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Director Operations 1
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Dumping investigation into rod in coils exported from the Peoples Republic of China

Dear Director

This submission is made on behalf of Jiangsu Shagang Group Co., Ltd, (Shagang) in response to the application for the publication of dumping duties on rod in coils (RIC) exported from the Peoples Republic of China (China).

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

The applicant's basis for considering that exports of RIC from China are dumped relies on the view that a market situation exists such that domestic sales of RIC 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 Commission[1], '*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.*'

[1] Report 2013 – Reinvestigation into HSS from China, Korea, Malaysia and Taiwan.

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 RIC 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 Officer[2]:

> *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 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.

Shagang wishes to highlight 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 and subsequent submissions.

As such, Shagang does not consider that raw material costs and/or selling prices of RIC 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, Shagang contends that the Chinese domestic market and prices for iron ore are irrelevant in its case, as [redacted] [Confidential - raw material purchases]. The iron ore prices paid by Shagang are at global spot market prices and reflect prices that are available to any steel producer in the world. As such, Shagang's raw material costs must be considered to reflect competitive market costs.

Canadian Section 20 inquiry

In its submission dated 23 October 2015, the applicant references recent findings made by the Canadian Border Service Agency (CBSA) in its dumping investigation into certain concrete steel reinforcing bar exported from the People's Republic of China (China). The applicant considers that findings made following a Section 20 inquiry conducted by the

[2] TMRO Review of a decision to publish a dumping duty notice and countervailing notice - HSS

CBSA support its view that domestic sales of RIC in China are distorted as a result of significant influence by the Government of China (GOC).

In Shagang's view, the applicant has overlooked the critical differences in the assessment of Chinese domestic market sales within the Australian and Canadian dumping systems, and in particular the alternative methodologies available within each system to determine normal value. Firstly, it is important to understand the context of the Section 20 inquiry within the Canadian anti-dumping framework and the impact this has on the standard of proof in rejecting domestic sales for dumping purposes.

China's accession to the World Trade Organization (WTO) in 2001 was subject to terms and conditions outlined in Protocols. Article 15(a) of the Protocols (commonly referred to as the non-market economy provisions) allowed WTO members to use alternative methodology in determining price comparability for dumping purposes, by not requiring a strict comparison with domestic prices or costs in China if the producers under investigation could not clearly show that market economy conditions prevailed in the industry producing the like product with regard to manufacture, production and sale of that product. The Protocols allowed the use of these non-market economy provisions for 15 years from the date of accession.

Within the Canadian anti-dumping system, Section 20 of the relevant domestic legislation[3] preserves the rights of Canada to apply the non-market economy provisions allowed under China's accession protocols, for determining normal value where certain conditions prevail in the domestic market. In the case of China, an alternative normal value method is applied where, in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

By contrast, Australia granted China market economy status in 2005 and in doing so, relinquished the option to apply the non-market economy[4] or economy-in-transition[5] provisions within the *Customs Act 1901* (the Act). As such, the Commission must base its normal value determinations on domestic sales of like goods sold in China in the ordinary course of trade.

However, where the Minister is satisfied that one of the conditions of subsection 269TAC(2)(a) of the Act is met, domestic sales cannot be relied upon to determine normal values. One such condition is the existence of a situation in the market that renders domestic sales unsuitable. The Commission's Dumping & Subsidy Manual provides further guidance and examples of the types of circumstances which would render domestic sales unsuitable, including Government influence that leads to distortion of prices.

So whilst under both anti-dumping systems, the Commission and the CBSA initiate their respective dumping investigations into products exported from China with a presumption

[3] Special Import Measures Act (SIMA) which reflects Canada's implementation of the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.
[4] Subsection 269TAC(4) of the Act.
[5] Subsection 269TAC(5D) of the Act.

that domestic sales in China are suitable for determining normal values, a difference exists in the standard of proof required to reject domestic selling prices under section 20 of SIMA and subsection 269TAC(2)(a) of the Act.

In the Canadian system, there must be sufficient evidence and information for the President to have a reason to believe and to form an opinion that domestic prices are not substantially the same as they would be in a competitive market. Whereas under Australia's legislation, the Minister is required to be satisfied that a situation exists in the domestic market that renders sales in that market unsuitable for determining normal values.

