxxxxx + xxxxxx + xxxxxx + xxxxxx)] (as highlighted in blue in the tables above). Then, the unit cost shall be CNY [xxx] per square meter per year (=CNY xxxxxxxxxxx/xxx m²/30 years) (“unit initial cost”). Third, in addition to the above indicated initial cost, which was paid in a lump sum, SDGI has to pay the land use tax annually. The land use tax paid for the investigation period is CNY [xxxxx] (as highlighted in green). Therefore, the unit land use tax shall be converted as CNY 3 per square meter per year (=CNY xxxxxx/xxxxxxx m²/1 year) (“unit land use tax”).

31. Based on the above, the unit cost for the land use right during the investigation period shall be the sum of unit initial cost and the unit land use tax, i.e., CNY [xxx] + CNY 3 = CNY [xxx] per square meter per year.
32. SDGI would like TRA to correct such inaccuracy based on the factual evidence submitted during the investigation to restore true situation of the company’s benefit amount.

III. External benchmark of bank interest rate

33. SDG Group considers that the external bank interest rate of 20.78% used by TRA to replace and determine the bank interest rate of China was extremely unfair.
34. Resorting external benchmark in a subsidy investigation to determine certain subsidy amount is subject to strict conditions and standards. External benchmark does not mean an investigating authority can do whatever it wants without respecting the legal requirements and obligations imposed.
35. In the OFC case, TRA had chosen only one country, i.e., Turkey’s bank interest rate to be a benchmark for SDG Group’s loans. In common sense, leaving aside the fact TRA used only Turkey as a source of benchmark, will a 20.78% bank interest rate be considered a

rate that is reasonably prevailing in those countries comparable with Turkey?

36. There are several publicly available channels to determine a reasonable external bank interest rate, SDG Group wants to know on what consideration TRA believes that 20.78% interest rate of Turkey is a fair and reasonable rate.
37. Before using 20.78% of Turkey's bank interest rate, has TRA considered the inflation factor of Turkey that may have caused such interest rate to be unrealistic and unfair to determine SDG Group loans interest rate? Concerning this important issue, SDG Group would like to request TRA to provide further detailed explanations (1) why Turkey is (alone) chosen; (2) whether TRA tried its best to look for an alternative interest rate; (3) will TRA believe that 20.78% interest rate to be a reasonable benchmark?
38. The bottom line is that external benchmark does not allow an investigating authority to select the highest (unreasonable) benchmark to determine a subsidy amount, unless the investigating authority offers substantiated justifications for choosing a particular benchmark.
39. SDG Group did not see TRA made any efforts to examine all sources of information before using 20.78% of bank interest rate, nor did it see TRA present reasoned explanations why such interest rate is reasonable and whether TRA made a proper comparison with other publicly available information regarding the bank interest rate.

IV. Conclusion

40. Based on the foregoing statements and illustrated procedural defects, SDG Group asks TRA to terminate the subsidy investigation without imposing measures for the following reasons:

- (1) TRA's absent justification relating to why sampling is used for the subsidy

investigation and why TRA focused on only SDG Group as a sampled exporter without selecting additional exporters from the sample pool when two initially selected sampled exporters decided to discontinue the cooperation with TRA, because the subsidy duty rate that is applied to all the non-sampled cooperating exporters based on SDG Group's rate alone violates Articles 14 and 19 of the SCM Agreement.

- (2) Improper treatment of certain loans as benefits conferred on SDG, which inflated the actual subsidy amounts.
- (3) Unjustified external benchmark of bank interest rate of 20.78% used to determine SDG Group bank loans.
- (4) Insufficient disclosure on certain subsidy programs calculations.

41. One important related issue that SDG Group would like to put forward to TRA is that, given the surrogate costs and domestic sale prices of SDG Group -- an investigation parallel with the subsidy investigation -- how did TRA avoid "double remedies" on the same product of OFC?

Submitted for and on behalf of SDG Group

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