



14 February 2019

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

BY EMAIL:

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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 – RESPONSE TO IMPORTER AND EXPORTER VISIT FINDINGS

Liberty Steel (formerly Liberty OneSteel) thanks the Commission for their timely completion and placement of importer and exporter verification reports on the public record in advance of publication of the statement of essential facts in this matter. Accordingly, Liberty Steel has reviewed the reports and makes the following observations concerning some of the preliminary visit findings.

In summary, the Australian industry considers that:

- The existence of a maximum carbon equivalent specification as an indicator of product pre-qualification for welding, should be considered a mandatory reporting category within the model control codes;
- In the absence or low volume of domestic sales of Grade 490 product in the Taiwanese domestic market, Grade SD420W product would be the most comparable model to the goods under consideration, subject to necessary upward specification adjustments being made for fair comparison;
- The normal value for Wei Chih ought to have been determined under s.269TAC(1)¹;
- Any upward adjustment to the export prices for those goods sold on a theoretical weight basis by Wei Chih, should not exceed █% when converted to “actual” weight by the exporter’s “accounting system”;
- Further clarification of the model control code categories applied to Daehan’s domestic and export sales are sought;
- The evidence supporting Daehan’s claimed domestic credit adjustment needs to be more carefully considered;
- DITH’s importer expenses should include those of its related-party trader, Duferco; and
- The combination method of interim duty calculation should be applied where positive dumping margins are found, and a floor price based on the ascertained normal value be applied to exporters with negative dumping margins; and
- The date of effect of the notice containing the Minister’s declaration under s.269ZDB, should be applied as early as the date of initiation of this Review of Measures (1 August 2018).

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

A. WEI CHIH STEEL INDUSTRIAL CO LTD (“WEI CHIH”)²

1. ‘Like goods sold on the domestic market’, ‘Model Matching’ and ‘Ordinary course of trade’

From a combined reading of *Sections 2.4, 2.5 and 7.2* of the visit report, Wei Chih produces and sells in the Taiwanese domestic market, only three models of like goods to the goods under consideration (GUC), namely:

- Grade 280;
- Grade 420; and
- Grade 420W.

The visit team considered that the “carbon content... has no effect on the price of the goods sold”, as such, the visit team “did not use carbon content to model match”.

With respect, the issue of the amount of carbon and the existence of a maximum carbon equivalent value, are two entirely different considerations. It was never the Australian industry’s contention that model matching should be based on like for like amounts of carbon content, but instead whether or not the like goods had a carbon equivalent value specified. The latter is indicative of the model’s pre-qualification for weldability. Control of chemistry to meet a maximum specified carbon equivalent value ensures that standard welding procedures developed for a given carbon equivalent value can be applied. Generally, the lower the carbon equivalent value, the easier a steel is to weld without pre- or post-weld heat treatments being required to prevent weld embrittlement from occurring. The visit team’s misunderstanding of the price effect of the existence of a carbon equivalent value specification is best demonstrated in *Section 2.4* of the visit report, where the Commission notes zero (0%) carbon content for Grade SD280. The visit team is mistaken if they accepted that this model of the goods contained zero carbon in its chemistry. The proper conclusion to be drawn is that Grade SD280 has no carbon equivalent specification, and as such, is not pre-qualified for welding. Given this apparent misunderstanding by the visit team of the importance of carbon equivalent value, we encourage the case management team to reconsider whether for any grade sold domestically, there is a price premium for the model that is pre-qualified for welding and as such has a carbon equivalent value specification. It is the Australian industry’s understanding that under the specification standard CNS560 models with improved weldability (lower maximum CE specified) are identified with the suffix “W”, as in the case of Grade SD420W.

We further observe at *Section 3.1.1* that a number of “secondary” grade 500N product, not suitable for export to Australia were sold into the Taiwanese domestic market (namely two transactions). Even though we assume that these transactions were not included in the assessment of like goods sold in the ordinary course of trade in the domestic market, we were surprised that the verification team did not treat them as examples of a down-grade model of the goods, not suitable for comparison to the prime-only models exported to Australia, and not sold in sufficient volumes into the Taiwanese domestic market.

