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Director Operations 2
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Dumping investigation into steel reinforcing bar exported by Jiangsu Yonggang Group

Dear Director

This submission is made on behalf of the Jiangsu Yonggang Group Co Ltd (Yonggang), in response to the Anti-Dumping Commission's (the Commission) findings outlined in Statement of Essential Facts Report No. 423 (SEF 423) on 20 December 2017.

1. Retrospective application of new legislative amendments

Yonggang wishes to raise its strong objections regarding the Anti-Dumping Commission's ("the Commission") proposed retrospective application of *Customs Amendment (Anti-Dumping Measures) Bill 2017* ("the Bill"), to the steel reinforcing bar review of measures which was initiated and undertaken well before the Bill was introduced to Australia's parliament. Yonggang submits that review 423 cannot be considered to have been undertaken immediately before the commencement of the amendments. In these circumstances, review 423 does not comply with the requirements of item 4 of the Bill, and as such, the introduced amendments should not be applied in that review.

Item 4 of the Bill provides that the amendments will apply to:

- (a) a review under Division 5 of Part XVB of the Customs Act 1901 for which an application is lodged, or request is made, on or after the commencement of this Schedule;
- (b) such a review that was being undertaken immediately before the commencement of this Schedule but for which a declaration in accordance with subsection 269ZDB(1) of that Act had not been made at that time;
- (c) an application for such a review that was lodged, or a request for such a review that was made, before the commencement of this item but for which a notice of a review under subsection 269ZC(4), (5) or (6) of that Act had not been made at that commencement. [Emphasis added]

It is clear then that in the case of review 423, the introduced amendments outlined in the Bill should only be applied to those reviews that were 'undertaken immediately before the commencement of

this schedule'. The term '*immediately*' should be interpreted as applying only to reviews initiated after the Australian Government had announced its intention to amend the Act, by introducing the bill to Parliament on 13 September 2017, and not to all reviews underway at the time of amendments commencing, as the Commission appears to be interpreting.

Had the Australian Government intended for the amendments to apply to all reviews underway at the commencement of the schedule, there would have been no need to include the word '*immediately*' in defining the retrospective application of the amendments. In the case of review 423, the Commission appears to be reading item 4 of the Bill as applying to a '*review that was being undertaken before the commencement of this Schedule*' by effectively removing the effect and relevance of the term '*immediately*'.

In Yonggang's view, the Australian Government intended the amendments to be limited only to reviews initiated immediately prior to the commencement of the schedule, to mitigate any adverse impact arising from the retrospective application of the amendments. In so doing, it would allow for the legitimate and reasonable expectations of interested parties to be observed by ensuring that the retrospective amendments only applied to those reviews where the amendments were capable of being known and complied with.

2. Factors affecting Yonggang's pattern of trade

As SEF 423 highlights, for Yonggang to be considered a 'low volume exporter' in accordance with the newly introduced subsection 269TAB(2A), the Minister must have regard to (i) previous volumes of exports by that exporter, (ii) patterns of trade for like goods, and (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

(i) previous volumes of exports by that exporter

In SEF 423, the Commission states that '*Yonggang has previously exported the goods prior to the review period, during both the original investigation period and subsequently thereafter, and in relatively higher volumes than that recorded during the review period.*'

The Commission's preliminary finding with regard to comparison of Yonggang's original and contemporary export volumes is highly misleading and distorting. In drawing conclusions on relativities in export volumes, it is important to bear in mind the size of the relative markets and production capacities, especially when undertaking a comparison of such small volumes.

For example, the Commission found in the original investigation in REP 300 that the Australian market for steel reinforcing bar was approximately 900,000 tonnes, and increased to approximately 1,000,000 tonnes during the investigation period of the current investigation (case 418) from Greece, Indonesia, Spain, Taiwan and Thailand, which mirrors that of the current review 423. Based on Yonggang's export volumes during these two investigation periods, its volumes represented approximately [REDACTED]% and [REDACTED]% of the Australian market, during case 300 and review 423 respectively. Likewise, relative to its total production capacity of steel reinforcing bar, Yonggang's actual exports during the two specified periods of investigation accounted for a miniscule [REDACTED]% and [REDACTED]%, during case 300 and review 423 respectively.

Yonggang therefore submits that its export volumes to Australia continued to remain negligible during the current review period.

