



4 March 2019

Director
Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

BY EMAIL:
investigations3@adcommission.gov.au

Dear Director,

Re.: Dumping and Subsidisation Investigation No. 495 concerning steel reinforcing bar exported from Turkey

AUSTRALIAN INDUSTRY SUBMISSION

Liberty Steel thanks the Commission for their timely completion and placement of the *Preliminary Affirmative Determination and Imposition of Securities* on the public record in this matter.¹

A. Summary

Where there appears to be (or will be) sufficient grounds for the publication of a dumping or countervailing duty notice, during the course of an investigation, then it is entirely appropriate for the Commissioner to make a preliminary affirmative determination (PAD) and require and take securities². Under s.269TD(4)³, the key objective of taking securities is "to prevent material injury to an Australian industry occurring while the investigation continues".

However, in the case of this investigation, the Australian industry has observed that the publication of the PAD on 15 January 2019 and the power to take securities on goods entered for home consumption, has not had the effect of preventing further material injury occurring. Indeed, following initiation of the investigation on 16 November 2018 there has been an escalation in injury to the domestic industry through a surge in the volume of the goods imported from Turkey at historically low export prices that have continued to undercut all sources of the goods sold in the Australian market.

In this submission, the Australian industry seeks that the Commissioner exercise the following powers to abate the ongoing injury suffered by it while the investigation continues:

- Recommend the taking of securities under s.42 in the form of cash deposits as permitted under s.43;
- Revise the method by which the amount of securities to be taken is calculated by adopting a combination of fixed and variable rates;
- Revise the security rates for individual exporters as soon as additional and reliable information becomes available to the Commissioner; and

¹ EPR Folio No. 495/007 (ADN 2019/007, 15 January 2019).

² Under s.42

³ All legislative references in this document are to the *Customs Act 1901*, unless otherwise stated.

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MEMBER OF



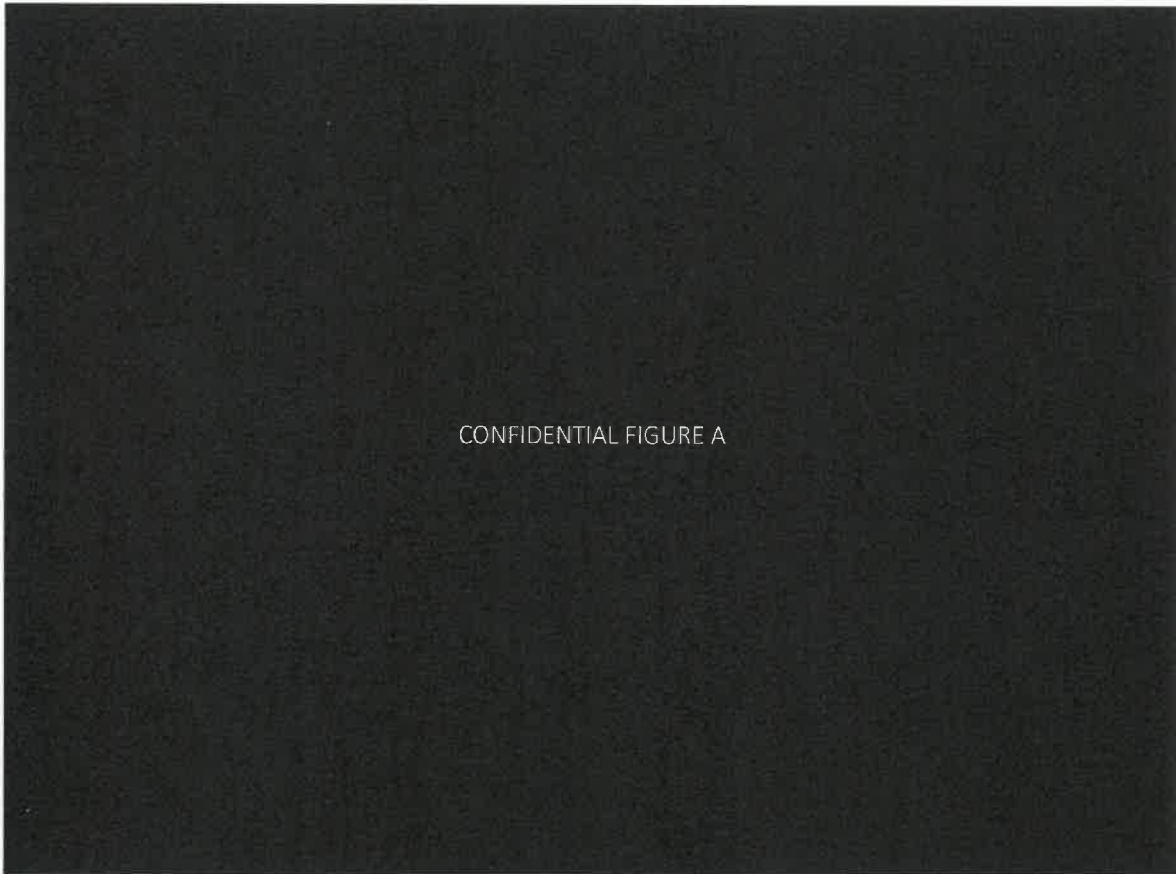
- Consider all matters necessary to recommend to the Minister that the dumping and/or countervailing duty notices be published (under s.269TN) in respect of goods that have been entered for home consumption since the date of initiation of this investigation.

