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Ms Candy Caballero
Director, Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

Dumping investigation into Steel Reinforcing Bar

Dear Ms Caballero,

This submission is made on behalf of Daehan Steel Co., Ltd (Daehan) in response to the investigation into the alleged dumping of steel reinforcing bar (rebar) from the Republic of Korea (Korea). Daehan is a producer and exporter of rebar to Australia during the nominated investigation period.

The purpose of this submission is to highlight Daehan's concerns about the absence of any verification visit reports on the public record and the impact that this may have on procedural fairness and the ability for Daehan to properly defend its interests.

Timeliness of relevant information

The rebar investigation was initiated by the Anti-Dumping Commission (the Commission) on 17 October 2014 and extended by the Parliamentary Secretary to the Minister for Industry on two occasions¹. Subject to any further extensions, the Statement of Essential Facts (SEF) report is due to be published in nine days' time on 1 July 2015.

Daehan is concerned that in the 278 days since the commencement of the investigation, the Commission has not placed any verification visit reports on the public record. This relates to visits undertaken by the Commission to importers, exporters and the applicant industry.

Of particular concern to Daehan is the absence of the Commission's industry verification report detailing the verification of the applicant's submitted financial data and material injury claims. The industry verification report is especially critical to the outcome of this inquiry given the questions raised by Daehan² and other interested parties³ about the

¹ Anti-Dumping Notice No. 2015/13; Anti-Dumping Notice No. 2015/39

² EPR 264, Record No. 004.

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reliability of the applicant's cost and sales information, stemming from their integrated production and sales operations.

The lack of sufficient opportunity to properly review and comment on the industry verification report prior to the publication of the SEF is troubling and in Daehan's view, reflects a lack of procedural fairness and restricts its ability to properly defend its interests in this matter.

Daehan wishes to bring to the Commission's attention its disclosure obligations under Article 6.4 of the WTO Anti-Dumping Agreement. Article 6.4 generally requires that the investigating authority shall provide interested parties with timely opportunities to see all information that is relevant to the presentation of their cases. This obligation is reflected in domestic legislation within subsection 269ZJ of the Customs Act 1901 (the Act), which outlines the Commissioner's requirements to maintain a public record.

The Appellate Body in EC — Fasteners (China)⁴ summarised previous decisions on the scope of information that must be disclosed under Article 6.4:

“The Appellate Body has found that Article 6.4 refers to ‘provid[ing] timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases’, and that the possessive pronoun ‘their’ clearly refers to the earlier reference in that sentence to ‘interested parties’. Therefore, it is the interested parties, rather than the authority, who determine whether the information is in fact ‘relevant’ for the purposes of Article 6.4.

The interested parties’ right under Article 6.4, therefore, is to see all non confidential information relevant to the presentation of their cases and used by the investigating authority. Article 6.4 thus applies to a broad range of information that is used by an investigating authority for purposes of carrying out a required step in an anti-dumping investigation....”.

The Appellate Body in EC — Tube or Pipe Fittings⁵ further summarised its previous findings on the importance of these disclosure obligations and concluded that information relating to the Article 3.4 injury factors is necessarily “relevant” information which is to be disclosed under Article 6.4.

The issue of integration within the applicant's group operations is clearly relevant and critically important to the Commission's assessment of the economic condition of the industry and the applicant's injury claims. As such, Daehan requests that the Commission

³ EPR 264, Record No. 009; EPR 264, Record No. 010; EPR 264, Record No. 037; EPR 264, Record No. 044.

⁴ Appellate Body Report, EC - Definitive anti-dumping measures on certain iron or steel fasteners from China, WT/DS397/AB/R, para 479-480.

⁵ Appellate Body Report, EC – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil, WT/DS219/AB/R: In paragraph 138 of the Report, the Appellate Body states that “At the outset, we wish to underscore the importance of the obligations contained in Article 6 of the Anti-Dumping Agreement. This Article “establishes a framework of procedural and due process obligations”. Its provisions “set out evidentiary rules that apply throughout the course of the anti-dumping investigation, and provide also for due process rights that are enjoyed by ‘interested parties’ throughout such an investigation”.

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publish the industry verification report as soon as possible to ensure parties have sufficient time and opportunity to comment and present counter views if necessary.

On the issue of timeliness, Daehan notes that the 2006 Joint Study⁶ received numerous submissions from interested parties expressing concerns about timeliness of information being placed on the public record. The Joint Study correctly observed that that '[t]he ability to view and consider documents in time to make a rebuttal or advance opposing views is important to parties being able to defend their interests' and recommended that all documents be placed on the public record as soon as possible but in any case not less than two weeks before the publication of the SEF report.

Given that the recommendation was accepted by the then Minister for Customs and Justice and Minister for Industry, Tourism and Resources, Daehan considers that the Commission is under an obligation to comply with the Ministers' recommendations and ensure that all relevant information is placed on the public record not less than 2 weeks before the publication of the SEF, so that all interested parties have proper opportunity to prepare and make further submissions on critical issues.

Yours Sincerely

John Bracic

⁶ Joint Study of the Administration of Australia's Anti-Dumping System, August 2006, section 4.2.2, pages 25-26.