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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 Jiangsu Yonggang Group Co., Ltd, (Yonggang) 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

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

highlights in all 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, Yonggang 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 version 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 the 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 version 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 version 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

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

in my view not an adequate basis for a market situation finding. I consider that this requires 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.

Yonggang 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 in the public domain and ought to have been known by the applicant when preparing its application.

As such, Yonggang does not consider that raw material costs and/or selling prices of rebar have been distorted by the imposition of export taxes on 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.

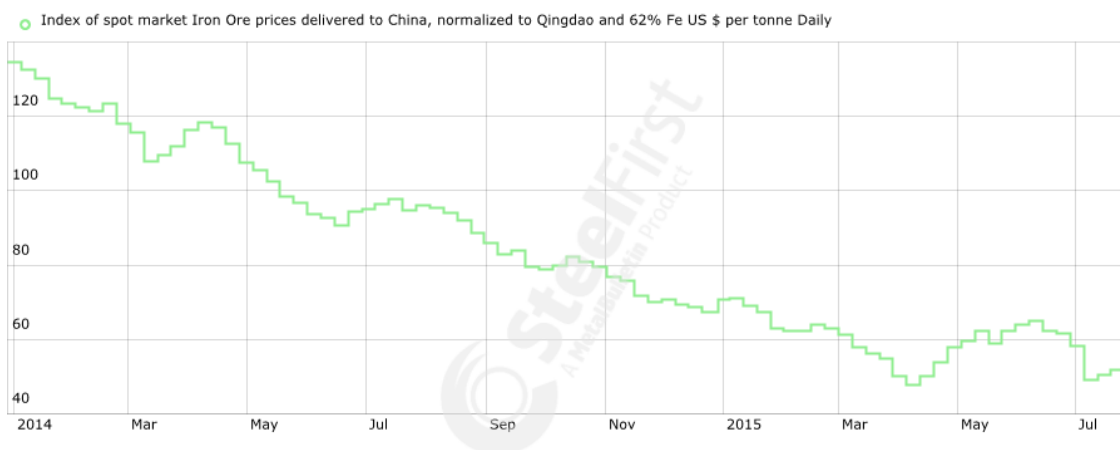
In any case, Yonggang contends that the Chinese domestic market and prices for iron ore

[REDACTED]

[REDACTED] [Confidential operational information]. As such, Yonggang's iron ore costs must be considered to reflect competitive market costs.

As shown in the chart below, spot market iron ore prices have experienced approximately a 51% fall between the highest and lowest average weekly price during the investigation period. Commentary on the fall in global iron ore prices have highlighted the deterioration in the supply-demand dynamics as the main cause, with increased production and falling demand resulting in an oversupply of iron ore.

Yonggang therefore considers that its iron ore costs reflect prevailing global market prices and must be used for the purposes of determining normal values.



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 Yonggang is an integrated steel mill that produces its steel billet requirements internally and consumes the billet to roll the steel reinforcing bars. Therefore, steel billet is a semi-processed product, with the main purchased raw materials relevant to the production of the goods under investigation being iron ore and coking coal.

The integrated operation of Yonggang 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, Yonggang 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'*. Yonggang rejects this comparison as it does not properly highlight or account for the different steel making routes 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.'*

Approximately 70% of Turkish steel production is by way of ferrous scrap metal and the electric arc furnace (EAF) method⁵. Yonggang considers that the remaining 30% of steel produced via the blast furnace (BF) method would be mainly directed towards steel slab for production of plate and coil. When the cost of key inputs and the relevant conversion costs from the two methods of steelmaking are taken into account⁶, Yonggang considers that billet producers using the BF steel manufacturing process will have an obvious competitive cost advantage over those producers using scrap metal during the investigation period.

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, Yonggang contends that the observed price differences in billet across the countries selected by the applicant, predominantly reflects current production cost efficiencies of the steel making methods predominantly used in those countries.



The current cost advantage that BF steel producers such as Yonggang have over enjoyed over the investigation period EAF steel producers, such as the applicant and Turkish billet producers in the current pricing dynamic, is supported by the SteelOrbis report⁷ which examined the significant move away from steel scrap imports to billet imports into Turkey. The report concludes that *'decreases in iron ore prices have handed a cost advantage in crude steel production to integrated mills'*.

⁵ World Steel Association, World Steel in Figures 2015, page 11.

⁶ Cost models outlining the respective conversion costs of steelmaking using the EAF and BF methods can be found at <http://www.steelonthenet.com/cost-eaf.html> and <http://www.steelonthenet.com/cost-bof.html>.

⁷ SteelOrbis Report, "Is billet replacing scrap in Turkey?"

Therefore, Yonggang submits that surrogate Turkish billet export prices are not a reasonable or appropriate measure of the cost of producing billet through the BF method.

Conclusion

To summarise, Yonggang 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, Yonggang requests the Commission to require the applicant to provide a properly completed public record version of the application.

Yonggang 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. Yonggang therefore requests that the Commission obtain contemporary information on the export taxes applicable to the key inputs in steelmaking 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.

Notwithstanding the lack of evidence to support a market situation finding or a finding that key input costs do not reflect competitive market costs, Yonggang submits that the proposal by the applicant to disregard the entire production costs of billet and substitute it with export billet prices from Turkey is not permitted by the Act or the Anti-Dumping Agreement. Where individual costs are found to not reflect competitive market costs, only those individual costs must be replaced with a comparable competitive market cost. This is particularly important in these circumstances given the obvious differences between Yonggang's production method for billet and the production method utilised by Turkish billet producers.

John Bracic