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8 January, 2016
BY EMAIL

Anti-dumping Notice No. 2015/151
PRELIMINARY AFFIRMATIVE
DETERMINATION REPORT NO. 300

Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001
AUSTRALIA

Attention: Director Operations 4

Re: Steel Reinforcing Bar Exported from the People's Republic of China
Comments on the Preliminary Determination

Dear Sir/Madam:

The Anti-Dumping Commission ("the Commission") has published, on December 21, 2014, the Preliminary Affirmative Determination ("PAD") Report No. Case 300: Anti-dumping Investigation into Steel Reinforcing Bar ("rebar", 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 PAD:

Error in identifying the quarter of the export sale

In the worksheet of "Australian Sales" in Appendix 4-TAC(2)(c) NV and DM, the Commission identified the export sale made in [redacted] as [redacted] of the period of investigation ("POI") by mistake, and marked it as [redacted] in the Australian sales list. Given the POI begins with July 2014 to June 2015, so the quarter of the aforesaid export sale should be identifies as [redacted] in fact. We corrected it at **Exhibit C-1** to this submission, and request the Commission to

revise the calculation in both the Statement of Essential Fact ("SEF") and the final determination.

Incorrectly adding an "ACRS Fee" to the constructed normal value ("NV")

In the worksheet of "Australian Sales" in Appendix 4-TAC(2)(c) NV and DM, the Commission added an "[e]" in calculating the constructed NV for the subject merchandise exported to the Australia. However, Valin never paid any [ ] for the exportation of rebar to Australia during the POI, and as consequence, we corrected this error at **Exhibit C-1** to this submission, and request the Commission to delete the amount of this ACRS fee in both the SEF and the final determination.

Double-counting the "Export handling expenses"

In the worksheet of "Australian Sales" in Appendix 4-TAC(2)(c) NV and DM, the Commission add a "[ ]" in calculating the constructed NV for the subject merchandise exported to the Australia, based on the reported [ ] of the Australian sales of rebar during the POI.

However, as we reported that Valin books the export revenue at the [ ] level in its accounting system, all [ ] occurred before the delivery of goods at the board of the carrier, such [ ] are all booked as "[ ]" in its SG&A, and as consequence, it has been included in the reported CTMS of the Australian rebar. Therefore, the Commission should not double-add the "[ ]" in the calculation of constructed NV.

We corrected this error at **Exhibit C-1** to this submission, and request the Commission to correct it in both the SEF and the final determination.

Incorrectly picking the quarter of the Cost to Make and Sale ("CTMS")

In the worksheet of "UPLIFT" in Appendix 4-TAC(2)(c) NV and DM, the Commission picked the [ ] CTMS of subject merchandise as "minuend" to calculate the "[ ]" of [ ], whereas the correct "minuend" should be the "Australian CTMS" of [ ] for such calculation.

We corrected this error at **Exhibit C-2** to this submission, and request the Commission to correct this error in both the SEF and the final determination.

Miscalculating the UPLIFTED AUS CTMS

In the worksheet of "TAC2 NV without Adj" in Appendix 4-TAC(2)(c) NV and DM, the Commission uplifted entire CTMS of the rebar exported to Australia by [redacted] calculated out based on the variance between Valin's actual cost of [redacted] consumed in the production of subject merchandise, and benchmark price, the East Asian steel billet import prices at cost and freight (CFR) terms.

To Valin's understanding, the correct methodology should be, as indicated on page 25 of the PAD, to apply the "*percentage difference……to the cost of steel billets* {only} *consumed in production of each model of rebar*", rather than to the entire CTMS of the rebar produced. We, therefore, corrected this error at **Exhibit C-2** to this submission, and request the Commission to correct this miscalculation in both the SEF and the final determination.

No legal basis to substitute a semi-product in the construction of NV

Australia has recognized China's full market economy status since April 2005, the Commission should not treat China as a non-market economy and apply benchmark price in the antidumping calculation.

However, in the PAD, the Commission determined that a "particular market situation" ("PMS") exists in the rebar market in China, and the NV should be determined on the basis of a cost construction, and that "*the significant influence of the GOC has ……distorted the prices of* ***raw materials*** *used to make steel in China and render them unsuitable for cost to make and sell (CTMS) calculations*".

