PUBLIC VERSION

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22 May 2019

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

Dumping investigation into steel reinforcing bar exported from Turkey

Dear Director,

This submission is made on behalf of Diler Demir Celik Endustri ve Ticaret A.S. ("Diler"), in response to the submission by Liberty One Steel ("Liberty") date 15 May 2019.

At the outset, Diler wishes to highlight its concerns with Liberty's apparent attempt to invent issues relating to Diler's determined dumping margin, by discrediting the Commission's longstanding practices and methodologies, and raising doubts about the capability of Commission officers to properly and accurately verify submitted financial data. Whilst it is common for issues arising during the course of an investigation to be strongly contested by interested parties, it is disingenuous for Liberty to now query methodologies regularly utilised by the Commission and which have been exposed for public comment to ensure transparency.

Suitability of domestic sales under s.269TAC(14)

Liberty argues that the Commission has erred in assessing whether subsection 269TAC(14) of the Customs Act 1901 ("the Act) was applicable, by basing its assessment on a model-by-model and quarter-by-quarter basis. Whilst Liberty accepts that other provisions relevant to the determination of normal values are able to be made on a model-by-model and quarter-by-quarter basis, it submits that '*[n]othing in s.269TAC(14) requires the Minister to assess the suitability of domestic sales for normal value determination on a model-by-model basis'*.

In explaining its position, Liberty poses the question, '*whether the model-by-model (including quarter-by-quarter) approach of the Commission is in conformity with Article 2.2 and footnote 2*' of the WTO Anti-Dumping Agreement. It contends that the term '*'product under consideration' is the product defined by the investigating authorities upon initiation of the investigation, and the investigating authorities are bound by that definition.*' It refers to an Appellate Body finding in EC- Bed linen in support of its position.

The interpretation argued by Liberty is fanciful and plainly flawed.

First, it is noted that Liberty provides no specific citation in its submission, of the Appellate Body's finding or reasoning from the Bed Linen dispute. This is particularly revealing given that the relevant issue considered by the Appellate Body in that matter was whether the European Communities then practice of "zeroing" was consistent with the Anti-Dumping Agreement. The Appellate Body ultimately concluded that the European Communities' then practice of zeroing was inconsistent with Article 2.4.2 of the Anti-Dumping Agreement and that all exported transactions falling within the product scope must be used when establishing the existence of the margin of dumping. That is, the product margin of dumping must be based on all products under investigation.

This is not a relevant issue to this investigation as the Commission does not practice zeroing in its dumping margin determination and all export transactions are used to determine the "product" dumping margin.

Contrary to the view offered by Liberty, the Appellate Body has given clear and unambiguous guidance that model matching for the purposes of determining dumping margins is a reasonable approach that is open to an investigating authority. In DS397[1] the Appellate Body concluded:

> *In our view, as a starting point for the dialogue between the investigating authority and the interested parties to ensure a fair comparison, the authority must, at a minimum, inform the parties of the product groups with regard to which it will conduct the price comparisons. For example, the authority may choose to make comparisons of transaction prices for a number of groups of goods within the like product that share common characteristics,* ***thus minimizing the need for adjustments****, or it may choose to make adjustments for each difference affecting price comparability to either the normal value or the export price of each transaction to be compared.* [emphasis added]

The Appellate Body went on to add:

> *Indeed, by using the PCNs (Product Control Numbers) as the organizing principle when gathering product information from the interested parties, the Commission's approach created a reasonable expectation that price comparisons would be conducted on a very particular basis. Moreover, in the light of the very precise nature of the physical characteristics listed under the PCNs, it was also reasonable to assume that few adjustments would be necessary, as prices of narrowly defined products by the Chinese producers would have been compared to prices of equally narrowly defined products in the analogue country, India.*

This is directly relevant to this investigation as the Commission notified in its initiation notice of its intent to rely on determined model control codes, and provided interested parties with an opportunity to submit their views on the composition of those model control codes. It is noted that Liberty submitted its views on the model control codes in its application and its submission placed on the public record on 5 February 2019.

In its application, Liberty makes clear its preference is for model control codes '*… to be used to identify the most closely matching models of the goods sold for export to Australia and like goods sold domestically in the country of export*' based on key characteristics including:

- Prime;
- Minimum yield strength;

[1] European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (WT/DS397/AB/R). paras. 490 and 496

- Maximum Carbon Equivalent; and
- Finished form.

Despite making its views clear at the outset of the investigation, it now appears that Liberty is requesting the Commission to simply ignore the model control codes and base normal values on models that are not closely matching, and make required specification and/or timing adjustments as required. This overlooks the fundamental purpose of the model control codes, which is to minimise the requirement for complex adjustments and ensure a normal value is established which reflects a domestic selling price for a comparable product to the good exported.

Further in DS179[2], United States submitted that:

> *…while Article 2.4.2 provides that margins of dumping be based upon a comparison of an average of normal value prices with an average of the prices for export transactions, the transactions included in these averages must be "comparable". The reason for this limitation is that the inclusion in the averages to be compared of sales that are not comparable could result in a dumping margin based upon factors not related to dumping. The United States notes that Article 2.4.2 is subject to the provisions of Article 2.4, which requires that normal value and export price be compared "at the same level of trade . . . in respect of sales made at as nearly as possible the same time" and that allowance be made for, inter alia, differences in physical characteristics. Thus, a Member may create multiple averages in order to ensure that comparisons are not distorted by averaging of noncomparable transactions, such as transactions involving different models or at different levels of trade.*

In considering this issue, the Panel found:

> *…that we do not consider that Article 2.4.2 prohibits the use of multiple averaging per se, as Korea's first submission could be taken to suggest. To the contrary, Article 2.4.2 provides that the existence of dumping shall normally be established "on the basis of a comparison of a weighted average normal value with a weighted average of all comparable export transactions" (emphasis added). The inclusion of the word "comparable" is in our view highly significant, as in its ordinary meaning it indicates that a weighted average normal value is not to be compared to a weighted average export price that includes non-comparable export transactions. It flows from this conclusion that a Member is not required to compare a single weighted average normal value to a single weighted average export price in cases where certain export transactions are not comparable to transactions that represent the basis for the calculation of the normal value.*

Therefore, applying the Panel's ordinary meaning of 'comparable' to 'proper comparison' contained in Article 2.2 of the ADA and the equivalent subsection 269TAC(14) of the Act, it is undoubtedly appropriate and reasonable for the Commission to interpret and apply a policy that assesses the low volume test on the basis of comparable like models and/or on a quarterly basis.

Determination of export price

Liberty queries the determination of Diler's export price pursuant to subsection 269TAB(1)(c) of the Act, and proposes that 'the export price of those goods ought to be such amount as is determined by the Minister having regard to all relevant information.' Again, this is an attempt by Liberty to have

[2] United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea (WT/DS179/R). paras. 6.107 and 6.111

the Commission ignore and disregard information requested by the Commission's exporter questionnaire and which has been verified and determined to be accurate and reliable.

As outlined in SEF 495, the Commission was aware and had regard to all the circumstances of the exportations during the investigation period. In determining Diler's export price, it is open to the Commission to follow its common practice of determining the first arms-length transaction outside the Diler corporate group, being the price to the Australian importers less any post-exportation expenses incurred by Diler. It is noted that in doing so, the Commission would still be entitled to determine this export price pursuant to subsection 269TAB(1)(c) of the Act, as all of the circumstances of exportation are known.

Domestic credit expense adjustment

Diler is confused by Liberty's argument given the Commission's longstanding policy that extending credit to a customer involves an opportunity cost of forgoing earlier payment, and an actual cost of financing the production and sale of the goods. Whilst it is accepted that the actual financing cost of extending credit, irrespective of whether the sales is made domestically or for export, is not typically directly verifiable to a source document[3], it is nonetheless a selling cost known to both buyer and seller, as these credit terms are often documented on a sales contract, purchase order, commercial invoice, etc.

The Commission's formula for calculating the cost of credit recognises the notional value of extending credit by referencing the prevailing rate of interest on short-term borrowings or deposit accounts.

Therefore, it is reasonable for Diler's constructed normal value to deduct the calculated costs of extending domestic credit from its calculated total SG&A expenses, which already include the financing charges associated with extending credit to domestic customers.

Yours sincerely

John Bracic

[3] In some circumstances, a financial instrument such as a promissory note can be used to directly link a customer's extended credit terms to an actual cost.