



19 November 2018

Director
Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

BY EMAIL:
investigations4@adcommission.gov.au

Dear Director,

Re.: Reviews of Anti-Dumping Measures Nos. 486 and 489 concerning steel reinforcing bar exported from the Republic of Korea and Taiwan (with the exception of Power Steel Co. Ltd)

AUSTRALIAN INDUSTRY SUBMISSION

Liberty Steel (formerly Liberty OneSteel) makes the following observations following initiation of the above reviews (ADN No. 2018/112 refers) and the publication of ADN No. 2018/171 (concerning the decision to extend the time granted to issue the *Statement of Essential Facts* and the *Final Report*).

Powers of the Minister in relation to review of anti-dumping measures

The outcome of a Division 5 Review of Measures is prospective. Subject to the operation of s. 269ZDB(6)(a),¹ the review determines the anti-dumping measures that will be applicable to exports by those parties the subject of the review in the future. Again, subject to s. 269ZDB(6)(a), a declaration will not affect the duty payable in respect of goods that have been entered into Australia before the declaration under s. 269ZDB is made.

However, s. 269ZDB(6)(a) does permit the Minister to make a declaration which has limited retrospective effect – enabling the Minister to “back date” the declaration to the date of publication of the ‘initiation’ notice under s. 269ZC.

Following receipt of the Commission’s Exporter Questionnaire, exporters subject to a Division 5 Review have a period of 37 days to effectively calculate and form a view of their new variable factors based on their own financial information, and reach an informed view as to their likely future duty liability. It is Liberty Steel’s view that at the conclusion of the 37-day period in responding to the Commission’s Exporter Questionnaire that the exporters have in effect, constructive notice of their future duty liability.

Therefore, for this reason Liberty Steel considers that the Commission should, as a matter of practice, recommend to the Minister that any declaration made under s. 269ZDB(1) should specify the date on which responses to the Exporter Questionnaires were due, to be the date on which the declaration is to be taken to have had effect, either in relation to a particular exporter or to exporters generally, as if the Minister had fixed different variable factors in respect of that exporter or of exporters generally, relevant to the determination of duty.

¹ All legislative references are to the *Customs Act 1901* unless expressly stated otherwise.

Such a practice would ensure that the interests of the exporter (in terms of having constructive knowledge of their variable factors) and the interests of the Australian industry (in terms of avoiding additional injury from an exporter exploiting the delay in updating the variable factors) may be fairly balanced. Furthermore, it will serve to discourage exporters (subject to Division 5 Reviews); following publication of an initiation notice under s. 269ZC, but before the declaration under s. 269ZDB is made; from increasing the volume of low-value exports to Australia - especially in circumstances where there is an expectation of the variable factors changing in such a manner that will increase their future duty liabilities. This practice will prevent exporters from exploiting any duty advantage they perceive to have during the intervening period.

Applied here, Liberty Steel seeks the Commission recommend to the Minister that the notice declaring the outcome of Reviews of Measures Nos. 486 and 489, specify **7 September 2018** as the date on which the declaration is to be taken to have had effect, to exporters generally, as if the Minister had fixed different variable factors in respect of exporters generally, relevant to the determination of duty.

Proposed form of duty

The current anti-dumping measures are in the form of an *ad valorem* duty. Liberty Steel considers that the combination duty method, i.e. a combination of fixed and variable duty, is the most appropriate form of duty for the following reasons.

The weakness of the *ad valorem* method in allowing potential exporter exploitation is identified in the Commission's *Guidelines on the Application of Forms of Dumping Duty* (November 2013):

It has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty.

In preparing its application for this review of anti-dumping measures (**Review No. 489**) Liberty Steel observed that the subject exporters from Taiwan reduced their weighted average export price by a greater percentage than any reduction in their estimated normal value during the review period:

Exporters generally from Taiwan

Estimated Normal Value:	↓	6.3 per cent ²
Weighted Average Export Price:	↓	13.6 per cent ³

Exporters generally from South Korea

In the case of exporters generally from South Korea, although estimates of changes in their weighted average export price were less significant than changes in their estimated normal value, this has not always been the case across the lifecycle of these anti-dumping measures. For example, during the period from 1 April 2016 to 31 March 2017, the largest exporter's estimated normal value (Daehan) did not reduce in line with its export price,⁴ resulting in a period of increased dumping which was incapable of remedy.

Therefore, it is Liberty Steel's contention that had the combination duty method been applied to the original anti-dumping measures, then the degree to which the respective exporters (from South Korea and Taiwan) were able to avoid the effects of the *ad valorem* rates of duty by reducing their export prices would have been prevented, or at least frustrated, by the imposition of a variable method of duty calculation in the form of a floor price set at the ascertained export price, together with a fixed amount of duty at an *ad valorem* rate.

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

² EPR Folio No. 489/001, p. 12.

³ EPR Folio No. 489/001, p. 13.

⁴ EPR Folio No. 452/016, p. 22.