

**WRITTEN SUBMISSION OF SPANISH GOVERNMENT ON SEF 546- STEEL
REINFORCING BAR FROM KOREA, SINGAPUR, SPAIN AND TAIWAN- CONTINUATION
INQUIRY (PUBLIC RECORD).**

The Spanish Government would like to thank the Antidumping Commission (hereinafter the Commission) for the opportunity to submit comments on the Statement of Essential Facts No. 546 for the continuation inquiry into AD measures against imports of Steel Reinforcing Bar from Spain (except Nervacero) and other countries. This new contribution must be understood as complementary to the one by Compañía Española de Laminación S.L. (hereinafter CELSA).

We would like to recall the Commission that it is a pivotal principle of the AD Agreement that *“anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury”* (paragraph 1 of Article 11 of ADA). Therefore, the Appellate Body in US – Oil Country Tubular Goods Sunset Reviews, para. 178, viewed the continuation of an anti-dumping duty as *“an exception to the otherwise mandated expiry of the duty after five years”*. (Underlining added)

The prospective analysis carried out by any investigating authority in an expiry review should assess the likelihood of continuation or recurrence of both dumping and injury, once the measures were lifted (paragraph 3 of Article 11 of ADA). That analysis cannot be based on mere conjecture or even possibility, but on a likelihood test grounded on evidence. In US – Corrosion-Resistant Steel Sunset Review, para. 111, the Appellate Body stated that *“an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible”*. (Underlining added) It is not enough to simply state that such likelihood exists, in para. 7.271 of the above-mentioned report, the Appellate Body held that the investigating authority should draw *“reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence”*. (Underlining added)

We consider that the conditions for the continuation of the application of anti-dumping measures to CELSA are not met. In our claims we will argue that the likelihood parameters for CELSA are clearly indicating no likelihood of continuation or recurrence of dumping and injury in a foreseeable future. As it has been established by the Appellate Body in para. 104 of the above-mentioned report *“if any of those two conditions is not satisfied, the duty must be terminated.”* (Underlining added)

Unlikelihood of injury recurrence.

- a) Limited exports from CELSA.

It is standard practice in an expiry review, that if the investigating authorities find that imports from a company under investigation have ceased during the application of the anti-dumping measure, it concludes that the exporter could not sell in the importing country without dumping and that, to reenter the importing country, it would have to resume dumping. The Commission has proved that CELSA did not export its products to Australia in the 2019 review investigation period. In the following lines we will explain that there are other factors different from the imposition of the anti-dumping measure that explain the absence of exports by CELSA to Australia.

Proper analysis of the reasons behind likelihood parameters should be made avoiding presumptions and other factors, others than the antidumping measure, having an impact on

the volume of imports have to be taken into account. As it has been argued by the Appellate Body in US – Corrosion-Resistant Steel Sunset Review, para. 178, “...a firm evidentiary foundation is required in each case for a proper determination under Article 11.3 of the likelihood of continuation or recurrence of dumping. Such a determination cannot be based solely on the mechanistic application of presumptions”. Also applicable to our case is the Panel Report, US – Oil Country Tubular Goods Sunset Reviews, para. 7.101, “*In our view, the USDOC’s finding regarding the decline in the volume of imports was not based on a thorough evaluation of the possible causes of such decline. The decline could have resulted from a variety of other factors, which could theoretically indicate no likelihood of continuation or recurrence of dumping. In other words, it is possible that despite a decline in the volume of imports, there may not be likelihood of continuation or recurrence of dumping*”. (Underlining added)

In this case, not only have CELSA's exports to Australia been reduced, but also all its world exports have declined with the aim of re-focusing its sales on the domestic market in Spain and the European Union. Therefore, the absence of CELSA's exports to Australia cannot be explained by an alleged effectiveness of the anti-dumping measures in force, but rather by a reorientation of its sales to a domestic market that has recovered after the financial and real estate crisis that began in 2007.

Evidence of CELSA's reorientation to a recovered domestic market and the unlikelihood of a rebound in exports to Australia is the fact that the company has enjoyed full production capacity during the 2019 investigation period, therefore there is no risk that idle capacity could flood the Australian market.

b) New corporate operations led by the applicant.

