



## EUROPEAN COMMISSION

Directorate-General for Trade

Directorate H - Trade defence

Investigations IV Relations with third countries for Trade defence matters

Brussels, 7 April 2020

### CONTINUATION ENQUIRY -EXPIRY REVIEW- BY AUSTRALIA

#### ANTI-DUMPING MEASURES ON STEEL REINFORCING BAR FROM KOREA, SINGAPORE, SPAIN AND TAIWAN

#### Written submission of the European Commission on Initiation

The current measures in force were imposed in November 2015 for a duration of five years.

Following an application of the domestic industry, Australia initiated a continuation enquiry or expiry review of these measures on 3 March 2020.

The European Commission would like to thank the Anti-Dumping Commission for the opportunity to submit comments with regard to this investigation.

At this initial stage, based on data available in the complaint, the European Commission would like to raise the following issues that need to be considered in the course of this investigation.

#### **1. Likelihood of continuation or recurrence of dumping and injury**

An expiry review is a complex investigation as it includes a prospective analysis of what is likely to happen, in case measures are allowed to lapse. This involves an assessment of trends and developments that will take place in the near future. Nevertheless, according to WTO jurisprudence, such likelihood analysis has to be based on positive evidence.

The Panel in *US – Corrosion-Resistant Steel Sunset Review* underlined the importance of the need for sufficient positive evidence on which to base the likelihood determination:

*"The requirement to make a 'determination' concerning likelihood therefore precludes an investigating authority from simply assuming that likelihood exists. In order to continue the imposition of the measure after the expiry of the five-year application period, it is clear that the investigating authority has to determine, on the basis of positive evidence, that termination of the duty is likely to lead to continuation or recurrence of dumping and injury. An investigating authority must have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence."*<sup>1</sup>

---

<sup>1</sup> Panel Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 7.271. The Appellate Body agreed with this view. Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 114.

### *1.1. Likely import volumes and prices*

It is underlined that imports from the subject countries continued and increased in 2016 and 2017, despite the imposition of measures in 2015. Subject imports then decreased slightly in 2018 and were largely replaced by other imports in 2019. Regarding the likelihood of recurrence of imports in significant quantities, the petition merely explains that the subject countries have sufficient production capacity and have kept their distribution channels in place.

As regards import volumes from **Spain**, according to the application, they remained rather stable in 2016, following the imposition of measures in 2015, but increased in 2017. However, they decreased substantially in 2018 and ceased in 2019.

Prices from the subject countries fluctuate over the period. It appears that export prices from Korea and Taiwan were dumped, whereas export prices from Singapore have never been dumped over the period analysed.

**Spain** has not exported to Australia in 2019 and, according to the application, the estimated dumping margins were negative in 2018. Already in 2017, the alleged dumping margins were negative in some of the periods. As to the likelihood of recurrence of Spanish imports, the application simply mentions that Spanish exporters have sufficient capacity to increase their production of rolled products and that they have kept their distribution channels in Australia.

However, the Spanish production capacity has not changed over the past years and despite the distribution channels in place, Spanish exports have significantly decreased in 2018 and have ceased completely in 2019.

Furthermore, Spanish exports have not been dumped for two years and it cannot be automatically assumed that dumping would recur, if measures were allowed to lapse. **However, an analysis as to whether Spanish exports would be dumped has not been provided, e.g. an analysis on the basis of Spanish export prices to other third countries.** Such analysis is also missing for Singapore.

In view of the above, it has not been established that exports from the subject countries to Australia, and in particular exports from Spain, would recur in significant quantities and at dumped prices, in case measures were allowed to lapse.

### *1.2. Effect of imports on the situation of the domestic industry*

According to the information provided in the complaint, the situation of the domestic industry shows rather positive developments during the injury investigation period (1 October 2014 to 31 September 2019). Factors such as production, sales volume, capacity utilization, investment, research and development, employment or wages improve during the investigation period. The domestic industry is however struggling to keep positive levels of profit and profitability. Profitability was low especially in 2016/2017, despite the imposition of measures on imports of the subject countries in 2015. The investigating authority should therefore look at all elements that could have caused price injury during this period.

