OneSteel Manufacturing Pty Ltd
(Subject to Deed of Company Arrangement)
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7 July 2017

The Director

Operations 2

Anti-dumping Commission

BY EMAIL operations2@adcommission.gov.au

Dear Director,

Submission of the Australian industry

RE.: Reviews of anti-dumping measures applying to steel reinforcing bar concerning exports by Jiangsu Shagang Group Co., Ltd ("Shagang") (*Review No. 411*), Hunan Valin Xiangtan Iron & Steel Co., Ltd ("Hunan Valin") (*Review No. 412*), Zenith Steel Group Co., Ltd ("Zenith") (*Review No. 421*) and Jiangsu Yonggang Group Co., Ltd. ("Yonggang") (*Review No. 423*)

AND Reviews of anti-dumping measures applying to steel rod in coils concerning exports by Shagang (*Review No. 413*), Hunan Valin (*Review No. 414*) and Zenith (*Review No. 420*)

OneSteel Manufacturing Pty Ltd (**OneSteel**) is the domestic industry producing like goods to the goods the subject of the above six review inquiries.

At the outset, OneSteel considers that the near absence of export activity by the review applicants in the Australian market across the review period (1 April 2016 to 31 March 2017) raises a number of complex matters for the Anti-dumping Commission (**Commission**) to consider when re-ascertaining the variable factors relevant to the determination of duty.

In summary, the Commission must address the following risks in the course of conducting these reviews:

1. Given the limited number of export transactions, apply the transaction-to-transaction method under s 269TACB(2)(b)[1] to determine whether dumping has occurred and the levels of dumping;
2. In determining exporters' normal values under s 269TAC(2)(c)(i), select appropriate competitive costs of production of the goods outside China in a manner consistent with the WTO Appellate Body report in *EU – Biodiesel (Argentina)*;[2] and
3. Carefully examine the association between the exporter and importer of the goods, and any compensatory arrangements, including consideration as to whether or not the export sales of the goods may not be treated as arms-length transactions under s 269TAA(1)(c) by operation of s 269TAA(2).

[1] Unless otherwise expressly stated, references to statutory provisions are references to provisions of the *Customs Act 1901*

[2] Appellate Body Report, *European Union – Anti-Dumping Measures on Biodiesel from Argentina*, WT/DS473/AB/R, adopted 6 October 2016, AB-2016-4 *("EU – Biodiesel (Argentina)")*, p. 43 [6.74]

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Ascertain the variable factors and determine the levels of dumping based on the transaction-to-transaction method

OneSteel's assessment of the review applicants' export trade patterns may be summarised as follows:

Hunan Valin

Rebar		***Rod in coils***	
Export period	*Volume (tonnes)*	*Export period*	*Volume (tonnes)*
[redacted]	[redacted]	[redacted]	[redacted]

Shagang (including exports by related party Jiangsu Lihuai Iron & Steel Co., Ltd.)

Rebar		***Rod in coils***	
Export period	*Volume (tonnes)*	*Export period*	*Volume (tonnes)*
[redacted]	[redacted]	[redacted]	[redacted]

Zenith

Rebar		***Rod in coils***	
Export period	*Volume (tonnes)*	*Export period*	*Volume (tonnes)*
[redacted]	[redacted]	[redacted]	[redacted]

Yonggang

Rebar	
Export period	*Volume (tonnes)*
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Source: CONFIDENTIAL ATTACHMENT A

An important caveat to the above volume estimates is that they are based on OneSteel's best available information and are intended to indicate the low and infrequent volumes of trade for the like goods by the review applicants. It is expected that the above estimates [redacted]. For example, it is known that Yonggang is also an exporter of alloy round bar (not the goods) by reason of its involvement as an exporter/producer in *Dumping Investigation No. 384*. The Commission is encouraged to compare OneSteel's estimates to Border Force's commercial import database, to understand the precise volumes, values and pattern of trade of the like goods by the review applicants.

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OneSteel's above assessment of export trade patterns lend themselves to the transaction-to-transaction method of dumping margin calculation for the exporter review applicants under s 269TACB(2)(b). In line with the Commission's policy on the correct use of dumping margin determination methods, the few transactions present means that it is appropriate for a single export transaction price to be compared to the normal value (howsoever determined) for the same period.[3]

In terms of selection of the correct periods for determination of normal values, given the limited and sporadic export trade patterns and the variability in costs even across short periods, the Commission should consider using monthly unit normal values in order to yield a more accurate dumping margin calculation. The variability in costs is reflected in the movements in the previously selected competitive cost benchmark for use in the determination of the normal values under s 269TAC(2)(c)(i), namely the SBB Latin American billet benchmark based on Latin America export billet prices (FOB, Latin American port US$/t), refer *Figure 1* (below).