B. Volumes and prices of goods exported from Turkey since initiation

The Australian industry has obtained the latest export volume and price information for exports of the goods from Turkey. In summary, they demonstrate a surge in export volumes since the initiation of the investigation, with a corresponding decline in the latest export prices, specifically:

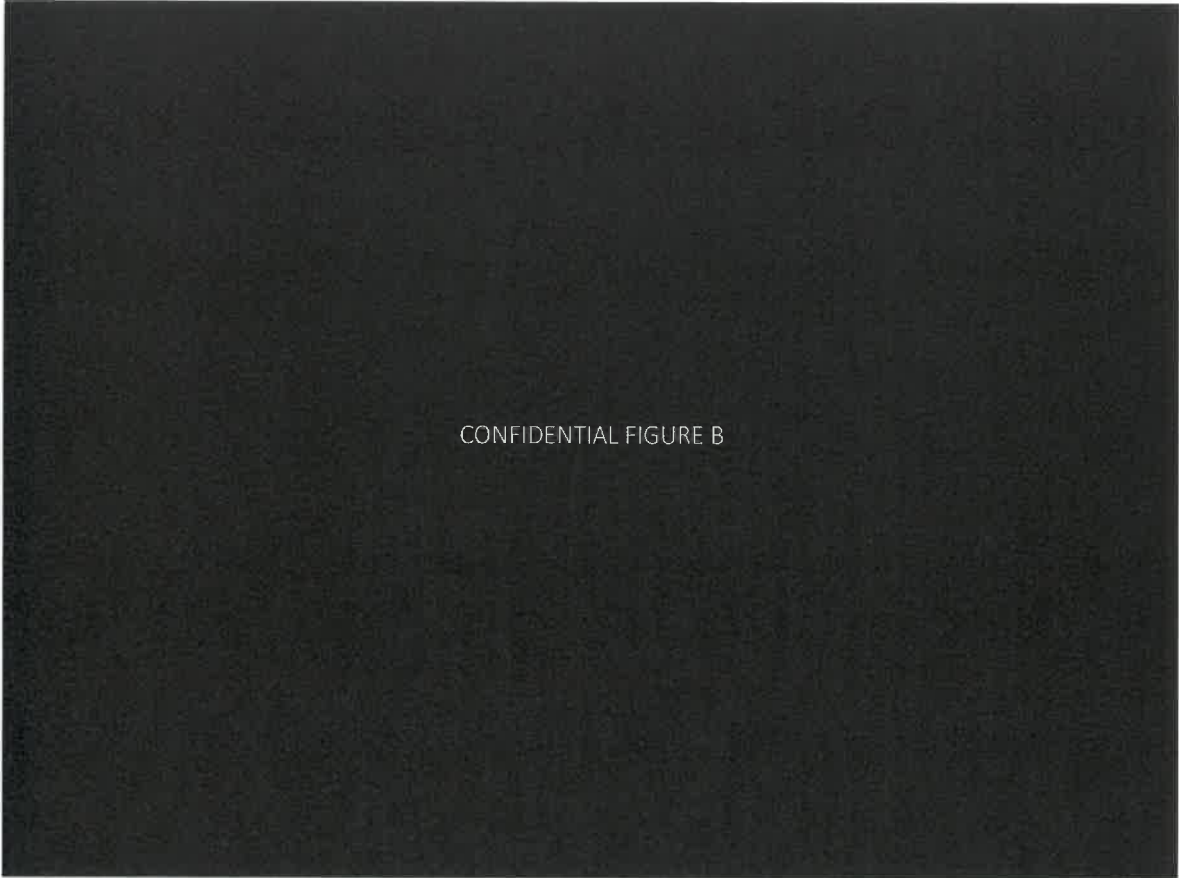
- Export volumes from Turkey for rebar in straight lengths (DBIL) increased by 123 per cent between November and December 2018;
- Export volumes from Turkey for rebar in coiled form (DBIC) increased by 194 per cent between November and December 2018;
- The average export price for DBIL from Turkey in December 2018 was 8 per cent lower than the weighted average export price for DBIL across the investigation period; and
- The average export price for DBIC from Turkey in December 2018 was 5 per cent lower than the weighted average export price for DBIC across the investigation period.