- (ii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

With regard to factors affecting patterns of trade, the Commission states that *'it does not have any information regarding factors outside the exporters' control.'* Yonggang disputes this conclusion and notes the Australian industry' claims and the Commission's findings in the current investigation into steel reinforcing bars exported from Greece, Indonesia, Spain, Taiwan and Thailand (SEF 418). The period of investigation for case 418 mirrors that of review 423 and therefore the Commission's findings are directly relevant and pertinent to understanding the factors affecting the Australian market and the consequential impact on Yonggang's pattern of trade.

In its application, the Australian industry producing steel reinforcing bars highlights that the goods are *'a commodity product which, when having similar grade and dimension, are interchangeable regardless of origin'* and *'competes primarily on the basis of price'*. Similarly, the Commission has found that the commodity nature of steel reinforcing bar indicated a willingness by parties to switch between import sources, and *'due to the degree of price sensitivity in the rebar market, price competition is a major condition of competition between the imported goods.'*

Given these confirmed market dynamics, the high price sensitive competition and substitutability between imports, the price of steel reinforcing bar imports from the countries subject to investigation in case 418 will have a direct impact on Yonggang's pattern of trade to Australia which is outside of its control.

SEF 418 found that exports from the subject countries had dumping margins which ranged from - 2.2% to 42.1%. Yonggang understands that its import customer during the original investigation (case 300), [REDACTED], has switched the predominant share of its import volumes to exporters under investigation, which further supports the view of the ease with which importers are willing and able to switch suppliers in response to competitive price offers.

The broader switch of imports from China to the countries subject to investigation is demonstrated in the table below showing a sharp increase in the market share during 2016-17 of imports from the countries subject to investigation. This is also confirmed by the Commission which found there market share increased significantly in 2016-17 for countries and exporters subject to the investigation, and declined in 2016-17 for countries that are not subject to this investigation, including countries that are currently subject to measures.

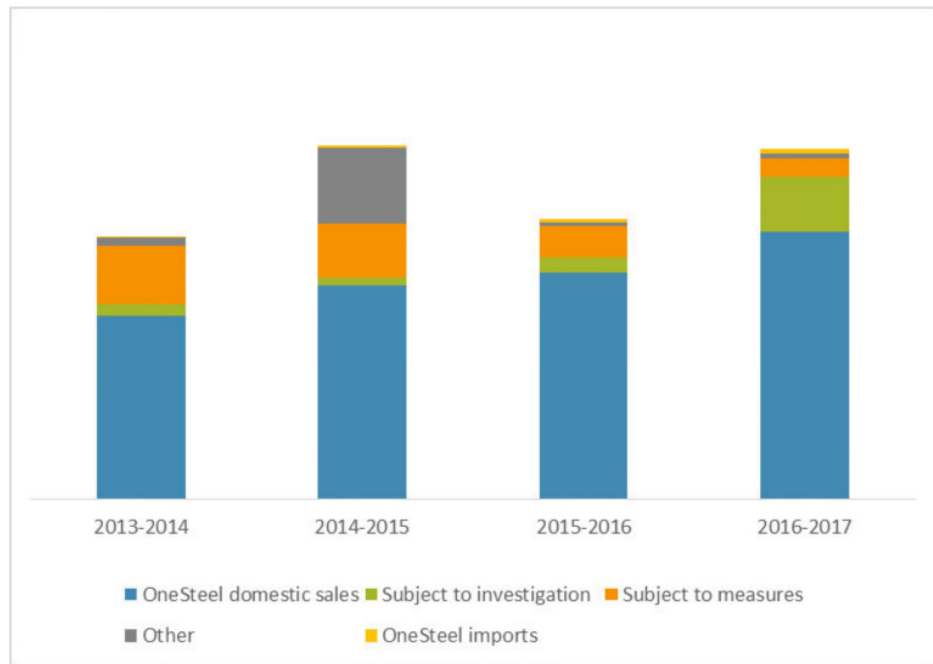


Figure 2: Australian market for rebar (tonnes)

Therefore, the Commission's findings in SEF 418 support the view that dumped and undumped imports from the countries subject to investigation have directly impacted Yonggang's pattern of trade by encouraging its previous import customers to purchase more of its import requirements from alternative export sources. These are facts supported by information gathered and verified by the Commission. It is also a fact that the prices of imports from these alternative import sources are outside the control of Yonggang.

Therefore, it is clear that Yonggang's reduced volumes during the review period are directly a consequence of import customers switching their purchases of steel reinforcing bar to import sources from countries not subject to measures. In those circumstances, the evidence does not support a finding that Yonggang meets the criteria for being considered a 'low volume exporter', as evidence confirms that factors existed during the review period which affected its patterns of trade for like goods and which were not within its control.