2. ‘Suitability of domestic sales’

At *Section 7.2*, the visit team found that one of the three models sold into the domestic Taiwanese market failed the ordinary course of trade (OCOT) test. Assuming that this was the Grade SD420W model, then presumably Grades SD280 and SD420 were sold in sufficient volumes in the Taiwanese domestic market.

Although we are surprised by the reported absence of domestic sales of grade SD490 in the domestic market, we would consider, Grade SD490 to be the most directly comparable to the particular model exported to Australia (i.e. Grade 500N) in terms of chemistry control for weldability and minimum yield strength (the yield point is where plastic deformation starts to occur), the key specification requirements for high yield strength steel reinforcing bar. SD420W and SD420 may also be considered comparable goods to the export Grade 500N provided the necessary adjustments are made to ensure proper comparison between the models.

For reference, extracts from the Standards to which domestic and export rebar is produced by Wei Chih are provided below:

² EPR Folio No. 489/012

AS/NZS 4671:2001

Grade 500N (Max CE specified, Minimum yield strength = 500 MPa)

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CNS560, A 2006

Grade SD490 (max CE specified, min yield strength = 490MPa, best match for 500MPa export grade)

Grade SD280 (no maximum CE specified, not a comparable grade)

Grade SD280W (max CE specified, min yield strength = 280MPa, well below min 500MPa for export grade)

Grade SD420 and SD420W (maximum CE specified, min yield strength = 420MPa, adjustment needed for fair comparison to SD490 or 500N export grade)

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Therefore, it is unclear why the visit team has concluded that it was unable to have regard to domestic sales of Grade SD420 or SD420W product as goods closely resembling the GUC with adjustments required to ensure a proper comparison in accordance with s.269TAC(9). The Australian industry contends that should no Grade SD490 product be found to be sold domestically by the exporter, Wei Chih, then an upward specification adjustment to the comparable Grades SD420 or SD420W will need to be made because of the price premium of

USD [REDACTED]/t applied by a Taiwanese producer of rebar for grade SD490 over SD420. Evidence of this contention was made in the submission of the Australian industry dated 23 October 2018.³ A copy of that evidence is again attached as CONFIDENTIAL ATTACHMENT A.

We encourage the case management team to review this finding, and reconsider the determination of the normal value under s.269TAC(1), using the exporter's domestic sales of Grades SD 420 and SD420W together with an upward specification adjustment.

Should the case management team revise the verification team's determination of the normal value under s. 269TAC(2)(c), care must be taken to not be unduly swayed by any submissions by the exporter, that some form of cost-based downward specification adjustment needs to be applied to the normal value on account that the goods supplied domestically are 'microalloyed', and the GUC are 'water-quenched'. Firstly, such an adjustment is unsound unless evidence of its effect on price is found. Secondly, it cannot be clearly concluded that the GUC sold into Australia are not also 'micro-alloyed' in addition to being 'water-quenched'. This is because in *Section 2.3 (The goods exported to Australia)*, Wei Chih has disclosed the following "alloy and alloy content":

"Nb:0.024-0.028% and Nb:0.026-0.030%"

Liberty Steel advises that a steel chemistry with Nb (Niobium) content over 0.02% is indicative of a deliberate microalloy addition that evidences an intention to micro-alloy the goods with niobium (commonly used as an alternative to vanadium) to achieve the desired strength characteristics.

3. 'Actual and theoretical weight in the export sales listing'

At *Section 4.1.1*, the visit team observed that:

"The export sales listing provided in the REQ had a mixture of theoretical weight and actual weights. Wei Chih explained that the weight used was at the customer's request. The verification team requested Wei Chih update the export sales listing with actual weights for all sales in the export listing. This is in line with the domestic sales listing which contains the actual weight."

