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18 April 2018

Director
Operations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Dear Director

Anti-circumvention inquiry – Steel reinforcing bars exported from Korea

This submission is made on behalf of Stemcor Australia Pty Ltd and Stemcor (SEA) Pte Ltd, collectively referred to in this submission as Stemcor, in response to the submission from Liberty OneSteel Pty Ltd (OneSteel).

OneSteel outlines its view that the circumvention provisions are targeting '*circumstances where an exporter attempts to circumvent the effectiveness of measures calculated under the ad valorem method*.' Clearly that is the intent of the legislation contained with Division 5A of the *Customs Act 1901* (the Act). What is also clear from OneSteel's summation is that the legislation is aimed at circumstances where it is established that an exporter or importer have 'attempted' to evade or reduce the effectiveness of the applicable measures. This suggests some intent or effort on the part of the parties to bypass the measures.

This is confirmed by the explanatory memorandum (Exmo) to the *Customs Amendment (Anti-Dumping Improvements) Bill (No. 3) 2012*[1] which describes circumvention as:

> *a trade strategy used by the exporters and importers of products to avoid the full payment of dumping and countervailing duties. Circumvention behaviours take various forms and exploit different aspects of the anti-dumping and countervailing system, but they all aim to ensure that the relevant goods do not attract the intended dumping or countervailing duty.* [emphasis added]

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[1] para 12, page 6.

The dictionary definition of 'strategy' is 'a plan of action designed to achieve a long-term or overall aim'. Therefore, circumvention can be seen as an exporter or importer engaging in a practice, process or activity, with the sole intention or purpose of avoiding duty.

This cannot be found in the case of Stemcor's imports of reinforcing bar from Korea as all available information gathered and verified by the Commission confirm that:

- Stemcor paid the full amount of interim dumping duty imposed;
- Stemcor set its selling prices in the Australian market after taking account of the incurred dumping duty;
- Stemcor's selling prices remained profitable; and
- Stemcor's purchases from Daehan were arms-length and there were no further rebates, reimbursements or considerations other than the agreed price.

In terms of Daehan's export prices, its submission highlights that export prices decreased following the imposition of the measures but these were consistent with the observed trends in regional billet prices and corresponding reinforcing bar prices, including those of OneSteel. In addition, Stemcor understands that Daehan's [redacted] due largely due to:

- a change in the Commission's consideration of the adjustment claims relating to inventory carrying costs, technical support and expenses relevant to leasing equipment. Given the previous acceptance of these adjustments by the Commission, it was reasonable for Daehan to take into account those factors when negotiating and setting its export prices to Stemcor. It is unreasonable to expect that Daehan would or could accurately understand or speculate on which of its adjustment claims might be reversed in any future review. Removing the effects of the changed adjustments, Stemcor understands that Daehan's dumping margin is estimated to be [redacted]%;
- a lag between the date of contract when prices are negotiated and agreed, and date of invoice which approximates the shipment of the goods. This lag distorts the dumping margin as prices are fixed at the time of order confirmation which takes into account the prevailing costs and domestic prices at that time, and not [redacted] months later after the goods have been produced and ready for shipment. This is further exacerbated by the use of quarterly averages which then compare domestic sales made after the exported goods are shipped, with export sales agreed at the time of order which can be up to [redacted] months prior.

Taking these matters into account, Stemcor considers that the dumping margin relevant to Daehan's exports of reinforcing bar during the review period would be comparable to the original dumping margin of 9.6% during case 264. Any margin

above the original duty rate would simply be a result of the short-term fluctuations and volatilities in [redacted].

This is further supported by the range of margins determined across the original 12 month investigation period which varied from [redacted]% to [redacted]%. This confirms that at the time of negotiating and agreeing export orders, Daehan is not able to precisely account for the fluctuations in [redacted].

To highlight more clearly, the chart[2] below shows the price differential in benchmark billet prices between Stemcor's contract order date and the subsequent invoice date. It demonstrates the significant variance in billet prices in the intervening period between order and invoice, with an approximate $[redacted]/mt increase ([redacted]%) in [redacted], and [redacted]/mt ([redacted]%) in [redacted]. Over the whole period covering Stemcor's orders, the price differential represented approximately $[redacted]/mt or [redacted]%. This differential can reasonably explain the [redacted]% increased margin of dumping by Daehan from its original [redacted]% to the comparable [redacted]%.

[CONFIDENTIAL CHART REMOVED]

Stemcor also disagrees with OneSteel's view highlighted by its example, which proposes that in order for the importer to not be said to sell the circumvention goods in Australia without increasing the price commensurate with the total amount of duty payable, then the importer must sell those goods in Australia for at least an amount that reflects the cost of the goods, the original amount of profit and the amount of dumping duty paid. This is plainly not consistent with the intent of the provisions or the Commission's interpretation.

The Exmo clearly states:

> *Further, recognising that profit reduction of itself is a legitimate business practice, an importer who is independent of the exporter, and who may be absorbing part of the duty but not making sales at a loss, will generally be considered as not engaging in the circumvention activity - unless the inquiry found, for example, evidence that the exporter was compensating in some form the reduction in profit allowing no, or limited, movement in the price of the goods.*

This interpretation is consistent with the Commission's draft chapter to the Dumping and Subsidy Manual[3]. Therefore, it is clearly incorrect to expect that an importer that is arms-length from the exporter, would be expected to fix its amount of profit for the five years during the life of the dumping measures without taking into account prevailing market prices or movement in costs.

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[2] Refer to Confidential Appendix 1.

[3] Draft Manual Chapter - Anti-circumvention avoidance of the intended effect of duty

If OneSteel's expectations of the circumvention provisions is to address circumstances where an importer reduces its profit margin, but continues to remain profitable after incurring dumping duties, then this is without foundation. It is simply irrational to expect that importers could fix their profit margins for five years whilst duties are in place, based on a historical period without having regard to the normal forces of supply and demand evident in the Australian market.

It is also clear that if the Commission were to agree with OneSteel's interpretation on the importer's expected profit following the imposition of measures, that OneSteel would [redacted]. This cannot be allowed to occur as the circumvention provisions were introduced to address circumstances whereby exporters and importers had engaged in a deliberate strategy of undermining the effectiveness of measures, and not as OneSteel appears to be suggesting to ensure that importers achieve a minimum profit margin that is not less than a historical profit.

Yours sincerely

John Bracic