PUBLIC RECORD

25 October 2021

The Director, Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2600

BY EMAIL:
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Dear Director,

Review of Measures No. 566 concerning steel reinforcing bar exported from Korea and Spain (except Nervacero S.A.)

AUSTRALIAN INDUSTRY RESPONSE TO SUBMISSION OF DAEHAN STEEL CO. LTD

InfraBuild (Newcastle) Pty Ltd (**InfraBuild**), the applicant and a member of the Australian industry producing like goods to the goods the subject of this review, refers to the submission of the Korean exporter, Daehan Steel Co. Ltd (**Daehan**) in response to *Statement of Essential Facts No. 566* (**SEF 566**) recently placed on the electronic public record[1] and makes the following observations and comments in response.

Daehan opposes the Commission's assessment that the *…combination duty method is the most appropriate form of duty.* The Korean exporter claims that because *…the vast majority of exports to Australia are from countries not subject to measures. There is virtually no risks associated with exports by Daehan, and certainly not in terms of undermining the effectiveness of the measures.*[2]

We do not understand the Korean exporter's rationale for this statement, or its applicability to the question of the correct or preferable form of duty calculation.

Firstly, is Daehan admitting that it is unable to compete in the Australian market except at dumped prices? Clearly this conclusion is consistent with the Commissioner's finding in *Continuation Inquiry No. 546*, and the exporter's long and uninterrupted history of dumping margins across reviews[3] and inquiries.[4]

[1] EPR Folio No. 566/022 (20 October 2021)
[2] EPR Folio No. 566/022, p. 2.
[3] *Anti-dumping Notice No. 2019/054* refers.
[4] *Anti-dumping Notice No. 2020/111* refers.

Specifically, in REP 546, the Commissioner concluded:

> *The Commission found that exports during the inquiry period were at dumped prices. Korean exports to Australia have continued, with a peak in volumes following the measures. Daehan, a major Korean exporter, has maintained its distribution links in Australia as well as its ACRS certification. Both of these factors signal its intention to continue to supply the Australian market. Daehan was also found to have significant underutilised production capacity during the inquiry period, which, if diverted to Australia, would represent a significant portion of the Australian market for rebar. Given the price sensitivity of the goods and its substitutability, the influence of import prices in respect of Korean rebar on the Australian industry's prices and evidence of price undercutting by exporters from Korea, it is the Commission's view that in the absence of measures, dumping of Korean rebar is likely to continue. Greater volumes from Korea at dumped prices will likely result in a further deterioration of the Australian industry's market share and consequently, price and profit related injury…* [5] [emphasis added]

Of direct relevance here is the Commissioner's finding that Daehan's exports reached *…a peak in volumes following the measures.* This "peak in volumes" corresponded with the time that interim dumping duties for Deahan were calculated using an *ad valorem* rate, specifically from 19 November 2015[6] to 10 November 2020.[7]

Secondly, the suggestion that the existence of exports from countries not subject to measures, displaces the risk of dumped exports by Daehan continuing to injure the Australia industry, ignores the current effectiveness of the measures calculated using the combination method (since 10 November 2020). Further, there is no basis to the assertion made by the exporter that there are *…virtually no risks associated with exports by Daehan*.[8] We categorically know this to be untrue. SEF 566 has demonstrated that despite the effectiveness of the current method of duty calculation, Daehan has doubled the dumping margin of its exports to Australia from 2.3 per cent[9] to 4.7 per cent.[10] By any measure, the *…risks associated with exports by Daehan…* have only amplified. Given also InfraBuild's observation in its submission in response to SEF 566,[11] that export volumes *…reached historically high values following initiation of Review No. 566, and in particular in the month of, and preceding, the publication of Daehan's Verification Report…* only reinforces the conclusion that the Korean exporter is actively looking to exploit any opportunity it can with respect to the anti-dumping measures applying to it. In this case, Daehan sought to 'beat' the increasing fixed rate of duty from the current 2.3 per cent rate. As past behaviour is a strong indicator of future performance, the Commissioner can only responsibly conclude that unless the combination method of duty calculation is recommended *…the purpose of removing the injurious effects of the dumping…*[12] will not be achieved.