Rebar in straight lengths may be sold on either a theoretical or actual weight basis. Whether rebar is sold on a theoretical or actual weight basis, so long as the producer stays within the permissible mass per meter tolerance specified by the Standard, either basis for sale meets the Standard requirements. CONFIDENTIAL ATTACHMENT B provides evidence of rebar pricing in the Asian region quoted on both theoretical and actual weight basis and a typical [REDACTED]% upward adjustment applied to convert from pricing on a theoretical weight basis to an actual weight price. If the upward adjustment to the export price for those transactions sold on a theoretical weight basis are greater than [REDACTED]%, then the case management team will need to more closely validate the basis on which the accounting systems are reporting "actual weight", i.e. are they formulae driven or based on actual weighed parcels of product. This enquiry should apply to the basis of "actual" tonnes reported for domestic sales also.

B. DAEHAN STEEL CO. LTD ("DAEHAN")⁴

1. 'Suitability of domestic sales'

The Australian industry is pleased with the visit team's indication that it is treating domestic sales of Grade 500 product as comparable to the GUC based on minimum yield strength requirement for the export Grade 500N being 500MPa, provided chemistry control for weldability has also been considered. It is not clear what the third category of the model control code (MCC) referred to in *Section 7.3* relates to. We would encourage the case management team to expand on what "C" and "B" relate to in the third category of the MCC. Presumably this result has driven the specification adjustment recommended later in *Section 8.2*.

It is not clear whether the product's pre-qualification for weldability evidenced by a maximum carbon equivalent value specification has been identified as a mandatory category within the MCC. On the one hand under the

³ EPR Folio No. 489/006

⁴ EPR Folio No. 489/013

'Grade' category, there is reference to "carbon content differences", and under the 'Carbon content' category, there is reference back to 'Grade', specifically, "Grade considered more applicable for distinguishing goods and determining price".

For reference, the Korean Standard KSD3504-2011 defines eight grades of ribbed bar, with only two grades having a "W" designation specifically intended for welding:



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As is the case for the export Grade 500N, Korean domestic grade SD500W requires chemistry specifications to be met with a maximum carbon equivalent value specified to ensure pre-qualification for welding. Grade SD500 has no carbon equivalent value specified (ie. it is not readily weldable) and as such cannot be considered a good match for export Grade 500N.



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The Australian industry seeks clarification as to whether the model sold into the Korean domestic market treated as comparable to the GUC, was in fact pre-qualified for weldability (as is required for all sales of the GUC exported to Australia under the AS/NZS 4671:2001 Grade 500N). If this has not been identified, or it is found that the model selected for normal value determination is not pre-qualified for weldability, then the case management team is asked to reassess the data and make a further specification adjustment based on observed price differences between domestically sold goods that are pre-qualified for welding (this may occur within any grade category eg. SD400 versus SD400W).

2. 'ADJUSTMENTS - Rationale and Methodology'

At *Section 8.1*, the visit team indicated their initial conclusion that 'domestic credit costs' are "relevant to the conditions of sale and has therefore accepted this adjustment". In reviewing this recommendation, the Australian industry requests the case management team to consider whether any domestic credit costs do in fact affect price comparability between export and domestic sales.

Daehan's distribution and marketing model is understood to be different to that of other Korean rebar producers. Daehan has sought to differentiate themselves by not only producing the like goods but also moving downstream and processing the rebar internally. As such Daehan have branded this as "Sta-z solution" or "Framework".⁵ Therefore, any claimed downward adjustments for the domestic credit costs should be resisted as they more accurately are associated with the selling and marketing of the downstream processed products and related construction solutions.⁶ Even if the Commission is satisfied that they only considered credit terms relevant to the like goods, then the exercise is one of determining whether or not there are in practice any credit term differences between domestic and exporter sales of the like goods and the GUC. Here, consideration of actual accounts receivable days is relevant and necessary to the Commission's inquiry. It is observed pre-payment for the goods is not uncommon within the Korean domestic market. If this is in fact the case, then any downward credit terms adjustment may in fact need to be reversed to an upward adjustment to the normal value.

