

20 April 2018

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By email

Dear Director

DITH Australia Pty Ltd Anti-circumvention inquiry concerning rebar exported by Daehan Steel and imported by Stemcor

We are instructed by DITH Australia Pty Ltd ACN 620 953 166 ("Duferco AU") in this matter.

1 Duferco AU's status and capacity with respect to this inquiry

Duferco AU is not an interested party in relation to the abovementioned inquiry, and therefore has not been invited by the Commission to make a submission, in terms of the relevant legislation, whether in a timely fashion or otherwise.¹

This is because the goods the subject of the application are steel reinforcing bars ("rebar") of the technical specification referred to in the initiation notice exported from Korea to Australia by Daehan Steel Co., Ltd ("Daehan Steel") and imported into Australia by Stemcor Australia Pty Limited ("Stemcor").² The inquiry period was the period from 1 April 2016 to 31 March 2017.

Duferco AU was not and is not directly concerned with the importation of *those goods*. Further, Duferco AU is not Stemcor, and is not related to Stemcor, therefore it is not directly concerned with the importation of *like goods* to those goods.³ Nor has Duferco AU been the subject of the Commission's inquiry.

Duferco AU and Stemcor are entirely separate companies. They are each a member of a larger international group of companies. Each of those groups is also independent and unrelated to the

¹ *Customs Act 1901*, Section 269ZDBE(6)(e) refers.

² See *Application for an anti-circumvention inquiry into avoidance of the intended effect of duty of steel reinforcing bar exported from the Republic of Korea* lodged with the Commission by OneSteel Manufacturing Pty Ltd ("OneSteel") and dated 27 October 2017, at pages 4, 5 and 6, and elsewhere, in its references to the goods (rebar) and the parties involved (Daehan Steel and Stemcor). The Commission's inquiry has related solely to those goods.

³ *Customs Act 1901*, Section 269T, definition of "*interested party*", refers.

other.⁴ **[CONFIDENTIAL TEXT DELETED –business operation details]**. Should it be additionally relevant, Duferco AU was incorporated on 8 August 2017. Thus, Duferco AU did not and could not have imported the subject rebar from Daehan Steel.

Duferco AU's trading relationship with respect to Daehan Steel's rebar exports to Australia is recent. It commenced after the inquiry period. That relationship is a separate and independent commercial relationship to that Stemcor AU may have with Daehan Steel. The acknowledged fact that Duferco AU has itself imported rebar exported from Korea by Daehan Steel is **[CONFIDENTIAL TEXT DELETED –business operation details]**.

Despite Duferco AU's remoteness from the inquiry in a technical sense, we ask the Commission to take these submissions into account in the context of its obligation to inquire and properly inform itself as to matters that are relevant to its duties under Part XVB Division 5A of the *Customs Act 1901* in making its recommendations to the Minister.

2 The inquiry does not relate to Duferco AU and its outcomes should not affect it

In this inquiry the claimed circumvention activity is that of the *"avoidance of the intended effect of duty"*.⁵ This circumvention activity is defined in terms of the exporter and the importer concerned. In this inquiry those parties are Daehan Steel and Stemcor, not Duferco AU.

Thus, the behaviours to which the inquiry is directed are those of Daehan Steel and Stemcor. They are not the behaviours of Duferco AU.

The Minister's powers do not extend to taking action that would relate to goods or to parties whose behaviours were not enquired into. In the case of Duferco AU, its behaviours could not be enquired into, and were not enquired into, because it was not engaged in the trade to which the inquiry is directed. Duferco AU was incorporated after the inquiry period and factually, and logically, only commenced business after it was incorporated.

If a circumvention activity of the type being enquired into by the Commission in this inquiry is found to have occurred, then any recommendation to the Minister, and any decision by the Minister, must be confined to the goods and to the parties that are the subject of the positive findings in the inquiry.

We submit that any purported exercise of power by the Minister under Section 269ZDBH of the Act that adversely affects the interests of other parties would extend beyond the scope of the findings made, and would be unlawful.

3 Administrative precedent regarding alterations that affect third parties

We note the position that was adopted by the Commission in its recommendations to the Minister concerning alteration of the relevant notice at the conclusion of its inquiry involving the same circumvention activity (*"avoidance of the intended effect of duty"*) with respect to aluminium extrusions exported by PanAsia Aluminium (China) Limited (*"PanAsia"*) and imported by Oceanic Aluminium Pty Ltd, P&O Aluminium (Brisbane) Pty Ltd, P&O Aluminium (Melbourne) Pty Ltd, P&O Aluminium (Perth) Pty Ltd and P&O Aluminium (Sydney) Pty Ltd.⁶

⁴ Information about the Duferco group of companies can be found at <https://dith.com/> and at <http://www.hbisco.com/site/en/index.html>. In contrast, information about Stemcor and the Stemcor group of companies can be found here <http://www.stemcor.com/>.

⁵ *Customs Act 1901*, Section 269ZDBB(5A) refers.

⁶ *Final Report No 241 – Alleged circumvention of certain aluminium extrusions exported from the People's Republic of China*, 23 December 2014.

In his decision at the conclusion of that inquiry the Minister altered the notice concerned by specifying a different export price:

- (a) for exports from PanAsia that were imported by the named importers - with retrospective effect to the date of initiation of the anti-circumvention inquiry; and
- (b) for exports from PanAsia that were imported by any and all other importers - with effect the day after the Minister's decision was made.

Despite the fact that the goods the subject of the application in that inquiry were aluminium extrusions exported by PanAsia to those named importers, and the behaviours of those parties in that regard, the Minister nonetheless altered the notice in a way that also affected third parties. However, the Minister did so in a nuanced way, by ensuring that the alteration only had retrospective effect in the case of the goods as imported from PanAsia by the named importers, being the importers that were the subject of the inquiry.

Without agreeing with this administrative precedent, and without detracting from our client's primary submissions, we bring this previous decision to the attention of the Commission in the context of the submission by OneSteel that the date on which any alterations to the notice should have effect should be the date of initiation of this inquiry.⁷

We reiterate that Duferco AU was not a named importer, did not engage in any of the behaviours that were the subject of the inquiry, and was not the subject of any inquiries by the Commission. Thus, it falls into a category of importers that, in the aluminium extrusions inquiry, was not subject to any retrospective application of the altered notice.

If you have any questions for us or our client in relation to the matters set out in this letter please do not hesitate to contact the writer.

Yours sincerely



Daniel Moulis
Partner Director

⁷ EPR 452, *Submission of Australian Industry - Liberty OneSteel* dated 5 April 2017.