CONFIDENTIAL FIGURES A, B, C & D (below) demonstrate the changes in volumes since the initiation of *Investigation No. 495*.



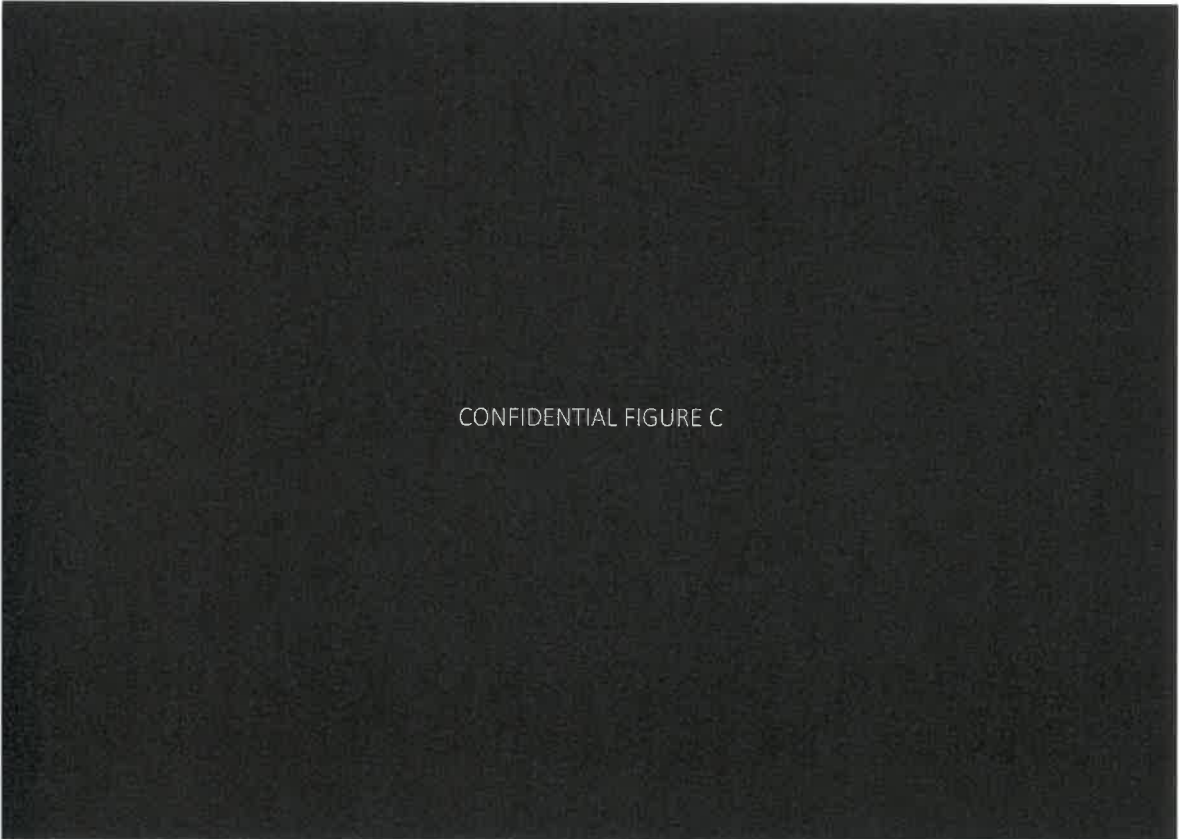
CONFIDENTIAL FIGURE A

CONFIDENTIAL FIGURE A - Export volumes (tonnes) of DBIL exported from Turkey and all other sources to Australia since 1 October 2017 (Source: CONFIDENTIAL ATTACHMENT A)



