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BY EMAIL

STATEMENT OF ESSENTIAL FACTS No. 322
STATEMENT OF ESSENTIAL FACTS No. 331

Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001
AUSTRALIA
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Attention: The Director - Operations 4

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

The Anti-Dumping Commission ("the Commission") put on the public record, on 8 August 2016, the Combined Statement of Essential Facts ("SEF") for Case 322 and 331: ALLEGED SUBSIDISATION OF STEEL REINFORCING BAR ("rebar, the subject merchandise") AND 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 combined comments on Program 1 and 46 in respect of the SEF 322/331:

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Program 1: Billet provided by the Government of China at less than adequate remuneration

Issue of Self-Subsidizing

In the SEF 322/331, the Commission explicitly acknowledged that ***"none of the Cooperative exporters of rebar and/or rod in coils had purchased steel billet during the investigation period. The Commission noted that all Cooperative exporters of rebar and rod in coils were fully integrated and self-produced billets that was then used to produce rebar or rod in coils."***

The Commission then *"considers that this program involves a financial contribution that involves the provision of billets by SIEs (i.e. **billets self-produced and self-supplied by the integrated SIE's**), being public bodies, at less than adequate remuneration."*

Under such a circumstance that a conclusive evidence has demonstrated the fact that there is no steel billet externally purchased at all by the Cooperative Exporters including Valin. However, the Commission's approach here is totally to ignore Valin's actual raw materials purchase (iron ore, coke and coking coal), and frictionally to create a new concept of "self-supply and self-subsidize" of billet.

As Government of China submitted that a state-invested enterprise producing rod in coil or rebar from basic raw materials (iron ore, coke and coking coal) in a fully integrated steelmaking process could nonetheless give itself a financial contribution by way of the production of steel billet as part of that process. In other words, what has been suggested is that a subsidy may be found to exist:

- without any "financial contribution by... any public body" (Article 1.1(a)(1) of the SCM Agreement refers);
- without "a [public body] providing [steel billet]" (Article 1.1(a)(1)(iii) of the SCM Agreement refers);
- without a price, or a payment, or any relevant transaction to determine whether "the provision [of the steel billet] is made for less than adequate remuneration" (Article 14(d) of the SCM Agreement refers).

A subsidy cannot exist in the circumstances we have described, how could a company give itself a subsidy? There is no any legal basis and logic to make that conclusion. Valin strongly maintains the position that the Commission's approach on the 'Program 1 – LTAR for Billet' is neither in consistent with SCM Agreement, nor with the Commission's longstanding practice. Any findings as

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such by the Commission would be a significant breach of China's WTO rights.

Issue of Public Body

The Commission, in both the rebar/RIC case, even did not investigate or analyze whether the exporter cooperating with the investigation like Valin with only some state ownership could constitute to be equal to a "public body".

As the Commission is very aware in the investigations that Valin is owned by

The major shareholder is a public listed company, a public listed company in China is the most market-oriented with the best corporate governance. Further, , a well-known world's leading steel and mining company, is

Therefore, even Valin has some state ownership, but it runs according to the market rules, there is no any evidence to establish that Valin can be regarded as a "public body".

The WTO Appellate Bod (AB) report in *the United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China - DS379*, has referred to three indicia: a 'public body' may possess, exercise or be vested with government authority, where:

- a statute or other legal instrument expressly vests government authority in the entity concerned;
- evidence exists that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority; and
- evidence exists that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Commission should treat these indicia as illustrations of circumstances which would point to an entity being a public body, however, there is no proper analysis of any kind, in both the rebar/RIC case, regarding whether the indicia could lead to the conclusion that any particular State-invested enterprise engaged in the self-production of steel billet for the production of subject goods is such a public body.

Further, in the two cases which have more lately dealt with the same topic,

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namely DS4363¹ and DS437², the latest pronouncements and clarifications that have been made by the WTO Appellate Body on the test for the identification of a “public body” in terms of Article 1.1(a)(1) of the Subsidies and Countervailing Measures Agreement (“the SCM Agreement”), the Appellate Body has stressed that the indicia that it referred to in DS397 are only descriptive of the kind of evidence that can be considered in deciding whether the legal test is satisfied. This does not supplant the test itself. The “substantive legal question” – which is whether the entity concerned possesses, exercises or is vested with governmental authority - must still be addressed.

In short, Valin submits that the Commission’s conclusion that SIEs “equal to” public bodies is without illegal in the extreme.

Program 46: preferential loans and interest rates

According to the calculation worksheet, is that they selected two types of benchmark rates, interest rates of People’s Bank of China (“PBC”) and private interest rates (no disclosure of the source), and takes three scenarios in the benefit margin testing:

1. Using simply averaging PBC rate during the POI directly to calculate a benefit under this program, resulting in a margin of ;
2. Using private rate directly to calculate a benefit under this program, resulting in a margin of ; and
3. Using private rate to calculate the benefit for the loans in foreign currencies, and using the simply averaging PBC rate to calculate the benefit for the loans in RMB, then worked out the benefit under this program, resulting in a margin of .

Under such circumstance, the ADC chose the margin based on the PBC rate as the final rate for this program. However, it is obvious that applying the simple averaging PBC rate **ALONG WITH** zeroing the negative benefit in the margin calculation, artificially got the margin lifted.

Valin understands the purpose of applying simple averaging PBC rates is to work out “whether any particular loan was provided at less than adequate remuneration”, and even could accept the methodology where using the daily

¹ *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (WT/DS436/AB/R, 8 December 2014)

² *United States – Countervailing Measures on Certain Products from China* (WT/DS437/AB/R, 18 December 2014)

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PBC rate for the same or most close due date of the loan, i.e. the interest rate at last date of the POI, rather than the simple averaged rate. The simple averaging itself had got the lower part of daily PBC rates heightened, thus resulting in more loans to be deemed as "less than adequate remunerated"; though at the same time, it also got the higher part of PBC rates lowed, **because of the zeroing**, the only actual outcome of simple averaging is to get more loans with relatively higher rate excluded from the benefit calculation. So, where the zeroing applies, the Commission should use the interest rate at last date of the POI in this case, rather than the simple average rate; where simple averaging applies to the PBC rate, the zeroing is nothing but manipulate the margin.

Therefore, Valin requests the Commission to use PBC's last date of the POI and correct the CVD margin for the program 46.

On behalf of Valin, we appreciate the opportunity to submit the comments above. For the Commission's convenience to review the CVD margin calculation, we are providing the re-calculation for the program 46 at **Exhibit SEF-1** for your reference.

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

Respectfully submitted,



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