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ANTI-DUMPING INVESTIGATION BY THE AUSTRALIAN GOVERNMENT ON IMPORTS OF STEEL REINFORCING BAR

Written submission of the European Commission on the

Preliminary Affirmative Determination and the Statement of Essential Facts Nr 418

On 27 June 2017, the Australian Anti-Dumping Commission (ADC) initiated an anti-dumping investigation on imports of steel reinforcing bar from Greece, the Republic of Indonesia, Spain (exported by Nervacero S.A.), Taiwan (exported by Power Steel Co. Ltd) and the Kingdom of Thailand. The European Commission submitted written comments on the initiation of the procedure.

On 14 November 2017, the ADC released the Statement of Essential Facts and the Preliminary Affirmative Determination (SEF/PAD 418) setting out the facts on which Australia proposes to base a recommendation to the Parliamentary Secretary to the Minister for Industry, Innovation and Science on the outcome of the investigation and applying provisional measures.

The European Commission would like to thank the Australian authorities for the opportunity to submit comments with regard to the above-mentioned proceeding and regrets that preliminary measures were imposed on European producers.

The European Commission has analysed the SEF/PAD 418 and would like to draw the investigating authorities' attention on certain issues regarding injury and causality. These would require further analysis and are presented below.

1. Material Injury

The WTO Anti-dumping Agreement (WTO ADA) determines in Article 3.1 that *"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products".*

Regarding the injury analysis, the ADC has found that the domestic industry has experienced injury in terms of **loss of market share, price suppression**, **reduced profits and profitability**, **reduced capital investment and reduced return on investment**.

However and as already expressed on previous occasions, the European Commission notes that the SEF/PAD 418 lacks some important elements of analysis. In this regard, it is recalled that Article 3.4 of the WTO ADA, requires that the investigating authorities examine *"all relevant economic factors and indices having a bearing on the state of the industry"* and WTO jurisprudence has confirmed this obligation to analyse each and every factor listed in that article.

Not all the factors referred to in the WTO ADA are mentioned in the SEF/PAD report. Important factors such as production, productivity, inventories, cash flow or wages are simply not addressed. Moreover, for some of the factors addressed not a single figure is provided. This represents a threat to the right of defense of the parties and a failure to disclose summaries of the information submitted in confidence, which are both obligations under the WTO ADA.

Volume effects

According to information provided in SEF/PAD 418, the steel reinforcing bar **domestic sales** of the complainant have increased by 45% during the investigation period (1/4/2013 to 31/3/2017). This is largely above market growth rate, which was 33% in the same period.

In this regard, the injury claim concerning the loss of **market share** refers to a minimal decrease (-4%) in the last year of the period, which does not seem to be a big amount given the big fluctuations of this factor in the past. Moreover, the domestic industry has significantly increased its market share during the investigation period, based on the only graph provided.

Other than that, the rise of imports from the investigated countries appears to mainly substitute imports from countries subject to recently imposed anti-dumping measures.

Price effects

SEF/PAD 418 finds that during the dumping investigation period (3/2016-3/2017) the undercutting from the investigated imports causes price suppression to the domestic industry which affects the industry profitability.

According to SEF/PAD 418, *the presence of increased volumes of dumped goods from the subject countries during the investigated period has coincided with the Australian industry's inability to raise its prices.*

However, the domestic industry raised its prices twice during the dumping investigation period (3/2016-3/2017). In September 2016, the price increase, as declared by the industry, was possible due to the conclusion of the investigation on the same product against China (INV 300), but this investigation terminated already in April and the volume of imports from China had already decreased during that investigation. In March 2017, the price increase takes place as a response to a cost increase and a general market price increase (as disclosed by the market based pricing information).

Furthermore, the market based pricing information does not show significant undercutting. Based on ABF data and verified sales data from the importers, exporters and the complainant, undercutting is not easy to asses since the % values are provided in ranges. Moreover, it appears that undercutting is not taking place in each month of the investigation period.

The European Commission insists on the fact that, as provided in Article 3.2 of the WTO ADA, price effects should have taken place *"to a significant degree"* and from the information available so far, it does not seem to be the case.

