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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 collectively on behalf of Diler Demir Celik Endustri ve Ticaret A.S., (DDC) and Diler Dis Ticaret Anonim Sirketi (DDT), in response to the Commission's preliminary exporter verification report. Unless otherwise stated, these associated companies within the Diler Group are collectively referred to as Diler throughout this submission.

Fluctuations in currency – sustained movement

The draft Diler visit report notes that the Commission has not published the calculated dumping margin, pending further consideration of the claims raised by Liberty Steel, that depreciation of the Turkish Lira against the US Dollar, needed to be addressed by applying the provisions set out in section 269TAF of the *Customs Act 1901* (the Act).

It is worth firstly noting that Liberty Steel's claim relates only to the application of ss.269TAF(3), which deals with short-term fluctuations, and not ss.269TAF(4), which deals with sustained movement. The Commission's interpretation of ss.269TAF(4) is clearly and carefully explained in Report 240[1]:

> Taking into account all relevant factors (as discussed above), the Commission has concluded that that:
>
> - section 269TAF was put into the Act after the conclusion of the WTO ADA, and reflects Article 2.4.1 of the ADA;
> - Article 2.4.1 originated from proposals of authorities such as the USA who wished to see more discipline on exchange rates;
> - USA legislation and practice has been to apply the sustained movement provision only when there has been an appreciation of the local currency;
> - even though Article 2.4.1 contains neutral terminology in regards to appreciation and depreciation of currency, when interpreted against a practical example of

[1] Final Report 240, pages 31-32.

currency movement it is clear that the provisions are geared toward the *necessity* of an exporter adjusting prices in the event of a sustained appreciation in order to avoid "technical" dumping, rather than the option to adjust prices in the event of a sustained depreciation;

- the WTO Panel cited by OneSteel as supporting its argument must be understood in the context of the issue before it, being multiple averaging, not the issue of a sustained currency movement of itself; and
- as such, subsections 269TAF(4) should only be able to be invoked by exporters in the event of an **appreciation of the exporting country's currency**.

[original emphasis]

In summary, ss.269TAF(4) is only applicable in circumstances where the local currency is appreciated against the export sales' denominated currency. Given that the Turkish Lira depreciated against the US Dollar during the period when Diler's export sales occurred, there is no justification for considering whether a sustained movement occurred.

Fluctuations in currency – short-term fluctuations

Liberty Steel claims that grounds exist for the Minister to consider disregarding short-term fluctuations provided for pursuant to ss269TAF(3) of the Act. Critically, Liberty Steel overlooks and makes no reference to the clear condition set out in ss.269TAF of the Act, which states:

> (1) If, for the purposes of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods **requires a conversion of currencies**, that conversion, subject to subsection (2), is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best establishes the material terms of the sale of the exported goods.
>
> (2) If, in relation to goods exported to Australia, a forward rate of exchange is used, the Minister may, in a conversion of currencies under subsection (1), make use of that rate of exchange.
>
> (3) **If:**
>
> **(a) the comparison referred to in subsection (1) requires the conversion of currencies**; and
>
> (b) the rate of exchange between those currencies has undergone a short-term fluctuation;
>
> the Minister may, for the purpose of that comparison, disregard that fluctuation.

Therefore, it is clear that ss.269TAF(3) is conditional on a conversion of currencies being required to compare normal values and export prices. This interpretation is supported by the Panel's findings in *US - Stainless Steel (Korea)*[2], that conversions were not required because the prices being compared were in the same currency, and thus concluded that the currency conversions were inconsistent with Article 2.4.1.

As the Commission is aware following its verification visit, Diler's circumstances are such that conversion of currencies is **not** warranted for comparison of export prices and normal values. The Commission has relied on export sales made by DDC to its related intermediary DDT. The

[2] Panel Report, *US – Stainless Steel from Korea*, WT/DS179/R, para 6.11, page 11.

invoices supporting these export transactions are denominated in Turkish Lira. To confirm this fact, please refer to supporting documents at **Exhibit B-3** of Diler's exporter questionnaire response, and additional supporting documentation provided during its verification visit.

Similarly, approximately [redacted]% of DDC's sales of like goods are denominated in Turkish Lira, with the remaining [redacted]% denominated in US dollars. Therefore, for the vast majority of domestic sales, no conversion of currency is necessary as both export prices and domestic prices are denominated in Turkish Lira. The only conversion required to domestic sales are those denominated in US dollars, which would ultimately lead to a favourable decrease in the normal value given the depreciation of the Turkish Lira against the US Dollar.

It is also worth noting that the preliminary normal value is a constructed domestic selling price, based on the cost of production of the exported goods. As the Commission has verified, steel scrap is the principal cost item used in production and Diler sources [redacted] of its scrap from imports. As these scrap purchases are denominated in US Dollars, the depreciation of the Turkish Lira against the US Dollar has led to a short-term rise in the Turkish Lira purchase value of the scrap material.

To address the impact of this short-term fluctuation on Diler's imported raw material costs and as a consequence the constructed normal value, if the Commission is inclined to apply ss.269TAF(3), then it must recommend that the Minister disregard the short-term fluctuations in converting Diler's US Dollar denominated scrap costs used in the constructed normal value. This again has the favourable effect of reducing Diler's normal value and further decreasing its preliminary dumping margin.

Appropriate benchmark foreign exchange rates

Should the Commission decide to disregard short-term fluctuations and replace with corresponding benchmark rates for the purposes of converting Diler's US dollar denominated domestic sales and US dollar scrap purchases, Diler considers that the appropriate source for the benchmark rates is the US Department of Commerce's (DOC) published benchmark rates used in anti-dumping investigations for the same purpose. The benchmark rates are published on the DOC website at https://enforcement.trade.gov/exchange/index.html, and are at **Attachment 1 – DOC FX**.

The primary benefit of using the DOC's published rates is that it provides a direct conversion of US Dollar to Turkish Lira, and as such, mitigates against possible cross currency exchange rate discrepancies. These cross currency discrepancies may be evident if the Reserve Bank of Australia (RBA) rates are used, which does not publish cross currency exchange rates. Instead, the RBA data would require the Commission to firstly convert US Dollar to Australian Dollar and then to Turkish Lira.

To negate the possible impact of cross currency discrepancies, Diler submits that the DOC published data is the most appropriate and reliable for this purpose, given that the US investigating authority relies on these benchmark rates for the same purpose.

Conclusion

In summary, Diler contends that the grounds required for disregarding short-term fluctuations pursuant to ss.269TAF do not exist. DDC's export sales to its related trading intermediary DDT are denominated in Turkish Lira, as are the vast majority of domestic sales made by DDT. Accordingly, no conversion of currency is required.

In circumstances where the conversion of currency would be impacted by short-term fluctuations in the Turkish Lira against the US Dollar, the decision to disregard the fluctuations and replace with corresponding benchmark rates has the effect of reducing Diler's normal value and reinforcing the finding that its actual export prices were not dumped.

If benchmark rates are necessary to convert Diler's US Dollar domestic sales and imported scrap purchases, then the most appropriate source of establishing the benchmark rates is the DOC's published rates which allow for a direct conversion from US Dollar to Turkish Lira.

Yours sincerely

John Bracic