3. Identified errors in preliminary dumping margin calculations

a) Subtraction of a rate of profit from the selected external benchmark.

In the original investigation into steel reinforcing bars from China, the Commission determined an billet benchmark price '*with the corresponding Latin American FOB level steel billet export price from Platts for the month minus an average rate of profit for billet sales the Chinese exporters realized for the sale of billets in their domestic market.*' [emphasis added]. In support of its decision to deduct a rate of profit from the billet sales prices relied on for establishing the benchmark, the Commission stated:

... the Commission stresses that the selected benchmark (Latin American FOB level export prices) reflects the sales prices of steel benchmarks in competitive markets. The Commission considers it reasonable to take out the verified average profit rate realised by Chinese exporters from sales of steel billets in order to calculate the competitive market costs of steel billets.

On appeal by the local manufacturer to the Anti-Dumping Review Panel (ADRP), the ADRP Member considered the issue and concluded:

I have reviewed the information before the ADC and consider it reasonable to adjust the price to enable it to be suitable as a 'cost element' in the development of a cost to make rebar. I can find no limitation in the legislation which precludes this approach.

Therefore, in the ascertaining normal value in this current review, Yonggang submits that the Commission must consistently apply its methodology for determining an adjusted billet benchmark price which can be considered to be a reasonable and reliable substitute for a Yonggang's billet raw material cost element. It is noted however that SEF 423 makes not comment on whether such adjustment, consistent with the Commission's previous approach and supported by the findings of the ADRP, has been undertaken in determining and substituting the benchmark for Yonggang's own billet costs.

Yonggang also understands that the billet costs submitted by each of the cooperating exporters from the current steel reinforcing bar and rod in coil investigations from Greece, Indonesia, Korea, Spain, Taiwan, Thailand and Vietnam, reflect purchase prices which would necessarily incorporate an amount of profit by the seller of the billet.

Therefore, Yonggang requests the Commission to clarify its approach to determining the billet benchmark in this review and confirm whether any adjustment for profit was made to ensure a proper substitution with Yonggang's actual billet costs. If the Commission confirms that no such adjustment was made in its preliminary dumping margin calculations, then it is urged to ensure consistency with its previous methodology and reasoning, and deduct the ■% rate of profit determined in the original investigation.

b) Incorrect calculation of timing adjustment.

Subsection 269TAB(2G)(a) of the Act requires that the export price of goods exported to Australia has been ascertained under subsection (2B), adjustment is necessary due to those exports (on which the export price is based) relating to earlier times. In calculating the timing adjustment, the Commission has compared the simple average of steel reinforcing bar prices over the original investigation period (1 July 2014 – 30 June 2015) to the simple average of the current review period (1 April 2016 – 31 March 2017). In doing so, Yonggang's ascertained export price from the original investigation period has been adjusted downwards taking account of the 1.1% decrease in steel reinforcing bar prices between the two specified periods.

However, this proposed approach by the Commission disregards and ignores the actual timing of Yonggang's exports during the original investigation period in estimating an adjustment which accurately reflects the movement in prices between the date of export of the original exports and the contemporary export prices for review 423.

To highlight more clearly, the table below shows the calculation of the timing adjustment undertaken by the Commission in this review, by comparing the simple averages of steel reinforcing prices between the two periods. Against the quarterly steel reinforcing bar prices relied upon by the Commission for the original investigation period, Yonggang's corresponding export volumes of steel reinforcing bar are identified. It shows that Yonggang did not export any steel

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reinforcing bar in the [REDACTED]. It also shows that almost [REDACTED]% of Yonggang's export volumes were exported in the [REDACTED].

[CONFIDENTIAL TABLE DELETED]

Therefore, by relying on a simple average and ignoring the actual volumes of exports in the corresponding quarters of the original investigation period, the Commission's timing adjustment erroneously estimates that steel reinforcing bar prices would have fallen. By contrast, using a weighted average method demonstrates that Yonggang's steel reinforcing bar prices would have been considerably higher ([REDACTED]%) during the current review period by taking into account the movement in prices in the actual quarter in which the goods were exported.

Yonggang therefore requests the Commission to correct its timing adjustment calculation by taking into account Yonggang's actual export volumes in the relevant quarter during the original investigation in calculating a weighted average steel reinforcing bar price for the original investigation period.

Yours sincerely

John Bracic