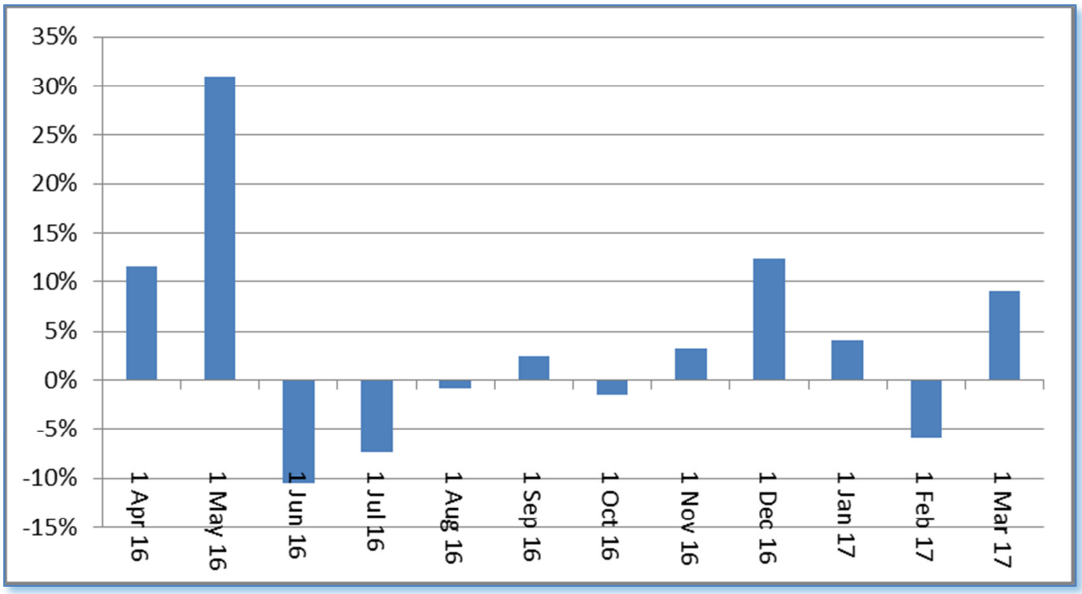

Figure 1 Variation in Latin America export billet prices (monthly averages) compared to previous monthly average price

Although OneSteel does not support the continued reference to export-price based indices (see below), the variability in the SBB Latin American billet benchmark – as the currently applicable basis to the exporters' substituted competitive input costs – demonstrates the likely reference point to which the review applicants would have had regard when making any pricing decisions for export to Australia.

[3] Anti-dumping Commission, *Dumping and Subsidy Manual* (April 2017), p. 119 [20.2]

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Selection of comparable competitive cost benchmark

OneSteel has previously submitted that the selection of an export-price based benchmark is *not* appropriate for use to arrive at 'the cost of production' for an exporter where a particular market situation has been found in the market of the country of origin – as has been found to exist in various Chinese domestic steel markets. OneSteel has consistently pointed to the need for the Commission to have regard to alternate domestic-based competitive markets for determining the cost of production.[4]

It is now well settled in Australian domestic law and international WTO jurisprudence that there is nothing to preclude the Commission from relying on 'information from other representative markets'.[5] However, OneSteel has consistently and repeatedly pointed to the importance of selecting comparable competitive markets, and adapting that information to reflect the costs of production in the country of origin, in a manner consistent with Article 2.2 of the *Anti-dumping Agreement*.[6]

OneSteel has always posited that the only competitive market costs of steel billets capable of being adapted to reflect the costs of production in the country of origin are those based on domestic competitive markets. The problem with a competitive cost benchmark based on export market values is that the distortionary effects of Chinese prices are directly introduced to the value of the benchmark, by virtue of the interaction between non-Chinese and Chinese prices in export markets.

Indeed, the Commission was cognisant of the risk of a competitive cost benchmark being affected by Chinese prices. Accordingly, in *Dumping Investigation No. 301* the Commission justified its selection of Latin American export billet prices in FOB terms as representative of the best available information on competitive market costs of steel billets for the following reasons:

> *"The Commission considers that the Latin American benchmark is a competitive benchmark that has not been identified as being affected by Chinese prices due to the following factors:*
>
> - *geographic distance from Asia limiting the distortionary effects of the GoC on the iron and steel industry;*
> - *significant production levels generating a 'deep' trade market and a relatively high level of competition; and*
> - *the existence of anti-dumping and trade remedy cases from Latin America on Chinese steel products."*[7]

Paradoxically, the Commission considered the correct issues, but reached the wrong conclusion - that is that Latin American billet export prices were not affected by Chinese prices.

