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ANTI-DUMPING INVESTIGATION BY THE AUSTRALIAN GOVERNMENT ON IMPORTS OF STEEL REINFORCING BAR

Written submission of the European Commission on the Statement of Essential Facts Nr 264

On 2 September, the Australian Anti-Dumping Commission released the Statement of Essential Facts (SEF) concerning the anti-dumping investigation on imports of steel reinforcing bar from the Republic of Korea, Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand and the Republic of Turkey. The SEF provides the findings of the investigation initiated on 17 October on which the Anti-Dumping Commissioner proposes to base the recommendation concerning the case.

The European Commission would like to thank the Australian authorities for this opportunity to submit comments with regards the above-mentioned proceeding.

Following a detailed analysis of the SEF the European Commission notes that the quality of evidence disclosed at this point of the investigation is clearly insufficient.

This issue was already pointed out at initiation but the SEF shows little improvement in this regard. The European Commission understands that this approach could in part be motivated by confidentiality reasons because there is only one complainant.

However, not disclosing meaningful information goes clearly against the right of defense of interested parties. Indeed, the SEF is lacking important elements of analysis as it will be shown in more detail in this submission. On this basis, it is extremely difficult for parties to make a judgment and defend its case.

Despite the above, and from the limited information contained in the SEF, the European Commission would like to reflect on certain issues regarding injury and causality. These are explained below.

1. MATERIAL INJURY

According to Article 3.1 of the WTO Anti-dumping Agreement (WTO ADA) a determination of injury *"shall be based on **positive evidence** and involve an **objective examination** of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the*

domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products".

In this respect, the European Commission considers that the injury assessment made by Australia is inconclusive. First, the methodology followed to conclude on the existence price effects is inappropriate. Second, the assessment of the situation of the domestic industry is incomplete and unconvincing as it does not demonstrate the existence of material injury caused by dumped imports.

a. Volume of dumped imports

The domestic consumption of steel reinforcing bar in Australia has grown by 17% during the overall investigating period (IP) and the domestic industry has also benefited from this trend since sales have increased at a rate close to the market growth (14%).

Unfortunately, the absolute level of market shares has not been disclosed by Australia. The only available information on market shares is presented in a graph[1], which merely gives some general indications. On this basis, while it appears that market shares of the investigated imports have increased during the IP (P1 to P4), this was mostly at the expense of imports from other countries, Malaysia and Thailand mainly. However, the impact on the domestic industry's market share was rather moderate. The European Commission estimates that it would be limited to a loss of around 1.5 percentage points, which does not appear to be material.

b. Effect of dumped imports on prices

The Anti-Dumping Commission found that the price pressure - in the form of undercutting - from the allegedly dumped imports prevented the domestic producer to increase prices (price suppression).

The European Commission has serious doubts about the methodology chosen to assess price effects for the following reasons:

- In anti-dumping investigations the most reliable and comprehensive source of evidence consists of data collected through the questionnaire replies of cooperating exporters, which is usually verified on site. In this case however, the Anti-Dumping Commission did not use this data for the undercutting calculation but instead **used information provided by importers**. This methodology is questionable because the information received by importers is more than likely less representative (in terms of number of transactions) than the data provided by the cooperating exporters. Australia in fact based its conclusions on a very limited number of transactions: a total of 16 transactions. This is without any doubt much more limited than all the export transactions provided by the 5 cooperating companies from the 4 countries concerned by the case and would inevitably lead to biased results.

[1] Statement of Essential Facts No 264, Figure 5, p.50.

- Australia has also performed a quarterly undercutting estimation based on sales prices to one major customer. Similarly to above, these figures cannot be taken as representative since they cover only a limited number of sales transactions. In any case, these figures show that **undercutting did not take place in all the quarters investigated**.

In sum, the European Commission considers that, so far, the Anti-Dumping Commission did not meet the requirement of Article 3.1 of the WTO ADA since the findings regarding price effects were not based on representative data and did therefore no involve an *"objective examination"*.

c. Impact of dumped imports on domestic producers

The European Commission noted that some of the injury factors such as production or wages are missing in the Report and this manifestly contradicts the WTO requirements. In that regard, Article 3.4 of the WTO ADA determines that the impact analysis "*shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry"* and it gives a list of fifteen indicators. The WTO Panel, when referring to such indicators, confirmed that "*the examination of the impact of dumped imports must include an evaluation of all the listed factors in Article 3.4"*[2].

