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21 August 2015

Director Operations 4
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

**Dumping investigation into steel reinforcing bars exported from the
Peoples Republic of China**

Dear Director

This submission is made on behalf of Shandong Shiheng Special Steel Co., Ltd. (Shiheng), in response to the application for the publication of dumping duties on steel reinforcing bars (rebar) exported from the Peoples Republic of China (China).

The applicant has failed to provide such information as the form requires

The application is a statutory form which sets out specific statutory requirements for information and the form in which the information is to be provided. The applicant cannot simply ignore these requirements and provide its own version of the form.

It is noted that the public version of the rebar application fails to contain the following required information:

- a. A-4.6 – Indexed table of sales quantities;
- b. A-5.2 – Indexed table of applicant's sales quantities and sales values;
- c. A-8.2 – Indexed tables of variations in production, costs, prices, profit and profitability;
- d. A-8.3 – Indexed table of other injury factors outlined in Appendix A7;

It is also noted that the approved form requests the indices at A-8.2 to be provided for each 'model, type, grade of goods', which does not appear to have been met by the applicant.

The inclusion of the indices in the approved form is intended to provide interested parties with a sufficient understanding of the injury claims and arguments submitted by the applicant. This is confirmed by the Commission's guidelines to the approved form¹, which highlights in all

¹ Application for dumping and/or countervailing duties: Guidelines for applicants (July 2013), pages 17-19, 21.

areas where indices are required that 'conversion of the data provided ... into indices allows the trends to be available for public comment without releasing information confidential to your company'.

It is also noted that all public version applications since the introduction of the approved form, including the applicant's recent application on steel reinforcing bar against numerous countries (case 264), contain the required indices. Therefore the decision by the applicant to redact the indices from the public version of this application is disturbing. Of particular concern is the Commission's acceptance of the indices being redacted in this case, without any reasonable explanation or justification.

In the absence of a properly documented application that complies with the requirements of the approved form, interested parties will not have a full opportunity to defend their interests in this matter. Therefore, the Commission is requested to address the inadequate nature of the non-confidential application by requesting the applicant to provide an amended version that complies with the statutory requirements of the form with the inclusion of the necessary indices.

Redaction of information

To ensure that the Commissioner complies with his obligations to maintain a public record in accordance with s.269ZJ of the *Customs Act 1901* (the Act), all relevant information must be placed on the public record unless information given by a person '*is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests*'. The obligations of the Commissioner pursuant to s.269ZJ have been interpreted by the Federal Court in *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice & Customs*, where Buchanan J² ruled:

Far from emphasising any overruling requirement of confidentiality, s.269ZJ imposes an obligation on the CEO to ensure that a claim for confidentiality does not result in inadequate information to interested parties except in very limited circumstances.

Accordingly, Shiheng requests the Commission to place the following information on the public record in the absence of any reasonable claims of confidentiality or adverse impact.

1. the footnotes containing hyperlinks on page 34 which appear to reference publicly available information;
2. the redacted estimate of 'export volumes of [REDACTED] tonnes from China destined for entry for home consumption in Australian between March to May 2015 (refer CONFIDENTIAL ATTACHMENT A- 9.3.1)' on page 42;
3. details redacted from the first three columns of table A-9.5.3 on page 47 and table A-9.5.4 which appears to identify specific importers and exporters;
4. the estimated import volumes shown in table B-1.5.1 which clearly cannot be considered to be confidential to the applicant or have an adverse affect on their

² *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice & Customs* [2008] FCA 443, para 91.

interests. It is noted that this information was included in the public application to case 264;

5. estimates of deductive export prices shown in tables B-2.3.1 and B-2.3.2 which are used to establish the alleged dumping margins. It is noted that this information was included in the public application to case 264;
6. the names of the two Chinese wire rod manufacturers referenced on page 75 for which cost-economics modelling was examined;
7. the name of nominated exporter that SG&A expenses were based on;
8. the constructed normal value methodology at the top of page 76. It is noted that this information was included in the public application to case 264;
9. comparison information shown in table on page 77 that identifies physical differences in terms of mass/metre tolerances;
10. dumping margins at section B-6.1 on page 78. It is noted that this information was included in the public application to case 264.

Lack of evidence to support the applicant's market situation claims

The applicant's basis for considering that exports of rebar from China are dumped relies on the view that a market situation exists such that domestic sales of rebar are unsuitable for the purposes of establishing a normal value. The applicant references previous findings by the Commission in respect of the Government of China (GOC) broad macroeconomic policies including the National Steel Policy and National and Regional Five-Year Plans relevant to the steel industry, as evidence of intervention in the Chinese iron and steel industry.

As previously stated by the GOC in these previous investigations, these broad policies are aimed at fostering industry efficiency and reflect an aspirational future state of the steel industry in China. Each steel entity in China is entitled to make commercial decisions in their own best interests.

Regardless of the Commission's previous findings, the primary consideration in this investigation involves a subjective examination of all relevant market variables in relation to the subject goods in totality. As stated by the Commission³, '*a market situation assessment involves an examination of factors which may affect the interaction of supply and demand in a sector, industry or particular market, to a considerable extent that prices and costs in that market can no longer be viewed as being established under those market principles.*'

Therefore the mere existence of broad policies and guidelines aimed at the steel industry in China is not sufficient to be satisfied that distortion in the rebar market in China exists, that renders arm's length transactions in the ordinary course of trade in that market unsuitable for use in determining normal values. As noted by the Trade Measures Review Officer⁴:

Notwithstanding that a suspicion of active government intervention extending beyond ordinary acceptable government regulation may be reasonably formed, suspicion alone is in my view not an adequate basis for a market situation finding. I consider that this requires

³ Report 2013 – Reinvestigation into HSS from China, Korea, Malaysia and Taiwan.

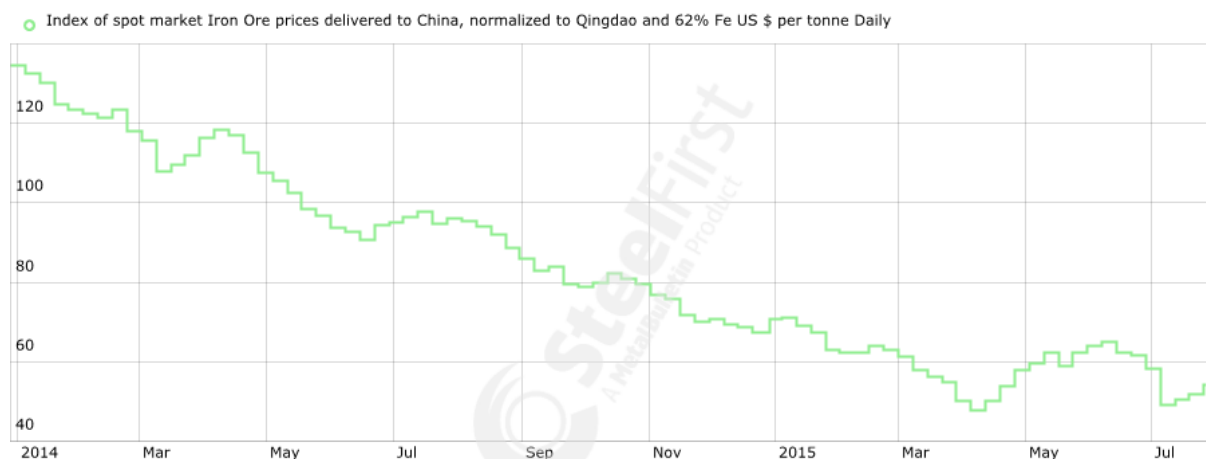
⁴ TMRO Review of a decision to publish a dumping duty notice and countervailing notice - HSS

some more concrete evidence of the implementation of governmental policies and their effect in the market, such as the generation of an evidently artificial domestic price. Only then, in my view, would it be possible to form a defensible view that it was more likely than not that a market situation of the requisite type had arisen.

The other main factor highlighted by the applicant to support its view that a market situation exists is the presence of value-added tax rebates and export taxes on exports of various steel products. In particular, the applicant highlights the export taxes imposed on coking coal (10%), iron ore (10%) and coke (40%) found to be in existence from 2008 to 2012.

Shiheng wishes to point out that the applicant's submitted information is outdated and does not reflect the contemporary tax rates applicable to the key raw materials used in the manufacture of billet. Export taxes on iron ore and coke have been reduced since 2012 with the applicable rate during the investigation period being 0%. This information is readily available on the internet and ought to have been known by the applicant when preparing its application. In addition, Shiheng notes that the GOC most recently announced further changes to export taxes on coking coal which were reduced to 3% from 1 January 2015.