For example, the *'geographic distance from Asia'* of a benchmark market may indeed be relevant to ***domestic*** market conditions, but is irrelevant when considering ***export-market*** prices,

[4] Refer here to submissions of OneSteel in *Dumping Investigation No. 300* at EPR Folio No. 300/054, p. 4; see also submission in *Dumping Investigation No. 301* at EPR Folio No. 301/033, p. 7; and the application of OneSteel to the Anti-Dumping Review Panel concerning rod in coils exported from China (19 May 2016) at p. 6 [10.1]; and the application of the former related party, Moly-Cop, in *Dumping and Subsidy Investigation No. 316* at EPR 316/038, p. 2; and the application of Moly-Cop to the Anti-Dumping Review Panel concerning grinding balls exported from China (30 November 2016) at p. 6.

[5] See *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309 at para. 111; and *EU – Biodiesel (Argentina) at [6.71] – [6.74].*

[6] *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*

[7] Report No. 301, *Dumping – Rod in Coils exported from China* [EPR Folio No. 301/038] at p. 17

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especially where such prices are quoted on FOB terms (as the Latin American billet price benchmark in fact is). As the quote is exclusive of sea freight, it is designed to compete on a head-to-head basis with other price quotes from anywhere in the world, including a sea-port in China.

Similarly, the Commission's reference to *'significant production levels'*, generating a 'deep' trade market, are all relevant to prevailing ***domestic*** Latin American market conditions, but do nothing to deflect the impact of the market distortions inherent in Chinese prices on the ***export-market*** based price quotes/trades.

Furthermore, the Commission's regard to *'the existence of anti-dumping and trade remedy cases'* in Latin American countries on "Chinese steel products" is again very relevant to the resistance of Latin American ***domestic*** markets to Chinese prices, but as the Commission no doubt understands, is completely irrelevant to the setting of ***export-market*** prices on FOB terms. In other words, the Commission has effectively identified all the reasons why export-based markets do not offer a suitable competitive cost benchmark unaffected by Chinese prices.

It is submitted that the issue of adapting the information of competitive cost benchmarks may be addressed in part by the selection of benchmark domestic prices from countries that are economically comparable (in terms of their levels of economic development) to China. Other administrations have addressed this inquiry by reference to the per capita gross national income (**GNI**) data as reported by the World Bank.[8]

Once an economically comparable market is identified, the Commissioner is then able to substitute the exporter/producer's billet costs with the costs of inputs utilised in producing the finished goods (billet costs) in the comparable market under s 43(8) of the *Customs (International Obligations) Regulations 2015* (***the Regulations***) to determine a normal value under s 269TAC(2)(c).

Originally, the Commissioner considered in *Dumping Investigations Nos. 300 and 301* that *"Latin American export billet prices in FOB terms represent the best available information on competitive market costs of steel billets"*.[9] However, since the current reviews coincide with contemporaneous dumping investigations[10] involving like goods produced in competitive, and potentially comparative markets, OneSteel considers that superior competitive cost benchmarks are now available to the Commission based on verifiable cost to make data for producers of billet in comparable markets.[11] The further advantage of utilising the verifiable cost information arising from *Investigations Nos. 416 and 418*, is that they will represent fully costed competitive benchmarks for billet inputs (exclusive of a profit margin). Indeed, the issue of subtracting the correct amount for profit on the SBB Latin American Billet price was considered imperfect by the Anti-Dumping Review Panel (**ADRP**) in *ADRP Report No. 40 concerning steel rod in coils exported from China*[12]:

> *"[117] I have concerns about the use of Chinese profit to convert the Latin American billet price to a cost, as expressed in the Reinvestigation Request and would have been open to consider the Latin American profit margin, if it was based on reliable data. However, it has become clear to me, for the reasons referred to above, that the Latin American*

[8] United States Department of Commerce, *Enforcement and Compliance Antidumping Manual*, 16 March 2015, Chapter 10 at p. 12.
[9] EPR Folio No.301/038 at p. 17
[10] *Dumping Investigation No. 416 concerning Steel Rod in Coils exported from Indonesia et Ors*, and *Dumping Investigation No. 418 concerning Steel Reinforcing Bar exported from Indonesia et Ors.*
[11] The investigation periods for *Investigations No. 416 and 418* match the review periods (1 April 2016 to 31 March 2017).
[12] Report of Member Blumberg dated 13 December 2016

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> *profitability is extremely unreliable, possibly to the point of being meaningless, due to the fact that it's derived from broad, general and public information of a few selected companies, with a wide range of profit margins, and is in relation to a wide product base, rather than in respect of steel billet."*

On the other hand, OneSteel's proposal has the advantage of not requiring any adjustment for profit, as it is based on the full cost of billet production in economically comparable markets, most closely aligned in terms of economic development to China.