To further add to the factual inaccuracies perpetuated by Deahan's submission, it is observed that it is not correct for the Korean exporter to state *…that exports from …Taiwan are now no longer subject to measures*, or that *…the vast majority of exports to Australia are from countries not subject to measures*.[13] The

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[5] REP 546, p. 81 at [7.6.1].
[6] *Anti-dumping Notice No. 2015/133* refers.
[7] *Anti-dumping Notice No. 2020/111* refers.
[8] EPR Folio No. 566/022, p. 2.
[9] ADRP Report No. 130 refers.
[10] SEF 566 refers.
[11] EPR Folio No. 566/024
[12] Anti-Dumping Commission, *Guidelines on the application of forms of Dumping Duty* (November 2013), p. 2.
[13] EPR Folio No. 566/022, p. 2.

Commission will observe that the Taiwanese exporter, Power Steel Co. Ltd, remains subject to measures at a fixed rate of interim duties of 4.4 per cent. Similarly, export volumes continue from Indonesia, Thailand and Spain, all sources of goods which remain subject to anti-dumping measures.

Further, the Commission's *Guidelines*[14] list seven key considerations for the combination of fixed and variable duty method. InfraBuild addresses each of the key considerations.

- *This form of duty, like the floor price duty method and fixed duty method, may not suit those situations where there are many models or types of the good with significantly different prices.*

Applied here, this consideration should not preclude the use of the combination method of duty calculation as there are only two models or types of goods: rebar in straight lengths and rebar in coil. Both these models/types do not demonstrate *"significantly different prices"*. Indeed, Daehan has demonstrated an historic pattern of only exporting rebar in coils to Australia.

- *It is suited to circumstances where there are complex company structures with related parties; and where circumvention of measures is likely.*

This consideration is relevant for Daehan as the Commission's exporter visit report in REV 489 noted *"The company has seven subsidiary companies and one affiliated company".* In addition, Daehan has a reported recent history of the falsification of prices to gain a financial benefit.

> *South Korea's Fair Trade Commission slapped six domestic steel companies with fines totalling Won 119.4 billion ($105.7 million) for falsification of rebar prices, the commission said Sunday. The companies -- Hyundai Steel, Dongkuk Steel Mill, Korea Iron & Steel,* ***Daehan Steel****, Hwanyoung Steel and YK Steel -- rigged prices between May 2015 and December 2016 by reducing their discounts amid higher imports from China, the FTC said.*[15]

- *It can be applied more precisely to certain goods in some cases.*

Again, this consideration is not relevant to rebar as there are only two models with similar costs and prices.

- *The 'effective' rate of this duty, when the duty has been imposed as a fixed amount per unit, diminishes in a rising market making it ineffective. The 'effective' rate increases in a declining market making it punitive.*

This is not relevant here as InfraBuild is not advocating for the combination method that uses a "fixed amount per unit".

[14] *Guidelines on the Application of Forms of Dumping Duty* (**the *Guidelines***), November 2013.
[15] EPR Folio No. 489/019.

- *Consequently, reviews may be more likely due to the effects of a rising or falling market than would be the case with an ad valorem duty method.*

The frequency of reviews, particularly for products that show price variability, should not be a determining factor in the Commission's decision to impose a particular form of measure. The Commission should be imposing the most effective measure to remove future injury to the Australian industry and annual reviews should be encouraged to ensure that measures are effective and contemporary.

- *The punitive effect in a falling market of the fixed form of this duty can have adverse effects on downstream industries. The Minister may need to consider these effects when deciding on the duty method.*

This is not a relevant consideration as InfraBuild is asking that the combination method employ a percentage amount for the fixed form component of the duty, not a set value. Even if the variable component of the combination became out-of-date there would be no punitive effect to downstream industries for a commodity product such as rebar. There are numerous exporters from a range of countries that have no dumping measures imposed that already have third-party quality accreditation to supply into the Australian market. Exporters in these countries include Portugal, Poland, Italy, Singapore and New Zealand to name a few possible sources.

- *The ascertained export price used in this measure can become out-of-date.*

It is widely recognised that both the normal values and the ascertained export price are likely to change and become out of that date. The Commission itself collectively refers to the them as the "variable factors". The legislation contains provisions such as Division 5 reviews and duty assessments to compensate for these changes. Importers that supply dumped product that causes material injury to the Australian industries and their supply chain partners are shielded from paying excess duty as detailed on the Commission's Dumping Commodity Register for rebar:

> *An importer of goods on which an IDD has been paid, may lodge an application with the Commissioner requesting that the [Minister] …make an assessment of the final liability of those goods to duty.*
>
> *This usually occurs when an importer considers that the IDD paid in respect of goods exceed the total amount payable (i.e. importers consider they are entitled to a refund of duties). In relation to IDD, an importer may consider that the dumping margin for the goods is now less than it was during the investigation period, or that its exporter is no longer dumping, and as a result it has paid more duty than it should have paid.*[16]

[16] https://www.industry.gov.au/sites/default/files/adc/measures/dcr_-_steel_reinforcing_bar_23.pdf (accessed 22 October 2021), p. 12.

