FOR PUBLIC RECORD

11 March 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 SEF

Liberty Steel, the sole producer in Australia of like goods, refers to the *Statement of Essential Facts Nos. 486 and 489* (**SEF**).

We make the following observations in response to the Commission's preliminary findings contained in the SEF. The use of paragraph numbers, headings and sub-headings below follow those contained in the SEF.

In summary, the Australian industry considers that:

- Additional disclosure of the model matching criteria and the outcome thereof is required;
- 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 SD490 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];
- 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; and
- The combination method of interim duty calculation should be applied where positive dumping margins are found.

Given the technically complex nature of Liberty Steel's contentions regarding the Commission's approach to model matching, it is suggested that the principle of procedural fairness (for all parties concerned) will be best served by the publication of a *Case Issues Paper* prior to making the Final Report. This may also go some way to redressing the Commission's failure to consider the Australian industry's submission in response to the exporter verification reports.[2]

[1] All legislative references are to the *Customs Act 1901* unless expressly stated otherwise.
[2] EPR Folio No. 486/011 & EPR Folio No. 489/015 Australian Industry Submission – submitted and dated 14 February 2019

4.3.2 Commission's approach to model matching in this SEF

Rather than improving transparency, the Commission's approach to model matching in this SEF is entirely opaque. The failure to disclose the exporters' steel grades sold domestically, considered on application of the model control code criteria to be the most directly comparable to the grades exported to Australia, leaves the Australian industry speculating as to whether or not the Commission's preliminary conclusions concerning sufficiency of domestic sales of a particular model, or the making of certain specification adjustments, are technically reasonable or have any factual basis to them. This lack of transparency facilitates a procedural fairness deficit for the Australian industry, as it can only speculate, not make an informed assessment of whether or not the Commission has made a serious factual error in its model matching conclusions. The difficulty faced by the Australian industry in trying to decipher the factual soundness of the Commission's model matching conclusions may be observed below concerning the assessment of sufficiency of domestic sales of like goods by Wei Chih, and the consequent decision to determine its normal value using a constructed methodology, without the application of a specification adjustment.

The actual domestically sold grades in South Korea and Taiwan considered to be most directly comparable by the Commission to AS/NZS 4679 Grade 500N are not disclosed. Even the information that is disclosed raises more questions rather than providing clarity. Indeed, for the South Korean exporter, the references to "ductility", "alloy" and "coating" do not appear to have any relevance and "carbon content differences" are meaningless unless consideration of a carbon equivalent value is being referenced. The fact that the Commission has had regard to such irrelevant factors, raises concerns for the Australian industry that the entire model matching exercise is flawed and contains serious factual errors. In the case of the Taiwanese exporter, the identification of only two relevant criteria, namely "quality" and "grade" is equally disconcerting. Presumably, the reference to "quality" relates to "prime" and "non-prime".

The Commission places itself at risk of not making the correct or preferable decision by not disclosing with any degree of precision the elements reported for each of these model matching criteria. The Australian industry does not see its role as one of contradicting the Commission's findings, but rather where appropriate, contribute its technical industry knowledge to assist the Commission to make the correct model matching selections, and where necessary provide substantiating evidence of the claims.

To remedy the current evidentiary deficiency of the SEF, the Australian industry proposes the Commission provide better definition of the model matching criteria applied and the outcomes thereof ie. the domestically sold grades considered most directly comparable to the grades exported to Australia, in the form of a *Case Issue Paper*, with an opportunity for submissions to be made by interested parties.

4.5 Exporter from Taiwan – Wei Chih

4.5.3 Normal value

The SEF has not addressed the concerns raised by the Australian industry in its submission[3] in response to the *Exporter Verification Report* for Wei Chih (**Wei Chih Report**).[4]

'Carbon content' vs Carbon equivalent value

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

[3] EPR Folio No. 486/011 & EPR Folio No. 489/015 Australian Industry Submission – submitted and dated 14 February 2019
[4] EPR Folio No. 489/012 Wei Chih Visit Report

existence of a carbon equivalent value specification is best demonstrated in *Section 2.4* of the Wei Chih 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 and as such cannot be considered a good match for the exported Grade 500N. 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.

'Secondary Grade 500N'

We further observe at *Section 3.1.1* of the Wei Chih Report 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 would assume that these transactions were not included in the assessment of like goods sold in the ordinary course of trade in the domestic market, the visit report states that the "verification team requested the domestic sales listing be updated to show the sales of these goods."[5] 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. The SEF was regrettably silent on their treatment, so too was it silent on whether or not these domestic sales of "secondary Grade 500N" were excluded from the calculation of an amount for profit under s.45(2) of the *Customs (International Obligations) Regulation 2015*.