In Shagang's view then, information which may be sufficient within the Canadian section 20 inquiry framework for the President to have reason to believe, would not automatically or necessarily have sufficient probative value to allow the Minister to be satisfied that a market situation exists under Australia's legislation.

Second, the applicant suggests that following findings under both the Australian and Canadian dumping frameworks that domestic sales are unsuitable for determining normal values, that '*both frameworks permit alternative methods of calculating normal values*'. Shagang again considers that the applicant has not properly identified and explained the significant differences in methodologies allowed under each of the two dumping systems.

Under the Canadian system, where the President forms the opinion that domestic prices are not substantially the same as they would be in a competitive market, the non-market economy provisions contained within section 20 of SIMA allows normal value to be determined on domestic selling prices in another surrogate country designated by the President. Alternatively, the President may designate the use of the aggregate of the cost of production and a mark-up in respect of the goods sold by producers in another surrogate country. Where sufficient surrogate information has not been furnished or is not available to determine normal values as above, the President may use export prices from another surrogate country to Canada to establish the normal value.

In summary then, where there is reason to believe that domestic prices in China are not substantially the same as they would be in a competitive market, the Canadian administering authority is able to resort to and rely upon surrogate prices or costs from exporters in other designated countries for determining normal values in China. This use of surrogate information reflects the alternative methods permitted under China's accession protocols.

By contrast, following Australia granting China market economy status for dumping purposes, where domestic sales are rejected following a market situation finding, the Commission is required to determine normal value according to the ensuing provisions of section 269TAC of the Act, which reflect the principles outlined in Article 2 of the WTO Anti-Dumping Agreement (ADA). This requires that normal values are to be determined by reference to a constructed selling price based on the costs of production in the country of export plus amounts for selling, general and administrative expenses and profit or export

prices of like goods to an appropriate third country. Importantly, the non-market economy provisions contained in Article 15 of China's accession protocols cannot be applied.

So the clear difference in methodology is the ability under the Canadian system to disregard Chinese exporter's domestic sales and costing information and resort to a completely surrogate normal value based on another exporter's domestic sales, costs or export prices. Whereas under Australia's system, a constructed normal value must be calculated by reference to an exporter's costs, subject to conditions identified below.

Applicant's flawed methodology for the construction of normal values

It is important to highlight that Shagang is an integrated steel mill that produces the vast majority of its steel billet requirements internally and consumes the billet to manufacture RIC products exported and sold domestically. 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 Shagang 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.

The applicant goes on to highlight by example the numerous prior dumping investigations involving steel products exported from China which involved findings of market situation for the purposes of disregarding domestic sales, and further findings that certain costs were not competitive market costs pursuant to regulation 43 of the *Customs (International Obligations) Regulation 2015* (the Regulation) for the purposes of constructed normal values. Shagang provides the following general observations about the relevant framework for constructing normal values, and specific remarks related to the circumstances involving the current RIC investigation.

Regulation 43 of the Regulation is intended to reflect the rules set out in Article 2.2.1.1 of the ADA. Those rules require that the costs to be used in constructing normal value are to 'be calculated on the basis of records kept by the exporter or producer under investigation', subject to the following two conditions being satisfied:

i) the exporter's records are in accordance with the generally accepted accounting principles of the exporting country; and
ii) the exporter's records reasonably reflect the costs associated with the production and sales of the product under consideration.

By comparison, the two corresponding conditions outlined in the Regulation require the exporter's records:

i) to be in accordance with generally accepted accounting principles in the country of export; and
ii) reasonably reflect <u>competitive market costs</u> associated with the production or manufacture of like goods. [emphasis added]

It is clearly evident that the language and application of the second condition within the Regulation is incompatible with the requirements of Article 2.2.1.1 the ADA. The ADA requires the administering authority to construct a normal value by using an exporter's production and selling costs where those costs are reasonably reflected in the exporter's records, without placing any criteria or pre-condition on the actual costs themselves.

Notwithstanding the inconsistency outlined above, Shagang notes that the Commission's practice and policy is to assess the required conditions set out in the Regulation in respect of individual costs where information and evidence has been provided by an applicant which warrants further investigation. As highlighted by the applicant's references to previous steel related investigations, the Commission has made findings about the competitive nature of key inputs used in the manufacture of investigated goods.