Therefore, in all circumstances where there is a positive dumping margin determined for an exporter, then the combination form of interim duty calculation should be imposed by the Minister, with the variable component being based on the ascertained export price. Given the recurrent difficulties the Commission faced in verifying the variable factors of all exporters in Continuation No. 546, the relative reliability of the ascertained export price makes it a critical feature in the form of measures imposed, as the means of setting a floor price for exporters with zero dumping margins, and as forming the variable component of any combination form of duty calculation.

Where measures are continued against exporters with a negative or negligible dumping margin, then the floor price should be set in accordance with the ascertained normal value (where it is known with any confidence or reliability) in the case of the former, and in the case of the latter, the combination form of measures.

Furthermore, the Commission is reminded of the recent history of export price behaviour by the key Korean exporter, Daehan.

For example, during the period from 1 April 2016 to 31 March 2017, Daehan's estimated normal value did not reduce in line with its export price,[17] resulting in a period of increased dumping which was incapable of remedy.

Therefore, to avoid a recurrence of the unremedied injury identified by the Australian industry in *Anti-circumvention inquiry No. 452*, InfraBuild contends that the combination duty method must be applied to Daehan and exporters generally from Korea so that any future attempts by these exporters to reduce their export prices by a degree greater than reductions in the domestic selling prices, will be prevented. This practice of exporter 'circumvention' may at least be frustrated, by the imposition of a variable method of duty calculation in the form of a floor price set at the ascertained export price, together with a fixed amount of duty at an *ad valorem* rate. This will ensure exporter compliance with the measures and improved effectiveness against ongoing injury to the Australian industry.

Indeed, the Commission originally recognised the susceptibility of the *ad valorem* method of duty calculation to exporter facilitated avoidance (through export price reductions designed to offset the impact of fixed amounts of duty on the prices of goods sold into the Australian market) in its *Guidelines*:

> *It has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty. That said, where such behaviour is observed when monitoring the measures an anti-circumvention inquiry can commence.*

However, since *Anti-circumvention Inquiry No. 452*, it is now evident that the *ad valorem* method's susceptibility to exporter induced price reductions cannot be cured by the current anti-circumvention framework. As such the *ad valorem* method remains prone to unremedied ineffectiveness. Clearly Daehan was aware of this loophole when during *Investigation No. 264*, its representative wrote:

> *An exporter subject to interim dumping duties that simply lowers its export price cannot in any way be considered a circumvention activity as defined. Whilst the applicant continually refers to the avoidance of the intended effect of duty, it is important to note that s. 269ZDBBA(5A) of the Act, which deals with the avoidance of the intended effect of duty as a circumvention activity, relates to*

[17] EPR Folio No. 452/016, p. 22.

an importer selling the imported goods in Australia without increasing the price commensurate with the total amount of duty payable. It does not relate to an exporter reducing its export prices.[18]

Undeterred by the *ad valorem* measures imposed following *Investigation No. 264*, within five (5) months (by November 2015) Daehan began exploiting the weakness of both the *ad valorem* measures and anti - circumvention framework, by lowering its export price at a greater rate than its normal value (thereby dumping exports at rates in excess of the 9.7 per cent originally determined). It was no coincidence during this period that the importer did not apply for any final duty assessments, as the amount of duty payable would have been found to have exceeded the amount of interim duty paid resulting in no refunds of interim dumping duties.

However, even if the current anti-circumvention framework is found to apply to instances of exporter facilitated price circumvention, rendering the *ad valorem* measures inutile, then the Australian industry may nevertheless not seek redress under the statutory framework until the amounts of final duty are determined. This may be up to a year after the injury caused by increased rates of dumping has recurred. The inequity of this outcome is obvious when juxtaposed against the importer's right to seek a repayment of duty overpaid under a final duty assessment, or, do nothing and realise the benefit of duty underpaid.

Conclusions

The Korean exporter has advanced no sound reasons for opposing the combination method of duty calculation currently recommended by the Commissioner in SEF 566. Accordingly, the Commissioner's recommendation is the correct or preferable decision and should be upheld in the final report to the Minister.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

[18] EPR Folio No. 264/074, p. 2.