

22 April 2020

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

BY EMAIL

Dear Director,

Resumed Dumping Investigation No. 495A concerning steel reinforcing bar (rebar) exported from the Republic of Turkey (Turkey)

AUSTRALIAN INDUSTRY SUBMISSION – RESUMPTION OF INVESTIGATION

InfraBuild (Newcastle) Pty Ltd (**InfraBuild Steel**), formerly *Liberty OneSteel* (Newcastle) Pty Ltd, the applicant and a member of the Australian industry producing like goods to the goods the subject of the application, alerts the case team to the recently published *Statement of Reasons* of the Canadian Border Services Agency (**CBSA**) that makes the following comments and observations concerning the Preliminary determinations with respect to the dumping and subsidizing of certain corrosion-resistant steel sheet originating in or exported from, in relevant part, Turkey (a copy of which forms NON-CONFIDENTIAL ATTACHMENT 1).

SUMMARY

The CBSA's decision indicates that a number of key input costs of production of like goods in Turkey do not reasonably reflect competitive market costs, specifically in relation to:

- Natural gas;
- Electricity; and
- Water.

This assessment by the CBSA has consequences for the Commission's construction (under paragraph 269TAAD(4)(a)¹) of an amount to be the cost of production or manufacture of like goods in Turkey for the purpose of determining whether domestic sales of like goods are in the ordinary course of trade

¹ Legislative references are to the *Customs Act 1901*, unless otherwise expressly specified.

under subsection 269TAAD(5), as required under subsection 43(1) of the *Customs (International Obligations) Regulation 2015 (the Regulation)*. Furthermore, in the event, the Commission considers it necessary to determine normal values under paragraph 269TAC(2)(c), then the CBSA's assessment of input costs of production of like goods in Turkey also has consequences for the Commission's construction of the "cost of production" for the like goods in Turkey by reason of the operation of section 269TAC(5A), and whether or not the Commission is in turn entitled to replace the recorded costs of production of the Turkish exporters with adjusted third-country prices for the costs of production.

The Commission may indeed consider in light of the findings of the CBSA, the interventions of the Government of Turkey are such as to render a situation in the domestic rebar market of Turkey that sales in that market are not suitable for use in determining a price under subsection 269TAC(1), by operation of subparagraph 269TAC(2)(a)(ii).

CBSA's preliminary determination concerning the provision of energy (e.g. natural gas, electricity) or utilities (e.g. water) at less than fair market value/ preferential rates (Program 11)²

The CBSA has preliminarily determined that the following goods or services were provided at a price that is less than the fair market value of the goods or services, which relates to the adequacy of the remuneration.

(a) Natural Gas

It was alleged by the relevant Canadian domestic industry that companies located in Organised Industrial Zones (**OIZs**) save 0.5% on the cost of natural gas for uses other than electricity. The allegations were based on the published prices of Boru Hatları ile Petrol Taşıma Anonim Şirketini [translation: *Petroleum Pipeline Corporation*] (**BOTAS**), the government entity that is the primary supplier of natural gas in Turkey, which indicates that prices to OIZs are 0.5% lower than for companies located outside an OIZ.

Furthermore, the CBSA considered that the natural gas market in Turkey has been regulated according to the provisions of *Natural Gas Market Law No. 4646*, and found that that law covers the import, transmission, distribution, storage, marketing, trade and export of natural gas and the rights and obligations of all real and legal persons relating to these activities.

The Turkish Government provided to the CBSA details of BOTAS' wholesale prices, which confirmed that prices for process consumption (i.e. not for energy generation) were consistently 0.5% lower for OIZs. Information on the public record indicates that at least one of the exporters of subject goods in *Investigation No. 495* (Habaş Sinai ve Tibbi Gazlar İstihsal Endüstrisi A.Ş. (**Habas**)) purchased natural gas from BOTAS during the investigation period.³ Furthermore, on the strength of the Turkish Government's response to the Commission's *Government Questionnaire*, Habas appears to operate in several OIZs.⁴

Irrespective of whether the exporter operates within an OIZ, or has as its primary supplier in Turkey, BOTAS, the preliminary findings of the CBSA are that natural gas markets in Turkey have been regulated.

² NON-CONFIDENTIAL ATTACHMENT 1, p. 84.

³ EPR Folio No. 495/029, p. 23.

⁴ EPR Folio No. 495/013, Exhibit 2.

