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Director, Investigations Unit 4
Anti-Dumping Commission
GPO Box 2013
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AUSTRALIA

Dumping Investigation into Merchant Bar exported from Taiwan

Dear Director,

Please accept this supplementary submission made on behalf of Feng Hsin Steel Co., Ltd (Feng Hsin), which further addresses the injury claims and allegations presented by the Applicant.

The Applicant states in its application that “[m]aterial injury arising from the volume and price effects of the dumped goods exported from Taiwan commenced in or about **November 2020**.” (p.36). In other words, Taiwan imports throughout almost the entire injury reference period prior to November 2020 did not cause material injury, as admitted by the Applicant.

It follows that the extensive quarterly analyses over certain key economic indicators throughout the 2017-2020 period, such as volume effect (p.42 *et al*), price undercutting (p.53 *et al*) and profit erosion (p.55 *et al*) in the Application (but completely blocked by confidential treatment), unsurprisingly fails to support the Applicant’s material injury claim. Nor does the Applicant itself intend to rely on such quarterly analyses to construct its material injury model in view of its above quoted admission that both volume and price effects commenced only “in or about November 2020”.

Indeed, these quarter-to-quarter comparisons throughout the injury reference period do not lead to any finding of a consistent, long-term trend of negative movements on these indicators. Instead, it relies on a few hand-picked and arbitrary, sporadic quarters to suit the Applicant’s

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requirement to demonstrate negative impacts. However, one may easily select other quarters to support a completely opposite conclusion, i.e., domestic industry did not suffer negative impacts due to the subject imports, as presented below. As such, the Application falls well short of presenting a tenable and coherent model of material injury via such quarterly analysis.

TABLE A-9.1.1 at page 43 of the Application:

These quarters show that rise or decline in **index sales volume** was in the same direction between Australian industry and imports, rather than in an opposite direction:

Period	Jul -Sep 2017	Oct -Dec 2017	rising (+) or decline (-)
<i>Aust. industry</i>	108	94	-12%
<i>Dumped imports</i>	78	72	-6%
Period	Oct -Dec 2017	Jan -Mar 2018	rising (+) or decline (-)
<i>Aust. industry</i>	94	110	+16%
<i>Dumped imports</i>	72	117	+45%
Period	Oct -Dec 2018	Jan – Mar 2019	rising (+) or decline (-)
<i>Aust. industry</i>	94	88	-6%
<i>Dumped imports</i>	135	95	-40%
Period	Jan – Mar 2019	Apr -Jun 2019	rising (+) or decline (-)
<i>Aust. industry</i>	88	86	-2%
<i>Dumped imports</i>	95	84	-11%

TABLE A-9.1.2 at page 45:

These quarters show that rise or decline in **index market share** was in the same direction between Australian industry and imports, rather than in an opposite direction:

Period	Jan -Mar 2017	Apr – Jun 2017	rising (+) or decline (-)
<i>Aust. industry</i>	100	101	+1%
<i>Dumped imports</i>	100	125	+25%
Period	Jan – Mar 2019	Apr -Jun 2019	rising (+) or decline (-)
<i>Aust. industry</i>	114	101	-13%
<i>Dumped imports</i>	123	113	-10%
Period	Apr -Jun 2019	Jul – Sep 2019	rising (+) or decline (-)
<i>Aust. industry</i>	101	108	+7%
<i>Dumped imports</i>	113	117	+4%
Period	Jul – Sep 2019	Oct – Dec 2019	rising (+) or decline (-)
<i>Aust. industry</i>	108	104	-4%

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<i>Dumped imports</i>	117	108	-9%
Period	Oct – Dec 2019	Jan – Mar 2020	rising (+) or decline (-)
<i>Aust. industry</i>	104	100	-4%
<i>Dumped imports</i>	108	105	-3%
Period	Apr – Jun 2020	Jul – Sep 2020	rising (+) or decline (-)
<i>Aust. industry</i>	105	102	-3%
<i>Dumped imports</i>	93	91	-2%

Feng Hsin’s order-taking price in the alleged injury period (11/2020-03/2021) was, respectively, US\$ [REDACTED], \$ [REDACTED], \$ [REDACTED], \$ [REDACTED], and \$ [REDACTED] per ton (see the table at p.3 of our 16 August 2021 submission). That is, a straight and consistent increasing trend, reaching a magnitude of 31.4% [$([REDACTED] - [REDACTED]) / [REDACTED]$] rise in March 2021. These month-to-month increments are so significant that it was impossible to miss by the Applicant in making its own IPP pricing decisions which ought to be used for the price effect analysis, to ensure an apple-to-apple comparison. Particularly if the Commission is to limit its injury examination to a fairly short time span of 5 months, as per the Applicant’s admission as quoted above.

However, the observed sharp increasing trend in Feng Hsin’s prices is completely opposite to what the Applicant has alleged in p.37 in its price variation analysis over the same 11/2020-02/2021 period (i.e., 96, 97, 99, 102 index points, signaling Applicant’s prices were lower than its July 2020 price level despite the scrap steel price hikes). These index prices, therefore, must not be the IPP prices that should have been used for price undercutting comparison. We submit that the Commission should request that the Applicant provide its IPP prices across the entire POI, including the aforesaid 5-month period, to ensure a meaningful and accurate price effect analysis.

Otherwise, if the Commission simply undertakes a broad comparison of the subject import price with the Applicant’s average unit revenue in the concerned five-month period, it would lead to relying on Feng Hsin’s selling prices prior to the observed scrap price hikes (embedded in its 2nd and 3rd quarter 2020 invoice prices but delivered in 4th quarter 2020), to compare with the Applicant’s “Ezystock” prices and costs impacted by the scrap price hikes, which would undoubtedly result in a skewed and unfair comparison.

As such, unless the Applicant is able to provide its IPP prices and volumes in the aforesaid 5-month period, to allow for a meaningful price effect and lost sale analyses, the Commission is requested to conduct its obligatory examination of economic indicator movements over the entire injury reference period including the quarterly data of 2020 as submitted in the Application. The required trend analysis over a longer time span, as opposed to focusing only

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on a 5-month period, would mitigate the wrongful skewed comparative impact on the material injury finding.

Indeed, the WTO panel report made it clear that the injury examination shall involve an analysis “of **trends over time** of the volume and price of imports and of the state of the domestic industry”¹ (underline added)

The Appellate Body in the *Mexico- Anti-Dumping Measure on Beef and Rice* further pointed out² that evaluation and examination of sufficient indicators on the basis of “a complete set of data” would result in a more accurate picture of the state of the domestic industry than an examination limited to a portion of the reference period.

The Appellate Body expounded on the required trend analysis more specifically in safeguard inquiries³.

In carrying out the required trend analysis, specifically in respect of the volume effect, the Applicant’s sales volume in 2020 actually increased by 7% from the base year. Actually, it jumped by 15% from CY2019 - to the most recent CY2020 [(107-93) / 93], while notably the Applicant alleged no material volume effect in CY2019 at all.

TABLE A-9.5.1 at page 60: Index of Australian industry’s sales of merchant bar since CY 2017 base year

	CY 2017	CY 2018	CY 2019	CY 2020
Aust. Industry	100	107	93	107

The same healthy state of the domestic industry is true on the relative market share analysis as presented below.

TABLE A-9.5.4 at page 61: Index of share of Australian market for merchant bar

Market share	CY 2017	CY 2018	CY 2019	CY 2020
Aust. Industry	100	100	108	118

¹ Panel Report, *Mexico – Steel Pipes and Tubes* (WT/DS331/R), para.7.250

² It is confirmed in Appellate Body in the *Mexico- Anti-Dumping Measure on Beef and Rice* (WT/DS295/AB/R), para. 183.

³ In *US – Steel Safeguards* (Appellate Body Report, US – Steel Safeguards, paras. 354-355), the Appellate Body reiterated the importance of trends over the entire period of investigation:

“2.1. Thus, a demonstration of 'any increase' in imports between any two points in time is not sufficient to demonstrate 'increased imports' for purposes of Articles XIX and 2.1. **Rather, as we have said, competent authorities are required to examine the trends in imports over the entire period of investigation.**72”; see FN 72 (footnote original) Appellate Body Report, *Argentina – Footwear* (EC), para. 129.

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Dumped imports	100	123	110	97
Other imports	100	36	34	27

The market share of the Australian industry increased by 18% from CY2017 to CY 2020, while imports declined by 3%.

Feng Hsin’s own monthly invoice, delivery, and order-taking volumes to Australia as of July 2020 through June 2021 (covering both pre- and post-November scrap price hike periods) show a fairly flat and stable level of movement, as displayed below. Therefore, the Applicant’s allegation of volume related injury caused by the subject imports is baseless.

Month	Invoice	Shipment	Order
202007			
202008			
202009			
202010			
202011			
202012			
202101			
202102			
202103			
202104			
202105			
202106			
12 months average			

(source: Feng Hsin’s sales ledgers; July 2020 – March 2021 data had already been submitted in questionnaire response)

As for the required price effect, the Applicant’s unit prices have moved in strict parallel to its CTMS year-by-year. The following table confirms that costs were the driving force to price movements, instead of the alleged import price competition. Such a conclusion derived from year-long perspectives and comparisons refutes the Applicant’s allegation that a sudden scrap price hike starting in 11/2020 through 03/2021 had already inflicted instant material injury to it because, similarly, CTMS increased by 19% in CY2018 from CY2017 while no material injury was caused or alleged by the Applicant.

TABLE A-9.5.2.1.1 at page 64: Index of changes to Australian industry’s annual unit

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CTMS and unit sales revenue over the proposed injury period

Period	CY 2017	CY 2018	CY 2019	CY 2020
unit CTMS	100	119	116	111
unit sales revenue	100	117	118	111

Even amongst the most recent quarters of 2020 which covered the scrap price hike in the last quarter, unit price was stable despite the seemingly downward trend of CTMS (4th quarter CTMS (98) was even lower than 1st quarter (100)).

