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RECEIVED 25/02/2016

24 February 2016

The Director
Operations 4
Anti-Dumping Commission

BY EMAIL: operations4@adcommission.gov.au

Subsidy Investigation ADC 322 - Steel Reinforcing Bar exported from China
Australian industry response to submission no. 011 – Whites Group Pty Ltd ("the Importer")

I refer to the above submission and note 'the goods' description contained in the Public notice under subsection 269TC(4) of the *Customs Act 1901("Customs Act")*, published on 23 December 2015:

> *"Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.*
>
> *"The goods covered by this application include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.*
>
> *"Goods excluded from this application are plain round bar, stainless steel and reinforcing mesh."*[1]

In summary, the Importer appears to advance the following reasons for seeking to distinguish the goods imported by it from the goods under consideration (**"GUC"**):

1. the low volume of goods imported in comparison to the overall market;
2. lengths of between 300mm to 1800mm;
3. their technical specifications;
4. retail packaging and labeling;
5. channel to market;
6. end-uses by markets beyond the concrete reinforcing sector;
7. non-compliance to "a [AS/NZS] standard"; and
8. non-certification to ACRS (*Australasian Certification Authority for Reinforcing and Structural Steels*).

As matters currently stand, the Importer has identified no physical or mechanical feature that excludes the goods imported by it from the description of the GUC in this investigation, specifically, the goods description is:

1. not limited to a maximum or minimum length;
2. not limited to a particular grade or alloy content;
3. not limited by packaging or labeling or minimum order size;
4. not confined to any single market or end-use; and
5. not confined to a particular AS/NZS standard or certification.

Therefore, the goods imported by the Importer clearly meet the description of the GUC, and should therefore not be excluded from the subject of the investigation.

[1] Anti-Dumping Notice No. 2015/152 at p. 2.

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Although the Importer has not explicitly sought Ministerial exemption from interim countervailing duties, the Australian industry observes the following:

- the goods are not the subject of a Tariff Concession Order under Part XVA of the *Customs Act* (**"TCO"**); and

- the Australian industry does produce "like or directly competitive goods" that are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

There is no evidence that a TCO currently applies to the goods imported by the Importer.

In terms of whether or not the Australian industry produces "like or directly competitive goods" to the goods imported by the Importer, it is important to note that the expression "like or directly competitive goods" is not defined within the *Customs Tariff (Anti-Dumping) Act 1975* (***"Dumping Duty Act"***).

Although the expression "like goods" is defined under the current anti-dumping provisions contained within Part XVB of the *Customs Act*, the term "like or directly competitive goods", is not.

Therefore, the question arises whether the term has a broader or narrower meaning than the expression "like goods" as defined and interpreted pursuant to *Customs Act*.

The term "like goods" is defined by subsection 269T(1) of the *Customs Act*, as:

> *"in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration"*

Specifically, the expression ***"like or directly competitive goods"*** was adopted by the *Dumping Duty Act* from the *Customs Tariff (Dumping and Subsidies) Act 1961* - being the Act that it later repealed.

Reference to the antecedent Act suggests that "like or directly competitive goods" had the same meaning as the term "like goods" does under the current provisions of Part XVB of the Customs Act. Support for this interpretation may be found in the section 269TG (*Customs Act*) equivalent provisions found in the now repealed Act of 1961:

> *"7(1) If the Minister, after inquiry and report by the Tariff Board, is satisfied, as to any goods, that –*
>
> *"the export price of any of those goods that have been exported to Australia is less than the normal value of the goods so exported; and*
>
> *"the exportation of those goods is causing or threatening injury to an Australian industry producing or manufacturing* ***like or directly competitive goods****… may cause a notice to be published in the Gazette specifying the goods as to which he is so satisfied."* ***[emphasis added]***

In other words, reference to *"like or directly competitive goods"* in the Dumping Duty Act, should <u>not</u> be interpreted any differently to the term "like goods" under the Part XVB of the *Customs Act*.

Such a view would be in no way inconsistent with the purpose of the provisions of subsection 10(8) of the *Dumping Duty Act*, because the aim of those provisions, specifically paragraph (a), is to

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create an exemption in circumstances in which ***"like or directly competitive goods"*** (AKA ***"like goods"***) are:

> *"not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade".*

Therefore, the purpose of the exemption is not to distinguish a separate class of the goods based on their properties or characteristics, but rather in terms of the condition on which they are sold into the Australian market.

Applied here, the first issue is whether or not the Australian industry produces "like goods" as contemporarily interpreted to the Importer's goods. There is nothing in the description of the goods by the Importer to suggest that the goods are not the GUC. Further, there is nothing to suggest that the goods produced by the Australian industry are not "like goods" to the Importer's goods, or that the "like goods" assessment performed by the Commissioner in *Consideration Report No. 322* should be, or is capable of being, distinguished in the case of the Importer's goods.

In *Submission No. 011*, the Importer points to imports of the goods in lengths of "300 mm to 1800 mm", and seeks to distinguish the lengths by which the Australian industry sells the "like goods" by reference to the "Reodata Specification" document attached to its application. It is important to understand that although the "like goods" may be offered for sale in standard lengths of 6 to 15 metres, it does not preclude non-standard lengths also being offered for sale, i.e. 300 mm to 1800 mm subject to the usual "custom and usage of trade" applicable to non-standard lengths.

Further, the Importer seeks to point to the goods it imports as not "produced to a standard as it is not regarded as a specific reinforcing bar product". Again, although the Australian industry's "like goods" are produced to the applicable AS/NZS standard, that does not preclude them from being substitutable with the Importer's goods. Indeed, although the Australian "like goods" <u>are completely substitutable</u> for the imported goods, the same cannot be said for the Importer's goods, which are not completely substitutable for all the end-uses to which the Australian "like goods" may be put. In other words, the Australian "like goods" are functionally alike to the Importer's goods.

It is observed that different channels to market are not of themselves evidence detracting from a conclusion that the Australian industry produces "like goods" to this example of the GUC. Similarly, different packaging and trade dress or product getup are also not conclusive of the existence of otherwise of commercial likeness, as some "differentiation" is a marketing function, and a legitimate means by which suppliers may seek to alter their value proposition to the market.

In conclusion, the Importer's goods are:

- within the definition of the GUC;
- in a relevant sense, functionally and commercially substitutable for the like goods produced by the Australian industry.

To discuss any aspect of this submission, or if you require any additional information, do not hesitate to contact me.

Yours sincerely

Matt Condon
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OneSteel Manufacturing Pty Ltd