

17 October 2023

The Director, Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

BY EMAIL:
Investigations3@adcommission.gov.au

Dear Director,

Reinvestigation of certain findings in relation to *Continuation Inquiry No 601* concerning Steel Reinforcing Bar exported from Greece, the Republic of Indonesia, Spain (by Nervacero S.A), Taiwan (by Power Steel Co. Ltd) and the Kingdom of Thailand

**AUSTRALIAN INDUSTRY SUBMISSION IN RESPONSE TO
THE PRELIMINARY REINVESTIGATION REPORT**

InfraBuild (Newcastle) Pty Ltd (**InfraBuild**), the applicant for the continuation of anti-dumping measures the subject of this reinvestigation request of Panel Member Blumberg dated 3 July 2023, provides the following comments and observations below concerning the Commissioner of the Anti-dumping Commission's (**Commission**) *Preliminary Reinvestigation Report* in this matter (**Preliminary Report**).

Import volumes and patterns of trade

To the Commissioner's finding that:

‘the expiration of the anti-dumping measures in respect of exports from Nervacero would lead, or would be likely to lead, to a continuation of, or recurrence of, the dumping having regard to its assessment of import volumes and patterns of trade’,¹

InfraBuild considers the Commission's analysis of patterns of trade of Nervacero S.A (**Nervacero**), and its associates as a member of the Celsa group of companies, as compelling to the assessment of likelihood of recurrence. In particular, InfraBuild points to the Commission's analysis of the interchange between the various exporters of the goods and like goods in response to the presence, absence and effective rates of anti-dumping measures.²

Furthermore, the Commission is correct to treat Nervacero's dumped exports during the inquiry period as positive evidence of its likelihood to continue dumping. Irrespective of Nervacero's motive to export the goods, the Commission has properly focused on the irrefutable facts of the transaction:

¹ Preliminary Report, p. 12.

² Preliminary Report, p. 13.

1. 'it was an arms length transaction to an unrelated customer and met the requirements of section 269TAB(1)(a)';
2. 'the purpose of this shipment appears to be for retaining ACRS accreditation,' which in turn evinces an intention to continue to export the goods and like goods to Australia;
3. 'the importer for this shipment was one of Nervacero's major customers prior to measures... [who] now imports rebar from the CELSA Group entity in Poland'; and
4. 'that the domestic prices for rebar in Spain had recently increased more than the export price.'³

Likelihood that dumping is likely to continue or recur

The Commission's assessment of likelihood of continuation and recurrence of dumped exports of the goods by Spanish exporters is aligned with the recent decision of the Canada Border Services Agency concerning an expiry review determination also related to the dumping of rebar exported from Spain (among other origins). In relevant part, the Canadian authority found regarding the question of likelihood of continued or resumed dumping for Spain:

'Based on the evidence on the record in respect of: the commodity nature of rebar; excess global production capacity and weakening global demand for rebar; weakening economic growth and a declining construction sector in Spain; Spain's significant excess rebar production capacity; the export orientation of Spanish rebar producers; the restricted access to export markets due to trade restrictions imposed by other countries; the anti-dumping measures in other countries against rebar that demonstrate that rebar exporters in Spain have a propensity to dump into export markets; and the inability of rebar exporters in Spain to compete in Canada at non-dumped prices, the CBSA determined that the expiry of the finding is likely to result in the continuation or resumption of dumping into Canada of rebar from Spain.'⁴

Exporter's late submission

InfraBuild observes that Nervacero lodged a late submission to the Commission on 13 September 2023⁵. This submission was received outside of the 21-day period the Commission had set for submissions in relation to the reinvestigation (ending 22 August 2023). It is noted that the Commissioner has not considered this submission in his Preliminary Report, but that the submission will be considered in the Commissioner's reinvestigation report to the ADRP⁶.

InfraBuild makes the following comments regarding this late submission.

Firstly, Nervacero makes the misleading statement that '[t]he InfraBuild Submission... argue[s] that the reviewable decision has, contrary to the ADRP's view, met the legal requirement and should not

³ Preliminary Report, p. 15.

⁴ NON-CONFIDENTIAL ATTACHMENT A, p. 37 at [162].

⁵ EPR Folio No. 601/036

⁶ Preliminary Report, p. 16 at footnote 37.

be reinvestigated.⁷ [emphasis added] This was not stated by InfraBuild. For the avoidance of doubt, InfraBuild submitted that:

‘With respect to the ADRP Member’s Reinvestigation Request, it may not be said that the Commissioner failed to provide a reasoned and adequate explanation of why he considered that it was likely that dumping would recur if the duties expired. Although, part of his conclusion relied on analysis by the Commission that took into account Nervacero’s ability to compete in the Australian market both with and without the duties, this analysis was grounded in positive evidence, namely what export price the exporter would need to offer to compete in the Australian market, and an assessment as to whether that price would be dumped or undumped; given the named exporter’s verified ascertained normal value. This level of analysis cannot be compared to the ‘speculation’ performed by the investigating authority assessed in Pakistan – BOPP Film (UAE) ...

‘In contrast, the Commission’s analysis concerning the likelihood of dumping determination was detailed. It considered positive evidence of Australian market conditions, such as the export prices of imports from all sources, selling prices by both importers and Australian industry into the rebar market and the exporter’s ascertained normal value...

‘Applied here, the Commission met the requisite standard of proof required in its likelihood of dumping determination.’⁸

Conclusion

The Commissioner’s recommendation to the Minister to continue the measures with respect to Nervacero was based on positive evidence, and its likelihood determinations were well reasoned and supported by facts. The Preliminary Report further reinforces this conclusion.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

⁷ EPR Folio No. 601/036, p. 3.

⁸ EPR Folio No. 601/035, pp. 2 – 4.