C. DITH AUSTRALIA PTY LTD ("DITH")⁷

In *Section 1.2*, the visit team concluded that:

"DITH is part of the Duferco Group and functions as an importer to the Australian market. DITH purchases rebar from Daehan Steel Co Ltd (Daehan) through Duferco Asia Pte Ltd (Duferco), a related company within the Duferco Group, located in Singapore."

This would clearly place the Commission within s.269TAB(1)(c) with respect to the correct methodology necessary to determine the export price, as DITH, as importer, cannot be said to purchase the goods from the exporter, Daehan.

Furthermore, as not all the sales of the GUC by DITH to its Australian arms-length customers can be said to be profitable, doubts must arise as to the arms-length nature of the sales by Duferco Asia Pte Ltd (**Duferco**) to DITH. In these circumstances, it will be necessary for the case management team to consider the SG&A costs of Duferco when determining the post-importation costs of the importer.

D. POWERS OF THE MINISTER IN RELATION TO REVIEW OF ANTI-DUMPING MEASURES AND FORM OF INTERIM DUTY CALCULATION

We repeat the points of our earlier submission dated 19 November 2018⁸ regarding the power of the Minister to specify the date of effect of her declaration under s.269ZDB, and the proposed form of interim duty calculation.

1. Specification of date of effect of change to variable factors under s.269ZDB(1)(a)(iii)

Liberty Steel repeats its view that as a matter of principle and practice, that the declaration made under s.269ZDB should specify a date that the notice of declaration is to be taken to have had effect, in relation to exporters generally, from at least the conclusion of the 37-day period following initiation of the Review of Measures (i.e. 7 September 2018), but not earlier than the date of initiation (i.e. 1 August 2018).

In the spirit of fairness and equity, Liberty Steel again advocates that this approach be taken in this case, despite the preliminary finding of reduced dumping margins for the verified exporters.

⁵ EPR Folio No. 452/006, p. 27.

⁶ EPR Folio No. 452/006, p. 27.

⁷ EPR Folio No. 489/011

⁸ EPR Folio No. 489/009

2. Proposed form of duty

(a) Wei Chih and exporters generally from Taiwan (except Power Steel Co. Ltd)

If the visit team's preliminary calculation of the dumping margin remains negative in the Commission's final recommendation to the Minister, then Liberty Steel considers that a floor price based on the exporter's normal value forms the most appropriate method of calculating interim duty liability.

In the event the exporter's dumping margin is determined to be positive, then Liberty Steel considers that the combination method of interim duty calculation, i.e. a combination of fixed and variable duty, is the most appropriate form of duty calculation, as it will ensure that in the event the exporter reduces its export price to offset the effect of the fixed amount of *ad valorem* duty, then it will be unable to do so beyond the value of the export price ascertained by this Review of Measures. It is observed that if any reduction in the export price is in proportion to reductions in the exporter's domestic selling prices, then the Final Duty assessment process may be applied to ensure that the correct amount of final duty is paid; with repayment of any excess duty payments.

(b) Daehan and exporters generally from South Korea

Although the preliminary conclusion of the visit team concerning the dumping margin of the verified exporter from South Korea, Daehan, suggests that the decline in export price during the review period was not as significant as the decline in its domestic selling price, this has not always been the case across the lifecycle of these anti-dumping measures for this exporter. For example, during the period from 1 April 2016 to 31 March 2017, Daehan's estimated normal value did not reduce in line with its export price,⁹ resulting in a period of increased dumping which was incapable of remedy.

Therefore, to avoid a recurrence of the unremedied injury identified by Liberty Steel in *Anti-circumvention inquiry No. 452*, the Australian industry member contends that the combination duty method must be applied to Daehan and exporters generally from South Korea so that any future attempts by these exporters to reduce their export prices by a degree greater than reductions in the domestic selling prices, will be prevented. This practice of exporter circumvention may at least be 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. This will ensure exporter compliance with the measures and improved effectiveness against ongoing injury to the Australian industry.

Should the Commission require any further evidence or clarification of the matters raised above, please do not hesitate to inform the Australian industry applicant's representatives.

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

⁹ EPR Folio No. 452/016, p. 22.