The Australian industry proposes that any *Case Issue Paper* published should also address these concerns prior to the making of the Final Report.

Suitability of domestic sales

At *Section 7.2* of the Wei Chih Report, 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:

AS/NZS 4671:2001
Grade 500N (Max CE specified, Minimum yield strength = 500 MPa) [*extracts subject to copyright*]

[5] EPR Folio No. 489/012 Wei Chih Visit Report at p8

[redacted]

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)

[redacted]

[redacted]

From the SEF, it remains unclear why the Commission has concluded that it is 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.[6] A copy of that evidence is again attached as CONFIDENTIAL ATTACHMENT A. In the absence of high strength rebar grade SD490 sold by Wei Chih into the Taiwanese market, the price differential between grades SD400W and SD500W (or SD400 and SD500) sold by Wei Chih into the Korean market ought to also provide the Commission with an indication of the price extra that high strength rebar commands over a lower strength grade. Wei Chih are reported to have been selling these grades into the Korean market since 2010.

> "*Since 2010 the company started to develop a variety of straight steel bars and went into a new business stage with diverse variety of products. In 2010 it passed SD300 / 400 / 500 of KS D 3504 South Korean national product certification, the first eligible steel company in Taiwan to enter the Korean steel market.*"[7]

We encourage the Commission to review this finding, and reconsider the determination of the normal value under s.269TAC(1), using the exporter's domestic sales of Grades SD420 and SD420W together with an upward specification adjustment.

Should the Commission 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* of the Wei Chih (*The goods exported to Australia*), the exporter 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.

4.4 Exporter from Korea - Daehan

4.4.3 Normal value

The SEF has not addressed the concerns raised by the Australian industry in its submission[8] in response to the *Exporter Verification Report* for Daehan (**Daehan Report**).[9]

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* of the Daehan Report relates to. We would encourage the Commission 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* of the Daehan Report. The publication of a *Case Issues Paper* prior to making the Final Report addressing this concern would be appropriate from a procedural fairness perspective.

[6] EPR Folio No. 489/006

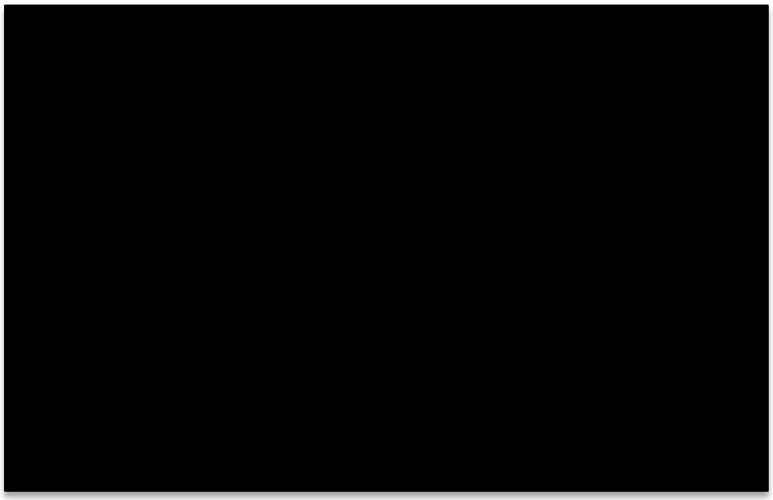
[7] https://www.emis.com/php/company-profile/TW/Wei_Chih_Steel_Industrial_Co_Ltd__%E5%A8%81%E8%87%B4%E9%92%A2%E9%93%81%E5%B7%A5%E4%B8%9A__en_1710474.html

[8] EPR Folio No. 486/011 & EPR Folio No. 489/015 Australian Industry Submission – submitted and dated 14 February 2019

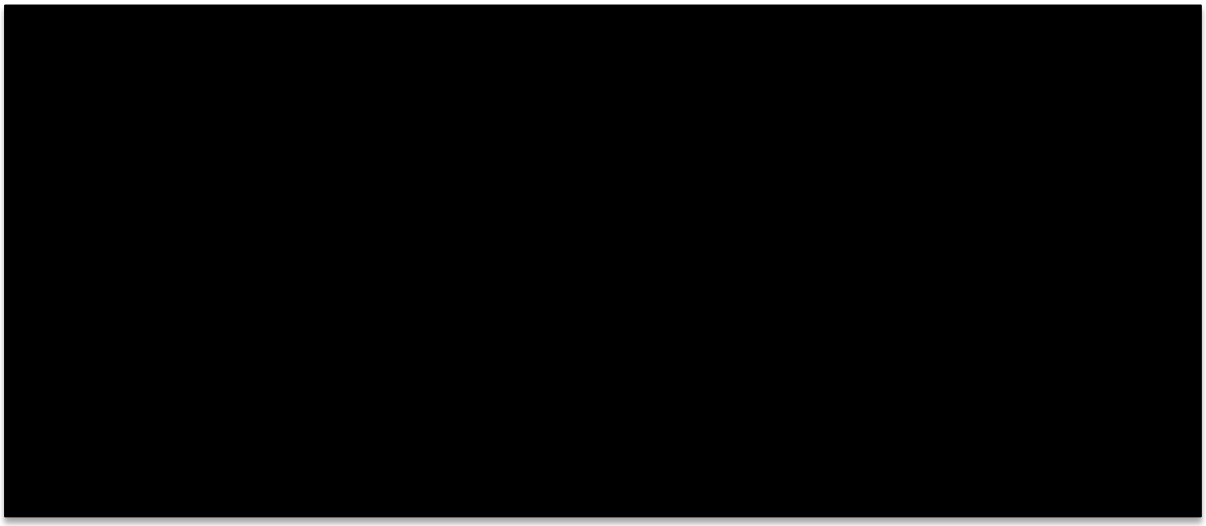
[9] EPR Folio No. 489/013

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 '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: [*extracts subject to copyright*]



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.



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 or SD500 versus SD500W).

4.4.4 Adjustments

The Commission has indicated that it proposes to make a downward adjustment to the normal value to account for "the cost of domestic credit".

In our submission in response to the Daehan Visit Report, Liberty Steel considered that the Commission ought 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".[10] 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.[11] 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.

6.3.2 The Commission's approach to form of measures

Daehan and exporters generally from South Korea

At the outset, the Commission has wrongly found that:

> *"there is no evidence that exporters [Daehan] have lowered their export prices to avoid the effects of any duty"*.[12]

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,[13] 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.

Indeed, the Commission originally recognised the susceptibility of the *ad valorem* method of duty calculation to exporter facilitated avoidance (through export price reductions designed to offset the impact of fixed amounts of duty on the prices of goods sold into the Australian market) in its *Guidelines on the Application of Forms of Dumping Duty* (November 2013):

[10] EPR Folio No. 452/006, p. 27.
[11] EPR Folio No. 452/006, p. 27.
[12] SEF 486 & 489, p. 24.
[13] EPR Folio No. 452/016, p. 22.

> *"It has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty. That said, where such behaviour is observed when monitoring the measures an anti-circumvention inquiry can commence."*

However, since *Anti-circumvention Inquiry No. 452*, even the Commission must now agree that the *ad valorem* method's susceptibility to exporter induced price reductions cannot be cured by the current anti-circumvention framework. As such the *ad valorem* method remains prone to unremedied ineffectiveness. Clearly Daehan was aware of this loophole when during *Investigation No. 264*, its representative wrote:

> *"An exporter subject to interim dumping duties that simply lowers its export price cannot in any way be considered a circumvention activity as defined. Whilst the applicant continually refers to the avoidance of the intended effect of duty, it is important to note that s. 269ZDBBA(5A) of the Act, which deals with the avoidance of the intended effect of duty as a circumvention activity, relates to an importer selling the imported goods in Australia without increasing the price commensurate with the total amount of duty payable. It does not relate to an exporter reducing its export prices."*[14]

Undeterred by the *ad valorem* measures imposed following *Investigation No. 264*, within five (5) months (by November 2015) Daehan began exploiting the weakness of both the *ad valorem* measures and anti - circumvention framework, by lowering its export price at a greater rate than its normal value (thereby dumping exports at rates in excess of the 9.7% originally determined). It was no coincidence during this period that the importer did not apply for any final duty assessments, as the amount of duty payable would have been found to have exceeded the amount of interim duty paid.

However, even if the current anti-circumvention framework is found to apply to instances of exporter facilitated price circumvention, rendering the *ad valorem* measures inutile, then the Australian industry may nevertheless not seek redress under the statutory framework until the amounts of final duty are determined. This may be up to a year after the injury caused by increased rates of dumping has recurred. The inequity of this outcome is obvious when juxtaposed against the importer's right to seek a repayment of duty overpaid under a final duty assessment, or, do nothing and realise the benefit of duty underpaid.

Existence of 'significant price volatility'

The Commission cites that the *Guidelines* specify that the *ad valorem* duty method has an advantage for goods which are subject to significant price variations over time because:

a) it does not show the same variability in the 'effective rate' of the duty – as export prices fluctuate – that arises under the other methods; and
b) may require less frequent reviews than other duty methods in this situation.

Irrespective of whether or not there is significant price volatility observed, there are several problems with the approach outlined in the Guidelines.

Firstly, the idea that variability in the 'effective rate' of the duty is a problem contradicts the primary objective of the measures of removing the injurious effects of the dumped and/or subsidised goods to the extent required. It is absurd to suggest that the *ad valorem* method somehow reduces this 'maligned' variability. The only way to reach that conclusion is to ignore the role and function of the duty assessment process. Thus, it may be that the *ad valorem* method may reduce 'variability' in a declining market (by not collecting a variable amount of duty), however, it reduces that variability at the expense of the Australian industry, who in fact observe an ever decreasing 'effective rate' collected as prices fall, irrespective of whether those lower export prices are at greater rates of dumping. On the other hand, an importer has the right to have repaid any amount of duty overpaid on a six-monthly basis.

Secondly, the idea that the *ad valorem* method *"may require less frequent reviews"* contradicts the purpose of a Division 5 review under the Act. The decision to initiate a review of measures is entirely independent of the form of duty calculation. The grounds to initiate a Division 5 review is based on observable changes in the variable factors. Therefore, the Australian industry fails to understand how this "less frequent reviews" outcome can be upheld as a relevant defence of the *ad valorem* method.

[14] EPR Folio No. 264/074, p. 2.

The Commission's *Guidelines* list seven key considerations for the Combination of fixed and variable duty method. Liberty Steel addresses each of the key considerations.

- *This form of duty, like the floor price duty method and fixed duty method, may not suit those situations where there are many models or types of the good with significantly different prices.*
  Applied here, this consideration should not preclude the use of the combination method of duty calculation as there are only two models or types of goods: rebar in straight lengths and rebar in coil. Both these models/types do not demonstrate "significantly different prices".

- *It is suited to circumstances where there are complex company structures with related parties; and where circumvention of measures is likely.*
  This consideration is relevant for Daehan as the Commission's exporter visit report noted *"The company has seven subsidiary companies and one affiliated company".* In addition, Daehan has a reported recent history of the falsification of prices to gain a financial benefit.

  > *"South Korea's Fair Trade Commission slapped six domestic steel companies with fines totalling Won 119.4 billion ($105.7 million) for falsification of rebar prices, the commission said Sunday. The companies -- Hyundai Steel, Dongkuk Steel Mill, Korea Iron & Steel,* ***Daehan Steel,*** *Hwanyoung Steel and YK Steel -- rigged prices between May 2015 and December 2016 by reducing their discounts amid higher imports from China, the FTC said."*[15]

- *It can be applied more precisely to certain goods in some cases.*
  Again, this consideration is not relevant to rebar as there are only two models with similar costs and prices.

- *The 'effective' rate of this duty, when the duty has been imposed as a fixed amount per unit, diminishes in a rising market making it ineffective. The 'effective' rate increases in a declining market making it punitive.*
  This is not relevant here as Liberty Steel is not advocating for the combination method that uses a "fixed amount per unit".

- *Consequently, reviews may be more likely due to the effects of a rising or falling market than would be the case with an ad valorem duty method.*
  The frequency of reviews, particularly for products that show price variability, should not be a determining factor in the Commission's decision to impose a particular form of measure. The Commission should be imposing the most effective measure to remove future injury to the Australian industry and annual reviews should be encouraged to ensure that measures are effective and contemporary.

- *The punitive effect in a falling market of the fixed form of this duty can have adverse effects on downstream industries. The Minister may need to consider these effects when deciding on the duty method.*
  This is not a relevant consideration as Liberty Steel is asking that the combination method employ a percentage amount for the fixed form component of the duty, not a set value.

  Even if the variable component of the combination became out-of-date there would be no punitive effect to downstream industries for a commodity product such as rebar. There are numerous exporters from a range of countries that have no dumping measures imposed that already have 3rd party quality accreditation to supply into the Australian market. Exporters in these countries include Portugal, Poland, Italy and New Zealand and several exporters in Indonesia.

- *The ascertained export price used in this measure can become out-of-date.*
  It is widely recognised that both the normal values and the ascertained export price are likely to change and become out of that date. The Commission itself collectively refers to the them as the "variable factors".

[15] NON-CONFIDENTIAL ATTACHMENT A (SBB Sept 2018 ARTICLE ATTACHED)

The legislation contains provisions such as Division 5 reviews and duty assessments to compensate for these changes. Importers that supply dumped product that causes material injury to the Australian industries and their supply chain partners are shielded from paying excess duty as detailed on the Commission's website:

"*To ensure that the amount of dumping duty collected by Customs does not exceed the actual dumping margin for each consignment over the five-year period, provision exists for assessment of the final duty liability. This system allows for any excess interim duty to be refunded where it is found that prices have changed since the original investigation or subsequent review.*"

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