Under WTO legal framework, no matter Article 2.2 of AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 (ADA), or, even if Australia does not recognize China as a market mconomy, according to the Article 15 of Protocol on the Accession of the People's Republic of China and the Paragraph 151 of Report of the Working Party on The Accession of China, a WTO Member may use a methodology that is not based on a strict comparison with domestic prices of China. The long established practice is to find a comparable benchmark price to substitute the cost of input of raw material which is purchased directly from market.

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.

In a recent anti-dumping investigation on Hot Rolled Plate Steel[1] 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.

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 rebar 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 rebar 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 both the SEF and the final determination.

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[1] Report No.198, DUMPING OF HOT ROLLED PLATE STEEL, 16 September 2013.

Not "apple to apple" comparison between the cost of steel billet and the benchmark price

In the PAD, the Commission adopted "*East Asian steel billet import prices at cost and freight (CFR) 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.

Even if there is a PMS existed, which 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 a semi-product, such as the steel billet.

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 a foreign port, which is recovering all export selling fees, CTM, SG&A and even the profit of the supplier. Therefore, it is obviously incorrect for such a simple replacement between the semi-product and benchmark price.

As noted by the Commission in the PAD, like all other cooperating exporters/producers, Valin is an "*integrated manufacturers of steel products, including rebar. As such, these exporters 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 reported in the CTMS of the rebar 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 rebar products.

In sharp contrast, the benchmark price selected by the Commission is the CFR price for the steel billets **delivered** at a foreign 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 even 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 PAD.

In order to make them comparable, both the cost of steel billet and the CFR benchmark price should be adjusted to the same level, i.e. the ex-work ("EXW")

level.

Therefore, for the selected benchmark price, which is actually the CFR price, the ocean freight, inland transportation and export customs handling expenses should be reduced from the CFR price; for the cost of steel billet, it should be added with the SG&A and profit margin, to the EXW level.

Based on the arguments above, we made relevant adjustments to both the CFR price and steel billet cost and then re-calculated the "UPLIFT" ratio at **Exhibit C-2** to this submission and request the Commission to present the correct calculation in both the SEF and the final determination. .

Abuse of a "non-cooperative" treatment to the cooperative company

According to the Customs Regulation 181A(3), where the profit for the constructed NV is unable to be determined by the domestic sales of like products, or same general category of goods by the exporter, it should be worked out the profit, as an alternative "*by identifying the weighted average of the actual amount realised by other exporters or producer from the sale of like goods in the domestic market of the country of export*".

In the precedent Anti-dumping Investigation into Aluminum Road Wheels exported to Australia from the China, where the PMS was also found existed. The Commission found "*it impossible for the Commission to calculate Pilotdoer's* {a cooperative exporter in that case, note added} *profit under subsection 45(2) of the International Obligations Regulation*", i.e. on the basis of "*the sales within the Chinese market of like goods in the ordinary course of trade*", hence use "***average net profit from domestic sales made in the ordinary course of trade by the other selected exporters***"[2].

However, in the ongoing rebar case, although recognizing the Valin as the Cooperative exporter, the Commission used the [redacted] identified in other exporters to construct the NV for Valin, that is to make a "non-cooperative" treatment to the cooperative company.

Valin submits that the Commission should use the profit margin realized by Valin itself after differentiating the selling expense related only to the export sales from that for the domestic sales, or at least, as an alternative, the average profit margin identified in other cooperative exporter in this case.

[2] Report No. 263, REVIEW INTO ANTI-DUMPING MEASURES on ALUMINIUM ROAD WHEELS, 14 September 2015, page 27.

Request for differentiating the export expense from the domestic sales

In the original submission, Valin reported the CTMS of rebar exported to Australia and the like goods sold in the domestic market, and the calculation of SG&A is based on the total sales value of Valin and the all SG&A accrued during the POI.

When we double-check all items of exporting expenses in the SG&A account of Valin, we found that there are some selling expenses, i.e. export inland transportation fees and customs handling and others fees, which are related to the export sales only but have nothing to do with the domestic sales. Therefore, we re-calculated the selling expenses for both the export rebar to Australia and the like goods sold in domestic market at **Exhibit C-3** to this submission. We request the Commission to use the revised CTMS spreadsheet in calculation of dumping-margin in both the SEF and 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 C-4** for your reference.

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

Respectfully submitted,

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