A survey for natural gas prices for business use, places Turkey at a price below the average European price for natural gas, trading at a 44.4 per cent discount.⁵

(b) Electricity

It was alleged by the relevant Canadian domestic industry that companies located in OIZs may receive a 10 – 20 per cent discount on electricity. The legal basis for the alleged preferential rates is the Article 13 of *Electricity Market Law No. 6446*. Applied here, on the strength of the Turkish Government’s response to the Commission’s *Government Questionnaire* in Investigation No.495, all the verified exporters appears to operate within OIZs.⁶

To the extent that producers of rebar in Turkey receive a 10 to 20 per cent discount on electricity by reason of the Turkish Government’s intervention in this key production input market, indicates that the the exporter’s costs do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

Furthermore, in its response to the CBSA’s Government Questionnaire, the Turkish government indicated the following points of regulation in the country’s price setting mechanism for overall electricity tariffs in OIZs:

“As a summary, electricity prices applied in the OIZs are explained below for three different possible cases:

- If the company that is located in OIZ is an eligible/free consumer and has a bilateral energy contract, it is subject to;

Total electricity price = Transmission price (regulated) or national distribution price (regulated) + OIZ distribution price (regulated) + energy price determined by bilateral energy contract (unregulated)

- If the company that is located in OIZ does not have a bilateral energy contract but OIZ has a bilateral energy contract, the company is subject to;

Total electricity price = Transmission price (regulated) or national distribution price (regulated) + OIZ distribution price (regulated) + energy price determined by bilateral energy contract of OIZ (unregulated)

- If neither the company that is located in OIZ nor OIZ have a bilateral energy contract, the company is subject to;

Total electricity price = Transmission price (regulated) or national distribution price (regulated) + OIZ distribution price (regulated) + national energy price (regulated).”⁷

The question for the Commission to consider is whether the points of price regulation conceded by the Turkish government (above) reasonably reflect competitive market costs. By way of comparison, residential

⁵ https://www.globalpetrolprices.com/Turkey/natural_gas_prices/ (accessed 17 April 2020).

⁶ EPR Folio No. 495/013, Exhibit 2.

⁷ CONFIDENTIAL ATTACHMENT 2, p. 25. [access to this document is restricted by the Canadian authorities]

electricity prices in Turkey were reported by the International Energy Agency in 2017 to trade at a discount to the United States,⁸ and a separate survey found the discount in tariffs for business users between Turkey and the United States at 17.5 per cent.⁹

(c) Water

The relevant Canadian domestic industry complainant further alleged that the Turkish government listed low water cost as an advantage of operating in a OIZ.

Pursuant to Article 97 of *Law No. 2464 on Municipality Revenues* and Article 18-f of *Municipality Law No. 5393*, the water tariffs are determined by the related Municipal Council of the related municipality of the related province or country.

To the extent that producers of rebar in Turkey received preferential prices for water consumption, then any such costs do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

CONTRIBUTION OF ENERGY COSTS TO THE TURKISH COST TO MAKE THE GOODS

We attach the report of an independent cost benchmarking survey of one of the verified exporters of the goods under consideration (CONFIDENTIAL ATTACHMENT 3). The Commission may recall this survey from Australian industry's original application as a means of estimating a normal value using a cost construction methodology. In summary, the independent cost benchmarking survey indicates that energy costs account for 10.8 per cent of the exporter's cost to make the goods in 2017. Therefore, should the Commission conclude that it is unable to use the exporters' own cost of production records under subsection 43(1) of the *Regulations* (as not reasonably reflective of the costs associated with the production of the goods), then the Commission must have regard to replacement of billet costs with adjusted third-country export prices of billet. As to an appropriate source for such third-country prices, the Commission should observe the comments of the CBSA when considering the appropriateness of Russian or other Black Sea billet sources, specifically whether or not these sources are subject to anti-dumping measures in other jurisdictions, and whether or not they are imported in such quantities, and at such prices, as they would be likely to have a depressing effect on traded billet prices in Turkey.¹⁰

CONCLUSIONS

Unless the Commission is satisfied that:

- (a) an exporter or producer of like goods keeps records relating to the like goods; and
- (b) those records:
 - (i) are in accordance with generally accepted accounting principles in Turkey; and

⁸ International Energy Agency, *World Energy Prices: An Overview* (May 2019), p. 9.

⁹ https://www.globalpetrolprices.com/USA/electricity_prices/ (accessed 17 April 2020)

¹⁰ NON-CONFIDENTIAL ATTACHMENT 1, p. 75.

- (ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

then the Commission is unable to recommend to the Minister to work out an amount to be the cost of production or manufacture of like goods in Turkey by using the information set out in those records.

Applied here, InfraBuild Steel submits that, at the very least, the costs for natural gas, electricity and water, recorded by the exporters are not able to be used in the construction of their costs of production for use in paragraph 269TAAD(4)(a) and subsection 269TAC(5A).

Please do not hesitate to contact your InfraBuild Steel representative on record with any questions.

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT