PUBLIC VERSION

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Director Operations 3
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Review of Steel Reinforcing Bar exported from the Republic of Korea

Dear Director,

This submission is made on behalf of Daehan Steel Co., Ltd. (Daehan) in response to the Anti-Dumping Commission's (the Commission) Statement of Essential Facts Report No. 486 (SEF 486) published on 18 February 2019.

Determination of normal value

Due allowance – Domestic services

Daehan is disappointed with the Commission's decision not to accept adjustment claims with respect to factors affecting domestic selling prices and as a consequence, comparability with export prices. In Daehan's view, it has provided the Commission with reliable evidence demonstrating that such factors contributed to increasing the relevant domestic selling prices.

The factors included:

i) Technical support services;
ii) Coil test services;
iii) Quality maintenance services; and

In assessing the claims relevant to the specific additional services provided by Daehan to domestic customers, the Commission's justification for rejecting these adjustments is that '*general expenses of this nature do not fall within the scope of the term 'differences in conditions and terms of sale'*.

Daehan respectfully disagrees. None of these services are offered broadly or generally to all domestic customers. They are instead specific to individual customers that have negotiated these additional services, which are reflected in the terms and conditions of their respective supply agreements.

For example, in the case of the coil test services, Deahan only provides this service to [redacted] after the customer experienced quality issues with previously supplied coils. Daehan does not offer or provide a coil test service to any other export or domestic customers.

Likewise, technical support services are only provided to [redacted] domestic customers and is applicable only to sales of deformed bar in coil.

The evidence provided to the Commission clearly shows that these services form part of the terms and conditions of the corresponding sales. As such, there is no basis for the Commission to conclude that these are general services that do not fall within the terms and conditions for which due allowance can be made.

In any case, Daehan submits that the primary consideration in determining whether an adjustment is required, is not whether a claimed factor is of a general or specific nature, but whether the claimed factor leads to differences which affect price comparability. This was confirmed by the WTO Panel's reading of Article 2.4 of the Anti-Dumping Agreement in *Egypt — Steel Rebar*[1]:

> [W]e read Article 2.4 as explicitly requiring a fact-based, case-by-case analysis of differences that affect price comparability. In this regard, we take note in particular of the requirement in Article 2.4 that '[d]ue allowance shall be made *in each case, on its merits*, for differences which affect price comparability' (emphasis added). We note as well that in addition to an illustrative list of possible such differences, Article 2.4 also requires allowances for 'any other differences which are also *demonstrated* to affect price comparability' (emphasis added). Finally, we note the affirmative information-gathering burden on the investigating authority in this context, that it 'shall indicate to the parties in question *what information is necessary* to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties' (emphasis added). In short, where it is demonstrated by one or another party in a particular case, or by the data itself that a given difference affects price comparability, an adjustment must be made. In identifying to the parties the data that it considers would be necessary to make such a demonstration, the investigating authority is not to impose an unreasonable burden of proof on the parties. Thus, the process of determining what kind or types of adjustments need to be made to one or both sides of the dumping margin equation to ensure a fair comparison, is something of a dialogue between interested parties and the investigating authority, and must be done on a case by- case basis, grounded in factual evidence.
>
> [original emphasis]

Likewise, the Appellate Body ruled in *US — Hot-Rolled Steel*[2] that an investigating authority cannot exclude any differences affecting price comparability from being the object of an allowance:

> Article 2.4 of the Anti-Dumping Agreement provides that, where there are 'differences' between export price and normal value, which affect the 'comparability' of these prices, '[d]ue allowance shall be made' for those differences. The text of that provision gives certain examples of factors which may affect the comparability of prices: 'differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences'. However, Article 2.4 expressly requires that 'allowances' be made for '*any other differences* which are also demonstrated to affect price comparability.' (emphasis added) There are, therefore, no differences 'affect[ing] price comparability' which are precluded, as such, from being the object of an 'allowance'."

[1] Panel report; WT/DS211/R, Egypt – Steel rebar from Turkey, para 7.352, page 85.

[2] Appellate Body report; WT/DS194/AB/R, US – Hot rolled steel from Japan, para 177, page 60-61.

Given then that the identified services are demonstrated to have affected domestic selling prices, and no such services existed which affected export selling prices to Australia, these additional services have affected price comparability between normal values and corresponding export prices. Accordingly, Dahean requests the Commission to reconsider its preliminary finding and make due allowance to the relevant normal values to address these differences.

Ordinary course of trade – Barter sales

In its questionnaire response, Daehan provided an overview of the domestic market with respect to differences that existed between barter and commercial sales. Daehan specifically noted that since the original investigation period when it was the sole local manufacturer of DBIC, a second local manufacturer of DBIC ( ) became a key competitor to Daehan's DBIC sales.

As a result of the increased domestic competition, . **[confidential terms of sale]**

. Daehan provided the Commission with documentation showing the mechanism for valuing the barter sales during the original investigation, and agreed with the Commission's finding that these barter sales were not sales made in the ordinary course of trade.

Equally, Daehan has provided the Commission with documentation and evidence showing that the barter sale arrangements during the current review are now such that the value of the traded goods are directly linked to prevailing market prices for commercial sales of DBIC. The only difference that remains between barter sales and commercial sales is . The actual selling prices of comparable products sold under barter and commercial sales are now identical.

Given the critical change in the arrangements surrounding the barter sales and the supporting evidence provided to the Commission, Daehan is disappointed with the Commission's apparent lack of meaningful consideration and reasoning for excluding barter sales from the normal value determination. The extent of the Commission's finding and assessment is reflected in the following paragraph from SEF 496:

> The Commission also found that a significant volume of domestic rebar sales were made under a barter arrangement, whereby Daehan received deformed bar-in-lengths in return. Consistent with the original investigation, the Commission excluded these sales from the normal value calculations.

It is clear that the Commission has overlooked the critical change in the barter sale arrangements since the original investigation, which were caused by substantial changes to domestic supply conditions following the emergence of as an alternative supplier and direct competitor to Daehan's DBIC sales.

Daehan contends that the Commission's preliminary finding that barter sales are not in the ordinary course of trade on the basis of the findings during the original investigation, is fundamentally flawed as it completely ignores the verified facts and circumstances found to exist during the current review period.

It is worth noting that reviews under Division 5 of the Act deals with the rights of interested parties to periodically seek review of the published dumping duty notice, on the basis of changed circumstances. Daehan believes that it has demonstrated a change in circumstances during the nominated review period with respect to its barter sale arrangements, which warrant a change in the treatment of such sales as being made in the ordinary course of trade, given that they are now linked to the domestic selling prices of commercial sales.

Daehan requests the Commission to reconsider the treatment of barter sales, and alter it finding by including these sales in the determination of normal values.

Response to issues raised by Liberty Steel

Date of effect of change to variable factors

It is noted that Liberty Steel has continued to urge the Commission to recommend that the Minister specify a date of effect of the change in variable factors to the date of initiation (1 August 2018). Clearly the strategy behind this request is a blatant attempt to introduce further uncertainty and disruption to legitimate import trade whilst the review inquiry is underway.

In Daehan's view, an effective dumping system provides interested parties with transparency and certainty around the investigating authority's practices and policies, and the decision maker's final decisions. Uncertainty surrounding the effective date of the change in variable factors, particularly in the case of reviews which have been extended well beyond the statutory 155 day timeframe, will inevitably disrupt legitimate trade.

It would also undermine the need for importers to apply for duty assessments as the earlier date of effect would result in a refund of dumping duties if the revised dumping duty rate was less than the original dumping duty rate.

For these reasons, Daehan considers Liberty Steel's position to be purely opportunistic and unprincipled, and a continuation of its ongoing efforts to exploit the dumping system with the sole aim of introducing barriers to entry to legitimate imports, and providing illegitimate protection to its manufacturing operations which are inefficient by global standards.

Proposed form of duty

Liberty Steel argues that the combination duty method should be applied as it continues to erroneously assert that this would prevent the '*recurrence of unremedied injury identified by Liberty Steel in anti-circumvention inquiry No. 452*.' In essence, Liberty Steel is requesting the Commission to deviate from its stated policy and practice with regards to the application of forms of dumping duties, without any reasonable basis.

First, since implementation of the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Dumping Duty Regulation) in June 2013, which provided additional methods to the Minister to calculate dumping duty, the Commission has consistently applied its published guidelines[3] on the application of forms of dumping duties. In the case of review of measures, the Commission has consistently left the form

[3] 'Guidelines on the application of forms of Dumping Duty', November 2013, Anti-Dumping Commission, (https://www.adcommission.gov.au/accessadsystem/investigations/Documents/Guidelineformsofdumpingduty-November2013.pdf)

of duty unchanged from the original investigation in circumstances where a positive dumping margin has been determined.

For example, in Review No. 380[4] the Commission continued to apply an ad valorem measure to exports of steel reinforcing bar by Compañia Española de Laminacion, SL, (Celsa). Importantly, Celsa's original ad valorem measure was imposed on the same basis as Deahan's ad valorem measure in the original investigation into steel reinforcing bar (Report 264). Likewise, other examples confirm that the Commission has continued to leave the ad valorem duty unchanged from the original investigation in subsequent reviews[5], in circumstances where a positive dumping margin is determined.

However, as noted in Review No. 445[6], in circumstances '*where the Commission has determined there is no dumping, or a negative dumping margin for a specific exporter, the Commission finds it appropriate to use a floor price method of calculating a dumping duty.*'

Second, the Commission found in inquiry 452 that no circumvention activity was occurring and that the relevant importer had ensured that it's selling prices into the Australian market took account of the interim dumping duties payable. Therefore, there is no basis or valid reasoning to support Liberty Steel's assertions that a combination method of duty is required to address issues of circumvention.

Daehan therefore disagrees with Liberty Steel's suggestion that the Commission should depart from its guidelines and practice of leaving the form of duty unchanged in a review where a positive dumping margin is determined.

Domestic credit

Liberty Steel queries the Commission's decision to make a downward adjustment for domestic credit extended to domestic customers.

Daehan confirms the facts verified by the Commission that demonstrates that domestic customers are offered different payment terms taking into account their credit history and credit worthiness. These payment terms are identified on Daehan's sales agreements with each customer, with sales values reflecting the cost of extending credit.

Yours sincerely

John Bracic

[4] Report No. 380, Steel reinforcing bar from Spain, page 22.

[5] Review 445, Review 383

[6] Report No. 445, Hollow Structural Sections from Thailand, page 35.