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ANTI -DUMPING INVESTIGATION BY THE AUSTRALIAN GOVERNMENT CONCERNING IMPORTS OF CHROME BAR EXPORTED TO AUSTRALIA FROM ITALY AND ROMANIA (CASE 319)

Submission by the European Commission following the Issues Paper 2016/02

The European Commission ('the Commission') would like to refer to the disclosure of the Issues Paper 2016/02 on 15/07/2016 and to thank the Australian authorities for the extension of the deadline for comments on that document until 2 August 2016. However, in order to allow the investigating authority sufficient time for reconsidering its proposed course of action, as the Commission believes it should, the Commission already presents its comments today.

In summary and as explained in detail hereunder, the Commission is of the opinion that a clear and objective analysis should lead to the termination of the case without imposition of duties.

A. Procedure

On 9 May 2016, the Australian Anti-Dumping Commission ('the ADC') disclosed its findings in this anti-dumping investigation. It was concluded that imports from Italy were not dumped and that the injury to the Australian industry is not material in degree and, as such, negligible. Therefore, the ADC proposed to terminate the investigation without the imposition of measures.

Only the Australian industry commented on this disclosure. It contested that the injury found was not material. It considered that too much emphasis had been paid to the injury trends in the investigation period whereas the injury analysis period would show clear injury. Following these comments, the ADC has limited the analysis of injury to the injury analysis period and moved the "investigation period injury" analysis to the causation analysis.

That causation analysis is new, as the ADC now, by taking out the quarterly investigation period data from the injury analysis, concludes that the Australian industry is suffering material injury.

It comes as a surprise to the Commission that the ADC, on the basis of the same data as the data disclosed on 9 May 2016 (there are no new data or any revised data), completely reversed its conclusion and now proposes that the Australian industry is suffering material injury. In view of this changed conclusion, the ADC has added an analysis of other possible causes of injury. That analysis is seriously flawed and appears result oriented.

In fact, it appears to lack a basic understanding of the fall in consumption possibly due to the reluctance of the Australian industry to supply meaningful data in this respect. The Australian investigating authority readily admits its unpreparedness for a meaningful assessment by the phrases:

"As such, the [ADC] is unable to assess whether and to what degree any injury was caused by imports of fully assembled hydraulic cylinders. " (page 20 of the Issues Paper);

"The only evidence Milltech provided to substantiate its claim (of falling investment in the mining sector) was a Reserve Bank of Australia chart of private non-mining investment." (page 20 of the Issues Paper).

In the absence of any positive evidence the ADC nevertheless concludes on page 20:

"Neither scenario precludes the possibility that price undercutting by dumped chrome bar from Romania results in Milltech achieving lower prices, volumes, profitability and profits because of dumping."

This conclusion clearly lacks any positive evidence and appears acutely biased.[1] Under the circumstances, any investigating authority would have found itself in a difficult situation if not proposing termination. The ADC clearly has strong doubts as to whether measures are justified, which are further amplified by its contradictory findings disclosed on 9 May 2016.

We would also have expected more in depth analysis of the increased investments by the Australian industry because to increase capacity at a time of falling demand appears to be a textbook example of self-inflicted injury or a badly timed management decision.

[1] When referring to causation, the WTO ADA requires that *"it must be demonstrated that imports are, through the effects of dumping causing injury within the meaning of this Agreement".*
Furthermore, it is also recalled that pursuant to Article 3.5 WTO ADA, "*The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports*".

B. The injury analysis ('Economic Condition of the Industry')

The Commission considers that the Australian authorities **failed to conduct an adequate injury determination**. On the one hand, because not all the relevant factors were examined and on the other, because no "evaluation" of the relevant economic factors has been made.

i) <u>Incomplete list of factors</u>

Article 3.4 of the WTO ADA requires that the examination of the impact of dumped imports on the domestic industry "*shall include an **evaluation of all relevant economic factors** and indices having a bearing on the state of the industry*" and it gives a list of fifteen indicators[2]. The WTO Panel, when referring to such indicators, confirms that "*the examination of the impact of dumped imports must include an evaluation of all the listed factors in Article 3.4*"[3].

In this regard, the Issue Paper read in conjunction with the Statement of essential facts is far from complying with this condition. Indeed, several important factors are simply missing, manifestly contradicting the WTO requirements and the Anti-Dumping Commission's Dumping and Subsidy Manual.

ii) <u>No meaningful evaluation</u>

According to the understanding of the WTO Panel, *"the 'evaluation' to which Article 3.4 refers is the process of analysis and interpretation of the facts established in relation to each listed factor"*[4].

