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

Dumping investigation into rod in coils exported by Jiangsu Shagang Group

Dear Director

This submission is made on behalf of the Jiangsu Shagang Group Co Ltd (Shagang), in response to the Anti-Dumping Commission's (the Commission) findings outlined in Statement of Essential Facts Report No. 413 (SEF 413) on 20 December 2017.

1. **Retrospective application of new legislative amendments**

Shagang 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 rod in coil review of measures which was initiated and undertaken well before the Bill was introduced to Australia's parliament. Shagang submits that review 413 cannot be considered to have been undertaken <u>immediately</u> before the commencement of the amendments. In these circumstances, review 413 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 ***<u>immediately</u>*** *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 413, the introduced amendments outlined in the Bill should only be applied to those reviews that were 'undertaken **<u>immediately</u>** 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 413, 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 Shagang'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.

Therefore, Shagang requests the Commission to reconsider its position and ensure compliance with the requirements of procedural fairness and rule of law principles by applying the relevant dumping provisions set out in the Act, at the time of commencement of review 413. That is, export prices must be determined under the original provisions set out at section 269TAB of the Act, as those provisions were capable of being known and were complied with at that time, prior to the newly introduced amendments.

2. Factors affecting Shagang's pattern of trade

As SEF 413 highlights, for Shagang 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. With regard to factors affecting patterns of trade, the Commission states that it '*does not have any information regarding factors outside the exporters' control.*'

Shagang disputes this conclusion and notes the Australian industry' claims and the Commission's findings in the current investigation into rod in coil exports from Indonesia, Korea and Vietnam (SEF 416). The period of investigation period for case 416 mirrors that of review 413 and therefore the Commission's findings are directly relevant and pertinent to understanding the factors affecting the Australian market and the consequential impact on Shagang's pattern of trade.

In its application, the Australian industry producing rod in coil highlights that rod in coil is a commodity product that is '*very price sensitive*'. Similarly, the Commission has found that the commodity nature of rod in coil leads to a high degree of substitutability and provides customers with the ability to easily purchase from suppliers interchangeably. The Commission observed there is low product differentiation and a high degree of substitutability.

This according to the Commission, is demonstrated by the willingness of importers '*to purchase RIC from different exporters. This includes the purchase of RIC from countries that are not the subject countries. RIC is a highly commoditised product which competes mainly on price. The Commission considers that, due to the high degree of price sensitivity in the market, price competition is a major condition of competition between the imported goods, and between locally produced RIC and imported goods.*'

Given these confirmed market dynamics, the high price sensitive competition and substitutability between imports and locally produced goods, the price of rod in coil imports from the countries subject to investigation in case 416 will have a direct impact on Shagang's pattern of trade to Australia which is outside of its control.

SEF 416 found that exports from largest exporters in Vietnam (Hoa Phat) and Indonesia (Ispat) were not dumped. Shagang understands that its import customer during the original investigation (case 301), [redacted], is the major import customer of the goods exported by [redacted] and [redacted], which further supports the view of the ease with which importers are willing to switch suppliers in response to competitive price offers.

The switch of imports from China to the countries subject to investigation is demonstrated by in the table below showing a sharp increase in the market share during 2016 of imports from Indonesia, Korea and Vietnam. This is also confirmed by the Commission which found '*that the market is now almost exclusively serviced by the Australian industry and undumped goods*'.

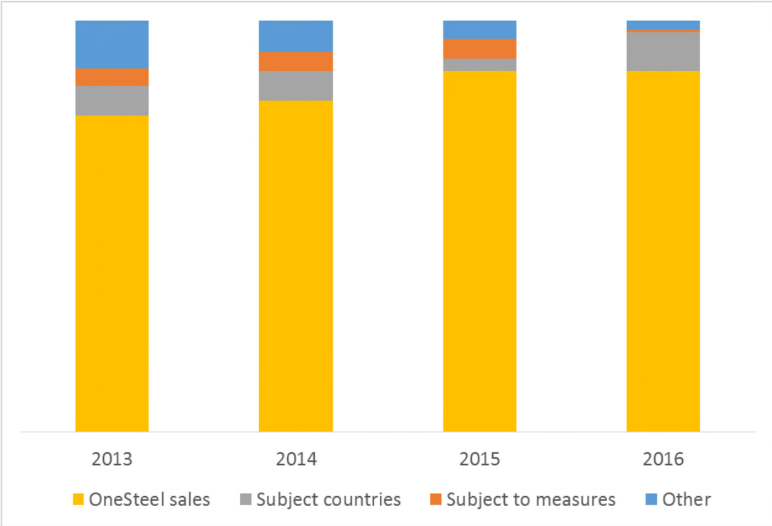

Figure 10 - OneSteel share of the total Australian market for RIC 2013-2016

Therefore, the Commission's findings in SEF 416 support the view that undumped imports from Vietnam and Indonesia have directly impacted Shagang's pattern of trade by encouraging its previous import customers to seek alternative supply of imports from those undumped 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 undumped alternative sources are outside the control of Shagang.

