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BY EMAIL

Anti-dumping Notice No. 2016/17
STATEMENT OF ESSENTIAL FACTS No. 301

Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001
Australia

Attention: Director Operations 4 Director Operations 1

Re: Rod in Coils Exported from the People's Republic of China
Comments on the Statement of Essential Facts

The Anti-Dumping Commission ("the Commission") has published, on 15 February 2016, the Statement of Essential Facts ("SEF") No. 2016/17 for Case 301: Anti-dumping Investigation into Rod in Coils ("RIC", the subject merchandise) Exported from the People's Republic of China.

On behalf of Hunan Valin Xiangtan Iron & Steel Co., Ltd ("Valin"), we submit the following comments in respect of the SEF:

Wrongly using the cost to make and sale ("CTMS") of the domestic "like product" in calculating the constructed normal value ("NV") for the RIC exported to Australia

In the worksheet of "Hunan Valin Adjustment Calculation" attached to the SEF report, Valin found that the Commission used the model of [[redacted]] to construct the NV for the RIC exported to Australia during period of investigation ("POI"). However, these models are [redacted], rather than [redacted].

According to the subsection 269TAC(2)(c), where the domestic or third country price of the like products is not suitable for use in determining the NV, it should be constructed based on the CTMS of the exported subject merchandise. In fact, Valin had reported all the data of RIC exportations to Australia and the CTMS for each model thereof, i.e. [redacted].

We therefore corrected this error at **Exhibit SEF-1** to this submission, and request the Commission to revise the calculation in the final determination.

Errors in treatment of profit from billet sales in China in calculating the NV

In the SEF on page 21, it is provided that "*the Commission substituted the cooperating exporters' fully absorbed steel billet cost to make (CTM) with the corresponding East Asia CFR import billet price for the month,* ***minus a verified average amount of profit* {referring [redacted], note added} *that Chinese billet manufacturers earn on their billet sales based on the best available information, which is a verified weighted average profit figure from billet sales in China over the investigation period as found in case 300***".

However, in the worksheet of "Hunan Valin Adjustment Calculation" attached to the SEF report, Valin did not find any reflection of the said "*minus a verified average amount of profit*" in the process of substitution of the cost of steel billet, or construction of NV, but a [redacted] of "*Yield Percentage*", that is conversely used to magnify the "Billet Index" price, by dividing the "Billet Index" by "1-[redacted]", in construction of NV for calculating the dumping margin for Valin.

We believes it is an error, therefore corrected it at **Exhibit SEF-1** to this submission, and request the Commission to revise the calculation in the final determination.

Distortion of the legal basis to substitute a semi-product in the construction of NV

In the SEF, the Commission determined that a "*particular market situation" ("PMS") exists in China*", and "{c}*onsequently, normal values were constructed under subsection 269TAC(2)(c)*", and that "*...... prices of production inputs ...... unsuitable for ...... CTMS calculations*", and therefore, substituted the "*Chinese* *manufacturers' costs to produce steel billet ...... compris{ing} 80 to 85% of RIC CTMS*" with "***East Asia CFR import billet price***".

In fact, the wholesale replacement of Chinese exporter's costs of steel billet, a semi-product *comprising 80 to 85% of RIC CTMS*, with surrogate costing information from outside of China fundamentally, is just a disguised application of an alternative non-market methodology to establishing normal values, equals to substitute the 80 to 85% of RIC itself for NV. Given that Australia recognized China as a market economy in 2005, the non-market provisions outlined in Article 15(a) of China's WTO Accession Protocols are not permissible.

Article 2.2 of AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 (ADA) provides that where domestic sales are not appropriate for determining normal values, the investigating authority is permitted to construct normal values "*with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits*". Further, Article 2.2.1.1 of the ADA requires that constructed normal values "*be calculated on the basis of records kept by the exporter or producer under investigation*", subject to the following two conditions being satisfied: (1) the exporter's records are in accordance with the generally accepted accounting principles of the exporting country; and (2) the exporter's records reasonably reflect the costs associated with the production and sales of the product under consideration.

Similarly, according to the Section 269TAC(2)(c) of the Customs act 1901, where the normal value of goods exported to Australia cannot be ascertained under s. 269TAC(1), i.e. domestic sales of the like product, the normal value of the goods could be constructed by (1) cost of manufacture of the exported good, (2) SG&A, and (3) an amount for profit, provided that the book accounting of the company is subject to generally accepted accounting principles; reasonably reflect the competitive market costs of production and the SG&A.

Even if there is a PMS existed in China, though Valin does not concede it is, when the Commission constructs the NV, the benchmark price can be only applied to the **inputs of raw materials**, rather than any **semi-product**, i.e. steel billet, because, no matter in forms of any kind, the alleged "significant influence of the GOC" can only "distort" the **price** of all or part of inputs in the market, but it cannot make any distortion on the **volumes of their consumption or any other conversion cost** incurred in the production, whereas the value and volume of the inputs, and the conversion cost are all the key factors in the total cost of semi and final products. So, the wholesale replacement of Chinese exporter's costs of steel billet completely distort the extent to which the alleged influence of the GOC in the steel industry in China.

