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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

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 anti-dumping measures on steel reinforcing bar from Korea, Singapore, Spain and Taiwan 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.

Based on the available information in the Statement of Essential Facts (SEF) 546, the European Commission would like to raise the following issues.

1. Likelihood of continuation or recurrence of dumping and injury

As already noted in our submission at initiation, 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 would take place in the near future. Nevertheless, according to WTO jurisprudence, such likelihood analysis has to be based on positive evidence.¹

1.1. Likely import volumes and prices

It is underlined that imports from the subject countries continued despite the imposition of measures in 2015. Subject imports then decreased slightly in 2018 and were largely replaced by other imports in 2019.

Imports from Spain (CELSA) decreased significantly since the imposition of measures in 2015 (3% ad valorem duty) and remained stable until 2017, when measures were reviewed

¹ 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.

and increased (4,5% ad valorem duty). In 2018, imports decreased and in 2019, there were no imports any more.

Regarding the likelihood of recurrence of imports, Australia considers that Spain has the capacity to resume exports at any moment for a number of reasons (ACRS certification was renewed every year, distribution channels were maintained, has the capacity to deliver, amongst others). However, the situation of the Spanish producer has changed considerably since the imposition of measures. The Spanish construction market has continued to recover after the 2007-2008 crisis. Hence, the demand for reinforcing bar has increased considerably. Consequently, the Spanish producer is currently running at what is effectively full capacity (90% capacity utilisation), leaving no room for exports to Australia.

In any event, regarding import prices, there is evidence showing that Spanish imports are unlikely to be dumped:

- The average FOB export price for Spain increased during the investigation period and was in 2018 close to the average FOB export price of non-dumping exporters (Fig 12 SEF 546).
- According to the complaint, the estimated dumping margins for Spain (all companies) were negative for some periods in 2017 and during the whole 2018.

These two elements are not analysed in SEF 546. The Anti-Dumping Commission hence disregarded positive evidence showing that there is no likelihood of recurrence of dumping.

Duty calculation for Spain

In the absence of exports from Spain in the dumping investigation period (2019), the duty calculation for CELSA has been based on assumptions, disregarding the above and other positive evidence of likely price behaviour.

The Anti-Dumping Commission has recommended a duty in the form of a floor price at the level of the normal value. The normal value has been derived from the exporter's questionnaire but since there were no exports to Australia, it has been assumed that the export price was equal to the normal value.

The Anti-Dumping Commission ignored more recent evidence of likely behaviour based on the fact that CELSA had positive dumping margins in the past (2014 and in an interim review in 2017 – investigating periods are however further away in time).

Indeed, there was positive evidence available to the Anti-Dumping Commission that could have been used to assess the likelihood of dumping and the dumping margin. For instance, the questionnaire most certainly provided information on the sales made to Australia in the immediately preceding period to the dumping investigation period, which may have been used in assessing the likelihood of dumping. Other evidence available was the ABF company-specific statistics for 2018 or CELSA's exports to third countries, but all this was disregarded.

Moreover, the floor price form of duty can be punitive for CELSA. Based on information provided in the SEF 546, scrap prices are the main driver of rebar prices and these are in

decline. Therefore, if CELSA's effective export price decreases due to the decline in scrap prices, the Spanish producer will not be able to adapt the selling price to continue to be competitive in Australia.

In view of the above, it has not been established that exports from CELSA to Australia would recur at dumped prices in case measures were allowed to lapse. The European Commission urges the Anti-Dumping Commission to base its dumping margin calculation on objective and most recent evidence provided by the cooperating exporters.

1.2. Likely effect of imports on the situation of the domestic industry

Any likelihood of continuation or 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.

According to SEF 546, the Australian market grew by 54% from the 12 months ended 30 June 2015 until the 12 months ended 30 June 2018. Thereafter, the market for rebar decreased slightly but otherwise remained relatively stable.

The domestic industry has profited from this situation, in coexistence with imports. According to the information provided in the SEF 546, the situation of the domestic industry shows rather positive developments during the injury investigation period (1 October 2014 to 31 September 2019). Many of their economic factors, such as production, sales volume, capacity utilization, capital investment, productivity, research and development, employment or wages improve during the investigation period. Market share increases immediately after the imposition of measures but declines in the following years, but reaching an unprecedentedly high share in 2019.

The domestic industry is however struggling to keep positive levels of profit and profitability since the imposition of measures in 2015. Profitability was especially low in 2016/2017. While the domestic producer has increased selling prices since the imposition of measures in late 2015, it has not been able to recover its CTMS. All these problems may not be exclusively attributed to import competition. The company was under voluntary administration and finally sold to a new parent entity in 2017. Such structural problems can however not be solved with anti-dumping duties.

As regards undercutting, prices in 2019 show that Singapore and Taiwan do not undercut the domestic prices and therefore they may not cause injury in the future. Only Korea has been found to undercut domestic prices since there are no imports from Spain during the dumping investigation period (2019). There is no information on the price level of other origins, such as Turkey. This may possibly contribute to the continuation of injury in the future.

In this regard, we feel that the lack of a real analysis of the likelihood of dumping for Spain undermines the analysis of the effect of the likely import volumes from this origin on the domestic industry. If we stick to evidence, Spanish import prices have increased in 2018 and are very close to prices of non-dumping origins. Therefore, the chances that Spanish imports are not causing injury if duty was removed are considerable.

2. Conclusion

Based on the information provided in the SEF 546, the continuation of measures regarding imports from Spain do not appear to be met:

- The analysis on likely import volumes from Spain is not convincing. CELSA is running at full capacity, leaving no room for exports to Australia to resume.
- In any event, evidence that was not taken into account pointed out at the likelihood that prices from Spain would not be dumped. Recommending a floor price duty is not justified.
- The situation of the domestic industry has improved significantly. However, despite the measures being in force for 5 years, the domestic industry has still problems of profitability. It is thus unlikely that a continuation of measures would solve this issue.

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