Regarding profits, it appears that the industry increased profits in 2015, with difficulties arising only at the end of 2016 and the first quarter of 2017.

Other factors such as capacity, capacity utilization and employment are showing positive developments.

2. Causal link

When referring to causation, Article 3.5 of the WTO Anti-dumping agreement provides that *"it must be demonstrated that imports are, through the effects of dumping causing injury within the meaning of this Agreement"*.

As already seen above, the levels of undercutting are given as ranges, which in most of the cases goes from 1% up to x%. Since undercutting is not consistently taking place in all the investigated months, it is highly likely that undercutting ranges are rather small. This is confirmed by the market pricing information disclosed in the report.

Furthermore, based on a chart presented in the Consideration Report (initiation), prices from all competitors were not far from each other and therefore all origins could motivate the alleged price suppression (if any).

The ADC alleges the existence of correlation of the complainant's sales prices with import prices in order to demonstrate price suppression. However, it is unavoidable that prices of the domestic industry are correlated with prices from imports since its pricing policy is based on the price offers from other competitors.

In this respect, the European Commission would like to recall the importance 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". Some possible factors are mentioned below:

a) At initiation, the European Commission already requested clarifications regarding the reasons behind the high **cost increase** in the last two quarters of the investigation, which clearly motivates the loss in profitability in this period. The SEF/PAD 418 explained that this increase was caused by the rising coke prices and weather events. No further details were provided but it is difficult to understand how weather events can affect the domestic industry. Additionally, according to industry sources, the steel rebar industry is not highly dependent on coke prices. Further explanations should be provided regarding this important issue.

b) Regarding the loss in profitability, it is noted that the domestic industry **increased capacity in 2015 and 2016** and the investments related to this increase of capacity may have also had an impact on the situation of the domestic industry. This issue was already raised at initiation and the SEF/PAD report does not bring any light to it. Therefore, the European Commission insists that clarifications are also provided.

c) The European Commission also questioned at initiation whether **losses of the domestic industry were structural** originated in a lack of competitively since, according to data provided at initiation, the domestic industry is suffering losses since well before the investigation period (and at least since 2010/2011[1]). The SEF/PAD report notes that the domestic industry was profitable in 2016 and because of that that losses are not structural. However, this particular point confirms the lack of competitiveness since on that year, imports were at the lowest level due to the different AD investigations/measures imposed. In conclusion, the Australian rebar industry can only make profits in the absence of competition.

d) Other factors such as fluctuations **of the Australian dollar exchange rate**, the apparently **significant cost of labor** or **efficiency of the operational performance** were also brought to the ADC's attention at initiation but no clarifications have been provided in the SEF/PAD.

3. EU industry specific claims

The European Commission does not have all the details of the calculation of the dumping margins for the Spanish exporter since these refer to company-specific data which is treated as confidential. According to that exporter, it would appear that some adjustments that were

[1] Statement of Essential Facts 264. Anti-dumping Commission - 2 September 2015.

claimed for the calculation of the dumping margin have not been granted by the Anti-Dumping Commission. There also appear to be some other issues related to the product scope.

In this respect, the European Commission would appreciate that the Anti-Dumping Commission would pay due attention to the above mentioned claims.

4. Conclusions

Following the assessment of the information disclosed in the SEF/PAD 418, it is not clear that the investigated imports are the cause of the alleged injury to the domestic industry since the significance of price effects has not been demonstrated.

Although import volumes from the investigated countries have increased, these imports have substituted imports from other origins subject to anti-dumping measures.

The European Commission considers that factors other than imports should be considered since, for instance, the cost increase in the last part of the dumping investigation period has not been properly explained. Other causes of injury to be looked at in more detail are the effects of the increase of capacity in 2015 and 2016, or the significant cost of labor amongst others.

Finally, the European Commission recalls once more the obligation to release of meaningful non-confidential information, in particular on all the injury indicators listed in Article 3.4 for the sake of accuracy, accountability and the right of defense of the parties.

The European Commission trusts that the Australian authorities will comply with their WTO obligations throughout the proceeding.