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ANTI-DUMPING INVESTIGATION ON IMPORTS OF STEEL REINFORCING BAR EXPORTED FROM THE REPUBLIC OF KOREA AND THE KINGDOM OF SPAIN (CONTINUATION INQUIRY 660)

Submission by the European Commission on the Statement of Essential Facts (No 660)

On 6 August 2025, the Australian Anti-Dumping Commission (ADC) issued the Statement of Essential Facts (SEF) with regard to a second expiry review investigation of anti—dumping measures on imports of steel reinforcing bar from Korea and Spain.

The European Commission ('the Commission') would like to thank the Australian authorities for the opportunity to present its comments in the framework of the above-mentioned proceeding. These comments are without prejudice to further interventions at further stages of the procedure.

Following the analysis of the limited information provided in the SEF 660, the Commission would like to raise the following issues which are considered not to be adequately addressed:

1. GENERAL

It is recalled, that according to Article 11.4 of the WTO Anti-dumping Agreement ('ADA') *"the provisions of Article 6 regarding **evidence and procedure** shall apply to any review carried out under this Article [...]"*

In this case, the information provided in the SEF 660 remains **insufficient** to allow the parties to have a proper understanding of all the elements at stake and thus to be in a position to properly exercise their rights of defence as required by Article 6.2 of the WTO ADA.

In particular, SEF 660 restricts interested parties from accessing the essential information used in constructing the export price and determining the normal value. Consequently, in the absence of imports from Spain, the Commission is unable to verify or assess the factors that led to the determination of the dumping margin for Spain. This lack of transparency raises concerns regarding procedural impartiality, as it limits the ability of interested parties to meaningfully participate in the review investigation and to ensure that the determinations are consistent with applicable laws.

Therefore, SEF 660 does not comply with the requirements under the domestic legislation (Customs Act 1901) and its release is depriving interested parties of their procedural rights.

As under the WTO ADA, also Australian domestic legislation requires that interested parties be given a meaningful opportunity to understand and defend their rights in the procedure.

2. LIKELIHOOD OF RECURRENCE OF DUMPING AND INJURY

It is recalled that according to Article 11.1 of the WTO ADA "*An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury".* In this context, it is highlighted that this is the second review, and the domestic industry is not suffering material injury.

a. Recurrence of dumping

In the absence of exports from Spain to Australia during the inquiry period, the ADC chose an alternative methodology to calculate the likely dumping margin. To this effect, normally, export prices to other third countries should be used.

In the SEF 660 it is explained that: "*The commission observed that only a small volume of goods were exported outside of Europe. Furthermore, the third country sales data provided by CELSA had limited information and critical information such as invoice date, date of sale and related party sales, were omitted. The commission therefore considers that third country sales are not reliable and as such not suitable for ascertaining an export price for CELSA".*

However, the actual volume of exports to third countries is not provided and it is not substantiated why these export volumes were considered not representative. As regards the alleged missing information, in line with Annex II, para 5 and 6 of the WTO ADA, CELSA should have been informed and given the opportunity to provide additional information before rejecting their data and using an alternative basis for establishing export price.

Instead, the ADC used export prices from Poland to Australia with the justification that the Polish company belongs to the same group. However, the investigation concerns Spain and not Poland and thus normal value was established on the basis of domestic prices in Spain, which cannot arbitrarily be compared with export prices from Poland to establish dumping.

Furthermore, the ADC asserts that the export price for CELSA Spain is based on the **analysis of REP 566** (issued in 2021). However, it is not clear how the analysis of REP 566 is relevant or was taken into account, as the dumping margin was established on the basis of current export prices from Poland.

In any event, the data in REP 566 relates to the period 1 July 2019 to 30 June 2020. This timeframe is remote and cannot reasonably be relied upon in the present expiry review in 2025, given the changes in global dynamics and domestic market conditions since 2019 (Covid-19 and Russia's war of aggression on Ukraine). In this context, it is also recalled that expiry reviews are complex investigations as they involve a prospective analysis and should thus focus on the likely developments in the near future, in case measures were allowed to lapse, rather than relying on data from the past (2014 or 2018).

Moreover, the ADC's statement that *"it would be fair to assume that **price undercutting** will continue in the absence of measures"* confirms the lack of any evidence. No price analysis has been presented to substantiate this assumption.

