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The Director
Operations 2
Anti-Dumping Commission

BY EMAIL operations2@adcommission.gov.au

Dear Director,

Review Inquiry Nos. 411, 412 and 423 (*steel reinforcing bar exported from China by Jiangsu Shagang Group Co., Ltd., Hunan Valin Xiangtan Iron & Steel Co., Ltd. and Jiangsu Yonggang Group Co., Ltd.*): Australian industry's response to exporter submissions

OneSteel Manufacturing Pty Ltd, trading as *Liberty OneSteel*, has reviewed the submissions of the exporters to *Statement of Essential Facts Nos. 411, 412* and *423* (**the SEF**) and makes the following observations in response to the corresponding headings and sub-headings of the respective exporter submissions.

SUMMARY

Liberty OneSteel has considered the submissions of Jiangsu Shagang Group Co., Ltd. (**Shagang**), Hunan Valin Xiangtan Iron & Steel Co., Ltd. (**Hunan Valin**) and Jiangsu Yonggang Group Co., Ltd. (**Yonggang**). The submissions contain the following errors of law and fact:

- the exporters' attempted statutory interpretation of the commencement provisions of the *Customs Amendment (Anti-Dumping Measures) Act 2017* (***Amendment Act***) is flawed, and the amended provisions under s 269TAB properly apply to the current review inquiries;
- the exporters demonstrate a failure to understand the differences between a competitive benchmark based on price and cost information. Therefore, given the changed competitive cost benchmark applied in the current reviews, the request for a deduction for profit of billet sales is unsound and should be rejected;
- in the current review inquiries, the exporters made no exports during the review period, therefore there is insufficient information to ascertain the export price under subsection 269TAB(1).[1] The exporters' interpretation of s 269TAB(2A)(b) is flawed and unsound; and
- the exporters' submissions provide tacit support for the Australian industry's proposed methodology for determining a timing adjustment factor to the export prices determined under S 269TAB(2B) on the basis that it is calculated from verified, relevant information.

Accordingly, Liberty OneSteel considers the Commission's determination of these matters in the SEF as representing the correct and preferable recommendation to the Parliamentary Secretary. With respect to those various matters pertaining to confidential evidence between the Commission and the respective exporters, Liberty OneSteel feels constrained in its ability to comment on the substance of these claims due to the level of redaction in the exporters' submissions and the lack of disclosure in the underlying verification visit reports.

[1] References to statutory provisions are to provisions within the *Customs Act 1901*, unless otherwise specified.

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SUBSTANTIVE SUBMISSIONS

A. JIANGSU SHAGANG GROUP CO., LTD. (EPR FOLIO NO. 411/013, 17 January 2018)

"1. Retrospective application of new legislative amendments"

As we understand the exporter's submission, its consultant objects to the application of the amendments made by the *Amendment Act* on the grounds that *"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'"*. The consultant then attempts to conflate *"a review that was being undertaken immediately before the commencement of"* of the amendments, with *"reviews initiated immediately prior to the commencement of the"* amendment.

With respect, we fail to see any redundancy in the use of the word "immediately" by the Parliament. In fact, on the ordinary meaning conveyed by the text, the intention of the Parliament was to cover all review inquiries that were "being undertaken", as distinct from 'initiated' immediately before the commencement of the amendment. The review may have been 'initiated' many months earlier, i.e. not immediately prior to the amendments' commencement, but because the review was "being undertaken immediately before" the amendments' commencement (i.e. on the day before), then the amendments properly apply to such reviews.

Applied here, *Review Inquiry Nos.411, 412 and 423* are all reviews to which the Parliament intended to apply the operation of the amendments, i.e. they were all reviews being undertaken immediately before the commencement of the amendments. The provisions of the *Amendment Act* commenced on the day after receiving Royal Assent, specifically, 31 October 2017. As at 30 October 2017, the reviews were being undertaken, i.e immediately before, and as such the Commission was right to apply the amendments to these inquiries.

Had the Parliament intended the *Amendment Act* to apply only to reviews 'initiated' immediately before the commencement, then the ordinary rules of statutory interpretation would demand that some means of referencing the instruments of initiation be drafted into the language of s 4(b) of the *Amendment Act*. Clearly, there was no such intention, and so s 4(b) properly applied to the current review inquiries. In fact s 4(c) expressly references the instruments of initiation (*"a notice of a review under subsection 269ZC(4), (5) or (6)"*), where it is there the Parliament's intention to apply the amendments to applications lodged prior (but not initiated) to the commencement date.

"3(a) Subtraction of a rate of profit from the selected external benchmark"

Liberty OneSteel is surprised that the exporter purports to make this submission, as it demonstrates a lack of understanding between the use of steel billet prices and steel billet costs – the former, possibly being sold on a profitable basis, and the latter, reflective of costs alone.