<u>Source of economically comparable markets suitable for use and adaption to arrive at the 'cost of production'</u>

According to the World Bank's latest publication of *World Development Indicators*, China's gross national income per capita based on purchasing power parity (PPP, international dollars) for 2016 was $15,500.[13]

Therefore, the closest comparable markets (in terms of 2016, GNI per capita) for which verifiable billet cost information is available (following the initiation of *Investigation Nos. 416 and 418*) are Thailand ($16,070) and Indonesia ($11,220).[14]

Given that the Commission has previously found that it must conduct its assessment of competitive market costs at the steel billet level,[15] then once the Commission has selected a verifiable producer in a suitable economically comparable market, the Commission should substitute the aggregate of all inputs utilised in producing the steel billet in the competitive market and substitute those values for the unreliable Chinese costs to produce steel billet by adding the individual Chinese exporter/producer's conversion costs to convert the steel billet into the finished product (rebar or rod in coils) in order to calculate the finished product's cost to make.

Assessment of whether export sales to Australia are genuinely 'arms-length' under s 269TAA(1)(c) by operation of s 269TAA(2)

At the outset, OneSteel considers that the timing of these applications for review are motivated by the vulnerability of Australia's review provisions under Division 5 of Part XVB of the Act. The fact that the reviews are seeking a change in variable factors on limited, or non-existent, export sales volumes to Australia suggest that they are designed to exploit the difficulty the Commission will face when attempting to determine a meaningful dumping margin. Where no export sales are present, then the reviews will likely take advantage of the Commission's impossible task in setting any meaningful form of measures.

Where export sales do exist, then OneSteel urges the Commission to carefully scrutinise whether or not these transactions are genuinely arms-length. It is observed that s 269TAA(2) permits the Commission to treat export sales as not arms-length where the importer, either *"directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss"*. Therefore, OneSteel cannot begin to stress the importance of conducting a thorough importer verification exercise, design to fully and comprehensively test the profitability and recoverability of the on-sale of the imported goods into the Australian market. Should the Commission find that these on-sales were unprofitable and

[13] Source: http://data.worldbank.org/data-catalog/world-development-indicators (accessed, 1 July 2017)
[14] *Ibid.*
[15] EPR Folio No. 301/038 at pp. 13 -14.

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unrecoverable, then the Commission should not determine the export price under the s 269TAB(1)(a), but rather using the method of deductive export price determination under s269TAB(1)(b).

Conclusions

OneSteel considers that the Commission's response to the low or absent export sales history of the review applicants will set an important precedent for future review applications seeking to exploit the weaknesses of Australia's review of measures provisions.

The Commission's utilisation of the transaction-to-transaction method under s 269TACB(2)(b) to determine whether dumping has occurred and the levels of dumping, and the selection of shorter, monthly (not quarterly) normal value periods will help achieve a more accurate comparison between the limited export price information and normal values.

These reviews present the Commission with a perfect opportunity to improve its selection of appropriate competitive costs of production of the goods <u>outside</u> China in a manner entirely consistently with the WTO Appellate Body report in *EU – Biodiesel (Argentina)*. Therefore, OneSteel seeks the practice of export-price based so-called competitive benchmarks be abandoned in preference of comparable, domestic-based prices capable of adaption. The Commission will have verifiable cost information from such markets courtesy of the current investigations concerning like goods from other markets across an investigation period that matches the review periods applicable here.

Finally, OneSteel is concerned that the method of export price determination may ignore the existence of any association between the exporter and importer of the goods, and any compensatory arrangements. Therefore, the Commission should ensure that its verification program include a thorough consideration of whether the on-sales of the goods into the Australian market were either profitable or recoverable in terms of s 269TAA(2).

Should the Commission seek to discuss any aspect of this submission, please do not hesitate to contact the respondent Australian industry.

FOR AND ON BEHALF OF THE AUSTRALIAN INDUSTRY RESPONDENT

ONESTEEL MANUFACTURING PTY LTD