It is worth highlighting that the Commission's practice and policy in the referenced steel cases is consistent with the applicant's view that '*[w]here raw material costs incurred by Chinese manufacturers of the investigated goods are not reasonably reflective of competitive market costs for the purposes of sub-regulation 43(2)(ii) the Commissioner may then make amendments to the costs incurred by Chinese exporters of the goods to reflect reasonably competitive market costs for those inputs.*' [emphasis added]. The applicant's view is also consistent with Shagang's view that only raw material costs found to not be reflective of competitive market costs should be replaced.

However, in the vast majority of the cases referenced by the applicant, the findings related to investigated exporters that purchased intermediate inputs such as hot rolled coil steel, hot rolled plate steel, hot rolled narrow strip steel and cold rolled stainless steel. In those circumstances, the intermediate inputs are the raw materials used to produce like goods and hence those raw material costs were substituted with determined competitive market costs.

Following a review of the relevant reports from those previous investigations, it is clear that the most relevant exporter with circumstances similar to Shagang is the integrated exporting producer of hot rolled plate steel, Shandong Iron and Steel Company Limited (JIGANG) from case 198. In that particular case, JIGANG was an integrated producer and the only cost found by the Commission to not reflect a competitive market cost was coking coal. As such, JIGANG's coking coal costs were replaced with a competitive benchmark price considered appropriate and reasonable.

The Commission's grounds for finding that coking coal costs in China were not reflective of competitive market costs in the hot rolled plate steel case involving JIGANG, centred entirely on the distortion brought about by the imposition of export taxes and no import taxes on coking coal. However as highlighted earlier in this submission, the tax rates applicable during the hot rolled plate steel investigation period are outdated and do not accurately reflect the circumstances evident during the 2014/15 investigation period for the current RIC investigation.

Finally, Shagang wishes to draw attention to the Commission's own practice in examining whether an exporter's raw material costs are reflective of competitive market costs. In the

section of the Commission's Dumping & Subsidy Manual dealing with constructed normal values, it states:

> *The purchasing behaviour of the exporter may be examined to determine whether the input has been supplied at a competitive market price. For example, if the exporter buys "on-the-spot" from an external unrelated supplier in another country that will mean that it is a normal competitive market price.*

As verified by the Commission, Shagang has provided its complete raw material purchases for iron ore, sintering powder, pellitizing powder and pellets, with sufficient information to enable the Commission to properly assess that the inputs were purchased in a competitive market and at normal competitive market prices. This information shows that Shagang's purchases of the identified raw materials are all imported materials sourced at international spot prices from external unrelated suppliers and hence at normal competitive market prices.

Determination of profit

In its submission, the applicant refers to the inclusion of a profit for the purposes of constructing normal value by reference to a rate of profit identified on the website of a Chinese producer of reinforcing bars, Shandong Shiheng Special Steel Group Co., Ltd.

Shagang makes the following comments regarding the applicant's suggested grounds for the inclusion of profit.

The regulations governing the Minister's determination of profit are subject to strict rules and conditions. Sub-regulation 45(2) requires that the '*Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade*' [emphasis added]. For the reasons outlined below, the rate of profit referenced by the applicant clearly fails to comply with the sub-regulation:

1. the proposed profit is not based on data by the exporter of RIC in this case, being Shagang;
2. the proposed profit does not relate to sales of like goods, being RIC, sold on the domestic market in the ordinary course of trade, but instead appears to be based on sales of reinforcing bar, whether exported or domestic, which are not like goods to the goods under investigation;
3. the proposed profit appears to relate to calendar year 2014 only and therefore does not reflect a meaningful profit achieved during the investigated period of July 2014 to June 2015.

Where the Minister is unable to work out the amount by using data referred to in sub-regulation 45(2), the regulations provide the following options for determining a reasonable amount of profit by:

i) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or

ii) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or

iii) using any other reasonable method and having regard to all relevant information, subject to the amount not exceeding the profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export

It is again evident that the applicant's proposed rate of profit does not comply with any of the alternative options outlined in the Regulations.

Conclusion

To summarise, Shagang considers that the market situation claims are weak and rely on outdated and inconsequential information. The proposed method for establishing a normal value is inconsistent with the requirements of the international agreement and Australia's domestic legislation. Shagang therefore requests that the Commission reject the applicant's claims and determine normal values on the basis of domestic sales of RIC sold in the ordinary course of trade.

Yours sincerely

John Bracic