Therefore, it is clear that Shagang's reduced volumes during the review period are directly a consequence of its earlier import customers switching their purchases of rod in coil to undumped import sources from Vietnam and Indonesia. In those circumstances, the evidence does not support a finding that Shagang 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 rod in coil 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. In support of its decision to deduct a rate of profit from the billet sales prices relied on for establishing the benchmark, the Commission considered:

> *… it reasonable 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. This is consistent with the Commissioner's approach to utilising actual verified domestic profit rates in domestic sales of like goods when constructing normal values.*

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

> *I consider that the ADC decision in REP 301 to deduct the verified average profit rate realised by Chinese exporters from the surrogate Latin America Billet price, to be reasonable and not contrary to Australian legislation or practice.*

Therefore, in the ascertaining normal value in this current review, Shagang 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 Shagang's billet raw material cost element. It is noted however that SEF 413 makes no 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 billet benchmark for Shagang's own billet costs.

Shagang 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, Shagang 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 Shagang'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 [redacted]% rate of profit determined in the original investigation.

b) Constructed normal value incorrectly based on domestic sales not comparable to exports.

In proposing to determine the ascertained export price for the review period, the Commission has relied on the export prices ascertained during the original investigation (REP 301). As verified by the Commission during that original investigation, all exports to Australia by Shagang were of [redacted] rod in coil. As such, the corresponding normal values determined by the Commission in that REP 301 were for [redacted] rod in coil. This was based on the Commission's identification of comparable model categories and its determination that the characteristics of [redacted] rod in coil were relevant to ensuring a proper comparison with the exported goods.

Given the Commission's previous findings and its proposed reliance on Shagang's previous exports [redacted] rod in coil for ascertaining export prices in review 413, it is essential that the Commission maintain consistency with its previous methodology and determine a normal value for comparable [redacted] rod in coil. This is achieved by using the costs of production of domestic sales of [redacted] rod in coil, and the corresponding rate of profit from the domestic sales of such goods.

A review of the Commission's preliminary dumping margin calculations shows that the costs used to construct normal values includes all domestic products, including [redacted] and [redacted] rod in coil. As the Commission has previously determined, the physical, functional, commercial and production characteristics of these alternative and higher grades of rod in coil differ substantially to [redacted] rod in coil. This is evidenced by the verified [redacted]% and [redacted]% higher cost of producing [redacted] and [redacted] rod in coil respectively, compared to [redacted] rod in coil.

The Commission's calculation clearly includes the costs of [redacted], [redacted] and [redacted] rod in coil as per the calculations shown below from confidential appendix 4 – normal value.

[Confidential table removed]

If the Commission continues to include costs relating to [redacted] and [redacted] rod in coil, then Shagang contends that adjustment is required pursuant to subsection 269TAB(2G)(b) of the Act which requires that:

> *(2G) If the export price of goods exported to Australia has been ascertained under subsection (2B), the export price may be subject to such adjustments that the Minister determines are necessary to reflect what the export price would have been had there not been an absence or low volume of exports, including:*
>
> *(a) adjustments due to exports (on which the export price is based) relating to earlier times; or*
>
> *(b) adjustments due to exports (on which the export price is based) relating to not identical goods.*

Shagang again repeats that [redacted] rod in coil are substantially different to [redacted] and [redacted] rod in coil in terms of their physical characteristics, functional end-use and commercial substitutability. As such, Shagang submits that in constructing normal values and to ensure proper comparison with the export prices of the [redacted] goods exported during the original investigation period, only the costs and profits from domestic sales of [redacted] quality rod in coil are relevant and should be relied upon.

