EMBASSY
OF SPAIN

TRADE COMMISSION
OF SPAIN
SYDNEY

ANTI-DUMPING INVESTIGATION AGAINST IMPORTS OF STEEL REINFORCING BAR FROM SPAIN AND OTHER COUNTRIES

WRITTEN SUBMISSION OF SPANISH GOVERNMENT ON CONSIDERATION REPORT 418

PUBLIC RECORD

The Spanish Government would like to thank the Australian authorities for the opportunity to submit comments on the initiation of this investigation. This contribution must be understood as complementary to the one submitted by the European Commission on behalf of the European Union, and the arguments put forward by the Spanish company involved in this antidumping proceeding.

First of all, we would like to recall the Australian authorities that, within the framework of a recent investigation on the very same products affecting Republic of Korea, Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand and the Republic of Turkey, Nervacero's margin of dumping was ultimately found negligible. Indeed, recommendations set out in report ADRP report Nº 34 were accepted on July 2016, which meant the exemption of Nervacero from the scope of measures. To our surprise, barely one year after these ADRP recommendations were confirmed, the Australian authorities have decided to include the Spanish company in this new antidumping investigation.

We have already had the chance to analyze the Consideration Report 418, as well as the application submitted by the petitioner. As a result, we would like to comment on the following aspects of the documents: inconsistency with prior investigations, lack of information and excessive level of confidentiality in Consideration Report 418, demand of the subject good by the petitioner, lack of material injury and weak causality.

Inconsistency with prior investigation

As abovementioned, from our perspective it is very unusual and highly surprising that the petitioners' request to impose measures comes only one year after the ADRP Report determined that Nervacero's dumping margin was below 2%, that is, *negligible*. After having analyzed analyze the Application and the Consideration Report 418, we question whether there are sufficient arguments in the complaint to back the opening of an investigation only one year after having dismissed measures on Nervacero, or whether it contains sufficient grounds to ascertain that this company has dramatically changed its pricing policy.

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Lack of information and excessive level of confidentiality

In this particular case, in which domestic industry is represented by only one company, we accept that there is need for confidentiality. We also understand that companies under voluntary administration are not obliged to furnish audited accounts (2016 is apparently not available). However, according to article 6.5.1 of the WTO Anti-dumping Agreement ('ADA'), *"The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence […]".* Therefore, relevant performance indicators should have been provided, e.g. in indexed form.

Moreover, according to the ADA, article 3.4, Consideration Report 418 should have taken into account many more variables to assess whether One Steel is really suffering from injury and to confirm whether there is a casual relationship between it and the alleged dumping. According to the Panel in EC — Bed Linen, *"the examination of the impact of dumped imports must include an evaluation of all the listed factors in Article 3.4"*.

We therefore urge the Australian Authorities to provide indexed data on production, sales, market share, profits, prices etc. and more information about employment, productivity, cash flow, financial performance, stocks, costs of raw materials, and so on. Instead, to confirm whether the data provided by the applicants are considered as correct and definitive for the purposes of the investigation.

One Steel imports subject product

In the Consideration Report No 418, page 10, it is stated that *"Import offers and the movement in the price of import offers are used by independent customers to negotiate prices with OneSteel. OneSteel provided information in support of its claim that its prices for sales to internal customers are determined using prices for external customers"*.

However, as stated in page 24, One Steel is an exclusive distributor of imported goods manufactured by an entity subject to the application. We wonder how this situation could influence the prices behavior of the subject product in the Australian market.

[CONFIDENTIAL]

In view of the above, we ask the Australian authorities to pay careful attention to this fact during the investigation.

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Injury

Accumulation

Consideration Report 418 is satisfied that there are sufficient grounds to accumulate imports from the subject countries. However, no evidence is given as to ascertain that imports from Spain, more specifically from Nervacero, comply with the three requisites included in article 3.3 of ADA as to be subject to cumulation: non negligible volume, non-negligible dumping margin and competition among the products.

We hope that in the next stages of the investigation the Australian authorities are able to demonstrate that it is pertinent to accumulate Spanish imports with the other subject countries or, conversely, to exclude them from the scope of the investigation.