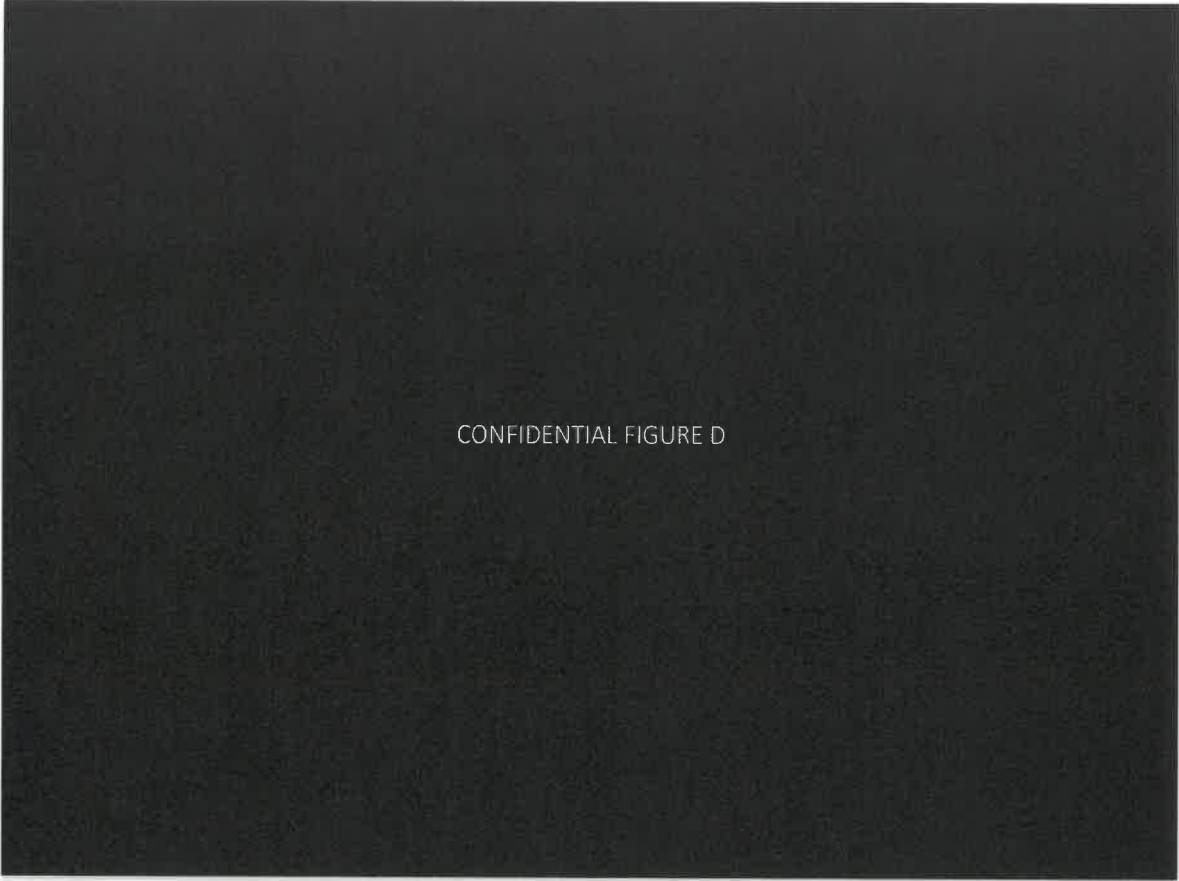
CONFIDENTIAL FIGURE B

CONFIDENTIAL FIGURE B – Average monthly export price (USD/tonnes) of DBIL exported from Turkey to Australia since 1 October 2017 (Source: [CONFIDENTIAL ATTACHMENT A](#))



CONFIDENTIAL FIGURE C

CONFIDENTIAL FIGURE C - Export volumes (tonnes) of DBIC exported from Turkey to Australia since 1 October 2017 (Source: [CONFIDENTIAL ATTACHMENT A](#))

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CONFIDENTIAL FIGURE D

CONFIDENTIAL FIGURE D – Average monthly export price (USD/tonnes) of DBIC export from Turkey to Australia since 1 October 2017 (Source: [CONFIDENTIAL ATTACHMENT A](#))

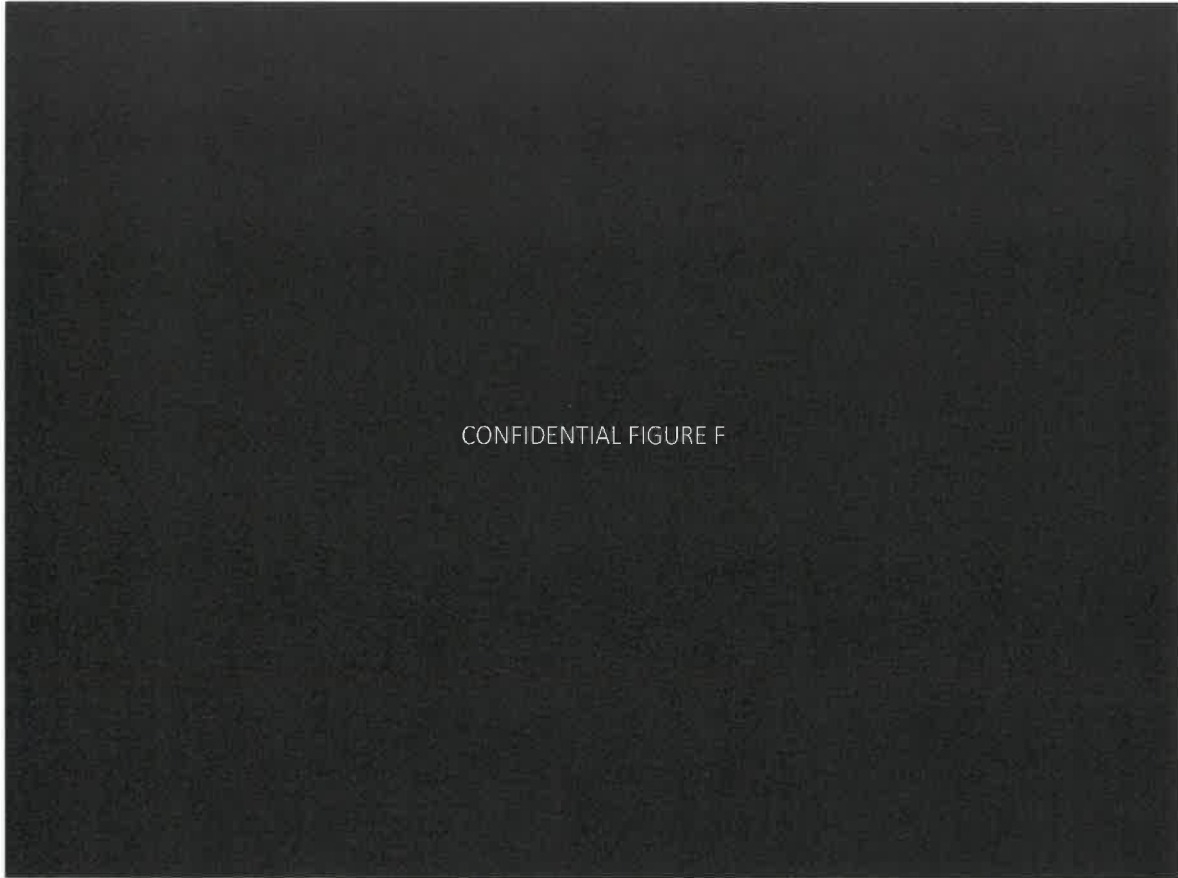
CONFIDENTIAL FIGURE A (above) demonstrates that the growth in export volumes of DBIL from Turkey has come at the expense of export volumes from other sources and lost sales volume (and market share) by the Australian industry. Evidence of the Australian industry's lost sales volume caused by the surge in export volumes from Turkey is reproduced below in *Section C*. CONFIDENTIAL FIGURE B (above) illustrates that the historically low export prices for Turkish DBIL has facilitated the surge in export volumes following the initiation of the investigation. Evidence of price undercutting by the Turkish exporters of all other sources is indicated in CONFIDENTIAL FIGURE E (below). Evidence of price undercutting by Australian importers of the Turkish goods in the Australian market is reproduced below in *Section C*.

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CONFIDENTIAL FIGURE E

CONFIDENTIAL FIGURE E - Average monthly export price (USD/tonnes) of DBIL exported from Turkey and all other sources to Australia since 1 October 2017 (Source: [CONFIDENTIAL ATTACHMENT A](#))

CONFIDENTIAL FIGURE C (above) illustrates the significant surge in export volumes to Australia of DBIC from Turkey since the initiation of the investigation (at levels unseen since May 2018). CONFIDENTIAL FIGURE F (below) again indicates that the surge in volume of DBIC exported from Turkey has come at the expense of sales volumes by the Australian industry and other countries. CONFIDENTIAL FIGURE D (above) illustrates that the historically low export prices for Turkish DBIC has facilitated the surge in export volumes following the initiation of the investigation. Evidence of price undercutting by the Turkish exporters of all other sources is indicated in CONFIDENTIAL FIGURE G (below). Evidence that the Australian industry has continued to experience lost sales volume caused by ongoing and more pronounced price undercutting by Australian importers of the Turkish goods in the Australian market is reproduced below in *Section C* (below).



CONFIDENTIAL FIGURE F

CONFIDENTIAL FIGURE F - Export volumes (tonnes) of DBIC exported from Turkey and all other sources to Australia since 1 October 2017 (Source: [CONFIDENTIAL ATTACHMENT A](#))

C. Evidence of ongoing injury to the Australian industry while the investigation continues

The charts of export volume and price of the goods from Turkey and other sources appearing at [CONFIDENTIAL FIGURES A to E](#), above, record goods exported in a particular month, with December 2018 representing the most recently available data. Therefore, goods exported from Turkey in December 2018 will likely arrive for entry in Australia across the latter-half of January and February 2019.

In terms of the impact of surging Turkish import volumes on the sales volume of the Australian industry, this will be observed during the month of entry in Australia, as the imported volumes from Turkey displace sales volumes by the Australian industry to its customers.

In terms of the price injury impact of price undercutting by importers of Turkish goods on the Australian industry since the investigation was initiated (November 2018), this will be observed in price negotiations between the Liberty Steel and its customers since November 2018 (for orders placed and delivered since December 2018/January 2019). The effect of import offers of Turkish goods on the Australian industry's price offers to customers may be observed in terms of the following three most severely impacted customers since the initiation of the investigation:

- [Redacted]
- [Redacted] and
- [Redacted]

1. [Redacted] [Customer 1]

The effect of Turkish import price offers on the Australian industry's net price offer to the customer may be seen in [CONFIDENTIAL FIGURE G](#) (below).



CONFIDENTIAL FIGURE G

CONFIDENTIAL FIGURE G – Australian industry settled net price offers to customer ([REDACTED]) and sources of lowest competitor price offer on which price offers are made. Indicates both month of offer (commencing [REDACTED]), and order and delivery month (commencing [REDACTED]) (Source: [CONFIDENTIAL ATTACHMENT C](#))

CONFIDENTIAL FIGURE G (above) indicates that since the initiation of the investigation, there was only one month in which Turkish sourced imports did not form the basis of the customer's most competitive/lowest price offer (January 2019). In every other month, Turkish import price offers were used by the customer to set the Australian industry's price offer to it. In fact, immediately following the initiation of the investigation, the Australian industry experienced a marginal degree of price depression in its price December 2018 price offers to the customer (0.5%). In the month absent any Turkish price offers, the Australian industry was able to increase prices. However, in the latest round of price offers (February 2019), the Australian industry has suffered price depression to this customer in the order of **4.3 per cent**. This price depression will be experienced for orders to be delivered in [REDACTED], this is in spite of any securities required to be taken on goods entered on or after 16 January 2019.

2. [REDACTED] [Customer 2]

The impact of Turkish import price offers on the Australian industry's net price offer to the customer may be seen in **CONFIDENTIAL FIGURE H** (below).



CONFIDENTIAL FIGURE H

CONFIDENTIAL FIGURE H – Australian industry settled net price offers to customer ([REDACTED]) and sources of lowest competitor price offer on which price offers are made. Indicates both month of offer (commencing [REDACTED]), and order and delivery month (commencing [REDACTED]) (Source: [CONFIDENTIAL ATTACHMENT C](#))

CONFIDENTIAL FIGURE H (above) indicates that since the initiation of the investigation, Turkish sourced imports form the basis of the customer's most competitive/lowest price offer in each and every month, and at lower and lower values in the case of DBIL. In the case of DBIC price offers, February 2019 price negotiations saw some relief to the industry's price depression on the back of increased competitor price offers for Turkish sourced imports for order/delivery in [REDACTED]. In fact, since the initiation of the investigation (November 2018 negotiated offers), the Australian industry has experienced price depression to this customer in the order of 7.0 per cent (based on February 2019 price offers). Since the publication of the PAD, net price offers declined by 4.8 per cent, despite securities likely to be taken at the *ad valorem* rate of 4.0 per cent.

3. [REDACTED] [Customer 3]

The impact of Turkish import price offers on the Australian industry's net price offer to the customer may be seen in **CONFIDENTIAL FIGURE I** (below).

CONFIDENTIAL FIGURE I

CONFIDENTIAL FIGURE I – Australian industry settled net price offers to customer () and sources of lowest competitor price offer on which price offers are made. Indicates both month of offer (commencing), and order and delivery month (commencing) (Source: [CONFIDENTIAL ATTACHMENT C](#))

CONFIDENTIAL FIGURE I (above) indicates two very interesting trends to emerge since the initiation of this investigation. Firstly, Turkish sourced imports of DBIL are consistently the lowest priced competitive offer against which the Australian industry's net price counter-offer is set. In the case of this customer, it declined in every month's offer since the initiation of the investigation, except for the latest round of price offer negotiations (February 2019).

Secondly, Turkish sourced DBIC is increasingly exerting downward price depression on the Australian industry's price offers for this model.

. [Price sensitive market intelligence] Following publication of the PAD, offers for Turkish sourced DBIC fell by **4.8 per cent**, despite securities required and taken at the *ad valorem* rate of 4.0 per cent.

D. Ineffectiveness of securities

CONFIDENTIAL FIGURES G, H & I (above) demonstrates the defiance of importers of the goods from Turkey to the imposition of securities, where price offers in the market have not increased commensurate with the potential duty liability. It appears from the following evidence that the importers have been able to avoid the intended effect of the securities by either receiving undertakings from the exporter to pay the contingent liability, or the importer is assuming the risk of any duty liabilities.

Customer:

following publication of the PAD (16 January 2019), the Australian industry met with its customer, , for its . In the course of negotiations the customer advised that the exporter (), via its importer (),



will ensure that “duty to be paid by the seller” (refer CONFIDENTIAL ATTACHMENT B: ‘1901 – [REDACTED]’). On this basis, the importer was able to further reduce its price offer to the customer for [REDACTED] delivery of DBIL by \$ [REDACTED] (compared to its February 2019 prices), and a reduction of \$ [REDACTED] for DBIC across the same period (refer CONFIDENTIAL ATTACHMENT B: ‘1901 – [REDACTED] - Price’). The Australian industry was obliged to match these price reductions in its offer to the customer for [REDACTED] delivery.

In further discussions with this customer, it was further revealed that the importer brought forward delivery of the goods to avoid the effect of the making of the PAD and the imposition of securities. This had the effect of reducing the customer’s order volumes placed on the Australian industry in February 2019:

[REDACTED] to advise that their order volume in February will be significantly below forecast on account of the early arrival of Turkish imported Rebar Straights, Rebar Coil, and Rod.

[REDACTED] indicated that this parcel was *shipped early to avoid the PAD.*⁴

In the following month (February 2019 price negotiations), the customer, [REDACTED], again advised the Australian industry that a further importer ([REDACTED]) will “wear duty risk” (refer CONFIDENTIAL ATTACHMENT B: ‘1902 – [REDACTED]’). This directly resulted in the Australian industry offering a price reduction to the customer for April 2019 delivery of \$ [REDACTED] for DBIL (-4.45%) when compared to March 2019 net prices (refer CONFIDENTIAL ATTACHMENT B: ‘1902 – [REDACTED] - Price’).

Customer: [REDACTED]

In its January 2019 price negotiations with its customer, [REDACTED], the Australian industry was advised that the exporter ([REDACTED]) will cover the risk of later conversion of securities taken, specifically “duty to be paid by seller ([REDACTED])” (refer CONFIDENTIAL ATTACHMENT B: ‘1901 – [REDACTED]’). This directly resulted in the Australian industry offering a price reduction to the customer for March 2019 delivery of \$ [REDACTED] for DBIL (- 2.23%) and \$ [REDACTED] for DBIC (-6.6%) (compared to February 2019 prices) (refer CONFIDENTIAL ATTACHMENT B: ‘1901 – [REDACTED] - Price’).] In fact, the reduction in price offers for March 2019 delivery of DBIC exported from Turkey were so significant and sharp (a total of -\$ [REDACTED] /t), that the Australian industry was only able to pass on [REDACTED] % of that reduction with an undertaking to reduce April 2019 prices with the balance.⁵

Customer: [REDACTED]

On 24 January 2019, the Australian industry received details of price offers made to its customer, [REDACTED], in which Turkish offers for DBIL with [REDACTED] delivery were made for AUD [REDACTED] (down AUD [REDACTED] /t on previous offers). Then [REDACTED], revised offers were received for Turkish DBIL for AUD [REDACTED] (a further reduction of AUD [REDACTED] /t). In other words, the net effect of the imposition of securities was an almost immediate reduction in price by the Turkish exporters to this customer of 4.7%.⁶

E. OPTIONS TO PREVENT MATERIAL INJURY OCCURRING WHILE THE INVESTIGATION CONTINUES

1. Taking cash deposits as permitted under s.43

Section 43 provides that:

“A security shall be given in a manner and form approved by a Collector and may, subject to that approval, be by bond, guarantee, cash deposit or any other method, or by two or more different methods.” [emphasis added]

⁴ CONFIDENTIAL ATTACHMENT B: ‘1901 – [REDACTED] – Email’

⁵ CONFIDENTIAL ATTACHMENT B: ‘1901 – [REDACTED] – Email’

⁶ CONFIDENTIAL ATTACHMENT B: ‘1901 – [REDACTED] – Email’

Liberty Steel submits that the current documentary form of security required to be taken is ineffective in preventing material injury occurring while the investigation continues. On the evidence available to the Australian industry, importers are not increasing their prices in the Australian market with an amount commensurate with the total amount of contingent duty liability, or exporters are defeating the intended effect of the securities by reducing their export prices by at least an amount equivalent to the importers' potential duty liability. Only the taking of a cash deposit will ensure that the importers properly account for the security amount in their ongoing price offers into the Australian market while the investigation continues.

2. Form of security amount calculation

The Commission's decision to determine that securities be taken as an amount worked out in accordance with the *ad valorem* duty method has facilitated the **8.0 per cent decline** in export prices for DBIL and **5.0 per cent decline** in export prices for DBIC exported from Turkey since the end of the investigation period. Had the combination method of duty calculation been applied, then decreases in export prices since the publication of the PAD would have been captured as additional amounts of securities imposed. When combined with the taking of cash deposits as securities, then this would have greatly improved the effectiveness of the preliminary measures.

3. Revise the security rates for individual exporters

If the Commonwealth is not at any time satisfied with the sufficiency of any security, then the Commonwealth may require a fresh security be given under s.46. It is contended that once additional, reliable evidence of the exporter's ascertained variable factors are obtained (possibly following conclusion of verification activities), then the Commissioner ought to properly recommend to the Commonwealth that new securities be taken at revised amounts.