In terms of market share, the petition mentions that Singapore and Taiwan hold the highest market share among the subject countries. However, import prices from Singapore are not

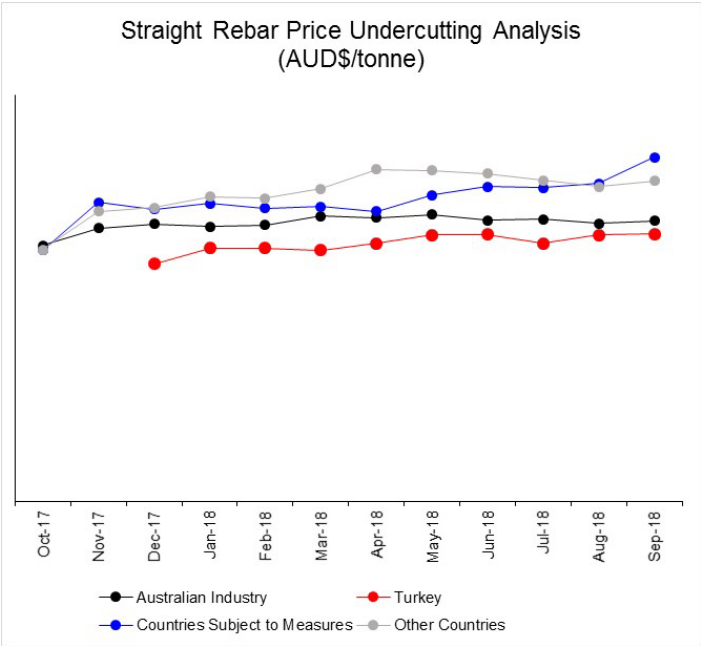
dumped. Moreover, no indication has been provided as to the level of market share that imports from the subject countries represent in Australian demand.

As regards prices, it is alleged that import prices from the subject countries have undercut Australian domestic prices. However, only narrative has been provided, as all actual data has been removed from the non-confidential version of the complaint. According to the narrative, Korea, Taiwan and Spain undercut Australian domestic prices, while for Singapore no exact undercutting margins have been found. In any event, export prices from Singapore have not been dumped.

As regards Spanish imports, it is alleged that Spanish import prices have undercut domestic prices and have caused price suppression during the investigation period.

However, Spanish export prices have not been dumped in 2018 and there were no exports in 2019. Therefore, any undercutting analysis should be based on likely import prices in the absence of measures. Again, only narrative has been provided. The narrative seems to indicate that the undercutting analysis is based on data of 2016 and 2017, which does not allow for a likelihood analysis based on positive evidence as provided for by WTO jurisprudence.

Based on information provided in the framework of the investigation regarding Turkish imports (please see graph below), it is clear that the prices from the countries under measures (including Spain) did not undercut Australian domestic prices.



**It is thus recalled that any recurrence of injury would have to be demonstrated on the basis of positive evidence regarding likely import volumes and prices and their likely impact on the situation of the domestic industry.**

## 2. Conclusion

Based on the information provided in the complaint, the continuation of measures regarding the subject countries, and in particular, regarding imports from Spain do not appear to meet:

- the behavior of imports varies among the subject countries, which needs to be reflected in the analysis; for some countries exports continued at dumped prices (Korea, Taiwan); for Singapore exports continued but were not dumped;
- exports from **Spain** have ceased in 2019 and Spanish export prices have not been dumped since 2018; thus, the analysis needs to focus on **recurrence** of injurious dumping;
- however, an analysis based on positive evidence regarding likely import volumes and likely import prices from Spain, in the absence of measures, has not been provided.

In view of the above, it appears that the continuation of measures regarding imports from the subject countries, in particular from Spain would not warranted. The Commission trusts that the Australian authorities will refrain from an unwarranted prolongation of measures.