In view of the above, it has **not been established** that CELSA is dumping and/or that dumping is likely to recur in case measures would lapse.

b. Recurrence of injury

According to SEF 660 it appears that the measures have been effective, as imports from the subject countries have decreased significantly, and the situation of the domestic industry improved considerably.

An examination of the relevant economic factors shows that there is no evidence of injury to the domestic producer and demonstrates positive developments during the investigation period (ending June 2020-ending June 2024).

The majority of the economic factors assessed in Table 8 **improved**, namely capital investments (+165 index points) assets (+54 index points), revenue (+45 index points), net gain (+463 index points), capacity (+4 index points), employment (+26 index points), wages (+18 index points) and productivity (+7 index points).

Moreover, **domestic sales increased** (Figure 5: Australian Industry's Sales Volume), **market share improved** (Figure 6: Australian Market Share of Rebar), and **profitability rose** (Figure 8: Unit Profit and Profitability) during the review period. Notably, receivables turnover increased in 2023 and continued to rise in 2024. While profitability and domestic sales declined in 2024 compared to 2023, this cannot be due to imports from Spain as **no imports from Spain were recorded** during the review period.

Furthermore, the ADC recognises that imports from countries not subject to measures, particularly China and Türkiye, have increased and are likely contributing to material injury to the Australian industry. It is surprising that the focus of the ADC remains on extending duties on **imports from Spain, which are effectively non-existent**, rather than assessing the impact of imports from other countries, which **represent approximately eight times the import volume of Spain and Korea** (Figure 9: Composition of Imports).

Therefore, the domestic industry is not suffering injury, and it has not been established that injury due to imports from Spain would recur if measures would lapse.

3. ALLEGATIONS OF CIRCUMVENTION

Concerns of circumvention are used to justify the substitution of Spanish export prices by Polish export prices to determine recurrence of dumping.

However, any concerns of circumvention should be tackled via a **separate circumvention inquiry** under Division 8 of Part XV of the Customs Act 1901. It is not permissible to address circumvention concerns indirectly by arbitrarily substituting other data into an expiry review concerning CELSA Spain. To do so exceeds the scope of the current review and is inconsistent with both the Customs Act 1901 and Australia's obligations under the WTO ADA.

In this context, it is recalled that an exporter who is a genuine producer of the product concerned and exporting its own production, as is the case for the Polish producer, is in no way circumventing any measure.

Therefore, the applicant's allegations concerning circumvention are completely unfounded and unsubstantiated and should have been dismissed by the ADC.

4. CONCLUSION

In view of the elements raised above, the continuation of measures in relation to imports from Spain is unwarranted, in particular:

- likelihood of recurrence of dumping by imports from Spain has not been established;

- the measures have proven effective: imports from Spain have ceased, and the sole domestic producer of rebar has experienced substantial recovery, with positive trends evident across the majority of injury indicators;

- the domestic industry is not suffering injury and a likelihood of recurrence of injury due to imports from Spain has not been demonstrated.

As outlined above, both the WTO ADA and the Customs Act 1901 impose clear evidentiary requirements. Article 3.1 of the ADA requires that any finding of a likelihood of recurrence of dumping and injury be based on ***positive evidence*** and an ***objective examination*** **of relevant data**. Similarly, section 269ZHE(1) of the Customs Act 1901 requires that a SEF must set out the facts on which the ADC's recommendations are based.

WTO panels and the Appellate Body have consistently confirmed that "**positive evidence"** entails reasoned conclusions supported by a factual foundation rather than speculation or unsubstantiated assumptions. For example, in *US – Hot-Rolled Steel from Japan ([1])*, the Appellate Body held that determinations must rest on **"objective and verifiable evidence"** and not on conjecture.

In contrast, SEF No. 660 sets out conclusions and recommendations that are not supported by any evidence. Accordingly, SEF No. 660 fails to satisfy the requirements of the Customs Act 1901 and falls short of Australia's obligations under the WTO ADA to base determinations on positive evidence and objective analysis.

Accordingly, this review investigation should be terminated without the continuation of measures for imports from Spain.

The Commission trusts that the investigating authority will carefully consider the points raised herein and refrain from extending such measures. Any alternative course of action would be inconsistent with the obligations under WTO rules as well as with the Customs Act 1901.

([1]) WT/DS184/AB/R, para. 193