The Commission is of the view that no meaningful evaluation of each listed factor was made. Not only because - as explained above - not all factors were analyzed, but also because the information disclosed with regard to the other factors was very poor and clearly insufficient to make a meaningful assessment of the alleged injury suffered by the domestic industry. For instance, trends are provided in the form of graphs without any explanation or indication as to the magnitude of the trends shown therein. Furthermore no indices or ranges are provided that could allow the reader to have even a meaningful understanding of the situation. Therefore the analysis in the Issues paper does not contain the *essential facts under consideration which form a basis for the decision whether to apply definitive measures* required under article 6.9 of the WTO ADA. In other words, the ADC did not provide a meaningful explanation allowing the interested parties understanding of the assessment conducted. This goes against all principles of transparency, fair treatment and due process which the WTO is trying to instill to all members.

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[2] *"actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments."*

[3] Panel Report, EC - Bed Linen. Para. 6.156

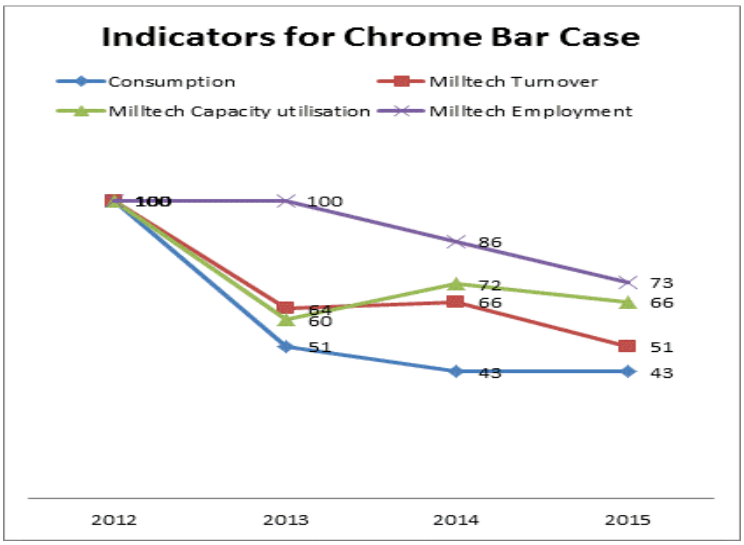
[4] Panel Report, Egypt - Steel Rebar. Para. 745

The Commission is of the opinion that a clear and objective analysis should lead to the termination of the case without imposition of duties – as was the initial conclusion of the ADC.

C. Causation: The dramatic fall in consumption is the reason for the injury found, if any

At page 19 of the Issues Paper 2016/02, the ADC, in its causation analysis, addresses under "other factors" the "declining market for chrome bar". Under this chapter it explains that, for 2 reasons unrelated to the imports under investigation, since the beginning of the analysis period, the market size for chrome bars has shrunk significantly. Although absolute figures or indices are missing in the document, the length of the bars in figure 17 of the Issues Paper suggests a fall by 49% from 2012 to 2013 and a 57% decrease in 2014 as compared to 2012. Market size in 2015 is at a level similar to 2014.

After having briefly explained the reasons for this dramatic decline of the market, the ADC concludes that the main decline in market size occurred in 2013 whereas the Australian industry "has continued to suffer injury in the form of reduced sales volumes, price depression and reduced profitability despite the stabilisation [of the market since then]". This conclusion is erroneous, as the following graph shows, depicting the data as disclosed to interested parties, with regard to a few key indicators:



** These data ere depicted from the relevant tables in the disclosure document (Issues paper 2016/02), from which we have indexed assuming the bottom line represents a "0" value.*

The trend in profitability (Figure 5 in the Issues Paper) could not be added to this graph, as the ADC has only disclosed the break-even level (at least, the Commission believes that the horizontal line in the middle of that graph represents the break-even level – although that is not indicated or mentioned as such). No other values, ranges or indexes are reported. In any event, the profitability trend appears to equally align to the consumption trend.

It is therefore understandable that the ADC does not go as far as to conclude that the enormous shrinkage of the market has not been the main cause of the injury – as it obviously has been the main if not sole cause for the injury suffered. Contrary to what the ADC concluded, the trends for the injury indicators over the analysis period perfectly correlate with and are clearly determined by the development in consumption over that period. A more detailed analysis will follow hereunder.

