



**J.BRACIC & ASSOCIATES**  
TRADE REMEDY ADVISORS

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15 July 2016

Anti-Dumping Review Panel  
c/o Legal, Audit and Assurance Branch  
Department of Industry and Science  
10 Binara Street  
Canberra City ACT 2601

**REVIEW OF THE DECISION TO PUBLISH A DUMPING DUTY NOTICE ON EXPORTS  
OF STEEL REINFORCING BARS FROM CHINA**

Dear Panel Member,

This submission is made on behalf of Jiangsu Yonggang Group Co., Ltd (Yonggang) in response to the application by OneSteel Manufacturing Ptd Ltd (OneSteel) for a review of the decision to impose interim dumping duties on exports of steel reinforcing bars exported from China.

The submission also provides additional information in support of Yonggang's own application for review.

**Response to OneSteel Manufacturing's application for review of a reviewable decision**

Ground 1 -Claimed adjustment for micro-alloys

Yonggang considers OneSteel's claim for adjustment of micro-alloys used in the production of steel billet particularly extraordinary in light of the Commission's decision to reject all of Yonggang's raw material and conversion costs relevant to the production of steel billet, and replace it with a surrogate benchmark price. For example, the Commission has disregarded all of Yonggang's imported iron ore purchase costs which were sourced primarily from Australia and Brazil at prevailing international spot prices. Those iron ore costs are estimated to represent approximately ■% of the total cost of producing steel billet. By contrast, the total cost of all alloys, of which vanadium is only a small fraction, accounts for less than ■%<sup>1</sup> of Yonggang's total cost of production of steel billet.

In any case, it is apparent to Yonggang that OneSteel's claim is founded upon a misunderstanding of the information presented and statements made by Yonggang. Exhibit B-4 Australian sales of Yonggang's questionnaire response clearly highlights that the

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<sup>1</sup> Calculated from Exhibit G-4 CTMS-Steel Billets submitted in Yonggang's exporter questionnaire response.

production method used to manufacture the exported goods was [REDACTED].

In fact, in Yonggang's response to a query from the Commission about the impact of alloys including vanadium on the respective billet costs, Yonggang explained:

[REDACTED]

[REDACTED]

[REDACTED]

This confirms that no adjustment for alloys is warranted as both domestic and exported goods [REDACTED]. This includes the use of vanadium in the production of [REDACTED] steel reinforcing bars.

OneSteel also appears to question the reliability of information and evidence presented to the Commission. The evidence presented to the Commission included a mill test certificate for 2 export transactions made by Yonggang during the investigation period. The test certificate shows that the production method used to manufacture the exported goods was the [REDACTED] referred to in OneSteel's application. Please refer to **Confidential Appendix A** for supporting evidence.

Further, Yonggang wishes to clarify and confirm that the reference at footnote 12 of OneSteel's application to an issue raised in a submission made by Yonggang, is not in any way relevant or related to the issue of alloys and production methods.

Ground 2 – Benchmark prices based on export market conditions

OneSteel disputes the decision to base the steel billet benchmark price on export market prices and claims that this approach is inconsistent with the WTO jurisprudence and the Commission's own policy interpretations. OneSteel refers to Appellate Body reports involving *US – Softwood Lumber IV* and *US – Anti-Dumping and Countervailing Duties* as support for its position, although it is noted that OneSteel does not directly reference the findings of the Appellate Body in either case.

Whilst the Appellate Body's findings were made in the context of an examination of Article 14(d) of the Subsidies and Countervailing Agreement, Yonggang does consider the views and interpretations of the Appellate Body to be relevant. In considering the question of what types of alternative benchmarks could be relied upon in a manner consistent with Article 14(d) of the SCM, the Appellate Body found in US – Softwood Lumber IV<sup>2</sup> that, where an investigating authority relies on an external benchmark, *"it is under an obligation to ensure that the resulting benchmark relates or refers to, or is connected with, prevailing market conditions in the country of provision, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale, as required by Article 14(d)."* The Appellate Body further *"underscored the importance of making appropriate adjustments to ensure that alternative benchmarks reflect prevailing market conditions in the country of provision"*.

The Appellate Body made no mention of whether domestic surrogate prices or export surrogate prices were preferred as OneSteel appears to be arguing. Instead and apparently overlooked by OneSteel, the Appellate Body provided clear guidance to investigating authorities looking to establish an external benchmark for the purposes of determining whether a subsidy had conferred a benefit. The Appellate Body identified required factors to be considered in achieving to meet the clear objective of establishing a benchmark that was relevant to and connected with the prevailing market conditions in the country of provision.

### Ground 3 – Deduction of profit from benchmark price for steel billet

Yonggang considers OneSteel's view and position on this issue to be unreasoned. The decision to make adjustment to the steel billet benchmark for profit is reasonably based upon the Appellate Body's interpretation that *'the resulting benchmark relates or refers to, or is connected with, prevailing market conditions in the country of provision, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale'*.

As noted by the Commission in REP 301, each of the cooperating exporters including Yonggang, were integrated steel producers that did not purchase steel billet but instead sourced the relevant raw materials necessary to produce steel billet. Therefore, Yonggang's cost of steel billet would not incorporate or include an element of profit when transferred internally to be converted to steel reinforcing bars.

It is illogical then to compare and replace Yonggang's cost of steel billet with a steel billet price inclusive of a profit margin achieved by the surrogate steel billet producer. For this reason, the Commission correctly identified the need for an adjustment to its surrogate benchmark, which would at the very least ensure that the benchmark reflected a cost of steel billet and not a price.

### **Additional information in support of Yonggang's application for review of a reviewable decision**

Yonggang wishes to reiterate the views outlined in its application to the Review Panel that the Commission's approach to the rejection and replacement of all costs in the production of

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<sup>2</sup> Appellate Body Report, WT/DS257/AB/R, para 106, page 43

steel billet, including iron ore supplied by Australia's largest exporters such as BHP and Rio Tinto at prevailing international spot prices, to be totally unsound and without any legal basis. By doing so, the Commission is endorsing and authorising a position and interpretation that allows for all costs of an exporter to be rejected where a single cost is found or considered to be affected by market distortion.

By any measure and reading of the relevant provisions of Australia's domestic legislation and the WTO Anti-Dumping Agreement, such an approach and practice is not permissible with the framework relevant to exports from market economies. If such an approach is accepted under the current dumping rules and guidelines applying to market economies, then this will surely lead to Australian industry applicants simply seeking higher dumping margins by highlighting doubts about a single and possibly immaterial costs item, for the sole purpose and expectation that it may result in all costs being rejected and replaced with an alternative surrogate benchmark.

As explained and found by the Panel in *EU – Biodiesel*, such an approach does not accord with the obligations of investigating authorities to determine costs on the records of the exporter where those records are kept in accordance with GAPP and reasonably reflect the costs of production.

Finally, in Yonggang's application for review, reference was made to email correspondence between the Commission and Yonggang which resulted in revision to the determined rate of profit added to the constructed normal value. This was raised in the context of Finding 5 – Ground e) in the application. It is noted that the email correspondence was not attached to the application for review by the Review Panel. We now provide that email correspondence at **Confidential Appendix B**.

Yours sincerely,

John Bracic