Existence of material injury

According to the data provided in the Application and Consideration Report 418, there seems to be a doubtful justification on the existence of material injury:

- Application:

Regarding the period of investigation, with respect to rebar in coil which according to the applicant makes up all of the exports from the EU exporters (what includes Nervacero), the Australian industry's sales quantities, overall sales values and production volumes have increased since 2013 (pages, 36, 23, 24 and 31). Revenue, return on investment and productivity with respect to all rebar have improved in the years leading up to the period of investigation (page 34). The application also shows that the Australian industry's ex-works prices and unit net sales revenue for rebar in coil have increased over the period of investigation itself (pages 40 and 50).

- Consideration Report 418

According to the figure 1 (page 11) included in the Consideration Report, One Steel has never seen its sales volume been reduced in the Analyzed Period. Furthermore, 2016-2017 period is the one in which its sales, and possibly market share, have had the best behavior.

In the market share graph (figure 2, page 12) one can easily see that the market share has never ceased to grow during the Analyzed Period. It is also evident that the increase in imports from subject countries has come from displaced imports originating in "other countries" or countries "subject to measures", not from the Australian market share. Therefore, the increase in the subject countries market share cannot have injured One Steel.

The claim that One Steel lost sales volumes to the allegedly dumped imports seems to us very weak. According to the brief information shown in figure 3 (page 17), the inclination of the lines presented only differs slightly, so no decisive conclusion can be reached.

When considering the article 5.3 of the WTO Anti-Dumping Agreement: *"The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation",* we are unable to identify the existence of material injury, sufficient to initiate the on-going investigation. Conversely, the facts present the picture of an industry whose performance, e.g. in terms of sales volumes or market share, has flourished over recent years.

Price effects

A key element of the petitioner's allegation is that even though its prices have increased, its costs have also increased, and at a higher rate than its prices. Allegedly, subject imports would have suppressed One Steel's ability to further increase its prices.

We would like to point out that using the margin between prices and costs as a proxy for price suppression may have many drawbacks. Indeed, a negative margin might be due to lack of competitiveness or cost control. Price suppression could also be due to imports originating in countries out of scope of the investigation. In this respect, rebar in coils originating in the Republic of Korea were seemingly exported to Australia in the period of investigation in large quantities, and at FOB prices lower than the FOB prices of the EU exporters (application, page 64). Additionally, Korean exports were apparently offered for sale on an FIS basis at the same or at lower prices than the same goods exported by the EU exporters in several months for which comparisons are presented (application, page 66).

But even if the comparison between prices and costs were an infallible method, one can see in the Consideration Report 418 (figure 4, page 18) that this margin has changed its sign four times in the Analyzed Period. What is more, in the Investigation Period there have been around four months with positive margin. Any clear trend supporting the petitioner's claim cannot be inferred.

Therefore, we hope that the investigating authorities examine the abovementioned factors during the procedure.

Causality

First of all, there seems to be a doubtful correlation between subject imports and the performance of One Steel's sales. Aside from the positive indicator's behavior shown above, for instance fiscal year 2015 to 2016, where allegedly dumped goods were being sold, was the only time of the Analyzed Period in which One Steel earned a profit.

Moreover, in the light of previous cases included in the Consideration Report 418, page 5 (ADC Report Nº264, ADRP Report Nº 34, ADC Report Nº 300, ADC Report Nº 322, ADC Nº 380), one can see how no sooner an investigation is terminated another is launched. It surprises us that in such a short time lapse so many complaints from One Steel have been converted into investigations against the same countries and the same products. We fear that this course of action may intend to prop up a company which has incurred in losses repeatedly in the last years.

We hope that the Australian authorities carefully examine other factors that may be behind the cause of the alleged situation of One Steel, e.g. level of competitiveness of its products or the damage that its parent company, Arrium, may have inflicted on it since its collapse in April 2016.

Conclusion

Just to end we would like to stress the following weak points we have found in this new investigation on steel reinforcing bars:

1) In July 2016, within the framework of a case affecting the very same products, it was declared that Nervacero had a negligible margin of dumping.
2) There is lack of demonstrated material injury that justifies the initiation of this antidumping procedure.
3) Alleged price suppression can be due to non-considered factors by the applicants and investigating authority.
4) One Steel is seemingly influencing market prices with its purchases, coupled with the fact that it is importing significant amounts of products being considered in this investigation [CONFIDENTIAL].
5) There is a weak correlation between alleged dumped imports and One Steel's performance.

According to the information provided in the Consideration Report Nº 34, we believe that this investigation should have not included Nervacero under its scope. If this company is not exempted in subsequent stages of the procedure, we at least expect that the Australian authorities carry out this investigation by taking into duly account the points highlighted above, in due respect of the WTO ADA provisions.