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Ms Candy Caballero
Director, Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

Investigation into Steel Reinforcing Bar exported from the Republic of Korea

Dear Ms Caballero,

This submission is made on behalf of Daehan Steel Co., Ltd. (Daehan) in response to the Commissioner's recent decision to publish a preliminary affirmative determination and impose provisional measures applying to exports of steel reinforcing bar exported by Daehan from Korea. The submission would like to draw your attention to a number of errors and deviations from the Commission's stated policy in the determination of normal values.

Normal values based on domestic sales

The Commissioner's PAD Report 264 explains that adjustments were made '*to normal values to allow for comparison between export and domestic sales were calculated pursuant to s. 269TAC(8) or 269TAC(9). For the purpose of the PAD, the Commission has not made for claimed adjustments for domestic technical support and inventory carrying costs as it is not yet satisfied that such an adjustments are warranted.*'

A review of the Commissioner's preliminary dumping margin calculation reveals that for domestic sales of like goods, the Commissioner has not made any adjustments to domestic selling prices to ensure a proper comparison with export sales to Australia. Normal values determined under s.269TAC(1) of the *Customs Act 1901* (the Act) appear to be based on Daehan's gross invoice values inclusive of [REDACTED] and [REDACTED] [commercial terms].

No adjustments have been made for the following factors:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED], and

Daehan therefore considers that the Commissioner has not, as stated in the PAD Report 264, had regard to the factors outlined above and adjusted prices in accordance with s.269TAC(8) of the Act to ensure that those differences do not affect the comparison with corresponding export prices.

Constructed normal values

It is noted that the Commissioner has opted to construct normal value for the remaining export model () due to the absence of domestic sales of like models in the ordinary course of trade. In doing so, the Commissioner has used the cost of production of the exported goods plus amounts for selling, general and administrative expenses (SG&A) and profit.

Of particular concern to Daehan is the Commissioner's selective reliance on a limited subset of domestic sales of like goods for the purposes of establishing amounts for SG&A and profit. This is inconsistent with the statement in PAD report 264 that '*a weighted average profit calculated for domestic sales of like goods sold in the ordinary course of trade during the investigation period.*' This statement gives the impression that the weighted average profit was calculated using all like goods when in actual fact it was based on one like good model out of the 19 like good models sold on the domestic market in Korea.

Further, it is Daehan's understanding that the profit used in the construction of normal values for other cooperating exporters from Taiwan were properly calculated using all like good domestic sales in the ordinary course of trade. It is of particular concern that the Commissioner has chosen to apply different approaches to the determination of profit, inconsistently between different cooperating exporters.

Daehan considers it unreasonable and inconsistent with the requirements of Regulations 181 and 181(A) of the Act and Article 2.2.2 of the WTO Anti-Dumping Agreement, for the Commissioner to determine SG&A and profits on a subset of like goods sold domestically. In the case of profit, Daehan considers the Commissioner's determination of profit to be clearly inconsistent with the Commission's own interpretation of Regulation 181(A) and as such unreasonable. In Final Report 217¹, the Commission stated:

The Commission considers that the correct or preferable interpretation of reg. 181A(2) is that the actual profit achieved on all domestic sales of like goods sold in the ordinary course of trade be used. [emphasis in original]

This is consistent with the WTO Appellate Body's interpretation of Article 2.2.2, where it disagreed with Brazil's view 'that Article 2.2.2 only requires the use of "actual" data in the

¹ Final Report 217 – Preserved or processed tomatoes exported from Italy, page 39

ordinary course of trade, not all data in the ordinary course of trade'. The Appellate Body² made clear that:

In our view, the language of the chapeau indicates that an investigating authority, when determining SG&A and profits under Article 2.2.2, must first attempt to make such a determination using the "actual data pertaining to production and sales in the ordinary course of trade". If actual SG&A and profit data for sales in the ordinary course of trade do exist for the exporter and the like product under investigation, an investigating authority is obliged to use that data for purposes of constructing normal value; it may not calculate constructed normal value using SG&A and profit data by reference to different data or by using an alternative method.

In addition to the selected use of a subset of like goods for the determination of SG&A and profit, Daehan notes that the Commissioner has opted to apply quarterly rates of profit to corresponding quarterly constructed costs for the purposes of determining normal value. This appears to be a deviation from the Commission's normal practice of determining a single rate of profit over the investigation period. Daehan questions the objectivity and consistency of this approach in light of its understanding that a single rate of profit was used for other cooperating exporters in this current investigation.

Accordingly, Daehan requests the Commission to place on the public record its interpretation of the correct and preferable approach to the determination of SG&A and profit with regards to the scope of like goods and periods to be used.

Finally, Daehan wishes to highlight two apparent errors in the calculation of the constructed normal value.

Firstly, in adding amounts for net financial expenses to the constructed normal value, the Commissioner has incorrectly subtracted total financial income from total financial expenses. This results in an overstatement of the net financial expenses by the amount of total financial income. The error occurs as financial income is expressed as a negative.

Secondly, in undertaking the ordinary course of trade test and calculating profit, the Commissioner has used the full reported cost of make and sell to compare to corresponding selling prices of like goods. This includes amounts recorded as non-operating income and non-operating expenses. However, in constructing a normal value, the reported amounts for non-operating income and non-operating expenses are omitted for reasons unknown.

Given that s.269TAC(5A) of the Act requires that costs to be used in a constructed normal value 'must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b)', Daehan submits that it is unreasonable to include net non-operating expenses in establishing normal value under s.269TAC(1) of the Act and to exclude them from the determination of normal value under s.269TAC(2)(c) of the Act.

² Appellate Body Report, European Communities – Anti-Dumping duties on malleable cast iron tube or pipe fittings from Brazil, para 97, page 38 (WT/DS219/AB/R)

Conclusion

In conclusion, Daehan contends that the Commissioner has not conducted an objective assessment of the positive evidence submitted in the exporter questionnaire response, and requests that Daehan's preliminary dumping margin be re-assessed in light of the deficiencies identified.

Yours Sincerely

John Bracic