



20 November 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 RESPONSE TO EXPORTER SUBMISSION 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, observes a number of factual inaccuracies in the submission of the exporter, Nervacero S.A.,¹ in response to the *Preliminary Reinvestigation Report* in this matter (**Preliminary Report**).

Misrepresentation of the Commissioner's analysis

The exporter claims [at p. 3]:

Instead of conducting a reinvestigation that addresses the flaws identified by the ADRP, and applying the correct legal standard, PRR 601 appears to disagree with the ADRP's finding and reasserts that Report 601 applied the correct legal standard and cannot be faulted. [PRR 601, page 11]

This is a misleading and disingenuous comment by the exporter. Even a cursory reference to the following page [p. 12] of the Commissioner's Preliminary Report reveals the approach taken in response to the Panel Member's reinvestigation request:

The commission has re-examined the evidence (including evidence to the contrary) before it and maintains the conclusion that recurrence or continuation of dumping will likely result from removal of the measures with respect to Nervacero.

The commission has examined:

- *patterns of trade*
- *likelihood of dumping*
- *Nervacero's claims regarding its exports to Australia.*

¹ EPR Folio No. 601/039.



The Commissioner then performs a detailed assessment of each of these three factors to provide the Commission with the positive fact-based analysis required by the WTO jurisprudential and domestic legal standards. For the avoidance of doubt, the Commissioner's analysis spans pages 12 to 19 of the Preliminary Report.

Nervacero's critique of Commissioner's analysis imbalanced and self-serving

To the extent that the exporter acknowledges the Commissioner's analysis in response to the reinvestigation request, heavy emphasis is placed on the Commission's assessment of the trade patterns and behaviours of the Celsa group of companies, of which the exporter and its Polish affiliate are members.

As such, the so called "demonstrated behaviour" of Celsa Group – even if a relevant consideration - would in fact weigh against the probability that expiry of the measure would or would be likely to cause a recurrence of exports and dumping from Nervacero and the injury that the measure was intended to prevent. There is no evidence, either in fact or by inference, that the measure's expiration would make it more likely than not for Celsa Group to replace supply of the rebar from Celsa Huta Ostrowiec with rebar from Nervacero. [p. 3]

With respect, it is not a valid critique of the Commissioner's analysis to simply dismiss conclusions not in the exporter's interest as not supported by *...evidence, either in fact or by inference...* when the Commission has clearly presented evidence of past trade behaviour. To do otherwise, the Commissioner would either need to have Delphic powers of prophecy or engage in simply unfounded speculation. Clearly the latter is not permitted under domestic law, and the former is yet to be proven.

The Commissioner has performed an evidence-based examination of the channels and distribution networks of members of the Celsa group of companies into the Australian market. This analysis was performed in accordance with the Commission's policy on the question of assessing the likelihood of continuing or recurring dumping. The *Dumping and Subsidy Manual (Manual)*² sets out consideration of *...whether exports are likely to continue or resume (such as volume of exports before and after measures were imposed, exporters' production capacity, exporters' supply chains, exporters' other markets, third country sales, and the world market for the goods)...* and *...changes in distribution channels...* as relevant non-exhaustive factors to consider in the inquiry.³

Exporter's misleading claim of 'Incorrect and inadequate redressing of factual error'

A further significant and conspicuous omission from the exporter's assertion concerning the composition of the Australian market is the failure to identify exports of the goods from Italy.

The exporter claims [at p. 4] that the general duty rate of 5% applicable to exports of the goods from Spain is a *...higher import tariff' and that this is of itself a competitive barrier to trade in the Australian market.* To validate its assertion, the exporter then only identifies other exporters of the goods to Australia with zero tariff rates:

² *Anti-dumping Commission, 'Dumping and Subsidy Manual', December 2021.*

³ *Manual, p. 137.*



We remind the Commission that there is a zero tariff rate applicable to all other major sources of imports for the Australian market – including Malaysia, Indonesia, Poland, Singapore, Turkiye and Taiwan.

A 'major source of imports for the Australian market' suspiciously omitted from the exporter's list is Italy, which accounts for an estimated [REDACTED] tonnes)⁴ of total rebar imports for the 12 months ending October 2023. Italy, like Spain, faces a 5% tariff rate, which clearly does not preclude it from participating in the Australian market. Therefore, the exporter's suggestion that a 5% tariff is a competitive barrier to trade in the Australian market, is factually inaccurate.

Furthermore, the suggestion that the exporter's geographic distance is a further barrier to the exporter's renewed participation in the Australian market⁵ is also invalidated by the presence of exports of the goods from Italy, which face similar logistical dimensions.

Conclusion

The exporter, Nervacero, provides no reasonable or reliable basis to reverse the Commissioner's recommendation contained in the Preliminary Report, based on selective, incomplete and self-serving citations from the Preliminary Report, and conspicuous omissions of trade data.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

⁴ Australian Bureau of Statistics

⁵ EPR Folio No. 601/039, p. 5.