In *Dumping Investigation No. 300*, the Commission applied the Latin American Billet FOB export prices from Platts as the competitive benchmark for steel billet costs. This benchmark was based on FOB selling prices. In *Dumping Investigation No. 301* (rod in coils ex China), the Commission there considered that as these were selling prices, it was reasonable to *"to deduct the verified average profit rate realised by Chinese exporters from sales of steel billets in order to calculate the competitive market costs for steel billets"*. Liberty OneSteel has consistently objected to this approach.

However, in contrast to the original investigation, in the current review inquiries, the Commission is no longer considering selling prices as the competitive benchmark for steel billet costs, but rather, actual, verified steel billet costs:

> *"For the purpose of these reviews, the Commission has available to it verified steel billet costs obtained from cooperating exporters and manufacturers in Investigations 416 and 418. The Commission considers that in the current case these verified costs most accurately reflect the cost of production of steel billet relevant to the manufacture of the goods exported to Australia during the review period."*[2] [emphasis added]

Therefore, as the Commission is now basing its competitive benchmark for steel billet costs on the verified costs of production, and not selling prices, no adjustment needs to be made for a rate of profit on steel billet sales.

The Commission should reject the exporter's claimed deduction to benchmark steel billet costs, as the methodology has changed since the original investigation.

"3(c) Incorrect calculation of timing adjustment"

At the outset, Liberty OneSteel finds it difficult to comprehend the exporter's suggestion that *"Shagang is unaware of Yonggang's original export information"* given that Yonggang is 25% owned by Shagang[3] since 2007.[4] The related party nature of these 'two' exporters was confirmed by the European Commission (**EC**) in its dumping investigation concerning *high fatigue performance steel concrete reinforcement bars exported from China*, where the EC found in its provisional and definitive determinations that:

> *"(22) Two of the cooperating groups, Jiangsu Yonggang and Jiangsu Shagang, are related through common ownership of one of the exporting producer of the HFP rebars, which was admitted in the questionnaire replies of both groups...*
>
> *"(23) With regard to this claim [that neither exporter was involved in each others' decision making processes, lack of operational link whatsoever, separate production lines and completely independent sales distribution channels in the domestic and international markets], taking into account the nature and strength of the relation between the groups, namely the fact that one of the companies of one group is the biggest single shareholder in the main producer of the product concerned of the second group, and that the former company's officials are present in the main statutory bodies of the latter company, the Commission preliminarily concludes that both groups should be treated as related..."*[5]

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[2] SEF No. 411, 412 & 423, at p. 22.
[3] https://www.steel.org/~/media/Files/AISI/Reports/Steel-Industry-Coaliton-Full-Final-Report-06302016 (accessed 31 January 2018) at p. 132.
[4] http://www.steelonthenet.com/kb/history-shagang.html (accessed 31 January 2018).
[5] http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154183.prov.en.L23-2016.pdf (accessed 31 January 2018 at [22]-[23] and http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1246&from=EN (accessed 31 January 2018) at [24] and [25].

Liberty OneSteel considers the exporter's submission a vindication of the Australian industry's submission dated 10 January 2018,[6] wherein it was submitted that the inherently weighted average export price in the Australian market during the original investigation period be compared to the weighted average export price for the Australian market during the review period. We consider this approach the most reliable given its dependence on verified information. Furthermore, it is an inherently relevant enquiry given its comparison of the weighted average export price into the Australian market between the two periods. Unlike the exporter's submission, the Australian industry's submission on this 'proposed methodology' has not been so heavily redacted so as to render a reasonable understanding of the substance of the claim incomprehensible.

B. Hunan Valin Xiangtan Iron & Steel (EPR FOLIO NO. 412/014, 17 January 2018)

"1. Retrospective application of new legislative amendments"

Liberty OneSteel refers to and repeats its response to this claim in *Section A.1* (above).

The exporter's submission is an unsound interpretation of the *Amendment Act* and should be dismissed.

"2. Factors affecting Valin's pattern of trade"

The exporter has misinterpreted s 269TAB(2A). The question for the Parliamentary Secretary is whether *"there is insufficient or unreliable information to ascertain the [export] price"* [emphasis added].[7]

Where there is an "absence" of exports, then there is "insufficient" information to ascertain the exporter price. Where this is a "low volume" of exports, then it must be decided whether there is "insufficient or unreliable" information having regard to the factors set out in sub-paragraphs (i) – (iii). This interpretation is clearly consistent with the Explanatory Memorandum to the *Customs Amendment (Anti-Dumping Measures) Bill 2017* (**the Bill**), which provides in relevant part:

> *"12. If the Exporter made no exports during the period being examined by the review, there is insufficient information to ascertain the export price under subsection 269TAB(1). If the Exporter made a low volume of exports during the review period the Minister must consider whether or not to determine that the information provided by the Exporter in relation to those exports is insufficient or unreliable to ascertain an export price. The Minister must consider the list of factors at new paragraphs 269TAB(2A)(b)(i)-(iii) when making that determination."* [emphasis added][8]

Applied here, the Commission has concluded that there was an "absence" of exports by the exporter during the review period, in other words there was insufficient information to ascertain the export price:

> *"...Commission has found that Hunan Valin did not export the goods to Australia during the review period..."*[9]

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[6] EPR Folio No. 411/012.
[7] Paragraph 269TAB(2A)(b)
[8] Explanatory Memorandum, *Customs Amendment (Anti-Dumping Measures) Bill 2017*, pp. 30 – 31.
[9] SEF No. 412, p. 11.