Regarding the particular situation of Infrabuild and the alleged damage, we believe the new situation of the applicant has not been properly assessed in the SEF. After the imposition of measures, the Australian industry has been acquired by new owners, the business has been restructured, and the debt and cash flow has been substantially improved. Further, in 2019 Liberty Steel acquired a major Australian steel distributor, Steelforce Holdings Pty Ltd. These actions have increased the Australian industry’s dominant influence and control over the construction and structural steel market. The Australian industry is very competitive and therefore, even in the event of resumed imports, there is no possibility of recurrence of injury.

Unlikelihood of dumping recurrence.

The Commission has calculated a dumping margin for CELSA in respect of the inquiry period of 0.0 per cent. The absence of a dumping margin is relevant, although not definitive, when examining the likelihood of recurrence of dumping. In the words of the Appellate Body Report, US – Corrosion-Resistant Steel Sunset Review, para. 124 “*in a sunset review, dumping margins may well be relevant to, but they will not necessarily be conclusive of, whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping*”. (Underlining added)

Existence of zero dumping margins after the issuance of an antidumping duty order may provide a strong indication that, absent an order, dumping would not be likely to continue or recur, because the evidence would indicate that the exporter do not need to dump to sell.

Lack of causal link between dumping and injury and other factors.

Investigating authorities are required to establish a causal link between dumping an injury, requirement that is not met by the Commission in the SEF. The Appellate Body Report, US – Anti-Dumping Measures on Oil Country Tubular Goods, para. 109, observes that while article 11.3 is “silent” on the issue of a “causal link”, “there could be a requirement to establish a causal link between likely dumping and likely injury in a sunset review under Article 11.3 flowing from other provisions of the Anti-Dumping Agreement and Article VI of GATT 1994”. (Underlining added)

An essential part of a causal link is not to attribute to imports what is caused by other factors. In this particular case injury from imports from other sources like Turkey or demand trends, should not be attributable to CELSA.

Regarding Turkey and other sources of imports, SEF recognizes that imports not subject to measure can further expand either at undumped prices or at prices non-injurious to the Australian industry. Impact from these sources should not be attributed to CELSA. Even, the Commission has resorted to this argument not to secure continuation of measures against exports from Singapore and Taiwan. Therefore, there are no grounds not to apply the same reasoning to CELSA.

Regarding demand, it is closely aligned to the level of construction activity in Australia, both government and private investment. How it may affect domestic industry should not be attributed either to CELSA imports. In the SEF (Figure 2 – page 26), we see a small decline in the activity in 2019 but because of the Covid-19 the forecast for the upcoming years is not favorable at all. As the Commission states in page 27 “the Economic and Fiscal Update in July 2020 forecast that dwelling investment would fall by 7% in the June 2020 quarter and 11% in the September 2020 quarter. The construction sector will experience subdued activity until at least middle 2021 and it will have a direct impact on the future demand of rebar.

Unsustainability of the argument of CELSA Group’s trade diversion.

We would like to state that it lacks all logical and legal sense to want to continue applying anti-dumping duties to CELSA based on fair exports from other countries where the group may have plants.

This reasoning is illogical insofar as what is expected of CELSA and its entire group is precisely that it should make fair exports. Furthermore, its consequences are also illegal, since the AD does not contemplate the possibility of penalizing a company for fair exports made by another company of the group in another country.

Conclusion

We request the Commission to allow the expiration of anti-dumping duties for CELSA, as there is no evidence of the likelihood of dumping and injury to the local industry, once this measure with respect to CELSA expires.

- CELSA's situation has changed radically in recent years. It now directs its sales to an expanding domestic market using all its productive capacities. The group now supplies the Australian market from other countries.
- The situation of the applicant company has also changed. It has established dominance on the market as a result of the reorganization caused by corporate operations not because of the implemented antidumping measures.

- The impact of other factors other than CELSA's exports affecting domestic industry performance, especially Turkish exports and expected demand should not be attributed to CELSA.