This correction is reflected in the amended 'CA4-Normal Value-Shagang' spreadsheet attached at **Confidential Exhibit 1**.

c) Incorrect calculation of Shagang's conversion costs included in constructed normal value

In substituting the billet benchmark in the constructed normal value, the Commission firstly calculates the conversion costs of its domestic rod in coil, referred to in the relevant spreadsheet as 'CTMS+profit minus raw materials'. Shagang understands that the raw materials referred to in that description is the billet costs used to produce the finished rod in coil products. This is confirmed by the next step in the calculation which is to substitute and add the billet benchmark cost to the calculated conversion cost.

However, in calculating the conversion cost, it is clear that the Commission has identified the incorrect billet costs. It has used the reported [redacted] costs highlighted in green, instead of the reported and verified steel billet costs highlighted in red in the screenshot below.

[Confidential table removed]

In doing so, the Commission has overstated the conversion costs of converting the steel billet to rod in coil, and overstated the constructed normal value. Shagang requests the Commission to correct this error and ensure that the conversion costs have been correctly calculated and the billet benchmark accurately substitutes Shagang's actual steel billet costs.

d) Substituted billet benchmark does not reflect the billet used in production of the exported goods

As noted earlier, the Commission confirms in SEF 413 that the substituted benchmark billet costs were established using information of billet purchases 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. The report provides no further explanation or details surrounding the types or grades of billet purchased by those cooperating exporters or the types or grades of billet relied upon by the Commission to ensure a proper replacement of Shagang's steel billet costs. As this is critical information which all interested parties would expect to be informed of, it is assumed that the Commission has used all billet purchases by the cooperating exporters, and not only steel billet suitable for use in producing low carbon quality rod in coil.

On that basis, Shagang submits that the Commission's constructed normal value is flawed as it incorrectly substitutes a steel billet benchmark cost reflecting higher grades of steel billet than the the actual grade of steel billet used to produce the [redacted] rod in coil exported during the original investigation period and the basis of the ascertained export prices. This is supported by the verified differences in the unit cost of steel billet produced for [redacted] rod in coil, relative to that of steel billet used in the production of [redacted] and [redacted] rod in coil. The verified cost data shows that [redacted] steel billet costs are approximately [redacted]% and [redacted]% lower than that of [redacted] and [redacted] steel billet respectively.

Therefore, to ensure proper comparison and limit the need for further adjustment, Shagang contends that the Commission should only rely on those steel billet purchases identified as being applicable to production of [redacted] rod in coil.

Where the Commission is unable to accurately identify such billet types from the purchasing information submitted by the cooperating exporters, Shagang submits that further adjustment is required to the steel billet benchmark cost to ensure proper comparison with the actual billet costs used in production of the exported goods. The adjustment should be based on the difference in costs between the actual cost of [redacted] steel billet relative to the average cost of all billet produced by Shagang, and applied to the average benchmark cost for all types of steel billet purchased by the cooperating exporters. The relevant formula for calculating the adjustment is outlined below:

Adjusted benchmark cost = (Shagang's average cost of [redacted] billet / Shagang's average cost of all billet) * cooperaing exporter's average cost of all billet.

e) 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 rod in coil prices over the original investigation period (1 July 2014 – 30 June 2015) to the simple average of prices over the current review period (1 April 2016 – 31 March 2017). In doing so, Shagang's ascertained export price from the original investigation period has been adjusted downwards taking account of the 1.6% decrease in rod in coil prices between the two specified periods.

However, this proposed approach by the Commission disregards the relative quarterly movements between the two periods being compared, and as such does not properly reflect the true movement in prices. Accordingly, Shagang contends that the preferred method of calculation should take account of the relative movements between the corresponding quarters of the two investigation periods, before averaging the quarterly differences, as per the formula below.

[Confidential table removed]

This preferred method shows an increase in rod in coil prices of 0.45% compared to the Commission's calculation of a 1.6% decrease in prices.

In the event that the Commission does not agree with this approach, Shagang proposes that the calculation of the timing adjustment should take into account the actual timing of Shagang's original 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 413.

To highlight more clearly, the table below shows the calculation of the timing adjustment by weighting the quarterly rod in coil prices with Shagang's corresponding quarterly export volumes.

[Confidential table removed]

It reveals that the Commission's simple average method ignores the actual volume of exports in the corresponding quarter of the original investigation period. It shows that Shagang did not export any rod in coil in the [redacted], the quarter when rod in coil prices were highest of the original investigation period. It also shows that over half of Shagang's export volumes were exported in the [redacted], when rod in coil prices were at the lowest during the original investigation period. Therefore, the weighted average method proposed above more accurately compares to the weighted average export prices determined by the Minister in the original investigation.

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

Yours sincerely

John Bracic