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

**Dumping investigation into steel reinforcing bars exported by
Hunan Valin Xiangtan Iron & Steel**

Dear Director

This submission is made on behalf of Hunan Valin Xiangtan Iron & Steel Co., Ltd (Valin), in response to the Anti-Dumping Commission's (the Commission) findings outlined in Statement of Essential Facts Report No. 412 (SEF 412) on 20 December 2017.

1. Retrospective application of new legislative amendments

Valin 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. Valin submits that review 412 cannot be considered to have been undertaken immediately before the commencement of the amendments. In these circumstances, review 412 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 412, 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 412, 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 Valin’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 Valin’s pattern of trade

As SEF 412 highlights, for Valin 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.*’

Valin 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 period for case 418 mirrors that of review 412 and therefore the Commission’s findings are directly relevant and pertinent to understanding the factors affecting the Australian market and the consequential impact on Valin’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 Valin'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%. Valin understands that its import customer during the original investigation (case 300), [REDACTED], has switched its source of supply to an exporter 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 the 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.

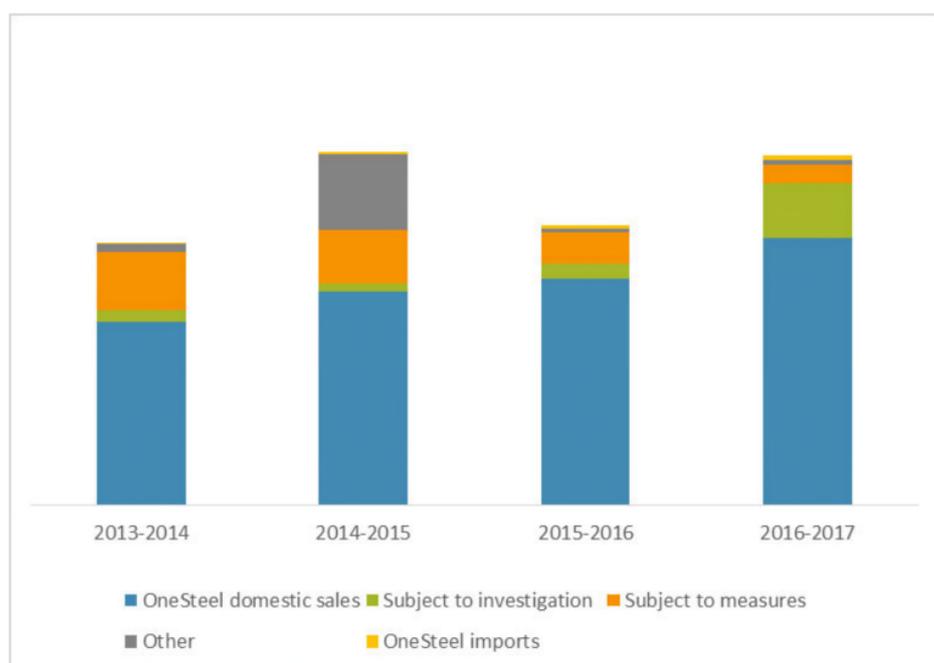


Figure 2: Australian market for rebar (tonnes)

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 Valin's pattern of trade by encouraging its previous and prospective import customers to seek alternative supply of imports. 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 Valin.

Therefore, it is clear that Valin'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 Valin 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, Valin 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 Valin's billet raw material cost element. It is noted however that SEF 412 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 Valin's own billet costs.

Valin 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, Valin 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 Valin'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.

- a) Error in calculation of SG&A costs added to the constructed normal values.

A review of the Commission's constructed normal value calculations reveals that the SG&A costs have been overstated by applying Valin's actual SG&A rate to the uplifted cost to make inclusive of the determined billet benchmark. This is incorrect as the driver for Valin's indirect selling, administrative and general expenses is not the cost of the raw materials used in production. More simply put, Valin would not and does not incur additional SG&A expenses simply because the notional unit cost of billet increases from RMB 2,100 / mt to RMB 2,300 /mt.