TABLE A-9.5.2.1.2 at page 65: Index of changes to Australian industry’s quarterly unit CTMS and unit sales revenue over the proposed investigation period

Period 2020	JAN – MAR	APR -JUN	JUL -SEP	OCT -DEC
unit CTMS	100	95	91	98
unit sales revenue	100	104	103	100

Consequently, there was no material negative price effect inflicted by the subject imports throughout the injury reference period.

Concerning the profits and profitability indicators, both year-long analysis and quarterly comparison in 2020 shows no negative trends, as presented in the Applicant’s tables below. Both unit profit amount and percentage in the 4th quarter of 2020 which was characterised by the sudden scrap price hike, still showed a 20% improvement when compared to the 1st quarter. Notably, CY2020 average profit amount and percentage both improved from the baseline CY2017 by 16% and 4% respectively.

TABLE A-9.5.3.1 at page 67: Index of changes in the Australian industry’s profits and profitability across the proposed injury analysis period

Period	CY 2017	CY 2018	CY 2019	CY 2020
unit gain or loss	100	108	128	116
profitability	100	92	109	104

TABLE A-9.5.3.2 at page 68: Index of changes in the Australian industry’s profits and profitability across the proposed investigation period (Source: appendix A6.1)

Period 2020	JAN – MAR	APR -JUN	JUL -SEP	OCT -DEC
unit gain or loss	100	169	196	120
profitability	100	163	191	120

Incidentally, the preceding table indicates that the 3rd quarter was the highest point of profit

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and profitability in 2020, which appears to have been the primary motivation for the Applicant to arbitrarily select July 2020 as the index month for its month-to-month comparisons. That is, the Applicant's material injury allegations coincide with the scrap price hikes starting in November 2020. Such an arbitrary and capricious methodology is in effect seeking a "best case" scenario, which is certainly untenable.

In effect, the Applicant relies on a 'but-for' argument based on weak assumptions. To that end, Feng Hsin wishes to highlight the lack of a "*compelling explanation*"⁴ for the use of the 'but-for' analysis in this case. The Commission's Dumping and Subsidy Manual makes clear that where a "coincidence analysis" shows no coincidence between dumped imports and injury indicators, or is unable to be undertaken, the alternative 'but-for' analysis requires a compelling explanation. In Feng Hsin's view, there is no compelling explanation as to why a coincidence analysis is not possible.

The main flaw in the Applicant's but-for claim is that it relies on the mistaken assumption that in the absence of alleged dumping, imports of merchant bar would have been replaced by the Applicant's own sales. This is clearly contrary to the Commission's policy in basing findings on a 'but-for' assessment which states that '*[i]t is not sufficient to simply assert such an effect as this will not meet the evidentiary requirements.*'⁵

This is further supported by the Appellate Body finding in *Mexico – Anti-Dumping Duties on Rice*⁶, which observed that assumptions by an investigating authority should be based on positive evidence:

An investigating authority enjoys a certain discretion in adopting a methodology to guide its injury analysis. Within the bounds of this discretion, it may be expected that an investigating authority might have to rely on reasonable assumptions or draw inferences. In doing so, however, the investigating authority must ensure that its determinations are based on 'positive evidence'. Thus, when, in an investigating authority's methodology, a determination rests upon assumptions, these assumptions should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.

The Appellate Body went further in that dispute and concluded that an examination on

⁴ Dumping and Subsidy Manual; November 2018; page 131.

⁵ Ibid.

⁶ Appellate Body Report, *Mexico – Anti-Dumping Measures on Beef and Rice*, WT/DS295/AB/R, para 204; page 69.

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positive evidence is not fulfilled when the assumptions on which the investigating authority's methodology relies are not properly substantiated and explained:

An investigating authority that uses a methodology premised on unsubstantiated assumptions does not conduct an examination based on positive evidence. An assumption is not properly substantiated when the investigating authority does not explain why it would be appropriate to use it in the analysis ... In the Final Determination, Economía did not explain why [its] assumptions were appropriate and credible in the analysis of the volume and price effects of the dumped imports, or how they would contribute to providing an accurate picture of the volume and price effects of the dumped imports ... We would expect an investigating authority to substantiate the reasonableness and credibility of particular assumptions.⁷

Given the evidentiary threshold outlined above, the Applicant's "but for" mode of reasoning is particularly questionable in the present case, and warrants hesitation and doubt by the Commission. Further, as the Applicant is the sole producer of like goods in Australia, imports are the only source for preventing the Applicant from developing monopoly power, amongst which Taiwanese imports are the major source. From this perspective, the Commission should be suspicious of rigid and simple conclusions drawn from such "but for" inferences and extrapolations, given the unwarranted element of "monopoly rent" that only hurts downstream industries and consumers.

⁷ Ibid., para 205, page 69.