4. Retrospective notice recommendation

Under s.45, a security taken in respect of any interim duty that may become payable on goods must be cancelled with four (4) months after being taken. In other words, any securities taken on or after 16 January 2019, will commence to be cancelled from 16 May 2019. Given that the earliest date on which the Commissioner's recommendation to the Minister may be made is on 23 April 2019, then the Minister's decision must be made and published in 23 days or less to ensure that all securities possibly taken are capable of conversion to interim dumping duty.

Without inviting an extension to the investigation timeline, the Australian industry acknowledges that one or more extensions may be required in order to properly consider the claims of countervailable subsidies. Therefore, in all likelihood, Liberty Steel reasonably anticipates that securities taken will commence to be cancelled before the Minister's decision (together with the necessary notices imposing and collecting duties) are published.

One means of preventing exporters and importers from 'gaming' this inherent 'loophole' in the system is to recommend to the Minister that she exercise her power under s.269TN to publish retrospective notices, that is, notices under s.269TG(1) and/or 269TJ(1) in respect of goods that have already been entered for home consumption up to the date of initiation of the investigation. This will ensure that interim duties may be calculated and captured on all injurious goods exported while the investigation is occurring and will better ensure that any delays in the conclusion of the investigation do not subject the Australian industry to ongoing material injury. Given that importers are currently flaunting the securities imposed, the publication of retrospective notices will moderate any reckless behaviour designed to avoid the intended effect of the preliminary measures.

In support of this requested recommendation, Liberty Steel encourages the Commission (during the course of the investigation) to consider all matters necessary to recommend to the Minister to cause retrospective notices to be published. It is Liberty Steel's assessment that the conditions of the statute have been satisfied, specifically:

- (i) *"within 90 days after the entry of the goods for home consumption, security has been taken under section 42": s.269TN(3)(a)*

The publication of the PAD and imposition of Securities on 15 January 2019 being 60 days following initiation of the investigation, permits a s.269TG(1) notice to apply to goods entered for home consumption since 16 November 2018.

(ii) *“the export to Australia during a short period of large quantities of goods”*: s.269TN(3)(b)

The evidence submitted above demonstrating the surge in the volume of the goods exported from Turkey, i.e. **123 per cent** increase in the volume of DBIL in December 2018 (refer CONFIDENTIAL FIGURE A, above), and **194 per cent** increase in the volume of DBIC in December 2018 (refer CONFIDENTIAL FIGURE B, above), satisfies this element of the criteria.

(iii) *“material injury has been caused to an Australian industry by the export” of these goods*: s.269TN(3)(b)

Irrespective of the volume of sales injury suffered by the Australian industry, the lower export prices for the historically high volume of goods exported from Turkey since the initiation of the investigations (refer CONFIDENTIAL FIGURES B and D) has facilitated further price undercutting which will cause the Australian industry to suffer ongoing price depression (refer CONFIDENTIAL FIGURES G to I, above).

(iv) *“imported into Australia by an importer who the Minister considers knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods”*: s.269TN(4)(a)

Preliminary assessments of the dumping margins in the Commission’s consideration report placed all importers on notice of the probability that the goods exported to Australia from Turkey were at prices less than the normal value of the goods, i.e. dumped. Therefore, the importers ought to have reasonably known that any reductions in the export price since initiation would only increase the dumping margins of the exports.

Furthermore, on the evidence presented in *Section C*, above, certain importers clearly understood the likelihood that the goods exported following initiation of the investigation were dumped or could have arisen in a duty liability, as there were clear and unequivocal discussions between those importers and exporters on who would bear the onus of future preliminary duty risk in light of further export price reductions. This trading in the risk of future duty liabilities is also borne out of the recent exposure of these importers to the anti-dumping system and its activity in the Australian market.

(v) *“that publication of a retrospective notice is necessary to prevent the serious undermining of any potential notice”*: s.269TN(3)(b)

Applied here, on the evidence presented above, Liberty Steel contends that any duties capable of being imposed from the date that the PAD was made, are incapable of themselves to adequately remedy the injury caused by the ongoing dumping. Both importers and exporters have effectively undermined and avoided the intended effect of the securities imposed, resulting in further price undercutting that will cause the Australian industry to suffer price depression.

Furthermore, as indicated above, given the likely extension to the conclusion of the investigation timeframe, securities imposed during the surge in export volumes since December 2018 (assuming they are entered for home consumption on or after 16 January 2019) will be cancelled. Therefore, retrospective duties are necessary to prevent the serious undermining of the remedial effect of a dumping duty.

(vi) *“inform the importer of the goods of the decision [under s.269TN] ... she proposes to make”*: s.269TN(4A)(a) to (c)

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