Therefore, the exporter cannot also be a "low volume" exporter. The exporter has taken the Commission's comments concerning testing the sufficiency and reliability of export sales out of context. The Commission was simply stating the alternate proposition that:

> *"[f]or Hunan Valin to be considered a 'low volume exporter' in accordance with 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."*[10]

After testing the alternate proposition, the Commission also concluded that the exporter can also be considered a "low volume" exporter. In Liberty OneSteel's submission, this additional testing of sufficiency and reliability of low volumes of exports is good administrative practice, but in the case of an absent exporter (as in this case), unnecessary.

Irrespective of whether or not the exporter was an 'absent 'or a 'low volume' exporter during the review period, the Commission's extensive analysis of the latter demonstrates that the Commission has adequate considered all three factors pertaining to 'low volume' exports. The Amendment Act and the Explanatory Memorandum do not point to a hierarchy when considering the factors, or that the presence of all three are necessary to satisfy the Parliamentary Secretary that the 'low volume' of exports are unreliable or insufficient. However, the exporter seeks to point to changes in the pattern of trade as conclusive that its (hypothetical) 'low volume' of exports are in fact reliable and sufficient to determine export price under s 269TAB(1).

The suggestion by the exporter that the 'low volume' of exports during the review period is "beyond its control" defies belief. The exporter competes on price, and the exporter may overcome its absence from the Australian market by adjusting its price to Australian market conditions. In other words, the exporter may do exactly what the legislation permits the Minister to do under s 269TAB(2B) (with adjustments under s 269TAB(2G)) in the exporter's absence or low volume, that is:

> *"to reflect what the export price would have been had there not been an absence or low volume of exports"*[11]

In other words, to suggest that low volume exports to the Australian market on the basis of export price offers by the exporter constitutes a factor "beyond its control" denies the new statutory regime of any purpose when the ordinary meaning of the text is taken as a whole.

Accordingly, even if the Commission considers that the exporter was responsible for "low volume exports of the goods", instead of an "absence" of exports, then the suggestion that its export price was a factor "beyond its control" ought to be rejected.

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[10] SEF No. 412, p. 12.
[11] Subsection 269TAB(2G)

"3(a) Subtraction of a rate of profit from the selected external benchmark"

Liberty OneSteel refers to and repeats its response to this claim in Section A.3(a) (above).

The exporter's submission is unsound and demonstrates a lack of understanding between a competitive benchmark based on prices (possibly inclusive of profit) and costs of production (not inclusive of profit) and should be dismissed.

"3(b)[sic] Incorrect calculation of timing adjustment"

Liberty OneSteel refers to and repeats its response to this claim in Section A.3(c) (above).

The exporter's submission provides tacit support for the Australian industry's proposed timing adjustment factor.

C. Jiangsu Yonggang Group Co., Ltd. (EPR Folio No. 423/011)

"1. Retrospective application of new legislative amendments"

Liberty OneSteel refers to and repeats its response to this claim in *Section A.1* (above).

The exporter's submission is an unsound interpretation of the Amendment Act and should be dismissed.

"2(ii) Factors affecting patterns of trade for like goods that are not within the control of the exporter"

Liberty OneSteel refers to and repeats its response to this claim in *Section B.2* (above).

The exporter's submission is an unsound interpretation of the Amendment Act and should be dismissed.

"3(a) Subtraction of a rate of profit from the selected external benchmark"

Liberty OneSteel refers to and repeats its response to this claim in *Section A.3(a)* (above).

The exporter's submission is unsound and demonstrates a lack of understanding between a competitive benchmark based on prices (possibly inclusive of profit) and costs of production (not inclusive of profit) and should be dismissed.

"3(b) Incorrect calculation of timing adjustment"

Liberty OneSteel refers to and repeats its response to this claim in Section A.3(c) (above).

The exporter's submission provides tacit support for the Australian industry's proposed timing adjustment factor.

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CONCLUSIONS

In light of the above submissions, the Commission is encouraged to reject the exporters' claims.

Should you have any questions concerning this submission, please do not hesitate to contact Liberty OneSteel.

FOR AND ON BEHALF OF THE AUSTRALIAN INDUSTRY

ONESTEEL MANUFACTURING PTY LTD (trading as 'LIBERTY ONESTEEL')