As such, Shiheng does not consider that raw material costs and/or selling prices of rebar have been distorted by the imposition of export taxes on coking coal, iron ore and coke. It is therefore incumbent on the Commission to formally request updated information from the GOC on the export taxes applicable to the relevant raw materials used in the production of billet during the investigation period.



Commentary on the fall in global iron ore prices have highlighted as a primary cause the oversupply of iron ore due to increased production from the three major producers, Rio Tinto and BHP Billiton from Australia and Vale S.A. from Brazil. This is particularly relevant in this investigation given that [redacted] [production details].

Shiheng considers that this strongly supports the view that iron ore prices in China are not influenced or impacted by GOC policies or measures, but instead determined by global supply and demand conditions and as such, reflect competitive market costs.

Applicant's flawed methodology for the construction of normal values

In choosing to construct a normal value, the applicant references previous findings by the Commission in relation to various steel products exported from China, and in particular the view that certain raw materials used in the production of these steel products were considered to be distorted. The application refers to hollow structural sections, galvanised steel, aluminium zinc coated steel and hot rolled plate steel.

It is important to highlight that the circumstances in the case of rebar production by Shiheng differs significantly to the vast majority of cases encountered in these previous steel investigations. Firstly, Shiheng is an integrated steel producer. That is, it produces its steel billet requirements internally and the billet is then used to roll the steel reinforcing bars. Therefore, steel billet is a semi-processed product, with the purchased raw materials relevant to the production of the goods under investigation being iron ore and coking coal.

The integrated operation of Shiheng is clearly outlined on its website and as such, it is reasonable to expect that in preparing its application, the applicant would have known this to be the case. Therefore it is misleading for the applicant to propose a constructed normal value that replaces the entire cost of billet with a surrogate billet cost.

If the applicant considered that relevant raw materials in China were distorted, it was incumbent on them to replace only those particular raw material costs that it considered do not reflect competitive market costs, with an appropriate market price. By replacing the entire billet cost, the applicant has effectively discarded costs other than the raw materials claimed to be distorted such as labour, manufacturing overheads, utilities, etc.

This approach is clearly not consistent with the requirements of Article 2.2.1.1 of the WTO Anti-Dumping Agreement and section 43 of the *Customs (International Obligations) Regulation 2015* (the Regulations). It is also inconsistent with the Commission's practice in the investigations highlighted by the applicant, of only replacing those particular costs found to not reasonably reflect competitive market costs.

Notwithstanding the inconsistency of the applicant's proposed approach to both domestic legislation and the international agreement, Shiheng also considers that there is strong evidence to reject the applicant's proposed surrogate information.

The applicant presents a comparison of domestic billet prices in China, India and Turkey as a means of highlighting what it considers to be the '*practical impact of these forms of intervention by the GOC on the domestic price of billet*'. Shiheng rejects this comparison as it does not properly highlight or account for the different methods and associated costs used to produce billet in the selected countries. As noted in the application, '*[r]ebar can be produced via a fully integrated steel production manufacturing process or, alternatively by using ferrous scrap metal as the principal raw material input to electric arc furnace steelmaking.*'

It is Shiheng's understanding that Turkish producers of billet primarily use ferrous scrap metal to produce billet. Based on the lower iron ores prices observed during the investigation period compared to equivalent ferrous scrap metal prices, Shiheng considers that billet producers using the blast furnace steel manufacturing process will have an obvious cost competitive advantage over those producers using scrap metal through the electric arc furnace method.

The graph below provides a comparison of prices during the investigation period of the primary raw materials used to manufacture billet via the two common methods of production. By taking into account the respective prices and corresponding conversion factors, Shiheng contends that the observed price differences in billet across the countries selected by the applicant, are simply a reflection of current production cost efficiencies.



Conclusion

To summarise, Shiheng considers that the application is deficient as it fails to contain information that is required by the statutory form, and which is necessary to enable interested parties to properly respond to the dumping and material injury claims raised. To address this concern, Shiheng requests the Commission to require the applicant to provide a properly completed public record version of the application.

Shiheng also considers that the market situation claims raised in the application are weak and rely on outdated information. The applicant's proposed method for establishing a normal value is inconsistent with the requirements of the international agreement and Australia's domestic legislation. Shiheng therefore requests that the Commission seek relevant updated information from the GOC on the applicable taxes relevant to exports and reject the applicant's market situation claims and determine normal values on the basis of domestic selling prices of rebar, in accordance with s.269TAC(1) of the Act.

Yours sincerely

John Bracic