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

Investigation into Steel Reinforcing Bar exported from the Peoples Republic of China

Dear Director,

This submission is made on behalf of Shandong Shiheng Special Steel Group Co., Ltd (Shiheng) in response to the various submissions and information presented by the applicant and which were placed on the public record on 26 October 2015.

Canadian Section 20 inquiry

In its submission, the applicant references recent findings made by the Canadian Border Service Agency (CBSA) in its dumping investigation into 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 CBSA support its view that domestic sales of rebar in China are distorted as a result of significant influence by the Government of China (GOC).

Whilst the applicant acknowledges that differences exist between the Australian and Canadian dumping systems in the treatment of China as a market economy, it submits that '*both frameworks permit alternative methods of calculating normal values where it is determined that the government has influenced market prices so that they are not reflective of normal competitive markets*'. In Shiheng's view, the applicant has understated the critical differences in the assessment of Chinese domestic market sales within the two dumping systems, and exaggerated the similarities in 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[1] 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[2] or economy-in-transition[3] 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 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 <u>believe</u> and to form an <u>opinion</u> 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 <u>satisfied</u> that a situation exists in the domestic market that renders sales in that market unsuitable for determining normal values.

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[1] Special Import Measures Act (SIMA) which reflects Canada's implementation of the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.

[2] Subsection 269TAC(4) of the Act.

[3] Subsection 269TAC(5D) of the Act.

In Shiheng'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*'. Shiheng 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.

Constructed normal value

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. Shiheng provides the following general observations about the relevant framework for constructing normal values, and specific remarks related to the circumstances involving the current rebar 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, Shiheng 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 <u>raw material costs</u> 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 Shiheng's view

outlined in its earlier submission of 2 September 2015, 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. Following a review of the relevant reports from those previous investigations, it is clear that the most relevant exporter with circumstances similar to Shiheng 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 again highlighted in our earlier 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 rebar investigation.

Finally, Shiheng 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 requested by the Commission's exporter questionnaire, Shiheng has provided transactional costing data in respect of its major purchased raw materials, 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. In the case of iron ore, the information shows that Shiheng purchased [redacted]% of its iron ore requirements at international spot prices from external unrelated suppliers not located in China and hence at normal competitive market prices.

Profit

In its submission, the applicant requests the inclusion of a profit for the purposes of constructing normal value by reference to a rate of profit identified on Shiheng's website. Shiheng makes the following observations regarding the applicant's suggestion:

- 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'. The referenced rate of profit relates to all steel products sold by Shiheng and does not relate to the production and sale of like goods in the ordinary course of trade; and
- the referenced profit relates to calendar year 2014 only and does not reflect the profit achieved on like goods sold in the ordinary course of trade during the nominated investigated period of July 2014 to June 2015.

Shiheng therefore expects the Commission to disregard the proposed profit submitted by the applicant. If required to construct domestic selling prices, the Commission must consistently apply its interpretation of the regulations relevant to the determination of profit, by calculating the profit achieved on domestic sales of all like goods sold in the ordinary course of trade.

Yours sincerely

John Bracic