Therefore, the [REDACTED] % SG&A rate calculated by the Commission should not be applied to the uplifted cost to make. Instead, the constructed cost to make and sell should be calculated using the formula below:

$$\text{CTMS} = \text{CTM with uplift billet} + (\text{Valin's actual CTM} * [\text{REDACTED}] \% \text{ SG\&A rate})$$

- a) Incorrect determination of like models for constructing normal value.

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 300). In constructing normal values, the Commission has relied on the costs and profit from all domestic sales of steel reinforcing bar, irrespective of their characteristics and whether they are identical or closely resemble the particular export goods which are the basis of the revised ascertained export prices.

The ascertained export price for this review is based on Valin's actual exports during the original investigation period. A review of the Commission's original determinations shows that the following export models identified, along with the corresponding product codes.

[CONFIDENTIAL TABLE REMOVED]

Consistent then with the original investigation period, to ensure proper comparison between these export prices and the corresponding normal values, the constructed normal value should be based on the cost to make and sell for identical goods or those most closely resembling those of the exported goods.

This is expressly required by the newly introduced amendments with subsection 269TAB(2G) of the Act requiring 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.*

Therefore, it is clear that where like goods exist which are identical to the exported goods ascertained under subsection 269TAB(2B), no adjustments are necessary, and alternatively, where differences exist due to physical characteristics, adjustment will made to ensure proper comparison. Valin submits that the Commission's preliminary calculations ignore these clear obligations and rely on information for domestic goods which differ significantly

to the goods exported by Valin during the original investigation period. For example, the export prices include [REDACTED] and the Commission's corresponding constructed normal value relies on the costs of [REDACTED].

Valin contends that the Commission must be consistent in its application of the relevant like models from the original investigation and rely on the like goods selection table submitted by Valin for the purposes of identifying the identical and most like domestic products. As presented in the original investigation and accepted by the Commission, the attached like goods selection table identifies the domestic sales of like goods which are most like the exported goods on the basis of being either identical to the exported goods or most closely resembling. By establishing normal values on the identified identical and like models, no adjustment pursuant to subsection 269TAB(2G) of the Act is required.

To highlight more clearly by example, in the original investigation period, Valin exported [REDACTED] rebar to Australia, with product code "[REDACTED]". To ensure proper comparison, the Commission relied on the costs and sales of goods which met the model characteristics of "[REDACTED]". In this current review period, it is noted that Valin made domestic sales of identical goods in the ordinary course of trade to the exported goods. Please refer to Valin's verified domestic sales listing for sales of identical product code "[REDACTED]". Therefore, in constructing a normal value for this export sale, the Commission must rely on the costs and profit of the identical goods.

For the remaining product codes for which identical sales do not exist, the Commission must apply the model characteristics of "[REDACTED]" to identify the most closely resembling like goods and also rely on corresponding costs and profit. Valin presents its selection of like goods at **attachment A**, and requests the Commission to reconsider and revise its constructed normal values calculations accordingly.

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 prices over the current review period (1 April 2016 – 31 March 2017). In doing so, Valin'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 the relative quarterly movements between the two periods being compared, and as such does not properly reflect the true movement in prices. Accordingly, Valin 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 steel reinforcing bar prices of 1.36% 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, Valin proposes that the calculation of the timing adjustment should take into account the actual timing of Valin'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 412.

To highlight more clearly, the table below shows the calculation of the timing adjustment by weighting the quarterly steel reinforcing bar prices with Valin'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, and relies on prices in quarters not relevant to Valin's exports. For example, Valin had no exports in the [REDACTED] which showed the highest prices in the original investigation. Further, the majority of Valin's exports were in the [REDACTED] of the original investigation period which showed the lowest prices in that period.

By contrast, the weighted average method proposed above more accurately compares to the weighted average export prices determined by the Minister in the original investigation.

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

Yours sincerely

John Bracic