Sales volume & sales revenue: Based on the breakdown provided in Figure 17, the sales volumes of the Australian producer have declined by 36% since 2012, whereas the volumes of imports have decreased by 64% over the same period. The market share bars represented in Figure 3 indicate that the relative decrease of imports from Italy has been the strongest. However, relating the Romania market share reported in that Figure to the consumption breakdown provided in Figure 17, the decrease, in absolute terms, of imports from Romania appears to be in the same order (-36%) as the 36% decrease in domestic sales incurred by the Australian industry. The market share represented by imports from Romania has indeed gone up, from 17% in 2012 to 26% in 2015, but this has been clearly at the expense of imports from other countries. The market share represented by the Australian industry increased even stronger over that period, from 24% to 34%.

Under such circumstances, the fall in the domestic industry's sales volumes and sales revenues cannot be linked to the imports, as imports dropped more significantly, either in absolute terms or in relative terms. The fall in demand on the Australian market is thus the sole explanation for the, as compared to imports moderate, drop in sales volumes and revenue incurred by the Australian industry over the period considered.

Employment: The Commission reiterates that it is difficult to comment on tables if no effort for quantification has been made. In figure 8, the Australian industry's employment in relation to "like goods" has been reported. In the absence of any figures (even indices or ranges are missing), we can only conclude that there has been a decrease in employment as from 2013. This decrease could be by 1% and as a maximum, assuming that the bottom line in Figure 8 would represent a "0" value, it could be a decrease by ca. 25%. Even if the employment decrease would indeed represent 25% over the period considered, such decrease would not be out of line with the loss in sales volumes which, as explained above, has been much higher and is purely caused by the drop in demand and unrelated to the imports concerned.

The **drop in capacity utilisation** can and should also be attributed to the fall in consumption – both trends are identical. The Australian industry's decision to increase its production capacity, in the context of a shrinking market, has clearly been erroneous and might have added to the injury. Unfortunately, this issue has not been thoroughly looked into, as should have been, by the ADC.

Falls in **profitability** are also caused by the strong fall in consumption which naturally created a lower volume of sales for the Australian Industry and negatively impacted its cost structure since fixed costs (including new capacities) could not be absorbed as efficiently as before. It is striking that no analysis has been made by the investigating authority on the impact of the lower capacity utilisation rates as well as the new capacity building on the profitability of the industry. Whilst addressing the issue of profitability, the ADC wrongly and quite simplistically states that "dumping has caused Milltech to experience reduced sales volumes" (p. 18). As explained above, the sole reason for the reduced sales volumes was a drop in consumption by 55% - 60%. Any analysis done in this significant drop in consumption would evidence that it has a lingering effect on profitability, which explains why the profitability development from 2014 to 2015 appears to be more negative than the drop in consumption between those 2 years.

Finally, the observed **price depression/suppression** is, clearly, also caused by the falling demand. It is a "normal" economic tendency for prices to drop in a shrinking market.

The Commission also has serious doubts about the undercutting finding because no appropriate adjustment appears to have been made to account for the alleged low quality of the Romanian exports (page 18 of the issues paper). Further the Romanian industry claims that there is no real competition between Romanian and Australian products. This issue has not really been analysed and/or clarified in the Issues Paper and we call upon the investigating authority to look into this. As mentioned earlier, the increase of market share represented by Romanian imports has not been at the expense of the market share of the Australian industry, therefore, the allegation by the Romanian companies appears plausible at first sight.

D. Conclusion

The Commission has difficulties in understanding the injury data presented, as, due to the consistent absence of values, ranges or indexes, they are not presented in a meaningful way.

The Commission further considers that the causation analysis is very weak and insufficient and that the data rather show that the real causation issue in this case is the massive fall in consumption which has created poor market conditions on the Australian market.

Consequently, the ADC's recommendation to impose interim duties on imports of chrome bars imported from Romania lacks reason and is flagrantly against the provisions of the WTO ADA. An objective assessment would have established that the injury found, if any, is caused by the decline of the market and, possibly, that the industry's decision to increase its production capacity has added to that injury. The data obtained and analysed demonstrate that imports of chrome bars from Romania have not contributed to this injury. The investigation should therefore be terminated, as the ADC already communicated to the interested parties on 9 May 2016.

The Commission would finally want to point at the extraordinary and unjustified decision for the non-implementation of the lesser duty rule which would expose the unfortunate Romanian exporters to higher duties at the Australian border and probable exclusion from the Australian market if measures would be imposed.

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The Commission reserves the right to submit additional arguments in case the procedure is extended.