In the anti-dumping investigation into Hot Rolled Plate Steel from China, the Commission determined that the PMS exists and applied a benchmark price to replace the cost of coking coal which is an input of raw material that was purchased from the market[1].

In the legal sense, according to the Customs Regulation 180(2), the term "reasonably reflect competitive market costs" for the cost to make has three respects of meaning: (1) the cost items are supported by the books of account, (2) the accounting methods in working out the costs are reasonable, and (3) "{t}*he purchasing behaviour of the exporter may be examined to determine whether the input has been supplied at a competitive market price*" (see page 43 of DUMPING AND SUBSIDY MANUAL December 2013). That is, where no challenge made to the cost items or the accounting methods as in the ongoing RIC case, the term "reasonably reflect competitive market costs" is relevant only to **whether the purchase of the inputs is made at a market price**. Thus, the Commission's practice in the precedent Plate Steel case is appropriate and of the legal basis, i.e. replacing the cost of the raw material which is directly purchased from the market.

However, in the ongoing RIC case, where it has almost the same situation as the Plate steel case, as the Commission is aware that "{a}*ll cooperating exporters are integrated manufacturers......do not purchase steel billet, but manufacture it themselves from raw materials......*", the Commission still distorts legal meaning of the Section 269TAC(2)(c) and Regulation 180(2), and deviates from the practice in the precedent case and the provisions in the DUMPING AND SUBSIDY MANUAL, to substitute the steel billet, a semi-product rather than raw material purchased from the market, in the calculation of constructed NV.

Valin strongly opposes such a serious deviation from the anti-dumping laws and long established practice, and urges the Commission to correct it in the final determination.

Non-comparability of cost of steel billet with the benchmark price

In the SEF, the Commission adopted "*East Asian steel billet import prices at cost and freight (**CFR** {emphasis add}) terms*" published by "*McGraw Hill Financial Service (Platts)*", i.e. the "*prices......for billets that are SD290, Q235 or equivalent quality billets* ***delivered*** {emphasis added} *to a main East Asian port*", as the benchmark for the cost of steel billet consumed in the production of subject merchandise.

[1] See Exhibit SEF-2 Final report of the Hot Rolled Plate Steel case, on page 29.

Even if the Commission incorrectly insists to use the benchmark price to substitute the "cost" of semi-product – steel billet, the comparison should be made on a fair "apple to apple" basis.

In this regard, Valin solemnly submits that the semi-product **ONLY** includes the cost of raw materials and manufacturing overheads, where the benchmark price that the Commission chose is at the **DELIVERY LEVEL** to an entry port, which is recovering all **export moving expenses**, CTM, SG&A and the profit of the supplier. Therefore, it is obviously incorrect for such a simple replacement between the **COST** of semi-product and **CFR** benchmark price.

As noted by the Commission in the SEF, Valin is an "*integrated manufacturers of steel products ...... do **NOT*** {emphasis added} *purchase steel billet, but manufacture it themselves from raw materials including iron ore, coke or coking coal and scrap steel*", therefore, the cost of steel billet is only the cost of "*raw materials including iron ore, coke or coking coal and scrap steel*" and the overheads in manufacturing the steel billet, as a **SEMI-PRODUCT** to be further produced into the final steel products.

In sharp contrast, the benchmark price selected by the Commission is the CFR price for the steel billets **delivered** at an entry port, which compose of (1) ocean freight, (2) export customs fees, (3) the costing of raw materials, (4) manufacturing overheads, (5) SG&A and, (6) the profit realized by steel billet supplier. Therefore, there is no comparability between the cost of steel billet and the benchmark price selected by the Commission in the SEF.

In order to make them comparable, CFR benchmark price should be adjusted to the ex-work ("EXW") level, thus at least the export moving expenses should be reduced from the CFR price, exactly as the Commission did to the profit part of the steel billet, i.e. to ***minus a verified average amount of profit* {referring [[redacted]], note added}** ***that Chinese billet manufacturers earn on their billet sales***, because the moving expense, completely the same as the "profit", is nothing but composition part that were included in the benchmark price but not in the substituted cost of steel billet.

Based on the above, we made "export moving expenses" adjustment to the CFR price, based on the public available "Ocean Freight Rate" in East Asia area provided at **Exhibit SEF-3**, which is calculated in average basis at **Exhibit SEF-4**, and then re-calculated the constructed NV at **Exhibit SEF-1** to this submission, and request the Commission to present the correct calculation in the final determination.

On behalf of Valin, we appreciate the opportunity to submit the comments above. For the Commission's convenience to review the dumping margin calculation, we are providing the re-calculation at **Exhibit <u>SEF-1</u>** for your reference.

Please feel free to contact the undersigned should you have any questions on this submission.

Respectfully submitted,

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