In addition to the above, there is no information on the actual magnitude of variations of the injury indicators. Indeed, the report just mentions "increase" or "decrease" to refer to these variations without giving any indication of the year by year trend and the amplitude of these changes. It is therefore simply impossible to make a judgment on the condition of the domestic industry if magnitudes are not disclosed. In this regard, Article 6.5.1 of the WTO ADA determines that the non-confidential summaries *"shall be given in sufficient detail to* ***permit a reasonable understanding*** *of the substance of the information submitted in confidence"*[3] and this has not been the case so far.

In spite of the above shortcomings, the information disclosed shows that the negative profitability has been reduced along the investigation period and that the negative profits (or losses) remain in P4 at levels of P1. This confirms the idea that the injury caused by allegedly dumped imports may not be material.

In sum, the European Commission considers that the Australian authorities failed to conduct an objective examination based on positive evidence because (i) not all the relevant economic factors were examined and (ii) because the evaluation of the relevant economic factors did not involve a sufficiently detailed analysis of each factor based on the WTO standards. In this respect, it is recalled that a WTO Panel concluded that *"the 'evaluation' to which Article 3.4 refers is the process of analysis and interpretation of the facts established in relation to each listed factor"*[4].

With the exception of the existence of losses, the European Commission does not agree with the conclusions of the Anti-Dumping Commission that injury can be considered as material in this case. Indeed, the market share, costs, prices do not appear to have changed significantly

[2] Panel Report, EC - Bed Linen. Paras. 6.156
[3] Article 6.5.1 WTO Anti-dumping Agreement.
[4] Panel Report. Egypt - Steel Rebar. Para. 745

from P1 to P4. In this regard, the minimal loss of market share (estimation: around 1.5%) cannot be considered as material. As regards losses, the doubts concern the causality since the applicant has been in a loss making situation during all the years under investigation and overall even reduced the amount of losses. This is analysed in more detail in the section below.

2. CAUSAL LINK

According to Article 3.5 WTO ADA, *"it must be demonstrated that imports are, through the effects of dumping, (...), causing injury within the meaning of this Agreement"*. In addition, according to Article 3.5, *"The authorities shall also examine any know factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports"*.

Further to the above mentioned doubts about the scope of material injury, the European Commission questions the fact that injury is caused by dumped imports. There are some indications that this is not the case. For example, it should be noted that in P2 the Australian steel reinforcing industry suffered the highest losses in the period analyzed, but this coincides with the year when domestic sales had increased considerably (17% according to the industry), the number of employees had expanded and the investigated imports had reduced slightly.

On the other hand, there are clear indications that the material injury, i.e. limited to the losses in this case, has been caused by factors other than imports. It is indeed striking that the domestic industry has been suffering losses during the four consecutive years covered by the investigation. As already raised at initiation, this would indicate that the domestic industry is suffering from structural problems rather than any problems caused by imports.

In this respect, the SEF concludes that the different claims regarding structural problems were speculative in nature because no documentary evidence was provided by the interested parties. In this context, it is important to underline that the burden of proof in an anti-dumping investigation is born by the investigating authorities and not by the interested parties.

It is indeed up to the investigating authorities to examine any other known factors other than the dumped imports, and the SEF itself contains sufficient evidence that indicate that there may have been structural problems causing injury to the domestic industry, i.e. the figures showing consistent negative profits and profitability. These known factors should thus have been analysed in detail rather than just dismissing their importance by claiming this is only a speculative issue.

Based on the above, it seems that the injuries caused by other factors are being unduly attributed to the dumped imports, and the European Commission hereby requests the Australian authorities to take this issue into consideration for the remainder of the investigation.

3. CONCLUSIONS

Following the assessment of the information provided in the SEF, the European Commission would like to draw the investigating authorities' attention to the fact that the injury and causality analysis do not appear to be convincing at this stage of the investigation. The injury assessment is surprisingly poor and the price effects analysis seems to be biased.

The European Commission trusts that the Australian authorities will comply with their WTO obligations throughout the proceeding.